



HOUSE OF LORDS

Select Committee on the Constitution

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10th Report of Session 2015–16

# The Union and devolution

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Evidence is published online at [www.parliament.uk/union-and-devolution](http://www.parliament.uk/union-and-devolution) and available for inspection at the Parliamentary Archives (020 7129 3074).

Q in footnotes refers to a question in oral evidence

## SUMMARY

We believe that the four nations of England, Northern Ireland, Scotland and Wales are stronger united than apart. The Union has brought stability, peace and prosperity to the United Kingdom. Yet today, the Union is under threat.

Power has been devolved to Scotland, Wales and Northern Ireland in an *ad hoc*, piecemeal fashion. Successive Governments have taken the Union for granted. Proper consideration of the cumulative impact of devolution on the integrity of the Union itself has been lacking.

Every system has limits. This haphazard approach to the UK's constitution, in which power has been devolved without any counter-balancing steps to protect the Union, recently culminated in an existential threat in the form of a referendum on Scottish independence.

An inattentive approach to the integrity of the Union cannot continue. Following the significant changes that the territorial constitution has undergone in recent years, the time has come to reflect and take stock. While the constitution should reflect the wishes and interests of the nations and regions, that must not be at the expense of the stability, coherence and viability of the Union as a whole. Should any proposals for further devolution arise in the future, they should be considered within an appropriate framework of constitutional principles that safeguard the integrity of the Union.

We also draw attention once again to the conclusion of our 2014 report, *Proposals for the devolution of further powers to Scotland*. It stated that the UK Government must “devise and articulate a coherent vision for the shape and structure of the United Kingdom, without which there cannot be constitutional stability.”

### The Union and the devolution process

We do not share the Government's confidence that all the pieces for a stable constitutional settlement will be in place with the implementation of the Scotland Act 2016 and the passage of the next Wales Act. It is possible that at some point there will be demands for the devolution of further powers. It is essential that steps are taken now to ensure that any further proposals are dealt with in a manner that both meets the needs of the devolved nations and protects the interests of the Union as a whole.

While the UK constitution has proved flexible and resilient over the centuries, the Scottish referendum threatened the integrity of the Union. We regret that Mr Letwin, the Government minister responsible for the constitution, does not recognise the concerns expressed by this Committee and many others at the pressures being placed on the UK constitution by the manner in which the devolution of powers has taken place, and continues to take place, with little consideration of the status and needs of the Union.

The Government needs fundamentally to reassess how it approaches issues relating to devolution. What affects one constituent part of the UK affects both the Union and the other nations within the UK. Devolution needs to be viewed through the lens of the Union, with appropriate consideration given to the needs of, and consequences for, the entire Union.

The UK Government should identify which functions are essential to the effective functioning of the Union. These are the functions that underpin and maintain the key elements of the Union, which we define in our report as the economic, social, political, cultural, and security and defence unions. We explain these elements fully in our report. Ending, or substantially weakening, any of them would undermine the Union as a whole.

We also recommend that the UK Government publish a Devolution Impact Assessment, should any future proposals for devolution be made. This would measure the potential impact of such proposals on the cohesiveness and stability of the Union as a whole, and on each of its constituent nations.

To help guide this process, we set out a number of principles that should underpin any future development of devolution. These include *solidarity*, which is essential for the coherence of the Union. It must be balanced against the needs of *diversity*, reflecting the importance of recognising local circumstances and preferences. There must be *responsiveness* to demand, and due consideration given to an appropriate degree of *consent* for any change. Power should only be devolved according to the principle of *subsidiarity*, and in a manner that ensures *clarity* to assist public understanding of where responsibility lies.

The constitution being a reserved matter, provision for any future referendum on an issue as fundamental to the Union as the secession of one of its four nations should be set out in primary legislation by the UK Parliament. This will enable proper scrutiny by representatives of all four nations.

### **Adapting to devolution**

Recognition is needed of the overarching responsibility of the UK Government and Parliament for the effective governance of the United Kingdom. At the same time, a new mindset is required at all levels of government—one that recognises the devolved institutions as now being established components of the UK's constitution.

This new mindset will require abandoning a 'devolve and forget' attitude. Instead the UK Government should engage with the devolved institutions across the whole breadth of government policy, co-operating and collaborating where possible. In particular, the Joint Ministerial Committee should be reformed to promote co-operation and collaboration, rather than grandstanding and gesture politics.

We recommend that the UK Government undertake a thorough review of the operation of the Civil Service. It should consider how the devolved administrations can be more effectively and more consistently involved in policy development, in a way that answers their concerns and improves the governance of the UK.

In our view, to perpetuate the use of the Barnett Formula, which takes no account of relative need, makes a mockery of the Government's duty to ensure a fair distribution of resources across the UK. We recommend that the UK Government reconsider its use of the inadequate Barnett formula and establish a mechanism that takes into account the relative needs of different nations and regions in allocating funds.

Action is needed to clarify for citizens the increasingly complex division of responsibilities between different levels of government. Clarity is vital for proper accountability and responsibility at each level of Government.

We recommend that the Government consider the ways in which UK Government services could be branded, to make clear to citizens the distinction between services provided by devolved government and those provided by the UK Government.

We consider that the BBC and other public service broadcasters play an important role in maintaining a common British identity. By providing a shared source of culture and information, they act as a unifying force within the Union. It is vitally important that independent public sector broadcasters continue to provide a common UK-wide service in addition to regional and local coverage, particularly in relation to topics such as news and current affairs.

Civil servants can face conflicting priorities when a devolved administration takes a position diametrically opposed to the UK Government on a major policy issue. This tension was most acute during the Scottish independence referendum. Clear and definitive guidance for such situations should be issued now, rather than when political tensions have already started to arise. In particular, civil servants involved in a referendum that might jeopardise the integrity of the United Kingdom should be given clear guidance on their duties and rights.

### **The English Question**

The ‘English Question’ encompasses both concerns about the representation of England within the Union, and about the devolution or decentralisation of power within England. As a result of the devolution granted to other parts of the UK, the governance of England is now a key concern for those considering the territorial constitution. It is the largest, most powerful nation in the UK yet the only one without separate recognition and political representation within the Union. Meanwhile, within England power is centralised. As a result, there is dissatisfaction within England with the current territorial constitution.

One proposed solution, the creation of an English Parliament, would introduce a destabilising asymmetry of power to the Union. Another, elected regional assemblies, is not currently being considered and is unlikely to gain any traction in the near future.

The House of Commons has instead adopted procedures for ‘English votes for English Laws’ (EVEL) which aim to give English MPs a distinct voice in Parliament—but these are viewed unfavourably by some, including, but not exclusively, those representing the devolved nations whose devolution settlements already provide them with a distinct political voice.

The Government has also agreed a number of ‘devolution deals’ with local authorities, primarily forming new combined authorities with greater devolved powers. We generally support the principle of decentralising power, and consequently we cautiously welcome the deals. However, while they may address some of the concerns about the centralisation of power within England, there appears to be a lack of consideration given to how they may affect the overall governance of England in the longer term, and the wider territorial constitution

of the UK. We discern no clear vision in Government of where the process might lead.

We raise a number of concerns about the negotiation process for ‘devolution deals’, and in particular the lack of public engagement and transparency. It is essential that the public should be engaged about their concerns and about where they believe power should lie within England.

It is too soon to know whether EVEL and the ‘devolution deals’ will provide an answer to the English Question. What is clear is that the English Question remains one of the unresolved issues facing decision-makers grappling with the UK’s territorial constitution.



# The Union and devolution

## CHAPTER 1: INTRODUCTION

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1. The United Kingdom's territorial constitution is in a state of flux. Significant and far-reaching changes to the devolution settlements with Scotland, Wales and Northern Ireland are being debated and implemented. Meanwhile there are significant changes being made to governance arrangements within England. 'Devolution deals' are being negotiated between the Government and English local authorities, following a flagship Greater Manchester deal, while the House of Commons has adopted new procedures for considering legislation that applies only to England or to England and Wales.
2. In this period of rapid change, there is growing concern over the stability of the Union itself. The independence referendum in 2014 gave Scotland the option to leave the Union. While Scottish voters chose to remain a part of the UK, they are divided on the issue. There continue to be calls from some for another referendum despite the Scottish Government's repeated description of the vote as "a once in a generation opportunity" ahead of the referendum.<sup>1</sup> Northern Ireland's political settlement remains fragile and English discontent with how the Union works has become a matter of increasing concern for policymakers and observers.
3. **The four nations of the United Kingdom are stronger united than apart. The Union has brought stability, peace and prosperity to the United Kingdom.** We are therefore deeply concerned by the implications of the reactive and piecemeal approach successive governments have taken to devolution to date, an approach that has neglected adequately to consider the cumulative impact of the devolution settlements on the Union as a whole. During this inquiry, therefore, we focused our attention on the Union, and in particular on how to ensure that it remains an effective and positive force in the lives of the people of the UK. This report follows the publication of our March 2015 report, *Proposals for the devolution of further powers to Scotland*, in which we recommended that the UK Government and UK-wide political parties "devise and articulate a coherent vision for the shape and structure of the United Kingdom, without which there cannot be constitutional stability."<sup>2</sup>
4. In this report we seek to set out what the Union is for, how it has been affected by devolution and where the risks to the stability of the Union might lie. We then consider how the Union might be strengthened following the stresses of two decades of *ad hoc*, piecemeal devolution. We set out a number of principles which should underpin any further devolution of power within the UK, before considering a number of specific measures that, if implemented by the Government, should ensure that any further proposals for devolution are dealt with in a coherent manner that strengthens, rather than destabilises, the Union.

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1 See for example: 'Salmond: "Referendum is once in a generation opportunity"', *BBC News*: <http://www.bbc.co.uk/news/uk-scotland-29196661> [accessed 5 May 2016] and the foreword to Scottish Government, *Scotland's Future: Your guide to an independent Scotland* (November 2013): <http://www.gov.scot/resource/0043/00439021.pdf> [accessed 5 May 2016]

2 Constitution Committee, *Proposals for the devolution of further powers to Scotland* (10th Report, Session 2014–15, HL Paper 145), para 24

5. We heard from 66 witnesses during our inquiry, including academics, think tanks, the chairs of Commissions on devolution, the Welsh and Scottish Governments, representatives of political parties from all parts of the UK including Northern Ireland, trades unions, the voluntary sector and business organisations. We held evidence sessions in the National Assembly for Wales and Edinburgh University's Centre on Constitutional Change. We are grateful to both institutions for hosting us. We also received 62 pieces of written evidence, ranging from the Welsh Government to private individuals. We are grateful to everyone who submitted written material or gave evidence to us in person.
6. In the May 2016 elections, some of our witnesses became or ceased to be members of devolved legislatures. Other witnesses' roles in political parties or other organisations have changed. We have referred in the text to titles and roles as they were at the time individuals gave evidence.
7. In this report we use the term 'nation' to refer to the four constituent nations that make up the UK (England, Northern Ireland, Scotland and Wales).<sup>3</sup> We use the term 'British' to refer generally to UK citizens, including those living in Northern Ireland. We also use the terms devolved government and devolved administration interchangeably to refer to the Scottish and Welsh governments and the Northern Ireland Executive.

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<sup>3</sup> Strictly speaking, the Union can be described as comprising "two Kingdoms (Scotland and England), a Principality (Wales) and a Province (Ulster from the Kingdom of Ireland)." Written evidence from Lord Morrow ([UDE0068](#))

## CHAPTER 2: WHAT IS THE UNION?

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8. There is no single definition of what constitutes the Union between the four nations of the United Kingdom. Unlike in most other countries, the essential components or elements of this Union have never been set down or codified. As Dr Andrew Blick, Lecturer in Politics and Contemporary History, King's College London, told us:

“There has never been a specific moment at which the UK has sought decisively to write down the key values and rules of its system. While all constitutions develop over time, the UK constitution stands out for the extent to which it appears to be an accumulation more than a specific planned construction.”<sup>4</sup>

9. While there have been historic events in the development of the Union, such as the 1689 Bill of Rights and Claim of Rights, and the different Acts of Union, these have evolved and been superseded over time. Consequently, the UK's constitution relies on custom, practice and a plethora of different statutes in place of a written constitution, such as is found in nearly all other states. Nonetheless, the Union has certain characteristics and key elements that combine to form its whole. In this chapter, we briefly explore the historical evolution of the Union before setting out the characteristics and key elements of the Union today.

### The evolution of the Union

#### *The Unions creating the United Kingdom*

10. The Union of the four nations making up the United Kingdom has been influenced and shaped by the history of those nations. That history demonstrates an enduring tension between unity, as the nations came together to form the United Kingdom, and diversity, as they developed increasingly separate administrations.<sup>5</sup> The United Kingdom has developed through incorporations and Unions between the ancient nations and peoples that occupy the British Isles.<sup>6</sup> Its present form as the United Kingdom of Great Britain and Northern Ireland dates from the partition of Ireland and the secession of the Irish Free State (later the Republic of Ireland) in the 1920s.
11. The Union exhibits a long-standing asymmetry between the administrations of each nation in the Union,<sup>7</sup> arising from different circumstances, traditions, politics, culture and geography.
12. Wales was incorporated into the governance structure and legal system of England through the so-called Acts of Union of 1536 and 1543, although English conquest and dominance long pre-dated those Acts. Indeed, from 1746 until 1967, the two were so closely entwined that references to England

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4 Written evidence from Dr Andrew Blick ([UDE0029](#))

5 Written evidence from the Federal Trust for Education and Research ([UDE0018](#))

6 Written evidence from Dr Andrew Blick ([UDE0029](#))

7 Written evidence from the Federal Trust for Education and Research ([UDE0018](#))

in statute were automatically taken to include Wales.<sup>8</sup> By contrast, the Acts that created the Unions with Scotland and Ireland ensured they retained discrete identities, separate from that of England.

13. The 1706–07 Acts of Union that brought Scotland and England (and therefore Wales) together in Great Britain, “expressly reserved certain Scottish institutions as ‘for all time coming’ unalterable”,<sup>9</sup> including the continuation of a separate legal system and church in Scotland.<sup>10</sup>
14. Ireland was subject to English (and later British) rule to varying degrees from at least the Tudor period.<sup>11</sup> The 1800 Acts of Union that brought Great Britain and Ireland together as the United Kingdom merged the Church of Ireland with the Church of England, but maintained a separate judicial system in Ireland.<sup>12</sup> The administration of Ireland continued to be conducted from Dublin,<sup>13</sup> with the Chief Secretary for Ireland effectively the government minister with responsibility for governing Ireland.
15. The Union with Scotland abolished the English and Scottish Parliaments and created a new British Parliament in which MPs and peers representing Scotland sat on equal terms with those from England, as did members from Ireland following the Union of 1801. Beyond that, Professor Colin Kidd, Professor of Modern History, University of St Andrews, told us that the 1707 Union did not change procedure in what was essentially the old English Parliament. Notably, “There was no mechanism built into the Union to allow for the expression of Scottish discontent with the will of an English-dominated Parliament, or for the redress of such grievances through formal institutional channels.”<sup>14</sup> It was not until the early 20th century that the House of Commons instituted separate procedures for the passage of Scottish legislation via separate standing committees of Scottish MPs.

### *Ireland and Northern Ireland in the Union*

16. Ireland’s place in the Union was the subject of enormous parliamentary upheaval during the 19th century. Devolution (or ‘Home Rule’) came to the forefront of the political agenda as pro-Home Rule Irish MPs held the balance of power in the House of Commons in 1885, 1892 and 1910. Home Rule Bills introduced by the Government in 1886 and 1893 were defeated. Arguments over another Home Rule Bill (which became the Government of Ireland Act 1914) and the status of pro-Union counties in the north-east of Ireland were among the most pressing issues in the years preceding the First World War.

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8 From the passage of the Wales and Berwick Act 1746 to its repeal by the Welsh Language Act 1967. There were, however, distinct Acts applying to Wales alone, including over licensing, education and the disestablishment of the Church of England in Wales: the Sunday Closing (Wales) Act 1881; Welsh Intermediate Education Act 1889. Disestablishment in 1920 followed the Welsh Church Act 1914 and the Welsh Church (Temporalities) Act 1919. See Kenneth O. Morgan, *Wales in British Politics 1868–1922*, 1963.

9 Written evidence from the British Academy ([UDE0037](#)). The phrase is used repeatedly in the Union with Scotland Act 1706 and the Union with England Act 1707, relating both to the Union itself and the separate Scottish institutions.

10 Written evidence from Professor Adam Tomkins ([UDE0021](#)). See articles XIX and XXV of Union with Scotland Act 1706 and Union with England Act 1707.

11 See written evidence from Lord Morrow ([UDE0068](#))

12 [Union with Ireland Act 1800](#); the Irish Parliament passed a parallel [Act of Union 1800](#). Royal Commission on the Constitution, Report, Cm. 5460, October 1973, (hereafter ‘Kilbrandon Report’), pp 46–47

13 The modern Northern Ireland Civil Service being a descendent of the separate Irish administration, see [Q 50](#) (Alan Trench)

14 Written evidence from Professor Colin Kidd ([UDE0007](#))

17. The Government of Ireland Act 1920, which superseded the 1914 Act, provided for Home Rule through parallel parliaments for Southern and Northern Ireland, with the hope that they would later merge. By 1922, however, Southern Ireland had become an independent dominion, which in 1949 became the Republic of Ireland. Northern Ireland remained in the Union, governed by the powerful devolved Government and Parliament established by the 1920 Act.<sup>15</sup> Devolved rule in Northern Ireland was suspended in 1972 after civil rights protests developed into violence and the Troubles, and was not successfully re-introduced until after the 1998 Good Friday Agreement.<sup>16</sup>

*Administrative devolution within Great Britain*

18. While Irish Home Rule and partition dominated debate during the late-19th and early-20th centuries, there was also increasing recognition of diversity among the other nations of the UK. Consequently, the UK Government gradually developed separate administrative structures for Scotland and Wales.
19. A Scottish Education Department was established in 1839 and Scotland regained its own department of state in 1885, its head being a member of the Cabinet from 1892 and a full Secretary of State from 1926.<sup>17</sup> The National Insurance Act 1911, one of the foundation-stones of the modern welfare state, was delivered by separate Insurance Commissioners for Scotland, Ireland and Wales.<sup>18</sup> The Second World War saw a distinct strengthening of the Scottish Office and other national institutions. Scotland's separate welfare administration was further recognised in the 1940s with a separate National Health Service for Scotland created alongside the new NHS for England and Wales.<sup>19</sup> The Secretary of State for Scotland was therefore responsible for a considerable amount of the administration of Government in Scotland—what has been termed administrative independence<sup>20</sup>—as well representing that nation in the UK Government.<sup>21</sup>
20. Although administrative devolution developed at a slower rate in Wales, an increasing range of powers were administered separately, eventually through a department of state. Education, national insurance and health were again areas where administration was devolved. From 1951 there was a Minister for Welsh Affairs and in 1964 the Welsh Office and Cabinet post were created.<sup>22</sup> The Secretary of State for Wales was thus also responsible for administering a range of Government activity in that nation.

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15 Kilbrandon Report, paras 149-160

16 See Annex A

17 Commission on Scottish Devolution (the Calman Commission), *Serving Scotland Better: Scotland and the United Kingdom in the 21st Century, Final Report* (June 2009) p 30: [http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/15\\_06\\_09\\_calman.pdf](http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/15_06_09_calman.pdf) [accessed 6 May 2016]. There had been an earlier Scottish Office in the years after the Union of 1707.

18 National Insurance Act 1911, sections 80-82

19 Under the [National Health Service \(Scotland\) Act 1947](#). The Northern Ireland Parliament also established a parallel NHS there in their Health Services (Northern Ireland) Act 1948.

20 See, for example, J.D.B. Mitchell, *Constitutional Law*, second edition (1968) p 209

21 The Secretary of State for Scotland and the Scottish Law Officers were also responsible for ensuring that legislation was compatible with Scots Law.

22 Kilbrandon Report, paras 121-134

21. Pressure for devolution increased slowly and fitfully through the latter half of the 20th Century. A Royal Commission on the Constitution recommended devolution to Scotland and Wales in the 1970s, but referendums in those nations did not provide the required levels of popular support. Support for devolution grew during the 1980s and 1990s.

*The creation of the devolved institutions*

22. Following their 1997 general election victory, the new Labour Government held referendums in Wales and Scotland on whether to create devolved legislatures. Both resulted in ‘yes’ votes. The new legislatures and executives came into being following elections in May 1999. Following the Belfast or Good Friday Agreement, and a referendum approving its terms, a new Northern Ireland Assembly and power-sharing Executive was also elected in May 1999. The devolved institutions have subsequently evolved and taken on greater powers. The devolution settlements in Wales and Scotland have been the subject of series of Commissions and cross-party agreements, resulting in new legislation that has increased the powers of the devolved institutions.<sup>23</sup> Northern Ireland’s arrangements have been more precarious, with devolution suspended several times during the 21st century. The creation of the devolved institutions and their evolution since 1999 are described in greater depth in Annex A.

*Ongoing diversity in the Union and devolution*

23. The development of the Union has been shaped in each nation by a multitude of factors,<sup>24</sup> creating diversity in the UK’s governance arrangements that far pre-dated the creation of the modern devolved institutions in the late 1990s. The devolution Acts that created those institutions reflected that administrative diversity, granting to the new devolved institutions the powers of the Secretaries of State for Wales and Scotland and the old Northern Irish Parliament.<sup>25</sup> The subsequent evolution of the devolved institutions reflects further adaptation of the territorial constitution to the needs of each nation.
24. England stands out as both the historically dominant partner in the Union and the only nation without its own devolution settlement. As Table 1 shows, the majority of England has no devolved government. London’s assembly and mayor—in place since 2000—are an exception and are substantially less powerful than the national devolved institutions. While the new ‘devolution deals’ will provide some devolved or decentralised power to a significant proportion of England’s population, focused on large urban areas that make up a considerable portion of England’s economy, the extent and nature of those deals are still evolving. We discuss the governance of England in more detail in Chapter 8.

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23 The key devolution statutes remain in the [Scotland Act 1998](#), [Northern Ireland Act 1998](#) and [Government of Wales Acts 1998](#) and [2006](#). The [Wales Act 2014](#) largely amends the 2006 Act, while the [Scotland Act 2012](#) and the [Scotland Act 2016](#) largely amend the 1998 Act.

24 [Q 265](#) (Professor Richard Rawlings), [Q 256](#) (Kirsty Williams AM) and [Q 289](#) (Lord Empey)

25 [Q 32](#) (Akash Paun)

**Table 1: Devolution across the UK**

Area	Type of devolution	Population (millions)
England	N/A	54.3
Scotland	Government and directly-elected Parliament	5.3
Wales	Government and directly-elected Assembly	3.1
Northern Ireland	Power-sharing Executive and directly-elected Assembly	1.8
Greater London	Directly-elected Mayor and Greater London Assembly (performing scrutiny function)	8.6
10 English 'devolution deal' areas	Proposed combined authorities (nine to have directly-elected mayors from 2017)	16.1

Source: Office for National Statistics, *Annual mid-year population estimates: 2014 (England)*; Mayor of London, *Press Release: London population confirmed at record high (2 February 2015)*; National Audit Office, *English Devolution Deals (April 2016) (HC948) (combined authority areas)*

### Support for the Union

25. The evidence we received shows that the Union is supported by most people in each nation of the Union. The Scottish independence referendum in 2014 and the 1998 referendum in Northern Ireland ratifying the Good Friday Agreement both confirmed the desire of the people of those nations to remain a part of the UK.<sup>26</sup> Although recent polling shows opinion in Scotland still sharply divided on the question of independence,<sup>27</sup> support in the other nations for their continued membership of the Union is strong. Recent opinion polls show support for independence from the Union at 6% in Wales, 21% in Northern Ireland and 16% in England.<sup>28</sup>
26. This popular support is a vital element that underpins and supports the continuance of the Union. It is an essential characteristic of what a number of

26 See [Q 299](#) (Professor Derek Birrell), [Q 65](#) (Professor John Curtice), written evidence from the British Academy ([UDE0037](#)). The Scottish referendum asked voters “Should Scotland become an independent country?”; the result was 55.3% ‘no’ to 44.7% ‘yes’. The Northern Irish referendum asked voters “Do you support the agreement reached at the multi-party talks on Northern Ireland and set out in Command Paper 3883?” (i.e. the Good Friday or Belfast Agreement); the result was 71.1% ‘yes’ to 28.9% ‘no’.

27 For example, the six opinion polls on this question by various companies reported on the ‘What Scotland Thinks’ website during March and April 2016 show an average of 43% saying they would vote ‘Yes’ to independence, 48% ‘No’ and 9% answering ‘Don’t know’. See <http://whatscotlandthinks.org/questions/how-would-you-vote-in-the-in-the-scottish-independence-referendum-if-held-now-a#table> [accessed 9 May 2016]

28 See written and oral evidence from Professor John Curtice ([UDE0056](#) and [Q 62](#)). The figure for Northern Ireland includes both support for unification with the Republic of Ireland (17% support) and outright independence (4%).

witnesses described as a voluntary union of nations.<sup>29</sup> The UK Government and Parliament's agreement to the holding of the referendum on Scottish independence acknowledged implicitly the right of Scotland to secede from the Union through a popular vote. Section 1 of the Northern Ireland Act 1998 explicitly states the same right for the people of Northern Ireland.<sup>30</sup> Although it has not been tested, it can be assumed that the same right exists for the people of Wales.

27. The devolved institutions in Wales, Scotland and Northern Ireland also exist by virtue of public consent, established initially by referendums in 1997 and 1998.<sup>31</sup> The 'permanence' clauses in the Scotland Act 2016 and the draft Wales Bill reflect the political (if not legal) reality that the Scottish Parliament and the National Assembly for Wales and their Governments will not be abolished without the consent of the people of those nations.<sup>32</sup> The approval given in the 1998 referendum in Northern Ireland for devolved rule suggests the same permanence for the institutions there, although tensions in that nation have resulted in the temporary suspension of devolved rule on a number of occasions. Support for the devolved institutions remains strong in all three nations.<sup>33</sup>
28. **The Union has the support of a majority of people in each of its constituent nations.**
29. **Decision-makers in all four nations have a duty to recognise popular support for the continuance of the Union and to work constructively to ensure that the Union operates as effectively as possible for the benefit of everyone in the United Kingdom.**

### Defining the Union

30. How individuals identify with the Union varies across the UK depending on each nation's history, institutions and relationships with the centre and the other nations.<sup>34</sup> Conceptions of what the Union is and what it is for vary over time as relationships evolve and new norms emerge.<sup>35</sup> Indeed, the idea of thinking seriously about the Union at all in terms of its purpose or benefits

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29 [Q 242](#) (Carwyn Jones); written evidence from Justice for Wales ([UDE0025](#)), Institute for Government ([UDE0048](#)), Campaign for an English Parliament ([UDE0012](#)), Society of Conservative Lawyers ([UDE0028](#)) and Welsh Government ([UDE0024](#)). Similarly, some witnesses stressed 'consent', for example Professor Arthur Aughey ([UDE0003](#)).

30 [Q 299](#) (Professor Derek Birrell), [Q 300](#) (Professor Arthur Aughey); written evidence from the Institute for Government ([UDE0048](#)), Dr Andrew Blick ([UDE0029](#)) and the British Academy ([UDE0037](#)). Northern Ireland Act 1998, [section 1](#).

31 See Annex A for more on devolution in the 1990s and subsequently.

32 See Constitution Committee, *Scotland Bill* (6th Report, Session 2015–16, HL Paper 59), paras 35–36. The 'permanence' clauses are section 1 of the Scotland Act 2016 and clause 1 of the [Draft Wales Bill](#), Cm 9144, October 2015.

33 Written evidence from the Institute for Government ([UDE0048](#)). In relation to Wales: [Q 244](#) (Carwyn Jones), [Q 266](#) (Professor Rawlings and Dr Moon). In relation to Scotland: [QQ 22](#) and [25](#) (Sir Kenneth Calman). While Northern Irish politics remain fragile, support for devolution is strong: the 2014 Northern Ireland Life and Times survey found that 50% of respondents thought that Northern Ireland should remain in the UK with devolved institutions. By comparison, 16% supported direct rule from Westminster and 17% supported reunification with the rest of Ireland, while 4% supported independence. Northern Ireland Life and Times, 'Political Attitudes' (2014): [http://www.ark.ac.uk/nilt/2014/Political\\_Attitudes/NIRELND2.html](http://www.ark.ac.uk/nilt/2014/Political_Attitudes/NIRELND2.html) [accessed 3 March 2016]

34 [Q 45](#) (Jim Gallagher), [Q 255](#) (Andrew RT Davies AM), [Q 289](#) (Lord Empey) and [Q 83](#) (Professor Nicola McEwen)

35 [Q255](#) (Kirsty Williams AM and Andrew RT Davies AM)



would have seemed extraordinary only a few decades ago: the Union was taken for granted.<sup>36</sup>

31. There is no agreement on how to describe what type of state the Union embodies. Where it may once have been correct to say that it was a unitary system (with power centred in Westminster), that is no longer accurate. At the very least it is “a unitary state with three special-status regions”.<sup>37</sup> Other witnesses variously described the UK as a union state,<sup>38</sup> a state of unions,<sup>39</sup> a multination or multinational state,<sup>40</sup> and a plurinational state.<sup>41</sup>
32. Professor Nicola McEwen, Professor of Territorial Politics, University of Edinburgh, told us that the diversity evident within the UK was not unique: “federal or multilevel systems tend to be based on the principle of wanting simultaneously to recognise diversity and to maintain unity. That idea of balancing unity and diversity is the underlying principle for all of them”.<sup>42</sup> Professor Ailsa Henderson, Professor of Political Science, University of Edinburgh, told us that codified constitutions, particularly in federal states, often explicitly seek to link unity and diversity.<sup>43</sup>
33. **These competing concepts of unity and diversity are central to the United Kingdom’s territorial constitution and to understanding how the citizens of the UK identify with the Union.**<sup>44</sup>

*British and national identity*

34. The combination of diversity and unity in the Union is reflected in the mixture of identities felt by many citizens across the UK. Identity is a complex and “slippery” concept.<sup>45</sup> Most people feel a mixture of identities, with their sense of British identity interacting differently with their other identities depending on the nation and the views of the individual.<sup>46</sup> Dr David S Moon, Lecturer in Politics, University of Bath, told us that devolution worked because it allowed for the expression of this combination of identities.<sup>47</sup>
35. National identity is strong in each of the four nations of the UK. How that interacts with British identity varies; individuals can associate strongly with both identities simultaneously, or one identity can dominate at the expense of the other.<sup>48</sup> The 2014 Future of England Survey found that:

“Unsurprisingly, British identity is weakest in Scotland and strongest in England. But English identity in England is almost as strong as Scottish identity in Scotland, and significantly stronger than Welsh identity in Wales. Within England, both Englishness and Britishness are strong with a slightly higher average score for Britishness.”

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36 [Q 1](#) (Professor Adam Tomkins), [Q 45](#) (Charlie Jeffery), [Q 45](#) (Jim Gallagher), [Q 149](#) (Professor Neil Walker) and [Q 274](#) (Dr Victoria Winckler)

37 [Q 85](#) (Professor Nicola McEwen)

38 Written evidence from Professor Adam Tomkins ([UDE0021](#)) and the British Academy ([UDE0037](#)); this is the phrase we used in our call for evidence.

39 [Q 149](#) (Professor James Mitchell)

40 Written evidence from Dr Andrew Blick ([UDE0029](#)), Dr Paolo Dardanelli ([UDE0035](#)) and Professor Arthur Aughey ([UDE0003](#))

41 Written evidence from Professor Michael Keating ([UDE0010](#))

42 [Q 83](#)

43 [Q 83](#)

44 See written evidence from Professor Arthur Aughey ([UDE0003](#))

45 [Q 280](#) (Dr Victoria Winckler)

46 Although Great Britain and the UK are not synonymous, it is unusual for people to express their identity in terms of the UK, instead people (including in Northern Ireland) express this identity as ‘British’. We use the term in this sense.

47 [Q 267](#)

48 [Q 88](#) (Professor Ailsa Henderson)

36. This interaction of national identity with people's British identity varied notably, however:

“Despite the fact that a sizeable portion of the electorate in Scotland and Wales feels an overlapping identity with both Britain and Scotland/Wales, for a significant number of people the relationship has come to feel more of a zero-sum game: one is either more Scottish/Welsh or more British. England has not, for most people, reached that point. Many people in England still feel both strongly English and British.”<sup>49</sup>

37. Identity in Northern Ireland is different again, with greater polarisation<sup>50</sup> and with British identity often interacting with Irish—rather than Northern Irish—identity. The 2014 Northern Ireland Life and Times survey found that 28% felt British and not Irish, and 26% Irish and not British, while 39% identified as a mixture of the two.<sup>51</sup>
38. We heard that modern Scottish politics, and the Scottish independence referendum in particular, demanded that electors choose between their Scottish and British identities.<sup>52</sup> While there were correlations between ‘yes’ voters and those with a strong sense of Scottish identity and between ‘no’ voters and a strong sense of British identity, Professor John Curtice, Professor of Politics, University of Strathclyde, told us that “the truth is that most people in Scotland feel some mix of the two identities”. He observed that, as a consequence, much of the debate in the referendum focused on “the contingent consequences of independence”, rather than purely on the issue of national identity.<sup>53</sup>
39. Dr Victoria Winckler, Director of the Bevan Foundation, noted that many people also associated themselves with a particular regional identity: “We need to recognise that a lot of people in England see themselves as Cornish, northern, Geordie or whatever, alongside their other identities.”<sup>54</sup> Councillor Julian German, Campaign for a Cornish Assembly, stressed the distinctive character of Cornwall as a region or nation with a strong sense of identity,<sup>55</sup> while Ed Cox, Director of IPPR North, described people as possessing “nested identities”, such as his own of “Mancunian and English and British”.<sup>56</sup> These regional and “nested” identities are not, of course, unique to England: they are also strongly felt in the other nations of the UK.
40. It should also be borne in mind that individuals’ sense of identity may be shaped and influenced by the wide and growing range of social, ethnic, religious and national communities which are characteristic of our society, and which have become sources of political debate in our multi-racial, multi-faith Union.
41. It is not a new observation that attempts to define Britishness are fraught with difficulty. The combination of unity and diversity, itself a key characteristic of the Union, makes attempts to define how people identify with the Union

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49 Charlie Jeffery, et al, *Taking England Seriously: the New English Politics. The Future of England Survey 2014* (14 October 2014) p 10: [http://www.centreonconstitutionalchange.ac.uk/sites/default/files/news/Taking%20England%20Seriously\\_The%20New%20English%20Politics.pdf](http://www.centreonconstitutionalchange.ac.uk/sites/default/files/news/Taking%20England%20Seriously_The%20New%20English%20Politics.pdf) [accessed 6 May 2016]

50 [Q 301](#) (Professor Derek Birrell)

51 Northern Ireland Life and Times Survey, ‘Political Attitudes’ (2014): [http://www.ark.ac.uk/nilt/2014/Political\\_Attitudes/IRBRIT.html](http://www.ark.ac.uk/nilt/2014/Political_Attitudes/IRBRIT.html) [accessed 4 March 2016]

52 [Q 57](#) (Cllr Robert Brown) and [Q 156](#) (Professor Neil Walker)

53 [Q 57](#); see also [Q 135](#) (Claire Baker MSP)

54 [Q 280](#); see also written evidence from Professor Charles Lees ([UDE0058](#))

55 [Q 117](#)

56 [Q 105](#)

troublesome. Rather than attempt to define what the Union is, or how people understand their connection with the Union, it may therefore be more useful to consider what the Union brings to the nations of the UK.

### Key elements of the Union

42. When asked about the key elements of the Union, witnesses often separated them into three distinct categories or ‘unions’: the economic union, the social union and the political union.<sup>57</sup> There are two other elements that we believe need separate articulation: what we have called the cultural union; and the security and defence union, which we think it helpful to consider separately from the political union. We consider these elements briefly in turn.

#### *Economic union*

43. The United Kingdom is a single market with a single currency and single fiscal and macroeconomic framework.<sup>58</sup> This is the economic union.<sup>59</sup> Peter Riddell, Director of the Institute for Government, noted that: “Having a single currency and single market are the fundamentals.”<sup>60</sup> Professor Adam Tomkins, John Millar Professor of Public Law, University of Glasgow, told us that the Union “gives to Scots a domestic market ten times the size of Scotland to live and work in, to trade with, to retire to, etc., wholly without legal impediment.”<sup>61</sup> Similarly, Carwyn Jones AM, the First Minister of Wales, told us that the Union gives his nation “access to a far larger single market than Wales alone would be. We benefit from being part of what is seen as a stable environment for business and investment.”<sup>62</sup> The vigorous debates over the extent to which the economic union—and specifically the common currency—could continue if Scotland became independent highlight its practical importance.<sup>63</sup> Professor Curtice told us that the relative economic consequences of leaving the Union or staying were the single biggest factor in persuading Scottish electors to vote against independence.<sup>64</sup>
44. We heard that business also saw the economic union as an important benefit of the Union. Owen Kelly, Chief Executive of Scottish Financial Enterprise, noted that “the single market that currently exists for financial services throughout the UK is seen very much as what makes the UK the market for financial services that it is.”<sup>65</sup> Fundamentally, as Stephen Herring, Head of Taxation, Institute of Directors, told us: “It is wrong to look upon each national region as economically distinct from one another, the whole can

57 See, for example, Calman Commission, *Serving Scotland Better*, paras 15-21, and [Q 10](#) (Professor Robert Hazell)

58 Although the concept of a single fiscal framework will become more diluted when Scotland gains a greater degree of fiscal autonomy under the Scotland Act 2016.

59 See for example, [Q 1](#) (Professor Adam Tomkins), [QQ 10-11](#) (Professor Robert Hazell), [Q 35](#) (Peter Riddell), [Q 45](#) (Jim Gallagher), [Q 135](#) (Cllr Robert Brown), [Q 180](#) (Stephen Herring), [Q 281](#) (Ben Cottam), written evidence from the Welsh Government ([UDE0024](#))

60 [Q 35](#)

61 Written evidence from Professor Adam Tomkins ([UDE0021](#)). Professor Tomkins was, at the time he gave oral and written evidence to us, a prospective parliamentary candidate for the Conservative Party in Scotland and a constitutional adviser to the Scotland Office. He gave evidence to us in a personal capacity (see [Q 1](#)).

62 [Q 242](#)

63 During the referendum campaign, the Scottish Government stressed continuity in the economic union, advocating the continuation of the Common Travel Area and the use of Sterling by an independent Scotland. Scottish Government, *Scotland’s Future*, pp 7 and 223

64 [Q 57](#); see also written evidence from Professor Curtice ([UDE0056](#))

65 [Q 170](#)

be better than the sum of the parts for most issues that affect business.”<sup>66</sup> Moreover, as noted below of the political union, there is an international element to the benefits of the economic union. Ben Cottam, Head of External Affairs, Federation of Small Businesses Wales, told us that “the Union is a brand ... that businesses of all sizes can capitalise on”.<sup>67</sup> Businesses can capitalise on the UK’s international standing and its membership and leading role in organisations such as the EU, the G7, the World Trade Organisation, the International Monetary Fund and the Organisation for Economic Co-operation and Development.

45. Crucially, the economic union, in combination with the social union (see below, paragraphs 47-56), helps promote economic stability by providing the four nations with protection against asymmetrical shocks (i.e. events that do not affect the whole UK evenly, but have an impact primarily in particular nations or regions). The economic union provides each nation with the support of a larger and more diverse economy, cushioning the impact that a shock in one region’s industry has on its economy as a whole. This insurance is primarily a benefit for the three smaller nations; as Professor Michael Keating, Professor of Scottish Politics, University of Aberdeen, put it: “if an economic shock affects Scotland or Wales particularly, then there is a big resource base to fall back on. We do not have to deal with that on our own.”<sup>68</sup>
46. **The core features of the economic union are the single market with a single currency and single fiscal and macroeconomic framework. It provides all citizens of the UK with a large and diverse market and international influence and it protects individual nations and regions of the UK against economic shocks.**

### *Social union*

47. The term ‘social union’ has been used to refer to different things. In this section we use it to refer to what some of our witnesses instead called a ‘welfare union’, and which has at its heart the pooling and sharing of resources according to need.<sup>69</sup> The other way in which the term has been used is to describe what Fiona Hyslop MSP, the Scottish Government Minister for Culture, Europe & External Affairs called “social relations, which means family, language and culture”.<sup>70</sup> We have called that the ‘cultural union’. It is discussed in paragraphs 64-68 below.
48. The Calman Commission on Scottish Devolution, in its 2009 report, described the social union. It stated that “the UK has created a system of welfare for all its citizens, which is both comprehensive and substantially uniform. ... A basic feature of the welfare state is that, in general, its cost is borne out of general taxation and its services and support are supplied on the basis of need. This implies a relatively high degree of what is sometimes termed social solidarity.”<sup>71</sup>

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66 [Q 180](#)

67 [Q 281](#)

68 [Q 151](#)

69 See, for example, [Q 151](#) (Professor James Mitchell), [Q 269](#) (Professor Robert Thomas)

70 [Q 128](#); the Welsh Government used the term ‘social union’ to cover both of what we call the social and cultural unions (written evidence, [UDE0024](#))

71 Calman Commission, *Serving Scotland Better*, p 35

49. Andrew RT Davies AM, leader of the Welsh Conservatives, told us that:
- “The welfare state is one of the main bonds of the United Kingdom. Where one part of the Union might find itself in difficulties—where the individuals of that part of the United Kingdom might find themselves in difficulty with long-term unemployment, high levels of sickness et cetera—the Union comes together and redistributes support on a collective basis.”<sup>72</sup>
50. A large number of our witnesses told us that the pooling and sharing of risks and resources across the UK were central to the Union, with many explicitly linking it to social solidarity.<sup>73</sup> Professor Robert Hazell, Director of the Constitution Unit, University College London, told us that the social union rested on “principles of fairness and of equal rights between citizens, equal access to the benefit system, and therefore a system of fiscal redistribution in order to be able to ensure that equalisation.”<sup>74</sup> The Welsh Government suggested that: “Resource and risk sharing, in the interests of social protection for all UK citizens, are at the heart of [our] understanding of the social union.”<sup>75</sup> Witnesses from Wales and Northern Ireland stressed the importance of this pooling and sharing for those nations which are poorer and which receive a net benefit from the transfer of resources.<sup>76</sup>
51. The social union covers the way in which resources are redistributed across the UK. The UK Government—which makes decisions on taxation and overall government spending—determines how resources are raised and allocated across the UK. This includes spending on welfare, which is one of the significant ways in which wealth is redistributed (since welfare spending is on the basis of need).
52. But the UK Government also provides funding for the devolved administrations by means of the Block Grant. The resources available to any nation or region are apportioned from the UK’s combined Consolidated Fund, which is the combined revenue from taxes raised across all four nations. This means that each nation and region can draw upon the resources of the whole UK to support its public services rather than relying solely on the revenue raised within its borders. The tax base of the whole UK is used to determine total spending on a UK-wide basis, allowing for the wealth of richer areas of the UK to support public spending in less affluent areas. Changes to the allocation of funding through the Block Grant are calculated by the Barnett Formula—we discuss this in more detail in the next Chapter, along with the implications of recent moves to make devolved nations more responsible for raising, as well as spending, revenue (paragraphs 102-117).
53. In combination with the economic union, the redistributive mechanisms of the social union help individual nations deal with the impact of asymmetrical shocks. This is partly through the welfare system. The welfare system disburses funds on the basis of need. Therefore citizens in nations suffering from an economic shock (and therefore with more people in need of state support) will consequently receive more welfare funding, supported by the tax

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72 [Q 258](#)

73 [Q 208](#) (Lord Hain), [Q 255](#) (Kirsty Williams AM), [Q 211](#) (Paul Nowak), [Q45](#) (Professor Jim Gallagher), and written evidence from Professor Sir Jeffrey Jowell ([UDE0053](#))

74 [Q11](#)

75 Written evidence of the Welsh Government ([UDE0024](#))

76 [Q242](#) (Carwyn Jones AM), [Q294](#) (Lord Empey) and [Q310](#) (Mark Durkan MP)

resources of the whole UK.<sup>77</sup> In addition, the UK Government can directly support affected regions with resources derived from the UK-wide tax base. For example, if a particular nation or region is hit by extensive flooding, the UK Government can provide funds from the UK-wide Consolidated Fund to help. The nation or region is not forced to rely on its own tax base for support.

54. The British Academy told us that:

“Since the Old Age Pensions and National Insurance Acts of 1908 and 1911, a key principle underlying the Union has become one of social insurance: viz., that tax and benefit rates are uniform throughout the UK, such that people in a territory that has hit hard times, or individuals who have hit hard times, are protected by the funds available to the whole UK, rather than only the part of it where they live.”<sup>78</sup>

55. At the individual level, citizens pay taxes for “a form of mutual insurance when any of us becomes old, sick or disabled, and needs to draw on the benefit system”.<sup>79</sup> When an individual needs support from the state they have, until recently, been funded from the same UK-wide pot into which their taxes have been paid. Their entitlement was then the same, wherever in the UK they lived. The Scotland Act 2016, which devolves some aspects of taxation and welfare, complicates this picture, but individuals still benefit from a core of common benefit provisions paid for from UK funds.

56. **The fundamental principle of the social union is the pooling of common funds at a UK level which are then expended on the basis of need, on a UK-wide basis. The social union is a manifestation of the solidarity that sees the people of the Union collectively support each other, no matter where in the UK they reside.**

#### *Political union*

57. Professor Hazell described the essential role of the political union in relation to the other key elements, and to the evolution of the Union as a whole:

“In the political union, every part of the UK is represented here in the Westminster Parliament, and the UK Parliament manages the economic and the social unions. As the sovereign parliament, it can itself reshape the political union, as it has done quite dramatically through the devolution settlements”.<sup>80</sup>

58. The political union centres on the UK Parliament, where all parts of the United Kingdom are represented, and on the UK Government and its relationships with the devolved institutions.<sup>81</sup> Beyond that, the Calman Commission felt that the political union “created a common UK citizenship that embodies shared fundamental freedoms such as common civil and political rights, valued across the UK.”<sup>82</sup> By sharing a political identity, and by together creating the liberal and free state in which we live, the

77 [Q 135](#) (Baroness Goldie MSP)

78 Written evidence from the British Academy ([UDE0037](#))

79 [Q10](#) (Professor Hazell)

80 [Q 10](#)

81 Calman Commission, *Serving Scotland Better*, paras 15-17; written evidence from the Welsh Government ([UDE0024](#))

82 Calman Commission, *The Future of Scottish Devolution within the Union: A First Report* (December 2008) para 4.33: [http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/02\\_12\\_08\\_calman.pdf](http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/02_12_08_calman.pdf) [accessed 5 May 2016]

people of the UK have developed and share common fundamental values about democracy, freedom and the rule of law. As we discuss later in this report (paragraphs 79–85), while they are not unique to the UK, a shared understanding and commitment to those common values underpins the governance and political culture of all four nations in the Union.

59. The political union also has an important external element. The Welsh Government told us that: “Our political union is principally manifested in the UK’s external relationships and membership of the European Union and of international organisations”.<sup>83</sup> As set out in one of the UK Government’s publications during the Scottish independence referendum: “The UK is one of five permanent members of the UN Security Council, and the only state in the world which is a member of the EU, NATO, G7, G8, G20 and the Commonwealth.”<sup>84</sup> The UK is recognised as a single entity internationally; it has, as Professor Jim Gallagher of Nuffield College, Oxford, put it, “an international personality”.<sup>85</sup> Speaking with one voice not only delivers what former Director of the Scotland Office Alun Evans described as “international clout”,<sup>86</sup> it also gives the constituent nations of the UK a voice on the world stage that they would not have had individually.<sup>87</sup>
60. **The political union is embodied in the sovereign UK Parliament and the UK Government, which represent and act on behalf of the whole United Kingdom. The UK Government provides a single voice for the UK internationally, with more influence than any individual nation in the Union would have. The political union also recognises the importance of accommodating distinctive national identities, manifested by the devolved institutions that represent the citizens of Scotland, Wales and Northern Ireland.**
61. There have long been separate legal systems across the UK, with Scotland, Northern Ireland, and England and Wales each having their own separate jurisdiction. The political union is strengthened by a common legislative framework based on laws passed by the UK Parliament affecting all four nations. The UK Supreme Court is, in most cases, the final court of appeal for all three jurisdictions.<sup>88</sup> Devolution has led to an increasing divergence in laws across the UK as the Scottish Parliament, the Northern Ireland Assembly and—since 2011—the National Assembly for Wales have passed primary legislation affecting their nations.
62. Wales does not have a separate legal jurisdiction, although it does have distinct law that applies to Wales.<sup>89</sup> Some of our witnesses, including the First Minister of Wales, argued that a distinct, though not separate, Welsh jurisdiction would be a logical corollary of the growing law-making power of

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83 Written evidence from the Welsh Government (UDE0024)

84 UK Government, ‘Europe and international - summary leaflet’ (13 March 2014): <https://www.gov.uk/government/publications/europe-and-international-summary-leaflet> [accessed 14 April 2016]

85 Q 45; see also Q 274 (Jessica Blair)

86 Q 95

87 See Q 242 (Carwyn Jones AM) and Q 255 (Kirsty Williams AM)

88 UK Supreme Court, ‘UK judicial system’: <https://www.supremecourt.uk/about/uk-judicial-system.html> [accessed 29 April 2016]

89 Lord Thomas of Cwmgiedd, evidence to the Constitution Committee, 27 April 2016, Q11

the National Assembly.<sup>90</sup> The Assembly’s Presiding Officer, Dame Rosemary Butler AM, told us that the lack of a Welsh jurisdiction creates unnecessary complexity.<sup>91</sup>

63. Lord Thomas of Cwmgiedd, the Lord Chief Justice of England and Wales, told us insufficient thought had been given to how the devolution of law-making powers in Wales would develop in the context of a shared legal jurisdiction with England. He noted that “there is no justice function that looks after Wales. By default the courts have put one in place but there is a not a justice function. ... [that] is a serious deficiency in an area where you accord very substantial primary legislative powers to an institution”. He concluded that “Wales has a distinct law that applies to it, so it has a jurisdiction in the territorial sense, but not a jurisdiction in the court sense. ... if Wales had a separate legal system, that would be a political decision and be perfectly operable, but at the moment we have the training and an understanding that the system can be made to work.”<sup>92</sup>

### *Cultural union*

64. The Calman Commission provided a useful description of the UK’s ‘cultural union’: “The people and the nations of the United Kingdom have many elements of shared identity, established through history, and expressed in common aspects of culture.”<sup>93</sup> The Scottish Government articulated this union during the independence referendum campaign, describing it as a ‘social union’.<sup>94</sup> They described a union, “made up of connections of family, history, culture and language”.<sup>95</sup> Similarly, former leader of the Scottish Conservatives Baroness Goldie MSP told us that: “You might live in Glasgow, but, if granny lives in Greenwich or cousin Jimmy lives in Grimsby, you want a sense of social union. You want a sense that you could be up here and be Scottish and look after your own domestic issues, but also be part of a whole that had coherence to it.”<sup>96</sup>
65. Professor Arthur Aughey, Professor of Politics, University of Ulster, noted that “those advocating ‘yes’ in the Scottish Referendum also proposed to maintain other unions which actually assumed cultural affinity throughout the UK ... encompassing what was described in the Referendum campaign as all the distinct national and regional communities in the British Isles based on close social, economic and cultural links and symbolised by Scotland retaining the monarchy.”<sup>97</sup>
66. **The cultural union is found in the connections between people across the UK. It includes the bonds of family and kin that ignore national boundaries and that have developed over generations. It is perpetuated by our common language and common institutions—**

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90 [QQ 244](#) and [253](#) (Carwyn Jones AM), [Q 261](#) (Leanne Wood AM) and written evidence from the Society of Conservative Lawyers ([UDE0028](#)) and Justice for Wales ([UDE0025](#)). On the difference between a ‘distinct’ and a ‘separate’ jurisdiction, see also oral evidence from Professor Richard Rawlings and Professor Robert Thomas ([Q 268](#))

91 Written evidence from Dame Rosemary Butler AM ([UDE0038](#)), see also written evidence from Professor Russell Deacon ([UDE0020](#))

92 Evidence to the Constitution Committee, 27 April 2016, [Q11](#)

93 Calman Commission, A First Report, para 4.49

94 [Q150](#) (Professor Neil Walker)

95 Scottish Government, *Scotland’s Future*, p 215; see also [Q 128](#) (Fiona Hyslop MSP)

96 [Q 135](#); See also [Q 274](#) (Dr Victoria Winckler)

97 Written evidence from Professor Arthur Aughey ([UDE0003](#))



such as the NHS,<sup>98</sup> the BBC and the monarchy—and in the shared heritage and history of the country. This history not only includes the shared development of the modern state and society in which we now live, but the shared external-facing history that includes the rise and fall of the British Empire, worldwide trade and centuries of migration across the British Isles and around the world, and the shared experience of two world wars in the 20th century. The cultural union includes the common ties of popular culture such as music, sport, TV and film,<sup>99</sup> as well as shared social attitudes towards humour.

67. The cultural union is reflected in different parts of the country in different ways. The impact of Empire and international trade was, for example, very different in rural East Anglia compared to industrial Lancashire or the shipyards of Belfast. Likewise the extent of linguistic commonality is more limited in areas of Wales than elsewhere in the UK. Nonetheless, the cultural union provides a common—or at least widespread and overlapping—set of connections and shared experiences and heritage.
68. A 2015 study placed the UK at the top of its rankings of soft power.<sup>100</sup> The cultural union supports the UK's 'soft power'. The single voice of the UK's political union, projected through its network of embassies, high commissions and consulates and the British Council, is aided by the global use of English in politics, business and scientific research. The UK's influence is enhanced by the reputation of its universities, its creative and performing arts, and the global reach of British culture, from the Beatles to Shakespeare and from Robert Burns to Premier League football clubs with fans across the world. Soft power is a quality in which we lead the world.

### *Security and Defence union*

69. Common defence is perhaps the most widely cited core element of the Union.<sup>101</sup> **The security and defence union is represented by the British Armed Forces—the Army, the Royal Navy and the Royal Air Force—and the UK security services. The UK also has a single borders and immigration policy.** Defence is explicitly included in lists of areas where power should be reserved to the UK level if Scotland were to be granted 'full fiscal autonomy' (see paragraphs 258-267).<sup>102</sup> Professor Charlie Jeffery, Professor of Politics, University of Edinburgh, observed that the Scottish Government's White Paper describing an independent Scotland envisaged some continued sharing of responsibility for national security.<sup>103</sup>

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98 Although responsibility for the NHS is devolved, it is broadly seen as a British institution; see [Q 28](#) (Sir Kenneth Calman). A 2013 survey found that it was the most popular option when respondents were asked to pick from a list those institutions that made them "most proud to be British". The next most popular were the armed forces, the British Olympic and Paralympic teams, the Royal Family and the BBC. British Future, *State of the Nation: Where is bittersweet Britain heading?* (2013) p 26: <http://www.britishfuture.org/publication/state-of-the-nation-2013/> [accessed 6 May 2016]

99 Supplementary written evidence from Professor Nicola McEwen ([UDE0061](#))

100 The Soft Power 30, 'Ranking': <http://softpower30.portland-communications.com/ranking> [accessed 14 April 2016]

101 See [Q 1](#) (Tomkins), [Q 137](#) (Claire Baker MSP), [Q 100](#) (Professor Philip Booth), [Q 121](#) (Scilla Cullen), [Q 59](#) (Jan Eichhorn), [Q 255](#) (Kirsty Williams AM), [Q 95](#) (Alun Evan), [Q 10](#) (Professor Robert Hazell), [Q 274](#) (Jessica Blair), [Q 152](#) (Professor Michael Keating) and [Q 264](#) (Professors Richard Rawlings and Robert Thomas), and written evidence from Professor John Curtice ([UDE0056](#)), James Jeavons ([UDE0016](#)), Professor Charles Lees ([UDE0058](#)), Scotland in Union ([UDE0017](#)) and the Constitution Reform Group ([UDE0045](#))

102 Scottish Government, *More Powers for the Scottish Parliament* (2014) p 3: <http://www.gov.scot/Publications/2014/10/2806/0> [accessed 5 May 2016] and [Q 214](#) (Paul Nowak)

103 [Q 51](#)

*Conclusion*

70. Professor Tomkins summarised what he saw as the benefits of the Union:

“The Union enriches all four of the nations that are part of it, and if any of the nations of the United Kingdom were to leave the Union it would impoverish not only that nation but all the others as well, not only economically but culturally and spiritually. The purpose of the Union is to make each of the nations of the United Kingdom richer and greater than any of them would be alone.”<sup>104</sup>

71. **We agree. The Union reflects the unity and diversity that makes up the United Kingdom. It is made up of nations, regions and people with a strong shared history and culture, and yet with distinctive local or national identities. The five key elements we have identified—the economic union, the social union, the political union, the cultural union and the security and defence union—collectively provide advantages to the constituent nations of the UK that go beyond what each could achieve on its own and unite the people from all four nations as citizens of one country.**

*Are all these elements necessary?*

72. While there was general, if certainly not unanimous, agreement as to the key elements of the Union at present, witnesses’ views varied more regarding the extent to which these elements were required for the Union to survive as a viable political entity. There were sharply diverging views among our witnesses as to whether the Union was dependent on the key elements listed above, or whether it was possible to envisage a looser Union without the support of all five of these key unions.

73. Professor Neil Walker, Regius Professor of Public Law and the Law of Nature and Nations, University of Edinburgh, for example, recognised the argument that devolving power in relation to the key elements that currently support the Union would lead to a loosening of the ties that bind the UK together: “[there is] a sense that ... degeneration of one goes hand in hand with alienation in terms of the other: as we begin to disconnect in policy terms, we also disconnect in cultural terms.” He argued, however, that there was an alternative form that the Union might take:

“there is another argument that says you can imagine a much more loosely coupled state where you do not have social solidarity, necessarily, in policy terms, but the people still continue—at least in some loose sense—to want to be part of the same state. ... If the people of the United Kingdom that are Scottish decide that they want something that is far more autonomous than the Welsh or the Northern Irish, or even the English, you can find some negotiated settlement on that basis and people say ‘On that basis, we can still be part of the same state, but on no other basis’, then why should we necessarily discount that possibility? ... What I am saying is that we should be a little more adventurous when we think about what the limits of statehood are”.<sup>105</sup>

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104 [Q 1](#)

105 [Q 152](#)

74. Likewise, Alun Evans told us that:
- “There is a powerful argument that giving people control, particularly over their domestic affairs, and the responsibility that means in raising the money to pay for it, rather than relying on getting disproportionate sums of money from the UK, is a perfectly legitimate discipline to apply to Scotland. But I do not think there is necessarily a corollary that therefore it has to lead to independence.”<sup>106</sup>
75. Professor Keating noted that the stumbling block might not prove to be Scotland, where the desire for greater autonomy originated, but rather the rest of the UK. He stated that while “Scots could stretch the Union almost indefinitely” he believed that “The English might, at some point, say, ‘Well, enough is enough. Become independent. We would find it more convenient than stretching the Union any further’.”<sup>107</sup>
76. Professor Matthew Flinders of the University of Sheffield, told us that it was important to reflect on the question of “‘what binds us?’ ... Where is the centripetal force that can allow for flexibility or difference? ... What still gives us a commonality and goals that allows us to live together?”<sup>108</sup> We believe that these five key elements of the Union go a significant way to answering those questions. Sir Kenneth Calman, who chaired the Commission on Scottish Devolution told us that “One thing that we [the Calman Commission] wanted to emphasise was that the social, political and economic unions were fundamental to having a UK. If you took them all away ... you would have to ask whether it was worth being part of a Union.”<sup>109</sup> **We agree.**
77. **The five elements that we have identified combine to allow the nations of the Union to work together as a single state. They allow for the expression of discrete national identities within the Union, while providing a structure within which all the constituent parts of the United Kingdom can support each other and work towards common objectives and ideals.**
78. **Whilst the way these elements are expressed has changed, and will undoubtedly continue to change, over time, we consider that ending or substantially weakening the Union in any of these respects would cause grave damage to the Union as a whole.**

### Core values of the Union

79. A common thread running through many of these elements of the Union is a core set of values shared across the UK. These values include democracy, the rule of law, personal liberty and equality. We asked our witnesses whether articulating a set of common values might help promote a sense of solidarity, or to define a common ‘British’ identity. Some witnesses, notably the Bingham Centre for the Rule of Law, proposed that these common values should be embedded in a constitutional statute. We address that proposal in more detail later in this report (see paragraphs 242-249).

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106 [Q 96](#)

107 [Q 152](#)

108 [Q 225](#)

109 [Q 23](#)

80. The Federal Trust for Education and Research, while sympathetic to including values in a constitutional statute, told us that “it is difficult to identify a coherent set of principles that might command wide assent”.<sup>110</sup> We also heard that any set of common British values were likely to be too broad to be of any practical use in helping define a specifically British identity. The problem, as Professor Hazell told us, is that in all likelihood the values identified would be “values of which any self-respecting democracy would say, ‘Those are our values too’. They are democratic values, values of fairness, of equality, of respect for humanity, fundamental human rights and all those things.”<sup>111</sup> Professor Henderson was also wary about claims of shared values as specifically British: “it is not always clear what specifically ‘British’ values (rather than Western European or northern European or liberal values) would be.”<sup>112</sup>

81. Professor Keating shared other witnesses’ scepticism about specifically ‘British’ values. He also told us that those values

“are, moreover, the same values espoused by non-unionists who want to set up their own states. There has not been a divergence of values across the United Kingdom but, if anything, a convergence. The divergence is about the constitutional and national framework in which these values will be expressed.”<sup>113</sup>

82. This convergence of views across the spectrum of political and constitutional viewpoints suggests a strong set of shared values. In a 2015 speech, former Prime Minister Sir John Major highlighted these values:

“We require and expect our Laws to be fair. Our Courts to be impartial. We take for granted that we can mock and criticise the mightiest in the land without fear of reprisal. We believe we have ancient rights—freedom of speech, the right to own and pass on our assets, protection against the State. We assume all this as an ancient right, whilst acknowledging that such liberties are still not available in many other parts of the world.”<sup>114</sup>

The cohesive effect of the rule of law is fundamental to a common UK-wide British identity and citizenship.

83. Articulating a common set of values as core ‘British’ values could mean walking a narrow path. The exercise is liable to produce a set of values that are so broad as not to differentiate British from European or universal modern values such as liberty, democracy, the rule of law and social solidarity.<sup>115</sup> Meanwhile a more specifically ‘British’ set of values may be challenged as too narrow and exclusive (whether by particular nations or by groups in society). Professor Robert Thomas, Professor of Public Law, University of Manchester, warned that they would be “either so abstract as to be almost meaningless, or so particular as to be controversial.”<sup>116</sup>

110 Written evidence from the Federal Trust for Education and Research ([UDE0018](#))

111 [Q 10](#)

112 Written evidence from Professor Ailsa Henderson ([UDE0065](#)); see also [Q 41](#) (Peter Riddell), [Q 158](#) (Professor Neil Walker) and written evidence from Mr Paul Scott ([UDE0027](#))

113 Written evidence from Professor Michael Keating ([UDE0010](#))

114 Sir John Major, Inaugural Edward Heath Lecture (29 July 2015): <http://magnacarta800th.com/tag/rule-of-law/> [accessed 25 April 2016]

115 Written evidence from Professor Michael Keating ([UDE0010](#)); see also written evidence from Dr Cormac Mac Amhlaigh ([UDE0036](#))

116 [Q 158](#)

84. Yet Sir Paul Silk, who chaired the Commission on Devolution in Wales, told us that although the values and principles that one might set out could be characterised as “motherhood and apple pie ... sometimes it is worth setting out those sorts of principles ... so that everybody in future feels that they should abide by them.”<sup>117</sup>
85. **Core values are shared across the United Kingdom. These include democracy, equality, personal liberty and the rule of law. These values are not unique to the UK, but they are intrinsic to the Union, rooted in history, and are widely shared by the people and institutions of all four nations. They contribute to what could be said to be a sixth union—one of attitudes and beliefs, of emotional loyalty and a sense of belonging, especially in troubled times.**

### CHAPTER 3: RISKS TO THE UNION

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86. In recent years, concerns have been growing about the effect that devolution has had on the stability of the Union as a whole. These concerns were brought into sharp relief by the Scottish independence referendum in 2014, and by the subsequent process leading to the Scotland Act 2016 and its associated fiscal framework.<sup>118</sup> We detailed our concerns about these events in our report *Proposals for the devolution of further powers to Scotland*.<sup>119</sup>
87. Professor Arthur Aughey, Professor of Politics, University of Ulster, told us:
- “In principle, greater autonomy for the parts need not affect the integrity of the whole. But the politics of national identity can foster multinational fragmentation by promoting only the one narrative of differentiation—unless, that is, a countervailing narrative of commonality can establish a renewed post-devolutionary balance. The Committee is correct to be concerned that there is a present popular sense of differentiation rather than commonality. It is this balance which this Committee is considering, defined as ‘a more stable settlement that will preserve and strengthen the Union as a whole’. It correctly identifies the need to give meaning and coherence to the Union.”<sup>120</sup>
88. We summarise below a number of risks arising from the devolution process to date that we are concerned may undermine key elements of the Union, as described in the previous chapter.

#### The cumulative impact of devolution on the Union

89. The creation of devolved institutions in 1998–99 does not appear to have been accompanied by any significant discussion of the UK-wide territorial constitution. Little thought has been given to the cumulative impact of the devolution of power to three nations and Greater London.<sup>121</sup> The 1997 White Paper on Scottish devolution argued that:
- “The Union will be strengthened by recognising the claims of Scotland, Wales and the regions with strong identities of their own. The Government’s devolution proposals, by meeting these aspirations, will not only safeguard but also enhance the Union.”<sup>122</sup>
90. There has been a failure to ensure that the recognition of identities stressed in the first sentence would lead to the safeguarding promised in the second. Some of our witnesses quoted a statement by a minister in the 1990s that devolution would “kill nationalism stone dead”.<sup>123</sup> As Professor John Curtice, Professor of Politics, University of Strathclyde, noted: “insofar as one of the purposes of introducing devolution was to cement Scotland’s place in the Union, it has clearly not succeeded”.<sup>124</sup>

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118 UK and Scottish Governments, ‘The agreement between the Scottish government and the United Kingdom government on the Scottish government’s fiscal framework’ (February 2016): <https://www.gov.uk/government/publications/the-agreement-between-the-scottish-government-and-the-united-kingdom-government-on-the-scottish-governments-fiscal-framework> [accessed 4 May 2016]

119 Constitution Committee, *Proposals for the further devolution of powers to Scotland*

120 Written evidence from Professor Arthur Aughey (UDE0003)

121 Written evidence from the Constitution Society (UDE0019)

122 Scottish Office, *Scotland’s Parliament*, Cm 3658, July 1997, p. 10.

123 Written evidence from the Political Studies Association (UDE0033) and Professor Charles Lees (UDE0058)

124 Q 63; see also written evidence from the Society of Conservative Lawyers (UDE0028)

91. The Institute for Government told us that the UK Government and Parliament had still not adapted to devolution.<sup>125</sup> In 2002 and again in 2015, this Committee published reports on inter-governmental relations in the UK, including recommendations on how Whitehall and Parliament should manage those relationships.<sup>126</sup> We return to these matters again in Chapter 7.
92. Many of our witnesses were concerned that no attempt had been made to assess the cumulative impact of the devolution settlements on the Union, or on its constituent nations. As Democratic Unionist Party MLA and Minister Lord Morrow explained why it was important to consider the Union as a whole: “The nations of the United Kingdom are not ‘independent’ political entities but are linked by an umbilical cord to the political centre of the United Kingdom. Changes in one nation can have unintended consequences in other areas.”<sup>127</sup>
93. Many suggested that this problem was exacerbated by what they saw as ‘reactive’ policy-making by successive UK Governments. They argued that devolution policy was often driven as a response to particular events—such as the election of a minority Scottish National Party (SNP) government in 2007 or the Scottish independence referendum in 2014—without any attempt to develop a longer-term strategy.<sup>128</sup> Devolution policy was decided in ‘silos’: the Government held separate conversations with Scotland, Wales and Northern Ireland, with little attempt to address matters in a coherent manner on a UK-wide basis.<sup>129</sup>
94. Dame Rosemary Butler AM, Presiding Officer of the National Assembly for Wales, told us that she had:
- “significant concerns about the piecemeal fashion in which our constitution is developing ...
- New devolution and constitutional arrangements for Scotland are being negotiated in parallel to future devolution for Wales. A form of devolution in England is happening at a remarkable rate. Given this state of flux, and without a clear constitutional framework encompassing all the constituent nations of the Union, it is impossible to determine what the overall outcome, or impact on the wider Union will be. This is not a satisfactory way of proceeding and is unlikely to leave a stable or sustainable foundation.”<sup>130</sup>
95. Similarly, Professor Charlie Jeffery, Professor of Politics, University of Edinburgh, told us that “we have seen a pattern of reaction and often of tactical response that is very short-termist in its thinking and piecemeal in the way in which it treats each individual part of the UK.” He termed the latest changes to Scotland’s devolution settlement following the Scottish independence referendum “constitution-making by YouGov poll”. He

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125 [Q 32](#)

126 Constitution Committee, [Devolution: Inter-institutional relations in the United Kingdom](#) (2nd Report, Session 2002–03, HL Paper 28) and [Inter-governmental relations in the United Kingdom](#) (11th Report, Session 2014–15; HL Paper 146)

127 Written evidence from Lord Morrow ([UDE0068](#))

128 Written evidence from Professor Colin Kidd ([UDE0007](#)), Dr Ben Wellings ([UDE0032](#)) and A Force for Good ([UDE0032](#))

129 For example, [Q 44](#) (Professor Jim Gallagher), [Q 32](#) (Akash Paun), [Q 3](#) (Professor Adam Tomkins), [Q 72](#) (Brendan Donnelly) and [Q 244](#) (Carwyn Jones AM), written evidence from Lord Morrow ([UDE0068](#))

130 Written evidence from Dame Rosemary Butler ([UDE0038](#))

concluded that “no part of the UK’s central political institutions has shown the capacity to give sustained thought to UK-wide coherence and to stand back from the short-term reactions and think in the round.”<sup>131</sup>

96. Oliver Letwin MP, Chancellor of the Duchy of Lancaster and the UK Government Minister responsible for devolution, was unconcerned:

“I do not think that the constitution of the UK is in some terrible state of crisis. It is in a continuous mode over many, many decades, and indeed centuries, of change. I think it is the genius of it that it does change and that it accommodates, progressively, the various demands that are placed upon it.”<sup>132</sup>

97. Mr Letwin stated that once the Scotland Act 2016 and proposed new Wales Bill had passed through Parliament, and once the Stormont House Agreement was implemented in full, “all those pieces of the jigsaw are in place, so far as the relationships between the component nations of the UK are concerned”. He felt that the Government would then “be able to say that we have reached a new settlement ... at least for the foreseeable future I hope that we will have reached a settlement”.<sup>133</sup>

98. **While the UK constitution has proved flexible and resilient over the centuries, it recently faced a serious existential threat in the form of a referendum on Scottish independence. We regret that Mr Letwin, the responsible Government minister, does not recognise the concerns expressed by this Committee and many others at the pressures being placed on the UK constitution by the manner in which the devolution of powers has taken place, and continues to take place, with little consideration of the status and needs of the Union.**

99. **There is no evidence of strategic thinking in the past about the development of devolution. There has been no guiding strategy or framework of principles to ensure that devolution develops in a coherent or consistent manner and in ways which do not harm the Union. Instead, successive Governments have responded individually to demands from each nation. Devolution has thus developed in an ad hoc fashion, with different constitutional conversations taking place separately in different parts of the country.**

100. **We do not share the confidence expressed by Mr Letwin that all the pieces for a stable constitutional settlement are in place. Once the forthcoming Wales Bill has completed its passage through Parliament, we recommend that the UK Government commission a thorough evaluation of the impact on the Union and its constituent nations of the cumulative effect of the devolution settlements and its plans for decentralisation within England.**

101. **The UK Government needs fundamentally to reassess how it approaches issues relating to devolution. What affects one constituent part of the UK affects both the Union and the other nations within the UK. Devolution needs to be viewed through the lens of the Union, with appropriate consideration given to the needs of, and consequences for, the Union as a whole. We recommend how this might be achieved in Chapter 5.**

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131 [Q 44](#)

132 [Q 314](#)

133 [Q 312](#)



## The allocation of resources within the United Kingdom

### *The economic union: fiscal devolution*

102. Fiscal responsibility has become an increasingly important element of recent changes to the devolution settlements. It derives from the principle that those responsible for spending revenue should also be responsible for raising revenue. Until recently, the devolved governments had very limited revenue-raising powers. Instead, the devolved governments were responsible for spending money allocated to them by the UK Government as a block grant. Recent and proposed changes to the devolution settlements have increasingly conferred greater fiscal authority on the devolved institutions, including the ability to vary the rate of (or in some cases, create and abolish) certain taxes.
103. Although the Scottish Parliament has had the power to alter income tax rates since 1999, a power that was expanded from April 2016, they have not so far done so. As well as these increased powers over income tax, the Scottish Parliament currently has power over stamp duty and landfill tax. It will take on almost total control of income tax bands and rates from April 2017, along with control over a number of other taxes.<sup>134</sup> In addition, it will receive the first ten percent of VAT receipts in Scotland. The Northern Ireland Assembly will have control over its corporation tax rates from the same date. Meanwhile the Wales Act 2014 devolves stamp duty and landfill tax and provides for rate-varying powers over income tax to be devolved. Within England, there has also been an increasing emphasis on fiscal responsibility, with the Government committing to 100% business rate retention for local authorities by 2020.<sup>135</sup>
104. A number of our witnesses expressed support for devolving certain revenue-raising powers to ensure that devolved institutions were responsible for raising as well as spending revenue.<sup>136</sup> The Institute for Government noted that historically there had been no incentive for “devolved governments to take decisions that increase the size of their tax base.”<sup>137</sup> Professor Jim Gallagher of Nuffield College, Oxford, told us that:
- “One of the persistent problems of the Scottish political discourse is that devolved institutions are presented as nice people who spend money while Westminster is a wicked institution which raises it. ... To that extent, I am very keen on fiscal responsibility.”<sup>138</sup>
105. Other witnesses drew attention to some of the potential risks of devolving significant revenue-raising powers. Steve Thomas, Chief Executive, Welsh Local Government Association, noted the risk of inequality: richer areas which generally contribute more to central government than they receive would benefit, while poorer areas which might struggle to cover the cost of the services they provide from the tax base in their area would lose out. He suggested, drawing on the example of devolution within England, that it “can lead to regional inequality and even, if you read the local government

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134 The [Scotland Act 2016](#) provides for the devolution of Air Passenger Duty and the Aggregates Levy.

135 HM Treasury, ‘Spending review and autumn statement 2015’ (27 November 2015): <https://www.gov.uk/government/publications/spending-review-and-autumn-statement-2015-documents/spending-review-and-autumn-statement-2015> [accessed 7 April 2016]

136 [Q 13](#) (Professor Hazell), [Q 52](#) (Professor Gallagher), and [Q 192](#) (Sir Richard Leese and Lord Porter of Spalding)

137 Written evidence from the Institute for Government ([UDE0048](#))

138 [Q 52](#); see also [QQ 290-91](#) and [294](#) (Lord Empey)

press at the moment, inequality between the counties and some of the urban areas. There are some real and distinct issues to worry about on that front.”<sup>139</sup> Some witnesses said that increasing self-reliance in funding, particularly at a local authority level, could risk “mainstreaming deprivation” in areas with a low tax base.<sup>140</sup>

106. Professor Michael Keating, Professor of Scottish Politics, University of Aberdeen, noted that the devolution of tax powers could “provoke ... a ‘race to the bottom’, because Governments will be trying to cut taxes and cut expenditure to attract investment and jobs.”<sup>141</sup> The Welsh Government was alive to this risk, stating that “a ‘race to the bottom’ would serve only to undermine the UK’s overall tax base and business tax take; this would do nothing to reinforce the Union.”<sup>142</sup> Owen Kelly, Chief Executive, Scottish Financial Enterprise, warned that differences in personal taxation could undermine the UK-wide single market.<sup>143</sup>
107. Lord Empey, Chair of the Ulster Unionist Party, was opposed to the devolution of further tax powers to Northern Ireland. He was concerned about the effect on the Union of diverging tax regimes: “There might be three or four completely separate tax regimes in one country and it would become so complicated that people would give up. I would take great care about going down that road.”<sup>144</sup>
108. There are additional risks to the coherence of the UK’s economic union if the devolved institutions are granted the ability to run a deficit or to borrow significant sums of money. The House of Lords Economic Affairs Committee heard that while Scotland’s ability to borrow money would need to be expanded following the increased tax powers contained in the Scotland Act 2016, a ‘moral hazard’ was presented by the presumption that Scotland would be bailed out by the UK Government should the Scottish Government be unable to service its debt. The Economic Affairs Committee concluded that a “‘no bail-out’ rule would not be believed by the markets. The assumption that the rest of the UK would bail-out Scotland would prevail.”<sup>145</sup> The markets’ perceptions of the UK’s overall economic health would therefore be affected by Scotland’s fiscal decisions.
109. Dr Victoria Winckler, Director of the Bevan Foundation, summed up the benefits and risks of fiscal responsibility neatly:

“The benefits ... are increased transparency, the possibility of having a system of incentives and rewards, and giving the responsible body additional tools and levers to achieve the changes that it wants. Equally ... there are significant risks. There is the risk of a race to the bottom. There are real risks around redistribution.”<sup>146</sup>

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139 [Q 284](#); see also [Q 269](#) (Dr David S Moon) and [Q 275](#) (Dr Victoria Winckler)

140 [Q 215](#) (Tony Armstrong) and [Q 105](#) (Ed Cox)

141 [Q 151](#)

142 Written evidence from the Welsh Government ([UDE0024](#))

143 [Q 170](#)

144 [Q 294](#)

145 Economic Affairs Committee, [A Fracturing Union? The Implications of Financial Devolution to Scotland](#), (1st Report, Session 2015–16, HL Paper 55), para 72

146 [Q 275](#)

110. Granting significant revenue-raising powers to the devolved nations will reduce the extent to which the central UK Government provides funding on a UK-wide basis. This reduces the ability of the UK Government to redistribute resources across the country, and means that the UK Government's role in redistributing wealth and resources must be accomplished using a smaller pot of funds (since more is raised and spent locally). This makes it all the more vital that there is an effective mechanism in place for allocating funds on the basis of need. Professor Jim Gallagher told us that around 50% of the resources for devolved governments should be raised at a UK level. He suggested that this was the level necessary to ensure "a set of common social rights across the United Kingdom ... [such as] access to healthcare free at the point of need and at the very least access to free schooling across the United Kingdom".<sup>147</sup>
111. Professor Nicola McEwen, Professor of Territorial Politics, University of Edinburgh, told us that countries with federal structures put in place systems for redistributing wealth "so that a poorer region has the ability to deliver a set of services to its citizens that are at least comparable to those in a wealthier region in another part of the country."<sup>148</sup>
112. Several of our witnesses questioned the extent to which needs-based redistribution currently takes place with the Barnett Formula as the mechanism by which changes are made to funding for the devolved nations.<sup>149</sup> This has been widely criticised, not least in a 2009 report from the House of Lords Select Committee on the Barnett Formula which recommended its replacement.<sup>150</sup> Nonetheless, the 'Vow' by pro-Union party leaders prior to the Scottish independence referendum promised to retain the Barnett Formula, a promise reflected in the Smith Commission's report and subsequent legislation.<sup>151</sup>
113. The First Minister of Wales stated the problem baldly:
- "At the heart of the problem for us is Barnett. There are proposals to devolve elements of income tax to us in the future ... Our fear is that as we take on income tax-varying powers, unless Barnett is dealt with we will basically lock in what for us is inequality in our funding. ... I do not want to see a scenario where, because of the operation of Barnett, a future Government might feel that they have to raise taxes in order to fill the gap that is there because the proper amount of funding is not being made available to Wales because of a lack of an updated, needs-based formula."<sup>152</sup>

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147 [Q 53](#); see also [Q 9](#) (Professor Adam Tomkins)

148 [Q 88](#)

149 [Q 151](#) (Professor Michael Keating), [Q 258](#) (Leanne Wood AM), written evidence from the Institute for Government ([UDE0048](#))

150 Select Committee on the Barnett Formula, [The Barnett Formula](#), (1st Report, Session 2008–09, HL 139)

151 'David Cameron, Ed Miliband and Nick Clegg sign joint historic promise which guarantees more devolved powers for Scotland and protection of NHS if we vote No', Daily Record (16 September 2014): <http://www.dailyrecord.co.uk/news/politics/david-cameron-ed-miliband-nick-4265992#> [accessed 7 April 2016]; Smith Commission, Report of the Smith Commission for further devolution of powers to the Scottish Parliament, para 95(1): [https://www.smith-commission.scot/wp-content/uploads/2014/11/The\\_Smith\\_Commission\\_Report-1.pdf](https://www.smith-commission.scot/wp-content/uploads/2014/11/The_Smith_Commission_Report-1.pdf) [accessed 5 May 2016]

152 [Q 246](#)

114. The commitment by the pro-Union party leaders to retain the Barnett Formula, made in the context of the Scottish independence referendum without any consideration of the implications for, or the views of, the other parts of the UK clearly underlines the piecemeal and incoherent approach that has characterised successive UK Governments' decision-making in relation to devolution.
115. The House of Lords Economic Affairs Committee recently concluded, in its report on the implications of financial devolution to Scotland, that "if the aim is to produce a sustainable, long-term solution, retention of the Barnett Formula is the wrong decision". It noted that the present system can produce "arbitrary and unfair results" and recommended that the Government look to introduce a "needs-based approach to funding the devolved administrations."<sup>153</sup>
116. **We support the principle of fiscal responsibility. However, increasing the fiscal powers of the devolved institutions will present risks to the redistributive role of the Union. The greater the amount of revenue raised and spent locally, the less scope for the allocation of resources on the basis of need by central government. This allocation is vitally important to ensure that the social union is supported by a pooling and sharing of resources across the whole UK. In that context, it is our view that to perpetuate the use of the Barnett Formula, which takes no account of relative need, makes a mockery of the Government's duty to ensure a fair distribution of resources across the UK.**
117. **We recommend that the UK Government reconsider its use of the inadequate Barnett formula and establish a mechanism that takes into account the relative needs of different nations and regions in allocating funds.**

*The social union: Shared welfare resources*

118. While many witnesses supported transferring at least some responsibility for revenue-raising to the devolved nations, far fewer supported transferring responsibility for funding welfare spending to the devolved nations. Scottish Government Minister Fiona Hyslop MSP was among them. She rejected the benefits of a UK-wide distribution system, equating it with centralised control: "You can have a very centralised system of welfare provision, but some of the most meaningful impacts for people are where you can have rapid reaction to local circumstances and local needs. Not everybody has the same experiences in all parts of the country in relation to what they need." She argued that devolved decision-making was more responsive to local needs and concerns as compared with "a very bureaucratic centralised system".<sup>154</sup> Former Director of the Scotland Office Alun Evans told us that a more fragmented welfare system was the nature of devolution.<sup>155</sup>
119. Ms Hyslop's view is consistent with her party's position in favour of fiscal autonomy and independence. Most witnesses who addressed this issue, however, took a different view.<sup>156</sup> We were told that the social union is one of the primary ways in which resources are redistributed across the UK. The

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<sup>153</sup> Economic Affairs Committee, [A Fracturing Union?](#) p 6

<sup>154</sup> [Q 128](#); see also [Q 101](#) (Professor Philip Booth)

<sup>155</sup> [Q 96](#)

<sup>156</sup> For example, [Q 51](#) (Professor Jim Gallagher), [Q 270](#) (Professor Richard Rawlings) and written evidence from the Welsh Government ([UDE0024](#))

social union provides a UK-wide minimum level of benefits and pensions for individuals,<sup>157</sup> so that those receiving support are funded from a central UK-wide pot rather than relying on the resources of an individual nation or region.

120. Professor Richard Rawlings, Professor of Public Law, University College London, encapsulated the views of several witnesses when he stated that: “The more that the Union withdraws from basic universal benefits, pensions and so on, the more that the position of the Union, long-term and historically, will be eroded.”<sup>158</sup> **We agree. Devolving responsibility for welfare risks damaging the common, UK-wide welfare system that is a key element of the social union.**

*Minimum standards of welfare provision*

121. One of the issues we discussed with our witnesses was the extent to which a UK-wide minimum level of welfare provision could allow the devolution of limited powers to tailor the welfare system in the devolved nations, while continuing to preserve the UK-wide nature of the current welfare system.
122. Claire Baker MSP, Scottish Labour Spokesperson for Democracy, supported the principle of a minimum level of welfare benefits:
- “If you have a minimum level, it recognises how the welfare system works: that we pool and share resources from across the UK and, regardless of where you live in the UK, you receive that minimum support from the UK Government. I would be very supportive of that. It is an important factor in maintaining the Union and people seeing the benefit of being part of that Union.”<sup>159</sup>
123. Dr Winckler told us that there was a “very strong case for having a common standard of provision for some aspects of public service, such as state pensions, maternity benefits and so on”.<sup>160</sup> Professor Gallagher told us that “welfare should be regarded as a minimum which is addable to ... provided centrally but supplementable”.<sup>161</sup> Lord Empey felt that “a coherent minimum level, particularly for things like pensions, may be something worth pursuing”.<sup>162</sup> Other witnesses expressed similar views.<sup>163</sup>
124. Where policy areas that are central to the social union become devolved or—particularly—subject to shared competence, consideration needs to be given to how minimum standards could be set and implemented across the country. The broad approach taken on certain elements of welfare in the Scotland Act 2016 reflects one of these. The UK Government sets UK-wide levels for benefits but the Scottish Government has a broad power to supplement those benefits and significantly increased revenue-raising powers to fund provision above the UK-wide level.<sup>164</sup> This approach incorporates both a common pooling of resources and a tailoring to local circumstances. The Scotland Act 2016 goes beyond this in other areas, however, giving the

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157 [Q 11](#) (Professor Robert Hazell)

158 [Q 270](#)

159 [Q 138](#)

160 [Q 276](#)

161 [Q 51](#)

162 [Q 295](#)

163 [Q 35](#) (Peter Riddell), [Q 139](#) (Baroness Goldie, Maggie Chapman and Councillor Robert Brown)

164 See [Q 13](#) (Professor Robert Hazell), [Q 35](#) (Akash Paun), and [QQ 138-39](#) (Baroness Goldie MSP)

Scottish Parliament a wider-ranging power to create and scrap new benefits in areas of devolved responsibility.

125. Some witnesses felt, however, that if there was to be a formal minimum level of UK-wide welfare support then it would be inappropriate for the UK Government alone to set it. The Welsh First Minister and Leanne Wood AM, the leader of Plaid Cymru, told us that imposition from Westminster would be inappropriate; any minimum provision should be agreed between the four administrations.<sup>165</sup> Any agreed level would require each administration (the UK Government for England, and the Welsh and Scottish Governments and Northern Ireland Executive) to provide at least the mutually-agreed minimum level of provision. Professor Jeffery felt this was unlikely to occur, telling us that he did not currently “see a willingness in Whitehall or indeed in the two Houses of Parliament to agree that kind of diminution of the sovereignty of the UK Parliament and of the Government whose legitimacy is based on it.”<sup>166</sup>
126. **Where powers relating to the welfare system are to be devolved, the UK Government should retain the ability to ensure a minimum level of provision. The shared-responsibility model established in the Scotland Act 2016 may provide a useful template, whereby a devolved government may supplement from its own resources (but not reduce) a UK-wide level of welfare support.**

*Minimum provision in other policy areas*

127. We asked our witnesses whether there might be a case for extending the use of minimum standards from welfare provision to other areas of public service. Most of those who commented felt that it was already too late to consider attempting to impose minimum standards in areas that were already devolved. Akash Paun of the Institute for Government stated: “In areas that have been fully devolved, such as health and education, that ship has probably sailed, because any attempt now to impose minimum standards would, by definition, be a limitation on autonomy already devolved”.<sup>167</sup> He added that for some “core social citizenship rights, such as access to basic healthcare free at the point of use, there is political consensus across the UK that would anyway constrain moving too far away from that”.<sup>168</sup>
128. Among others, the First Minister of Wales felt that attempting to apply minimum standards in devolved areas would run counter to the tailoring that is one of the functions of devolution: “it could not be right that the UK Government set [a minimum standard] ... as that would undermine devolution itself”.<sup>169</sup> Professor Ailsa Henderson, Professor of Political Science, University of Edinburgh, told us that attempts in federal countries to set guiding or framework legislation at the federal government level caused resentment among national and regional governments seeking their own approaches.<sup>170</sup>

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165 [Q 249](#) (Carwyn Jones AM) and [Q 260](#) (Leanne Wood AM)

166 [Q 48](#)

167 [Q 35](#)

168 [Q 35](#); see also Ailsa Henderson’s comments on the relative lack of variation in Canada ([UDE0065](#))

169 [Q 248](#); see also [Q 131](#) (Ken Thompson) and [Q 260](#) (Kirsty Williams AM and Andrew RT Davies AM)

170 [Q 88](#)

129. Paul Nowak, Assistant General Secretary, Trades Union Congress, focused on employment law and rights in the workplace: “it is important that, wherever you live in Great Britain, you are subject to the same provisions in terms of employment law and you have the same rights at work, whether you work in Glasgow or Guildford”.<sup>171</sup> Councillor Julian German, Campaign for a Cornish Assembly, told us that, in the context of devolution within England:

“it is important that we draw some baselines—for example, on healthcare—so that there is a base of service delivery to all the residents of the UK. Some regions may decide to go over and above that. That is their local democratic decision, but to ensure equality—importantly, equality before the law—there should be baselines for any regional or national devolution within the UK.”<sup>172</sup>

130. **Political barriers make it impracticable for the UK Government to attempt to impose minimum provision for public services in policy areas which have already been devolved. Should any currently reserved powers be devolved in the future, the UK Government should address the case for introducing UK-wide minimum provision in policy areas that affect an individual’s rights and entitlements.**

#### Diverging policy and service delivery choices

131. In addition to an asymmetry of powers, devolution leads to another form of asymmetry: differing policies and service delivery choices in different areas. It is an inevitable consequence of devolution that devolved administrations will make different choices regarding service delivery in response to the needs and preferences of their electorates—indeed it is, in many ways, the point of devolution. As Dr David S Moon, Lecturer in Politics, University of Bath, put it: “it allows more tailored politics. Different countries have different situations ... and you need different ways to deal with that.”<sup>173</sup>

132. Professor Philip Booth, Editorial and Programme Director, Institute of Economic Affairs, set out one of the advantages:

“We should experiment a bit—indeed, a lot—with allowing not just the nations within the UK but local areas to have wide differences in terms of the approach they take to welfare. They might learn from each other. They might be able to experiment with things.”<sup>174</sup>

133. Other witnesses echoed this and called for the different governments to learn from one another’s experiences.<sup>175</sup> Dr Moon agreed that the “idea of a legislative laboratory could be a positive thing”,<sup>176</sup> but he also described some of the potential disadvantages of policy divergence. He noted that there could be conflicts between different governments “in areas where the policy footprint overlaps between the devolved and non-devolved or reserved

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171 [Q 212](#)

172 [Q 118](#)

173 [Q 270](#)

174 [Q 101](#)

175 [Q 25](#) and [Q 28](#) (Sir Kenneth Calman) and [Q 237](#) (Lord O’Donnell and Lord Kerslake); see also Akash Paun, Jill Rutter and Anna Nicholl, Devolution as a policy laboratory: Evidence sharing and learning between the UK’s four governments (February 2016): <http://www.instituteforgovernment.org.uk/publications/devolution-policy-laboratory> [accessed 6 May 2016]

176 [Q 270](#)

areas”. He also pointed out that differences could be emphasised for political purposes in ways which might weaken the Union as a whole:

“Another negative of differential policy is that it can allow political parties to basically attack the other Governments for their domestic audiences. The most obvious example of this for me, being somebody who studies Wales, is the constant attacks on the Welsh NHS by the Prime Minister at Prime Minister’s Questions throughout the last Parliament. ... The issue here is that that was not a message for the Welsh people; it was a message for the English people. ... This is not good rhetoric, and it is certainly not good for the Union.”<sup>177</sup>

134. There have always been differences in service delivery, even with a centrally agreed policy. Sir Richard Leese, leader of Manchester City Council, noted that “if we accept that different places are different and if you do the same thing everywhere, as national programmes tend to do, you end up with different outcomes.” He argued that “If you want universality in outcomes, you have to do different things in different places to achieve it.”<sup>178</sup>
135. Ed Cox, Director of IPPR North agreed: “those who say that devolution leads to postcode lotteries should look at the situation we have right now. There is growing evidence to show that the centralisation of our public services is the primary cause of inequality, because of the constraints on public service providers. ... If we devolve greater power, it is more likely that we will see much more adaptable public services ... and perceived inequality will reduce.”<sup>179</sup>
136. Garry Clark, Head of Policy and Research, Scottish Chambers of Commerce, told us that policy divergence was not necessarily troubling for businesses. He suggested that they had grown used to different policy environments: “there are differentials whenever you have local authorities doing one thing over here, environmental agencies doing another thing over here, the planning authorities doing something over here, licensing doing something.”<sup>180</sup>
137. There is, however, the potential that the public may feel it is unfair for individuals in different areas to be treated differently. Professor Curtice told us that:
- “the postcode lottery syndrome is still, potentially, important, and if people think that they are getting different services or paying higher taxation or getting lower benefits because of where they live, it still matters, and what goes on in the rest of the United Kingdom is still, potentially, a frame of reference, even within Scotland, Wales and Northern Ireland.”<sup>181</sup>
138. Dr Jan Eichhorn, Chancellor’s Fellow in Social Policy, University of Edinburgh, added that “people accept difference if they feel they benefit from it. That is the key point. ... People do not like difference if it means that they can see something better happening somewhere else from their own perspective, obviously.”<sup>182</sup> Professor James Mitchell, Professor of

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177 [Q 270](#)

178 [Q 193](#); see also [Q 35](#) (Peter Riddell) and [Q 108](#) (Ed Cox)

179 [Q 109](#)

180 [Q 170](#); see also [Q 35](#) (Peter Riddell)

181 [Q 67](#)

182 [Q 67](#)



Public Policy, University of Edinburgh, told us that: “It is not necessarily just a policy; it is how the policy is perceived, and it could be something very mundane that is perceived as, or becomes, a hot issue that creates the problem.”<sup>183</sup>

139. This feeling of unfairness risks a consequential loss of solidarity and common identity. This is particularly true if the difference in policy clauses is felt to be the result of an unfair allocation of resources. Mr Cox told us that parts of England feel like they get the worst deal from the distribution of resources.<sup>184</sup> We also heard of the extent of Welsh dissatisfaction with its funding settlement and concerns that inadequate funding combined with the devolution of powers over income tax and welfare could have a negative effect there.<sup>185</sup>
140. Public support is vital for the continuance of the Union. Positive public perceptions are important in maintaining that consent—particularly in relation to the social union which, as we described earlier in this report, helps build the social solidarity that binds the Union together. If people do not feel that the distribution of common resources—more prosaically their taxes and the public spending that affects their lives—is fair, compared with what they observe in other parts of the UK, this risks undermining social solidarity and thus a core reason for popular support or consent for the Union as a whole.
141. **Policy difference is an inherent consequence of devolution; indeed it is part of the point of devolving power. However, it creates a risk of real or perceived unfairness in respect of differing levels of service provision or government support which can be damaging to social solidarity. The public should be clear why policy differences exist and who is responsible, so that the appropriate politicians can be held to account for their decisions at the ballot box.**

### Risks to the political union

142. A number of risks arise from the political elements of the Union. The desire of the devolved nations to have policies adapted to the individual characteristics of each nation has shaped the evolution of the political union for many years. In recent decades the pressure for autonomy arising from the growth of Scottish nationalism, the growing desire for greater autonomy in Wales and the complex and evolving political situation in Northern Ireland have shaped the current devolution settlement.
143. Yet devolution has seen the rise of new political tensions which are now exerting unexpected pressures on the Union. In the case of Scotland, we were told that the new Scottish Parliament gave a greater platform to a party that wanted Scotland to leave the Union: the Scottish National Party. Competing for seats in a devolved legislature, the SNP “became a credible alternative Government for the first time, as it was never going to be credible as an alternative Government at Westminster ... that played into the perception that here was a serious party”.<sup>186</sup>

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183 [Q 152](#)

184 [Q 105](#)

185 [Q 62](#) (Dr Jan Eichhorn) and [Q 246](#) (Carwyn Jones AM)

186 [Q157](#) (Professor James Mitchell)

144. Witnesses pointed to the increasing distinction between the political party systems in the four nations as a potentially centrifugal force.<sup>187</sup> Since 2010, the governments of the UK, Wales and Scotland have all been formed of different parties, while the mandatory coalition in Northern Ireland is made up of parties that only contest elections there. Professor Curtice told us:

“in terms of the [UK] party-political system, Northern Ireland, whose relationship was always somewhat tenuous, left in the 1970s. I would now say that Scotland has also left it. The considerations that affected people in Scotland were completely different [to the rest of Great Britain] ... politics in Scotland now is primarily about Scotland, and not about the interests of the UK as a whole.”<sup>188</sup>

145. Labour MSP Claire Baker told us that she was not convinced by this argument: “I am not sure that I would accept [that] there is a vast difference between Scottish politics and the rest of the UK.” She added that “I do not think there is that much difference between what is driving Scottish voters and what is driving other voters across the United Kingdom.”<sup>189</sup> Other witnesses from Scottish opposition parties agreed, although Maggie Chapman, co-convenor of the Scottish Green Party, noted that “The basis of politics is maybe not that different, but the way the Scottish people choose to express and choose to act in the culture of politics probably is different. That has been developing over the last few years, primarily around the referendum, but also with other factors.”<sup>190</sup>
146. Another concern arises in respect of the only nation that has no devolution settlement: England. The asymmetry of the devolution arrangements established in the late 1990s, without any recognition of England as a discrete entity, has created a sense that citizens of England do not enjoy the same political representation as other nations in the Union.<sup>191</sup> One witness described England as the ‘damnable question’, as Ireland had been a hundred years earlier.<sup>192</sup> Data from the Future of England Survey “demonstrate clear dissatisfaction with the current territorial constitution in England”.<sup>193</sup> This has implications for both England and the wider Union: Professor Colin Harvey, Professor of Human Rights Law, Queen’s University Belfast, told us that, “A profoundly and deeply unhappy and resentful England is of no use to the other parts of the UK.”<sup>194</sup>
147. English dissatisfaction with the shape of the political union has in part been prompted by a by-product of asymmetrical devolution: the West Lothian Question. The fact that MPs representing constituencies in the devolved nations can vote on issues that affect other nations in the Union but not their own has been controversial since the first Irish Home Rule debates in

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187 Written evidence from Dr Paolo Dardanelli ([UDE0033](#))

188 [QQ 65](#) and [57](#). Similarly, Professor Arthur Aughey told us that the 2015 general election campaign in Northern Ireland had focused on matters internal to Northern Ireland, rather than what MPs would do in the UK Parliament ([Q 302](#))

189 [Q 134](#)

190 [Q 134](#)

191 See written evidence from the Campaign for an English Parliament ([UDE0012](#)) and Stewart Connell ([UDE0006](#))

192 [Q 304](#) (Professor Arthur Aughey) - the term is the title of George Dangerfield 1976 book on the Irish question in the early 20th Century.

193 Charlie Jeffery, et al, *Taking England Seriously*, p 21. The authors note that the constitution is not, however, a priority for most English voters.

194 [Q 304](#)

the late 19th century. The Government's solution, changing the Standing Orders of the House of Commons to provide 'English votes for English laws', is in turn seen by some as undermining the principle of representation of all parts of the UK in Parliament.<sup>195</sup> We discuss the West Lothian Question and English votes for English laws in more depth in Chapter 8.

### *The European Union referendum and a British Bill of Rights*

148. Further risks arise from the up-coming referendum on membership of the EU on 23 June 2016. The political union may be affected by the result of the vote, whether because a vote to leave is carried despite lacking majority support in each of the four nations, or conversely because the Remain campaign succeeds despite one or more nations voting to leave.<sup>196</sup>
149. The Government has also proposed the replacement of the Human Rights Act 1998 with a British Bill of Rights. There has been significant discussion over the implications of such a move for the devolution settlements.<sup>197</sup> We do not intend, in this report, to take a position on either the Bill of Rights policy or its potential impact on the devolution settlements. We note, however, that the European Convention on Human Rights, to which the Human Rights Act gives effect, is embedded in the devolution settlements with Wales, Scotland and Northern Ireland (see paragraph 246) and changes to that Act could have an impact on those settlements and on relations between the UK Government and the devolved institutions.

### *The cultural union and emotional affinity*

150. The Union rests on a balance of unity and diversity. As well as familial links, shared institutions and shared heritage are integral to the cultural union. Diversity must be, and is, accepted but there is a risk that it could trump unity and undermine the cultural union. A number of witnesses felt that too little emphasis was placed on those common cultural and traditional elements which provide a common frame of reference for citizens across the whole UK.
151. Mr Evans told us that "the case for the Union needs to be made forcefully and powerfully". Echoing Lord Hennessy of Nympsfield, he said that: "one needs to identify the issues that bond the Union and celebrate them more effectively: the Queen, the Armed Forces, the welfare state, the National Health Service, economic stability, the BBC, the UK passport and the Olympic Games".<sup>198</sup> Others agreed that more needed to be done to promote what Professor Curtice called "emotional affinity" across the UK.<sup>199</sup>

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195 Written evidence the Mile End Institute ([UDE0042](#)) and from Christopher Luke ([UDE0011](#))

196 'Sturgeon: EU exit would 'almost certainly' trigger second independence referendum', *Daily Telegraph* (21 February 2016): <http://www.telegraph.co.uk/news/newstoppers/eureferendum/12167448/Sturgeon-EU-exit-would-almost-certainly-trigger-second-independence-referendum.html> [accessed 4 May 2016]

197 See Chapter 8 of European Union Committee, *The UK, the EU and a British Bill of Rights* (12th Report, Session 2015–16, HL Paper 139). See also written evidence from the British Academy ([UDE0037](#)) and [Q 7](#) in the Lord Chancellor's annual evidence session with this Committee, 2 December 2015; and Bingham Centre for the Rule of Law, *A Constitutional Crossroads: ways forward for the United Kingdom* (May 2015), p 8: <http://www.biiicl.org/binham-centre/devolution> [accessed 9 May 2016]

198 [Q 93](#). Professor Hazell also listed the armed forces, welfare state and monarchy ([Q 10](#)); similarly, Professor McEwen listed the NHS, BBC and monarchy (written evidence ([UDE0061](#)); see also [Q 150](#) (Professor Neil Walker)

199 [Q 66](#)

152. Yet there are challenges to such an approach. The NHS has been devolved since 1999 (and was always administered separately in Scotland) and while it is still seen as a British institution<sup>200</sup> it is also a central element of national or regional debates about devolved policy. While the common welfare system still exists, the Scotland Act 2016 has devolved a number of powers to Scotland which may obscure the UK-wide nature of the welfare safety net. Professor Adam Tomkins, John Millar Professor of Public Law, University of Glasgow, told us that the BBC “does not enjoy unanimous authority and support across the whole spectrum of Scottish political opinion just now”, and that the monarchy and the armed forces are less of a shared point of common affection and experience than in previous generations.<sup>201</sup>
153. **We consider that the BBC and other public service broadcasters play an important role in maintaining a common British identity. By providing a shared source of culture and information, they act as a unifying force within the Union. It is vitally important that independent public sector broadcasters continue to provide a common UK-wide service in addition to regional and local coverage, particularly in relation to topics such as news and current affairs.**

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200 See footnote 98

201 [Q1](#) (Professor Adam Tomkins)

## CHAPTER 4: PRINCIPLES UNDERLYING THE UNION AND DEVOLUTION

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154. In Chapter 2 we set out our understanding of the key elements that comprise and underpin the Union. In this chapter we consider what principles should guide consideration of the Union and devolution.
155. As we have previously noted, the process of devolution to date has proceeded on an *ad hoc*, piecemeal basis. There has been no overt effort to devolve power on the basis of an agreed set of principles. Akash Paun of the Institute for Government told us: “it is hard to identify clear and consistent principles that have guided the development of the territorial constitution.”<sup>202</sup> He argued that: “it has meant that there was no clear guiding set of principles to ensure coherence of the constitution as a whole. We have now reached a point where there needs to be much more serious thought about what those principles should be.”<sup>203</sup>
156. In general, our witnesses felt that establishing a clear set of principles would be helpful. Professor Charlie Jeffery, Professor of Politics, University of Edinburgh, told us that recent changes to the devolution settlements had been “entirely contingent on the persuasiveness or other means of the negotiating parties. This has not been a process driven by principle.”<sup>204</sup> He argued that if the UK was to achieve an “enduring settlement ... we need to start thinking about principle rather than the contingencies of negotiation processes.”<sup>205</sup> Former Head of the Civil Service Lord Kerslake agreed: “A set of guiding principles about devolution, both UK and within England, is worth exploring.” He noted, however, that “It is easy to say it and harder to write it”.<sup>206</sup>
157. Professor Adam Tomkins, John Millar Professor of Public Law, University of Glasgow, argued that:
- “We really cannot carry on, in the United Kingdom, developing devolution or developing Britain’s territorial governance in silos. ... Really for me the value of thinking about principles of union constitutionalism is that it gets us, or might help to get us, out of those silos and into the space where we can start thinking about the things that we have in common.”<sup>207</sup>
158. Some of our witnesses felt that agreeing a set of principles could be unhelpful. Scottish Government Minister Fiona Hyslop MSP said that it risked ending up reflecting only the lowest-common denominator. She advocated instead a focus on “the exercise of power, behaviour and practice” and on positive examples of the administrations working well together.<sup>208</sup> Lord Empey, Chair of the Ulster Unionist Party, warned of the dangers of over-prescription or inflexibility.<sup>209</sup>

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202 [Q 32](#); see also written evidence from Paul Scott ([UDE0027](#))

203 [Q 32](#)

204 [Q 51](#); see also written evidence from Professor Derek Birrell ([UDE0052](#))

205 [Q 51](#)

206 [Q 240](#)

207 [Q 3](#)

208 [QQ 125-6](#)

209 [Q 290](#)

159. The UK Government Minister responsible for the constitution, Oliver Letwin MP, was similarly disinclined to formulate a set of guiding principles:

“I quite understand why it is that people ... seek this theoretical underpinning. But ... I do not share that yearning. The genius of the British constitution is that it has worked in practice, not in theory. In general, trying to theorise about these things and to lay down a set of general principles that is meant to be absolute, and at the same time are meant to apply in the same way to each of the different component parts, is an exercise which sounds like some sort of Cartesian cleaning of the Augean stables ... it precipitates a whole series of further debates and discussions which are probably unproductive, and maybe even counterproductive.”<sup>210</sup>

160. **We disagree with the view that setting out general principles to underpin consideration of the Union and devolution would be unproductive. There is a strong case for creating a flexible framework, based on appropriate principles, as a guide to future action within which any further demands for devolution can be considered in a coherent manner. This would help to ensure that such considerations take into account the interests of the Union and of all four constituent nations of the United Kingdom, rather than proceeding in the reactive, *ad hoc* manner in which devolution has been managed to date. A guiding set of principles, while not prescriptive and still less absolute, would provide a yardstick against which the current devolution settlements, and any proposals for further devolution, could be measured and appraised.**

### Principles of the Union and devolution

161. The Silk Commission on Devolution in Wales put forward a list of principles with the intention of creating “a framework that could be applied to the consideration of any proposed future adjustments in the [devolution] settlement. This would be in contrast to the reactive and piecemeal nature of the development of devolution in the past.”<sup>211</sup> It concluded that these principles should include “accountability, clarity, coherence, collaboration, efficiency, equity, stability and subsidiarity”.<sup>212</sup> The Bingham Centre, in their draft Charter of the Union (see Annex B), put forward a similar list. We discuss the draft Charter in more detail in Chapter 6.
162. We do not intend to set out a comprehensive list of the principles that should govern the relationship between the Union and the devolved nations, and underpin any further discussions about devolution. Instead we consider some of the core principles that might be included on any list. The principles that we elaborate on below must not be treated by Government as a box-ticking exercise—they should guide the way in which the Government considers any future proposals for devolution, and inform any assessment they make of the impact of the current devolution settlements.

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210 [Q 313](#)

211 Commission on Devolution in Wales (the Silk Commission), *Empowerment and Responsibility: Legislative Powers to Strengthen Wales* (March 2014) p 26: <http://webarchive.nationalarchives.gov.uk/20140605075122/http://commissionondevolutioninwales.independent.gov.uk/> [accessed 9 May 2016]

212 Silk Commission, *Legislative Powers to Strengthen Wales*, p 28

163. We identify six principles that could assist the assessment process: solidarity and diversity, which reflect the ongoing combination of unity and the accommodation of national differences in the Union; consent and responsiveness, which acknowledge the importance of taking account of the public's wishes; and subsidiarity and clarity, which aim to ensure that power is allocated in a manner that leads to effective outcomes and that is coherent and comprehensible to the public.

### *Solidarity*

164. A number of our witnesses referred to the principle of solidarity, which Professor Ailsa Henderson, Professor of Political Science, University of Edinburgh, described as “the common purpose of all within the state” or the “glue that binds citizens together”.<sup>213</sup> The Silk Commission’s principle of ‘collaboration’ covers the same ground to some extent,<sup>214</sup> but the principle of solidarity carries a deeper meaning: it is related to the unity of the state and to common identity. Witnesses saw solidarity in two principal ways. First, the redistribution of resources through the social union. Second, in social cohesion and the comity of relationships within the UK.
165. Professor Robert Hazell, Director of the Constitution Unit, University College London, described the first: “The social union provides the social solidarity that binds the Union together, by redistributing revenue and pooling and sharing risk through welfare benefits and through the pension system.”<sup>215</sup> Professor Michael Keating, Professor of Scottish Politics, University of Aberdeen, referred to “territorial solidarity”, which he described as “the appropriate relationship of sharing among the various component parts of our political system”. He noted that “I do not think you need to go into deep-seated senses of identity or whether you feel British or not. It is a more practical question: how are we going to get a proper system for redistributing resources?”<sup>216</sup>
166. Professor Jeffery was concerned that in this regard the concept of solidarity, of considering the good of the whole UK rather than simply the good of a specific nation, was breaking down:
- “I think that there has been a loss of belief in the UK as a framework for solidarity and redistribution in Scotland, and quite likely in parts of England as well. More generally, it has been lost in England as an understanding of how to share this space with Scotland. Lots of the grievances that we reveal in public attitudes in England are about the sense that ‘our’ money is going to fund ‘them’. That is not a very promising way to invoke that kind of solidarity across a state.”<sup>217</sup>
167. The second manifestation of solidarity goes beyond the simple redistribution of resources. Professor Keating argued that in a world where citizens are subject to multiple layers of government, from the European Union to the local level, it was important to build social cohesion “at all levels”.<sup>218</sup> The Bingham Centre’s draft Charter states that governments within the UK

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213 Written evidence from Professor Ailsa Henderson ([UDE0065](#))

214 Silk Commission, *Legislative Powers to Strengthen Wales*, p 28

215 [Q 10](#)

216 [Q 151](#)

217 [Q 46](#); see also [Q 105](#) (Ed Cox).

218 [Q 151](#)

should “cooperate with each other in a spirit of trust, fair dealing and good faith.”<sup>219</sup>

168. Professor Henderson noted that the concept of solidarity is often linked with unity in the constitutions of federal states,<sup>220</sup> but expressed scepticism that it was enforceable as a principle.<sup>221</sup> Professor Nicola McEwen, Professor of Territorial Politics, University of Edinburgh, agreed: “In any set of relationships that kind of mutual trust has to be earned, learned and acquired through experience rather than something that can be a top-down measure.”<sup>222</sup> Professor Henderson suggested one concrete expression of solidarity was “a harm principle—you can have difference but you will not do undue harm to either another constituent unit or residents in those units.”<sup>223</sup>
169. This would seem similar to the proposal by the Smith Commission that there should be “no detriment as a result of UK Government or Scottish Government policy decisions post-devolution”.<sup>224</sup> The Lords Economic Affairs Committee concluded that this principle was “unworkable ... a recipe for future disagreement”. Many of their witnesses felt that “it could only work as a high-level principle” rather than being applied literally.<sup>225</sup> We recognise that the no detriment principle cannot be used as a tool by which public finances can be adjusted to reflect the impact of differing policy choices. It may have use, however, as a way to help decision-makers apply the principle of solidarity to the everyday choices they face.
170. **The solidarity that binds together the citizens of the UK as one people is essential to the Union. This is most clearly evident in the social union that provides for a pooling and sharing of resources across the UK. It should, however, guide the activities of decision-makers throughout the UK in a broader fashion: through comity and fair dealing. There is no way to legislate for, or enforce, solidarity but it is nonetheless vital to ensuring that the Union does not fall prey to division and an “us vs them” mentality. All those working in public service, at whatever level, must bear this principle in mind. This is particularly true in dealings over shared or concurrent powers, or in policy areas where decisions taken by one administration will have an impact on others. In these situations, solidarity means that the policies of one administration should not inflict avoidable harm on another nation or region.**

### *Diversity*

171. While solidarity reflects the unity that is integral to the Union, this has always been accompanied by bespoke arrangements for governing each nation, long pre-dating the formal devolution of legislative powers (see Chapter 2). Bespoke arrangements continue to this day, and there are substantial differences between the powers granted to each of the devolved legislatures, and notably between the governance of those nations and that of

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219 See Bingham Centre for the Rule of Law, *Draft Charter of the Union with Explanatory Notes*, 2016 (included at Annex B of this report)

220 [Q 83](#)

221 [Q 84](#)

222 [Q 84](#)

223 [Q 84](#)

224 Smith Commission, Report, p 26

225 Economic Affairs Committee, [A Fracturing Union?](#) paras 56-57



England and its regions. This asymmetry of powers is one of the territorial constitution's notable features.

172. Professor Jim Gallagher, Nuffield College, Oxford, told us that this was the result of the diversity of the nations of the UK: “different parts of the UK have demographic, economic and social differences. Things that matter in Wales might not matter in Scotland; things that matter in Northern Ireland certainly quite often do not matter in Wales and Scotland.”<sup>226</sup>
173. Accommodating the diverse nature of the Union's constituent nations can be seen as one of the guiding principles of the way the UK's devolution settlements have developed over the last 20 years. Our witnesses generally felt that having a degree of diversity was justified because it allowed devolution settlements to be tailored to the needs of individual nations. Professor Tomkins told us that: “It would be counter-productive to seek to iron out the differences and to impose a single, uniform model on all parts of the UK. ... What is good for Scotland may well not be good policy for Wales.”<sup>227</sup>
174. Several witnesses argued that the asymmetrical settlements helped stabilise the Union by tailoring constitutional arrangements to each nation.<sup>228</sup> Mr Colin Murray, Senior Lecturer in Law at Newcastle University, told us that: “it is entirely possible that persisting with the pre-1998 system of governance would have further destabilised the Union”.<sup>229</sup> Professor Neil Walker, Regius Professor of Public Law and the Law of Nature and Nations, University of Edinburgh, felt that “asymmetry is both stabilising and inevitable in the UK context”, although he added that asymmetry had inevitable consequences for central government that had to be addressed.<sup>230</sup>
175. Other witnesses saw the degree to which the devolution settlements had diverged as a source of concern. The Constitution Society told us that: “Asymmetry is not necessarily wrong in itself. But the particular form it has now taken has created uncertainty and is connected to various forms of political dissent, some of which are in tension with each other.”<sup>231</sup>
176. Professor Hazell also expressed concerns:
- “Asymmetry is a problem. It is a problem for two reasons. One is it is more difficult for citizens in different parts of the UK to understand their rights as citizens and their responsibilities if there is a different set of powers in different parts of the UK. Secondly, in an asymmetrical system, there is the risk of a game of leapfrog between the devolved countries, so that, if Scotland is offered something more, then Wales puts its hand up and says, ‘We want that too’, and Northern Ireland, and perhaps in time English cities or regions. Asymmetry possibly creates a dynamic that makes it harder to reach a stable and enduring settlement.”<sup>232</sup>

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226 [Q 50](#) see also written evidence from Lord Morrow ([UDE0068](#)) and Dr Carlotta Redi ([UDE0044](#))

227 Written evidence from Professor Adam Tomkins ([UDE0021](#)); see also [Q 23](#) (Sir Paul Silk)

228 [Q 155](#) (Professor Michael Keating) and [Q 98](#) (Alun Evans)

229 Written evidence from Mr Colin Murray ([UDE0051](#))

230 [Q 155](#); see also [Q 149](#) (Professor James Mitchell)

231 Written evidence from the Constitution Society ([UDE0019](#))

232 [Q 12](#); see also [Q 271](#) (Dr David S Moon)

177. Similarly, Professor Jeffery felt that asymmetry contained “at least the seeds of instability, because you tend to get spillovers from one part of the UK to the next, or senses of fairness or unfairness deriving from particular powers that one place has in comparison to another”, which made it “vulnerable, to put it crudely, to the next opinion poll.”<sup>233</sup>
178. Other witnesses echoed Professor Hazell’s concern about one particular outcome of asymmetry: the level of complexity now evident in the UK’s constitutional arrangements. Sir Kenneth Calman, who chaired the Commission on Scottish Devolution, told us that the difference between settlements was confusing. He suggested that he “could not answer questions on Wales easily, for example” and that the “average person in the street will have difficulty with it”.<sup>234</sup> This confusion has affected the workings of government: we heard during our 2015 inquiry into inter-governmental relations that there was a lack of understanding in the UK Civil Service about the differences between the devolution settlements in the different nations.<sup>235</sup>
179. Public opinion on asymmetry is divided, but generally in favour of greater symmetry. Dr Jan Eichhorn, Chancellor’s Fellow in Social Policy, University of Edinburgh, told us that:
- “If you ask people whether the arrangements for devolved powers should be the same everywhere across all of the parts that make up the UK, about 60% in Wales, Northern Ireland and England agree. Even in Scotland 50% say everyone should have the same, probably like the Scottish model. But it could be read the other way: even in England 40% say it is fine to have this disparity.”<sup>236</sup>
180. **The benefits of recognising the diversity of the UK’s different nations outweigh the potential confusion and public perceptions of unfairness that may result. However, the wider impact of asymmetry on the Union and on other nations in the UK must be properly considered as part of any assessment of devolution proposals.**
181. **The differences in the devolution settlements reflect the perceived needs and circumstances of each nation. They also reflect governmental decisions taken about devolution to Scotland and Wales in 1997. Any future proposal to devolve power should be assessed in light of the merits of devolving a particular power to a particular nation, as well as against its impact on the Union as a whole.**

### *Consent*

182. One clear principle that can be drawn from the development of devolution since 1997 is that devolution is delivered with the consent of the relevant nation. Professor Tomkins told us that “One of the absolute principles of devolution” is that “[it] is not imposed on parts of the United Kingdom that do not want it.”<sup>237</sup> The conditions in which the consent of the people should be sought directly via a referendum, as opposed to the consent of their elected representatives, are not, however, clear.

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233 [Q 50](#); see also written evidence from Justice for Wales ([UDE0025](#)) and Mr Paul Scott ([UDE0027](#))

234 [Q 22](#)

235 Constitution Committee, *Inter-governmental relations*, Chapter 4; see also [Q 144](#) (Sir John Elvidge)

236 [Q 65](#)

237 [Q 5](#); see also written evidence from Professor Arthur Aughey ([UDE0003](#)) and John Hartigan ([UDE0013](#))

183. While the creation of the devolved institutions was ratified by referendum in each of the devolved nations, there have been significant changes made to the devolution settlements since then for which referendums were not thought necessary (although in each case the devolved legislature has given its consent).
184. There have been no referendums on devolution in Scotland since 1997,<sup>238</sup> although the substance of the debate leading up to the independence referendum in 2014 meant that it was widely regarded as being a choice between independence and the devolution of further powers.<sup>239</sup>
185. There was a referendum in Wales in 2011 on whether the National Assembly for Wales should have the power to make primary legislation, and the Wales Act 2014 provides for a referendum on the Assembly gaining powers over income tax (consciously echoing the 1997 vote on tax powers in Scotland<sup>240</sup>). In 2015, however, the UK Government announced<sup>241</sup> that it would legislate to remove the requirement for a referendum to implement powers over income in Wales—raising the question of in what circumstances it is appropriate to require public consent by means of a referendum rather than agreement by a devolved legislature.<sup>242</sup>
186. **The principle of consent has become fundamental to the development of devolution in the UK, and should continue to be a guiding principle in the future. The circumstances in which changes to the devolution settlements require the consent of the people via a referendum are unclear. They should be clearly set out in any statement of these principles.**
187. We consider issues relating to public engagement in more detail in Chapter 5.

### *Responsiveness*

188. In addition to this principle of consent, many witnesses agreed that devolution had been ‘demand led’—i.e. that the impetus for the devolution of powers had come from the nations themselves, rather than from the centre. Successive Governments have been responsive to national demands for devolution and this has been a driving force in defining how devolution has developed.
189. Some saw this responsiveness as a purely reactive response by the UK Government to a perceived threat from nationalism. Dr Ben Wellings, Lecturer in Politics and International Relations at Monash University in Australia, told us that: “If any underlying principle is discernible it is devolution as a response to nationalist pressure.”<sup>243</sup> Professor Gallagher

238 In our report on referendums, we noted the inconsistency in the requirement for a referendum on the powers of the National Assembly for Wales in 2011 but not on the new powers for the Scottish parliament recommended by the Calman Commission. Constitution Committee, [Referendums in the United Kingdom](#) (12th Report, Session 2009–10, HL Paper 99) para 83

239 For example, see ‘Scottish independence: Cameron says No vote “not for status quo”’, *BBC News*, (15 May 2014): <http://www.bbc.co.uk/news/uk-scotland-scotland-politics-27414810> [accessed 14 April 2016], and ‘Scotland Votes to Stay the Same, and for Change’ *Time* (19 September 2014): <http://time.com/3400609/scotland-votes-to-stay-the-same-and-for-change/> [accessed 14 April 2016]

240 See comments by the then Secretary of State for Wales, David Jones MP, HC Deb, 31 Mar 2014, [col 607](#)

241 HM Treasury, Spending review and autumn statement 2015 (27 November 2015): <https://www.gov.uk/government/publications/spending-review-and-autumn-statement-2015-documents/spending-review-and-autumn-statement-2015> [accessed 7 April 2016]

242 [Q 270](#) (Professor Richard Rawlings), written evidence from Professor Robert Hazell ([UDE0054](#)) and Mr Paul Scott ([UDE0027](#))

243 Written evidence from Dr Ben Wellings ([UDE0032](#))

also described successive UK Governments' approach as "if not tactical, then certainly reactive: that is, change happens—let us be blunt—when something happens in Scotland, and Northern Ireland marches to its own tune somewhere else. Typically, Wales is dragged along in the Scottish slipstream to the extent that it wants to be."<sup>244</sup>

190. If devolution was, at least initially, the result of a desire to assuage nationalist feeling, there are those who now argue that responsiveness to demand should be a guiding principle. Mr Letwin, in evidence to this Committee in July 2015, stated that not only should devolution settlements not be imposed without consent, but that the UK Government should, where possible, seek to meet all requests for further devolution:

"to the greatest possible extent, where people in any constituent part of the Union, or indeed in part of a constituent part of the Union—as in the case of Greater Manchester, for example—express the desire and clearly have the capacity to take a greater share of power over their own affairs, we should seek means of answering that positively and give them that power."<sup>245</sup>

191. We cannot accept that as a sensible way forward, particularly in relation to local and regional government in England. In any event, the First Minister of Wales felt there was little sign of this principle emerging from the UK Government's dealings with the devolved nations: "there is a feeling in Scotland and Wales that powers have to be wrestled out of Westminster rather than there being a rational discussion as to what the future of the UK as a whole should be."<sup>246</sup>
192. The principles of demand and consent rarely extend to direct engagement with the electorate. As we note above, with the exception of the devolution of primary legislative powers to the National Assembly for Wales, the extension of devolution has—while being prompted by demand—not required any form of direct public consent from those affected.
193. While successive UK Governments have been responsive in general terms to national demands for greater devolution, they have proceeded in a fragmented way, rather than developing an overarching strategy within which devolution and the territorial constitution could be considered in the round. Peter Riddell, Director of the Institute for Government, stated that 'demand led' devolution "has undoubtedly been damaging, mainly because there has been an absence of thinking at the central UK level about these issues."<sup>247</sup> Other witnesses echoed this sentiment, criticising the 'siloed' approach to devolution that this engendered.<sup>248</sup>
194. **Devolution settlements have been 'demand led', with successive UK Governments responding to demands for greater powers and responsibility. While it is right that the UK Government listens and responds to the desires of the constituent nations of the UK, successive Governments have neglected their duty to do so in a manner that takes into account the wider needs and wishes of the Union and of all its constituent nations.**

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244 [Q 44](#)

245 Oliver Letwin MP, Evidence to the Constitution Committee on 8 July 2015, [Q 4](#)

246 [Q 245](#)

247 [Q 32](#)

248 [Q 32](#) (Akah Paun) and written evidence from Professor Adam Tomkins ([UDE0021](#))

*Subsidiarity*

195. Subsidiarity is the principle that power should be exercised at the lowest level possible consistent with good government. The Silk Commission defined it as follows: “decisions should be made as close as possible to the people they affect, consistent with addressing the relevant matter effectively”.<sup>249</sup> The Bingham Centre’s draft Charter of the Union includes a similar principle: that the different governments in the UK “should have powers that reflect the principles of autonomy and subsidiarity to the extent that they are best suited to providing for the particular needs of its people.”<sup>250</sup> Several of our witnesses stressed that the exercise of power closer to the level of those whose lives it affects was a desirable result of devolution in its own right.<sup>251</sup> We heard concerns about the centralisation of power within England and within Wales and Scotland since the creation of the devolved institutions, which suggests that this principle has scope to be applied more effectively within the constituent nations of the UK as well as at the level of the Union.<sup>252</sup>
196. Many witnesses pointed to the principle of subsidiarity as the cornerstone of a principles-based approach.<sup>253</sup> Dame Rosemary Butler AM, Presiding Officer of the National Assembly for Wales told us that: “the fundamental organising principle for the devolved settlements should be subsidiarity: the centre should reserve to itself only what cannot be effectively done at a devolved level.”<sup>254</sup> This sentiment was echoed by other witnesses who called for powers to be devolved unless there was a strong argument against it.<sup>255</sup>
197. Martin McTague, National Policy Vice-Chairman, Federation of Small Businesses, noted that from a business point of view subsidiarity was also desirable: “You are trying to get decision-making to the lowest reasonable level, where businesses can understand who is making the decision and they feel that they are in tune with conditions in their local market and local community”.<sup>256</sup>
198. **Subsidiarity is a principle that provides a useful benchmark against which to test any proposals for devolution. Where powers can be exercised more effectively at a lower level of government, then it should be open for those powers to be devolved. That is contingent upon the needs of the Union and the ability of the devolved body to exercise those powers effectively. Powers should not, however, be devolved solely because they can be—power should be devolved to a particular nation only when doing so would benefit the people of that nation or region and without detriment to the Union as whole.**

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249 Silk Commission, *Legislative Powers to Strengthen Wales*, p 28

250 Bingham Centre, *Draft Charter of the Union*, article 2.1 (see Annex B)

251 On England, see Chapter 8; regarding Scotland and Wales: [Q 82](#) (Brendan Donnelly), [Q 129](#) (Fiona Hyslop MSP), [Q 181](#) (Martin McTague), [Q 163](#) (Willie Sullivan), [Q 104](#) (Professor Philip Booth)

252 [Q 78](#) (Alexandra Runswick), [Q 190](#) (Sir Richard Leese), [Q 139](#) (Maggie Chapman), [Q 179](#) (Martin Sime), [Q 288](#) (Steve Thomas); written evidence from Scotland in Union ([UDE0017](#))

253 See, for example, ResPublica ([UDE0039](#)), Professor Hazell ([Q 11](#)), Ed Cox ([Q 112](#)), Mr Martlew ([UDE0040](#)), Scotland in Union ([UDE0017](#)), Sir Jeffrey Jowell ([Q 2](#))

254 Written evidence from Dame Rosemary Butler AM ([UDE0038](#))

255 [Q 163](#) (Willie Sullivan), [Q 181](#) (Martin McTague), [Q 215](#) (Paul Nowak), [Q 198](#) (Lord Porter of Spalding), [Q 199](#) (Sir Richard Leese)

256 [Q 186](#)

*Clarity*

199. The Silk Commission described the principle of clarity thus: “voters should understand where decisions are made and the settlement should be straightforward to operate”.<sup>257</sup> The evidence we received made it clear that the devolution settlements are not well understood by the public. There are different factors that contribute to this general lack of public understanding. Two of these relate to the structure of the devolution settlements. First, the asymmetry of the devolution settlements obscures public understanding of where powers lie across the UK. Second, the complexity of the devolution settlements themselves means that the division of powers between central, devolved and local government in each devolved nation is hard to disentangle.
200. There is a lack of public understanding across all four nations. Amongst the devolved nations, it seems particularly acute in Wales with its complex conferred-powers model of devolution (albeit a model which is less complex than that used in 2006–11<sup>258</sup>). The First Minister of Wales told us that, even though public understanding had improved, “it can be difficult for people to understand who does what. ... People tend to assume now that the Welsh Government are responsible, even in areas where we are not”.<sup>259</sup> By contrast, Sir Kenneth Calman felt that a lack of understanding led citizens in devolved nations to blame the UK Parliament and Government for everything.<sup>260</sup> Kirsty Williams AM, leader of the Welsh Liberal Democrats, stated bluntly: “the devolution settlement at the moment is ... about as clear as mud to the people.”<sup>261</sup> It is not surprising, then, that the Silk Commission made clarity a core principle for future Welsh devolution.
201. Witnesses from Wales told us that the problem was exacerbated in that nation by the lack of Welsh sources of news,<sup>262</sup> a situation which has existed since the end of the First World War. Jessica Blair of the Institute of Welsh Affairs noted that as Welsh newspapers had declined, people were increasingly accessing news from UK-wide sources, often based in England.<sup>263</sup> Dr David S Moon, Lecturer in Politics, University of Bath, emphasised the problem:
- “we have independent media—a Welsh media, with the *Western Mail*, BBC programmes, the *Daily Post* up north, but the readership and the people watching the programmes is small. The majority of the newspapers read are English ... the coverage of Welsh politics is very poor. That is going to be an issue not because the media drive opinion but simply to explain how the system works.”<sup>264</sup>
202. There is also a lack of clarity in Scotland. Lord Smith of Kelvin, in the foreword to the Smith Commission’s report, wrote that: “A challenge facing both [UK and Scottish] Parliaments is the relatively weak understanding of the current devolution settlement. This is not surprising given what is a complex balance of powers. With the enhancement of these powers, improved understanding is all the more critical to sustaining the trust and engagement of the public.”<sup>265</sup>

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257 Silk Commission, *Legislative Powers to Strengthen Wales*, p 28; see also written evidence from the Society of Conservative Lawyers ([UDE0028](#)) and Dame Rosemary Butler AM ([UDE0038](#))

258 See House of Commons Library, *The UK devolved legislatures: some comparisons between their powers and work*, Standard Note [SN/PC/04505](#), November 2007, pp 15-17

259 [Q 251](#); see also [Q 22](#) (Sir Paul Silk) and [Q 277](#) (Dr Victoria Winckler)

260 [Q 30](#)

261 [Q 256](#)

262 See, for example, Carwyn Jones ([Q 250](#)) and Andrew Davies ([Q 262](#))

263 [Q 279](#)

264 [Q 265](#)

265 Smith Commission, *Report*, p 6; see also [Q 135](#) (Baroness Goldie MSP and Maggie Chapman)

203. Professor Colin Harvey, Professor of Human Rights Law, Queen’s University Belfast, noted that there was “scope for profound confusion” for the public in Northern Ireland due to the lack of clarity.<sup>266</sup> He was echoed by Mark Durkan MP, former leader of the Social Democratic and Labour Party: “it is very hard for citizens to understand where power lies and where the buck stops. That is very bad for democracy. We are giving people all sorts of layers of democracy and they cannot understand who is responsible for what. We all appear to point the finger at each other.” He noted that the confusion also extends to the role of European Union institutions.<sup>267</sup>
204. A relative lack of public understanding of constitutional structures is not unusual; Professor Charles Lees, Professor of Politics, University of Bath, and Professor Henderson told us that levels of public understanding were low in many countries with multi-level governance structures.<sup>268</sup>
205. **A certain amount of complexity in the devolution settlements is inevitable, given the combination of devolved, reserved and shared powers in each nation. Yet it is important that the public understand where power lies if the democratic process is to work effectively. While voters can assess the outcome of public policies, they cannot accurately express a judgement on their elected representatives at the ballot box if they are ill-informed about the division of responsibilities between different levels of government. All those involved in developing devolution settlements should ensure that the division of powers is made as clear as possible, to aid public understanding of what responsibilities lie at each level of government.**

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266 [Q 302](#)

267 [Q 310](#); see also [Q 194](#) (Sir Richard Leese and Lord Porter of Spalding)

268 Written evidence from Professor Charles Lees ([UDE0058](#)) and Professor Ailsa Henderson ([UDE0065](#))

## CHAPTER 5: STRENGTHENING THE UNION

206. As we noted in Chapter 3, we do not share the UK Government's optimism that the devolution settlements being discussed and implemented at present will provide a stable, long-term territorial settlement. It seems likely that in the longer term there will be pressure for further changes to the devolution settlements.<sup>269</sup>
207. Sir Kenneth Calman, who chaired the Commission on Scottish Devolution, told us that the continuing devolution of powers has, instead of satisfying demand, generated further demand. He added that "it will not stop; it will continue".<sup>270</sup> Scottish Government Minister Fiona Hyslop MSP was clear that the Scottish Government continued to advocate full fiscal autonomy, but that in the meantime it would "negotiate within the boundaries of what the UK Government are prepared to discuss with us".<sup>271</sup>
208. While the UK Government has published a draft Wales Bill for consultation,<sup>272</sup> we note that it does not propose devolving all the powers recommended by the Commission on Devolution in Wales. The Commission's chairman Sir Paul Silk felt that this was simply delaying their implementation till a later date. He noted that "there will always be those who say, 'Look, there's that gap, which you should be filling'".<sup>273</sup> Moreover, if further powers were to be devolved to Scotland then it is likely that there would be calls for them to be offered to Wales as well.<sup>274</sup> Although the Northern Ireland Assembly already has a large range of powers it is possible, following the devolution of Corporation Tax, that there may be calls for other powers to be devolved there. Within England, there is an on-going process of decentralisation and administrative devolution with no clear end point, or indeed final structure, in sight.<sup>275</sup>
209. We do not advocate any particular devolution of powers, but we have considered how to ensure that any further discussions about devolution take into account not only the interests of the devolved nations concerned but also the needs of the Union as a whole. Any further changes that do occur should not take place in the *ad hoc* and piecemeal manner that has characterised devolution since the 1990s.
210. Two significant developments in how the UK deals with devolution are required to achieve this. First, the needs of the Union should be identified. Second, a process should be put in place to ensure that those needs are properly considered during any further discussions of devolution. The key elements of the Union and the principles identified earlier in this report should provide a guide to both of these actions.

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269 [Q 93](#) (Alun Evans), [Q 202](#) (Lord Salisbury)

270 [Q 25](#)

271 [Q 129](#)

272 [Draft Wales Bill](#), Cm 9144, October 2015

273 [Q 25](#)

274 See [Q 244](#) (Carwyn Jones AM)

275 See Chapter 8



## Taking into account the needs of the Union

### *Identifying the core functions of the Union*

211. The key elements of the Union, as set out in Chapter 2, are maintained and supported by a wide range of executive and legislative functions. For example, the UK Parliament sets the legislative framework within which the Department for Work and Pensions provides and supports the welfare system that is a part of the social union, funded by taxes set in the UK Budget by the UK Parliament and raised and managed by HMRC and the Treasury. If these key elements are to be protected, then there must be clarity as to which supporting functions must be undertaken at the level of the Union.<sup>276</sup>
212. Professor Alan Trench of the University of Ulster, told us that:
- “you need to reserve a certain range of functions to the UK level if the UK is to function as a meaningful state, and that those are going to refer largely to the three unions that we have been talking about—the economic, political and social. That becomes the underlying rationale for reserving them.”<sup>277</sup>
213. There was clear agreement amongst our witnesses on where responsibility for certain policy areas should lie. For example, there was unanimous agreement that functions relating to the security and defence union should be governed at a UK level.<sup>278</sup> Likewise, it was felt that the international expression of the political union—the UK’s foreign policy and international relations—should be managed at a UK-wide level.<sup>279</sup>
214. Our witnesses were more divided in relation to those functions related to the economic and social unions. While our witnesses agreed that core functions relating to the economic union should be retained at a UK level (the management of macroeconomic and monetary policy<sup>280</sup>) there were differing views on the extent to which taxation could be devolved to a national level (see paragraphs 102-117). The extent to which the social union, and in particular the mechanisms of the welfare state, needed to be managed by the UK Government was also contested (see paragraphs 118-126).
215. **Earlier in the report we concluded that ending or fundamentally weakening any of the five key elements of the Union—the economic, social, political, cultural and security and defence unions—could threaten the Union as a whole. The question that needs to be resolved is to what extent devolution can take place in policy areas relating to the key elements of the Union, in particular the economic and social unions, without undermining those elements and thus the Union itself.**
216. Work should be carried out to identify the core functions that must be undertaken at a UK-wide level if the Union is to continue as an effective unifying force. It is the UK Government’s responsibility to undertake this

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276 [Q 21](#) (Sir Kenneth Calman)

277 [Q 51](#)

278 [Q 2](#) (Professor Sir Jeffrey Jowell), [Q 10](#) (Professor Robert Hazell), [Q 137](#) (Claire Baker MSP), [Q 202](#) (Lord Salisbury), [Q 214](#) (Paul Nowak), and written evidence from Professor Charles Lees ([UDE0058](#))

279 [Q 51](#) (Professor Charlie Jeffery), [Q 137](#) (Claire Baker MSP), [Q 59](#) (Dr Jan Eichhorn), and written evidence from Scotland in Union ([UDE0017](#))

280 [Q 2](#) (Professor Sir Jeffrey Jowell), [Q 137](#) (Baroness Goldie MSP), [Q 185](#) (Stephen Herring), and [Q 214](#) (Paul Nowak)

work, acting in consultation with the public, civil society, and the devolved institutions. Ulster Unionist Party Chairman Lord Empey told us that:

“It is essential that all parts [of the UK] are involved in the discussions and in the move to get some kind of coherent outcome with which people can feel comfortable. ... If you are a Scottish nationalist, you do not want to be in the United Kingdom. We understand that. If you are an Irish nationalist, you do not want to be in the United Kingdom. The reality is that the people in both those territories voted to stay in the United Kingdom, so you have to honour that, respect it and follow it through to its logical conclusion.”<sup>281</sup>

217. Oliver Letwin MP, the UK Government Minister with responsibility for the constitution, rejected the idea that any list of core reserved areas could be identified.<sup>282</sup> He did, however, agree with other witnesses that foreign affairs should be the responsibility of the UK Government, and that “there is a strong presumption that while macroeconomic policy resides with the UK Government and the Bank of England, there should be at least a core of welfare arrangements, the rules for which are established at UK level”.<sup>283</sup> This suggests that even those not temperamentally inclined towards setting out core reserved functions may have underlying assumptions about what must take place at a UK-wide level.
218. **We recommend that the UK Government identifies which public responsibilities are essential to the effective functioning of the Union, and therefore need to remain the responsibility of the UK Parliament and Government. This should help to ensure that the coherence and stability of the Union can be properly protected in any further discussions regarding the devolution settlements.**
219. **This work should reflect a wide range of views. There should be engagement with the public and civil society which must reach beyond those interested in constitutional matters and make explicit the connection between devolution and the decisions and service provision that affect people’s lives. The process will also require discussion with the devolved institutions and consultation with the UK Parliament.**

*A draw down model of powers?*

220. Identifying functions that must be reserved to the UK Parliament and Government could create an assumption that any other powers should, in principle, be devolved. Professor Trench noted that “There is a big decision to be made about whether, in the absence of an explicit rationale for reserving something, it should at least be devolvable if not devolved”.<sup>284</sup>
221. The Federal Trust for Education and Research published a paper with *Unlock Democracy on devolution in England*, calling for local areas to be able to “call down powers from a central menu”.<sup>285</sup> The Trust’s Director, Brendan Donnelly, suggested that such a system could work, although he

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281 [Q 296](#)

282 [Q 313](#)

283 [Q 314](#)

284 [Q 51](#)

285 Andrew Blick, *Devolution in England: A New Approach* (April 2014) p 20: [http://fedtrust.co.uk/wp-content/uploads/2014/12/Devolution\\_in\\_England.pdf](http://fedtrust.co.uk/wp-content/uploads/2014/12/Devolution_in_England.pdf) [accessed 9 May 2016]

noted that the devolution of powers would “have to be up to the regions themselves. It would not be decided centrally whether they were able to do it.”<sup>286</sup> Willie Sullivan, Director of Electoral Reform Society Scotland, also supported the view that “instead of power being seen as concentrated in the centre and then devolved out” that power should lie with “much smaller groups of people” who would then decide what to share with the centre.<sup>287</sup>

222. **Powers should not be devolved simply because theoretically they can be exercised at a lower level of government (see paragraphs 195-198). We therefore do not advocate a “draw down” model of devolution in which all powers outside the core functions of the Union are ‘devolvable’ upon a request by a nation or region. There are core powers that should only be exercised by the UK Government and Parliament. They are not necessarily, however, the only powers that can be managed most effectively at the level of Union.**<sup>288</sup>
223. **There is no single list of the powers that could or should be devolved across the board. In the event that there are further demands for powers to be devolved, these should only be considered as part of an appropriate process that takes into account the needs of the Union and all the nations within it.** We detail the key elements of such a process below.

*A proper process for considering any proposals for devolution*

224. The UK Government should also put in place a proper process to deal with any further proposals for devolution in an appropriate, structured fashion. This process should take full account of the needs of the Union and ensure that any changes would not affect the cohesiveness and effectiveness of the Union.<sup>289</sup>
225. This process needs to be flexible while offering a framework that ensures proper consideration is given to the needs of the Union as a whole. Mark Durkan MP, former leader of the Social Democratic and Labour Party, told us that the UK could not “take a line-dancing approach to devolution, where everybody now takes the same next steps and should only take the same next steps” but at the same time “We have to do more than take the dolly mixtures approach to devolution, which is very confused and confusing”.<sup>290</sup> An appropriate process should provide stability without enforcing rigidity, maintaining the UK’s historic balance of unity and diversity.
226. **Proposals for further devolution, whether brought forward by the UK Government in response to suggestions by devolved administrations or by independent Commissions, should present any case for devolution alongside a Devolution Impact Assessment.**

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286 [Q 71](#); see also written evidence from Justice for Wales ([UDE0025](#)), Dame Rosemary Butler AM ([UDE0038](#)) and the Society of Conservative Lawyers ([UDE0028](#))

287 [Q 162](#)

288 See [Q 50](#) (Professor Jim Gallagher)

289 See written evidence from Dr Cormac Mac Amhlaigh ([UDE0036](#)) and the British Academy ([UDE0037](#))

290 [Q 309](#); Lord Salisbury also warned against inflexible uniformity ([Q 207](#))

227. **This assessment should include a thorough analysis of the proposals, addressing (but not restricted to) the following elements, and based on the principles described in Chapter 4:**

- **An assessment of the proposals against core UK responsibilities (as recommended earlier in this chapter) to ensure that they will not impact negatively on the cohesion of the Union;**
- **An assessment of the UK-wide implications and impact of the proposals, including any cross-border or bilateral arrangements that might be needed as a result, and how the interface of any shared or concurrent powers will be managed;**
- **Whether and how the proposed devolution of powers is likely to lead to better outcomes for citizens in the devolved nation as well as its impact on the citizens of other nations in the Union. Where possible this should include evidence from a results-based analysis of the devolution of similar powers in other parts of the country;**
- **An assessment of the implications for the future funding of the devolved nation in respect of the Block Grant;**
- **Whether the proposed changes would provide a coherent set of powers, both internally and in combination with the current devolution settlements, and avoid confusion over who is responsible for exercising those powers. It should also set out clearly the chain of responsibility for exercising the proposed powers;**
- **The extent of public demand for the changes proposed, demonstrating suitable consultation with the public and civil society, including how national consent should be obtained; and**
- **An assessment of the likely start-up and administrative costs of the change for the devolved nation and for the UK.**

228. The assessment could be applied both to requests for any further devolution of powers to the nations, and for the devolution of powers (whether legislative or administrative) within England.<sup>291</sup> The issues surrounding devolution in England are considered in more detail in Chapter 8.

### **Public information, engagement, consultation and consent**

229. We heard that it was hard to engage the interest of the public in discussions about issues related to devolution.<sup>292</sup> Democratic Unionist Party MLA and Minister Lord Morrow suggested that “people are generally concerned with the quality of delivery and accountability for decision making as opposed to the structures of government”.<sup>293</sup> Other witnesses agreed that while devolution and decentralisation were not concepts that aroused much interest, people became more engaged if the conversation was focused on

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291 [Q 51](#) (Professor Jim Gallagher)

292 Written evidence from the Political Studies Association ([UDE0033](#))

293 Written evidence from Lord Morrow ([UDE0068](#))

public services, local economic growth and issues that motivate people and communities—the ends rather than the means.<sup>294</sup>

230. Dr Jan Eichhorn, Chancellor’s Fellow in Social Policy, University of Edinburgh, told us that scepticism over the public’s willingness to engage in discussions of how the country is governed was misplaced: “A clear plurality in each part [of the UK] said that too little time had been spent” discussing ideas about changes to how the UK is governed. People did not feel, however, that they were able to shape the debate: they “perceive the process as largely elite-driven, by party-political processes with little space for the involvement of ordinary people.”<sup>295</sup> Katie Ghose, Chief Executive of the Electoral Reform Society, told us that public engagement varied from area to area within the UK: “It is completely arbitrary as to whether any local resident of any corner of the country is going to have any say over the flavour and settlement of devolution in their area.”<sup>296</sup>
231. It will take time to engage the public fully in a debate about the structure of the UK.<sup>297</sup> An important part of this is ensuring that citizens are informed about the issues involved. We heard that there was a lack of understanding about the territorial constitution and the respective responsibilities of UK and devolved governments (see paragraphs 199–205). A number of witnesses stressed the importance of political education. The First Minister of Wales noted the generational difference that education made to public understanding of devolution in Wales.<sup>298</sup> The internet also provides a valuable route through which information about the devolution settlements, and the responsibilities of different governments more generally, can be accessed by citizens.
232. There are different avenues through which discussions of constitutional matters may take place. Discussions can, and do already, take place through the public engagement that politicians undertake in their constituencies and with special interest groups. There are also formal mechanisms through which detailed consideration of constitutional issues may take place. These include cross-party talks such as the Smith Commission, longer-term Commissions like the Kilbrandon Commission on the constitution or the Calman and Silk Commissions, as well as citizen-focused conventions or assemblies.<sup>299</sup> Witnesses stressed the importance of using a range of methods to engage with the public, and of utilising new technology and social media.<sup>300</sup>

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294 [Q 201](#) (Lord Porter of Spalding and Sir Richard Leese), [Q 239](#) (Lord O’Donnell), [Q257](#) (Kirsty Williams AM), [Q 278](#) (Dr Victoria Winkler), [Q 279](#) (Jessica Blair) and [Q 287](#) (Steve Thomas)

295 Written evidence from Dr Jan Eichhorn ([UDE0055](#)). Sir Paul Silk and Steve Thomas of the Welsh LGA felt that the Welsh people were probably tired of constitutional conversations ([QQ 25](#) and [286](#)).

296 [Q 225](#)

297 [Q 217](#) (Tony Armstrong)

298 [Q 262](#) (Kirsty Williams AM), [Q 265](#) (Dr David S Moon), [Q 251](#) (Carwyn Jones AM), and written evidence from Scotland in Union ([UDE0017](#))

299 [Q 16](#) (Professor Robert Hazell); see also Alan Renwick, *After the Referendum? Options For a Constitutional Convention* (2014) pp 21–25: [http://www.consoc.org.uk/wp-content/uploads/2014/05/J1847\\_Constitution\\_Society\\_Report\\_Cover\\_WEB.pdf](http://www.consoc.org.uk/wp-content/uploads/2014/05/J1847_Constitution_Society_Report_Cover_WEB.pdf) [accessed 9 May 2016]

300 [Q 257](#) (Leanne Wood AM) and [Q 279](#) (Jessica Blair and Dr Victoria Winkler). See also the All-Party Parliamentary Group on Reform, Devolution and Decentralisation in the United Kingdom, *Devolution and the Union: A higher ambition*, which also calls for a ‘nationwide conversation’ (March 2016): <http://www.local.gov.uk/documents/10180/6917361/Devolution+and+the+Union+-+a+higher+ambition.pdf/> [accessed 9 May 2016]

233. A ‘constitutional convention’ has been suggested by political parties,<sup>301</sup> parliamentarians,<sup>302</sup> and witnesses to this inquiry,<sup>303</sup> as a way to focus discussion on many of the current issues relating to the UK’s constitution. The term constitutional convention covers a wide range of types of forum, with differing levels of public involvement. Dr Alan Renwick of the UCL Constitution Unit set out four different types:

- A Civil Society convention, made up of organisations and interested persons, such as the Scottish Constitutional Convention that met from 1989–1995 and made proposals for the creation of a devolved Scottish parliament and government;<sup>304</sup>
- A directly-elected assembly, such as that created in Iceland in 2011 to perform a review of the constitution;
- A citizens’ assembly, made up solely of members of the public selected at random, such as was used in British Columbia in 2005, the Netherlands in 2006, and Ontario in 2006–7; and
- A mixed assembly, made up of randomly-selected members of the public and politicians or people appointed by political parties, such as in Australia in 1998 and in Ireland in 2013–14.<sup>305</sup>

234. Efforts to engage with the public through such forums could include a single UK-wide forum (or one focussing on England), or multiple smaller forums across the country.<sup>306</sup> Likewise there are different ways in which such conventions can operate. As an example, Jessica Blair of the Institute of Welsh Affairs told us of an online constitutional convention that had engaged with 12,000 people across Wales.<sup>307</sup>

235. While we were conducting this inquiry, the Electoral Reform Society and a group of universities explored an alternative approach. They ran a pair of pilot ‘Citizens’ Assemblies’. Each was made up of around 35 people, one comprising solely members of the public and the other a mixture of the public and local politicians.<sup>308</sup> They told us that the convention or assembly model could be a useful adjunct to representative democracy, helping to bridge the gap between formal politics and the broader public. It could provide a new way to respond to the public’s needs; allowing the public a greater role while

301 The 2015 general election manifestos of the Labour, Liberal Democrat and Green parties each proposed a constitutional convention.

302 In a March 2013 report, the House of Commons Political and Constitutional Reform Committee called for a constitutional convention *Do we need a constitutional convention for the UK?* (Fourth Report, Session 2012–13, HC 371). Private Members’ Bills calling for a wide-ranging constitutional convention were introduced in both Houses during the 2015–16 Session.

303 For example, [Q7](#) (Professor Sir Jeffrey Jowell), [Q 140](#) (Claire Baker MSP, Robert Brown and Maggie Chapman), [Q 73](#) (Alexandra Runswick), written evidence from Professor Arthur Aughey ([UDE0003](#)), the Constitution Society ([UDE0019](#)). By contrast the Society of Conservative Lawyers were distinctly sceptical of the idea ([UDE0028](#))

304 The main organisations involved in the Convention were the Labour Party, Liberal Democrats, Scottish Green Party, trade unions including the Scottish Trade Union Congress, local government, the Church of Scotland and other organisations from Scottish civil society. Calman Commission, *Serving Scotland Better*, paras 1.76-77

305 Alan Renwick, *After the Referendum?*, pp 21-25

306 [Q 221](#) (Katie Ghose and Professor Matthew Flinders)

307 [Q 274](#). The report of the online convention is: Institute of Welsh Affairs, *Constitutional Convention Report* (April 2015): <http://www.iwa.org.uk/cy/cyhoeddiadau/view/242> [accessed 20 April 2016]

308 [Q 220](#) (Professor Matthew Flinders). For more information about how members were selected, see Professor Flinders’s supplementary written evidence ([UDE0067](#))

confronting citizens with the difficult questions that face elected politicians.<sup>309</sup> The organisers also suggested that the events showed that members of the public were willing to devote time and effort to these sorts of discussions.<sup>310</sup> Dr Eichhorn also told us that polling suggested members of the public would be willing to take part in a constitutional convention: “The vast majority of people—70 to 76% in each part of the UK—would be willing to give up at least a few hours to take part in such a convention if they were invited to do so.”<sup>311</sup>

236. There are significant difficulties in using any citizen-based forum to address substantial constitutional questions. These include considering how to ensure that the output of the forum would actually make a difference, and how to avoid overloading the convention with too broad a scope so that it did not “collapse under the weight of much too wide an agenda”.<sup>312</sup> There is also the question of who should take part. There would need to be a balance between having a representative cross-section of society and maintaining a manageable size of assembly. It would also be important to ensure that the ‘usual suspects’ in public discourse on the constitution did not dominate.<sup>313</sup>
237. There are different options for how any recommendations made by a convention or assembly would be taken forward. We were told that the Icelandic constitutional convention and, less formally, the Electoral Reform Society Scotland’s citizens’ assembly on improving democracy in Scotland both passed their conclusions on to experts.<sup>314</sup> The Irish Constitutional Convention made 40 recommendations, but few of these have been accepted by the Government and only two of those which require a referendum in order to be implemented have been put to the electorate.<sup>315</sup>
238. **We illustrate in this Chapter a range of ways in which the public could be informed and engaged in conversations about the territorial constitution of the UK. While we do not advocate a particular method, the implementation of our recommendations would benefit from public engagement and consultation. If the public are to remain convinced of the benefits of the Union, and the Union is to reflect their needs and preferences, they should be involved in the steps we recommend to strengthen it.**

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309 [QQ 221-222](#)

310 [Q 219](#)

311 Written evidence from Dr Jan Eichhorn ([UDE0055](#))

312 [Q 14](#) (Robert Hazell) and [Q 42](#) (Peter Riddell)

313 [Q 48](#) (Alan Trench)

314 [Q 26](#) (Sir Paul Silk) and [Q 163](#) (Willie Sullivan)

315 [Q 14](#) (Robert Hazell); David Farrell, ‘The government continues to slight the work of the Constitutional Convention’, *Irish Politics Forum blog* (27 May 2015): <http://politicalreform.ie/2015/05/27/the-government-continues-to-slight-the-work-of-the-constitutional-convention/> [accessed 23 March 2016]. Approval in a referendum is required to amend the Irish constitution.

## CHAPTER 6: OTHER RECENT PROPOSALS

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239. In the preceding chapters, we have addressed key questions relating to the Union and devolution and set out measures that should serve to stabilise the situation without removing the flexibility that is a core feature of the UK's territorial constitution. This chapter addresses wider proposals put to us that seek to stabilise the Union.

### *A new Charter or Act of Union*

240. We heard from representatives of two projects that have proposed similar but distinct proposals for a new statute setting out elements of the UK's territorial constitution and aiming to bring greater stability to the Union.<sup>316</sup> The Bingham Centre for the Rule of Law has proposed a 'Charter of the Union' that is intended to underlie the current devolution Acts, giving context for interpretation of that legislation and a framework for any further changes. At our request, the Bingham Centre produced a draft Charter which is included in this report as Annex B.

241. Meanwhile, the Constitution Reform Group, established under the chairmanship of the Marquess of Salisbury to consider many of the matters that his inquiry set out to examine, has proposed a new Act of Union. This would set out the function and powers of the centre (i.e. the UK Parliament and Government) and set out a process by which the devolved nations could apply for further powers to be devolved.

### *A Charter of the Union*

242. In their May 2015 report, *A Constitutional Crossroads*, the Bingham Centre for the Rule of Law advocated a written constitution for the UK in the long term. As an interim measure, they proposed a Charter of the Union "setting down the powers and underlying principles governing the relationship between the four nations of the Union. The Charter would codify shared commitments to democracy, the rule of law and personal liberty alongside the rights of each nation to a government best suited to its needs."<sup>317</sup> One of the team involved in the report described it as "retrofitting a UK-wide constitution" on to the varied devolution settlements already in place.<sup>318</sup>

243. The Centre's report set out a series of principles of 'union constitutionalism' that should be embedded in statute: consent; respect for democracy; respect for the rule of law; shared commitment to personal liberty and human rights; social solidarity; common security and defence; common economic framework; autonomy; subsidiarity; accountability; and comity, trust and fair dealing.<sup>319</sup> In their draft Charter, these are articulated as "fundamental principles" upon which the Union of the UK is based. The Bingham Centre explained that these principles would "guide the allocation of powers within the UK and the constitutional relationships within and between the centre and the constituent nations and parts."<sup>320</sup>

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316 Other witnesses also suggested a single statute of the Union or devolution, for example see written evidence from the Society of Conservative Lawyers ([UDE0028](#)) and Mr Ruairi Hipkin ([UDE0002](#))

317 Bingham Centre, *A Constitutional Crossroads*, p xiii

318 [Q 46](#) (Alan Trench)

319 Bingham Centre, *A Constitutional Crossroads*, pp 20-21

320 Bingham Centre, *Draft Charter of the Union*, para 3 (see Annex B)



244. Professor Adam Tomkins, John Millar Professor of Public Law, University of Glasgow, and rapporteur of the Bingham Centre’s project, described the purpose of the Charter as follows:

“[a Charter] could usefully identify and articulate the constitutional principles upon which the UK’s territorial constitution is based; it could strengthen the Union by making new legal provision about solidarity, loyalty and comity; it could place currently non-legislative matters on a statutory footing (such as inter-governmental machinery); and it could bring clarity to what are currently rather opaque matters (such as the frequency with which secession referendums may lawfully be held in the UK).”<sup>321</sup>

*Safeguarding core values*

245. The Bingham Centre proposed that, through their Charter, certain core values should be embedded in the territorial constitution. The Centre’s Director, Professor Sir Jeffrey Jowell, argued that the Charter “should set out core shared values such as democracy, the rule of law, personal liberty and rights. It is surely unacceptable that fundamental rights can be treated differently in different parts of the United Kingdom—as is possible now.”<sup>322</sup> In Chapter 2, we expressed our support for the principle that there are core, common values in the UK, similar to those set out by Sir Jeffrey. The Bingham Centre’s report states that human rights law should be uniform across the UK.<sup>323</sup> Their draft Charter stresses “a commitment to democracy, the rule of law, equality and the protection of human rights and freedoms” across the territorial constitution.<sup>324</sup>
246. At present, Convention rights—as well as being given effect in UK law by the Human Rights Act 1998, which requires British Courts to “take into account” the European Court’s jurisprudence when considering cases relating to convention rights<sup>325</sup>—are embedded in the three core devolution Acts. The legislative competence of the devolved legislatures is therefore restricted by reference to Convention rights, preventing them from making laws that are incompatible with the Convention.<sup>326</sup>
247. Beyond this restriction, there is the capacity for variation in what may be considered fundamental rights. For example, the Northern Ireland Executive did not bring forward a motion extending the Defamation Act 2013 to Northern Ireland when it came into force in Great Britain. The old libel laws remain in place in Northern Ireland and consequently there are two parallel sets of libel law in the UK.<sup>327</sup> Meanwhile, the requirement for cross-community support in the Northern Ireland Assembly means that same-sex

321 Written evidence from Professor Adam Tomkins ([UDE0021](#))

322 Written evidence from Professor Sir Jeffrey Jowell ([UDE0053](#)). We also heard that the charter could build on the language of openness and mutual respect found in the Good Friday Agreement and the 2012 Edinburgh Agreement; [Q 300](#) (Professor Arthur Aughey)

323 Bingham Centre, *A Constitutional Crossroads*, pp 8 and 24

324 Bingham Centre, *Draft Charter of the Union*, Article 5 (see Annex B)

325 Human Rights Act 1998, [section 2](#)

326 Scotland Act 1998, [section 29\(2\)\(d\)](#); Northern Ireland Act 1998, [section 6\(2\)\(c\)](#); Government of Wales Act 2006, [section 81](#)

327 See ‘Wilson halted libel bill debate’, Belfast Telegraph (4 May 2015): <http://www.belfasttelegraph.co.uk/news/northern-ireland/wilson-halted-libel-bill-debate-29239535.html> [accessed 4 April 2016]

marriage did not enter into law there although a majority of MLAs voted in favour of the change.<sup>328</sup>

248. **We recognise that variations in the law across the UK can cause difficulties. We are unconvinced, however, that a statutory statement of common values will provide sufficient certainty to ensure that issues involving fundamental rights such as freedom of speech or marriage will be protected in the same way across the UK.**
249. **We have not considered in any detail the case for harmonising law across the UK where it affects fundamental rights. We note, however, that any attempts to tackle this issue would require primary legislation in the UK Parliament.**

*A new Act of Union*

250. The Constitution Reform Group propose that instead of devolution within the UK developing through bilateral agreements negotiated with each nation in turn, “the four nations should agree between them what the centre should do. ... This, in our view, would make us all think about what we could all do better together” and also in which areas “we would be weaker apart”.<sup>329</sup> It would be a “bottom-up process” in which the four nations in the Union would decide what power is held at the centre.<sup>330</sup> This discussion about the role of the centre would produce a new Act of Union which would require the support of all the legislatures of the UK and the people in each nation (voting in a post-legislative referendum).<sup>331</sup> Core functions would be set out in the Act, and there would be a mechanism for an application from each nation to choose whether any other function is dealt with by them or at the UK-level; that choice would then be for Westminster to approve.<sup>332</sup> The Group’s description of it was broadly akin to the ‘draw down’ model described in chapter 5 (see paragraphs 220-223).
251. Many of the features proposed by the Constitution Reform Group accord with our recommendations in this report; in particular the Group’s focus on determining which powers should be reserved to the centre, and their intention to specify an appropriate process that would determine whether any further powers should be devolved. We are concerned, however, about the Group’s decision to approach this issue from the perspective of the devolved nations, rather than from the centre. Lord Hain, a member of the Group’s Steering Committee, described the Group’s approach:

“Devolution up until now has been a top-down process: the centre deciding to devolve powers to Scotland, Wales and Northern Ireland and more recently in parts of England. The model we are proposing is a bottom-up process. It is turning it on its head. That is to say that the nations, and I hope also in England’s case the regions and maybe city regions, will then federate upwards to the UK and decide what is done at the centre and what is done at a national level, for the purpose of the nations.”<sup>333</sup>

328 A ‘petition of concern’ was tabled in relation to the legislation, meaning that it required the support of a majority of both unionist and nationalist MLAs, which it did not have. See ‘Northern Ireland MLAs vote ‘yes’ for gay marriage - but motion is torpedoed by DUP veto’, *Belfast Telegraph* (22 November 2011): <http://www.belfasttelegraph.co.uk/news/northern-ireland/northern-ireland-mlas-vote-yes-for-gay-marriage-but-motion-is-torpedoed-by-dup-veto-34160017.html> [accessed 4 April 2016]

329 [Q 202](#) (Lord Salisbury)

330 [Q 207](#) (Lord Hain)

331 [QQ 202-204](#) (Lord Salisbury and Daniel Greenberg); see also a similar proposal in written evidence from Bill Noakes and Rolf Smith ([UDE0026](#))

332 [Q 207](#) (Daniel Greenberg)

333 [Q 207](#)

252. **Rather than being the result of a top-down process, the devolution settlements have, to date, been driven by the demands of the devolved nations without any proper consideration of the overall needs of the Union and its constituent nations. While we understand the intention behind the Constitution Reform Group’s proposal for a new Act of Union, we are concerned that taking the wishes of the devolved nations as a starting point, rather than the needs of the Union, risks perpetuating the existing approach of focusing on diversity at the expense of UK-wide solidarity.**

*Common features and difficulties*

253. In addition to the points made above, we have one further concern that applies to both proposals. This relates to the practical difficulties that are likely to ensue when agreement to any Charter or Act of Union is sought from the legislatures or governments of all parts of the UK.

254. Several witnesses told us that a new statute of the Union was unlikely to be passed by the Scottish Parliament with a secessionist government in power,<sup>334</sup> although Professor Jim Gallagher of Nuffield College, Oxford, noted that the Scottish Government had an obligation to reflect the views of the entire Scottish population and that it was time for it to “represent everyone and try to unite the Scottish nation”.<sup>335</sup>

255. Scottish Government Minister Fiona Hyslop MSP did not give us cause to believe that the Scottish Government would look kindly on an attempt to find common ground to strengthen the Union. She was opposed to any “centrally-imposed” statute that “may itself cause more dissonance than is needed”.<sup>336</sup> Other witnesses questioned whether there was sufficient basis of agreement on what would be codified in a charter or Act.<sup>337</sup> Professor Colin Harvey, Professor of Human Rights Law, Queen’s University Belfast, feared that it could appear to be an attempt to revive a unitary model of UK governance, at a time “when real opportunities are emerging for a more pluralistic and different type of constitutional conversation in the UK”.<sup>338</sup> Sir John Elvidge, former Permanent Secretary to the Scottish Government, felt that something might be usefully done at some point, but that it was too early in the history of devolution to attempt to codify it now.<sup>339</sup>

256. Both schemes run the risk of being perceived as an attempt to bind nations into the Union, which could undermine efforts to promote its benefits. This is particularly the case in the context of Northern Ireland, whose constitutional and political arrangements are more complex than those in Scotland and Wales.<sup>340</sup> Northern Ireland’s constitutional settlement includes formal relationships between east and west (with Great Britain), north and south (with the Republic of Ireland) and pan-British-Isles elements, reflecting the 1998 Good Friday Agreement. Former Deputy First Minister of Northern Ireland Mark Durkan MP told us that that agreement had allowed people to engage without being “any less unionist [or]... any less nationalist, no matter what position they held”.<sup>341</sup> Mr Durkan was concerned that a new

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334 [Q 15](#) (Professor Robert Hazell) and [Q 40](#) (Akash Paun and Peter Riddell)

335 [Q 48](#) (Professor Jim Gallagher)

336 [Q 125](#)

337 [Q 46](#) (Professor Charlie Jeffery), [Q 263](#) (Leanne Wood AM)

338 [Q 300](#)

339 [Q 145](#)

340 [Q 300](#) (Professor Colin Harvey)

341 [Q 309](#); see also written evidence from Professor Michael Keating ([UDE0010](#))

statute would be divisive: “As someone who is not a fan of the original Act of Union, as an Irish nationalist, I am not sure that what I want is a new Act of Union”.<sup>342</sup> Professor Derek Birrell of the University of Ulster noted that “The danger is that it would be seen as strengthening the Union and weakening the Irish dimension”.<sup>343</sup> He and other witnesses stressed the importance of ensuring that it did not appear to be calling for people to affirm or prioritise their British identity at the expense of other identities—the polarisation of identity in Northern Ireland makes this a particular concern there, but similar concerns arise with respect to Scotland.<sup>344</sup>

257. **We acknowledge and are grateful for the work done by the Bingham Centre for the Rule of Law on their proposed Charter of the Union and by the Constitution Reform Group on their new Act of Union. Their work in establishing the principles and common values underlying the Union and devolution will prove valuable for future discussions on these issues.**

### Full fiscal autonomy

258. In Chapter 3 we discussed the potential impact on the Union of increased fiscal devolution. One extreme model of fiscal devolution is full fiscal autonomy (also known as ‘devo max’) whereby the devolved nation takes on powers and responsibility over almost all domestic policy. This is the preferred option of the Scottish Government,<sup>345</sup> which submitted a paper to the Smith Commission advocating the devolution of all tax revenue and control of all taxes that it is possible to devolve, all domestic expenditure including welfare and employment, equal opportunities and human rights, and other economic levers “including competition, energy and broadcasting policy, responsibility for the Crown Estate, transport policy not currently the responsibility of the Scottish Parliament (including rail) and aspects of immigration policy”. The UK would retain responsibility only for “aspects of the constitution of the United Kingdom as a whole, monetary policy, aspects of citizenship, defence, intelligence and security including borders, [and] many aspects of foreign affairs”.<sup>346</sup>
259. Ms Hyslop argued for the policy of full fiscal autonomy on the basis that Scotland was capable of funding its domestic policies and administering welfare in a manner that was more sympathetic to the needs of Scotland. She contrasted it with a symmetrical or “one-size-fits-all form of either devolution or, indeed, tax system”.<sup>347</sup>
260. A number of observers have supported some form of full fiscal autonomy. Alun Evans, former Director of the Scotland Office, advocated something similar in his inaugural lecture as Chief Executive of the British Academy, referring to it as ‘Home Rule’. He argued that full fiscal autonomy was popular and followed the logic of devolution over the long term:

“does it end up with a more fragmented welfare system? Yes, it does, but that is the nature of devolution. It has been the nature of devolution

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342 [Q 305](#)

343 [Q 300](#)

344 [Q 300](#) (Professor Arthur Aughey and Professor Derek Birrell) and [Q 158](#) (Professor Michael Keating)

345 [Q 129](#)

346 Scottish Government, *More Powers for the Scottish Parliament: Scottish Government Proposals* (October 2014) pp 2-3: <http://www.gov.scot/Publications/2014/10/2806/0> [accessed 9 May 2016]

347 [Q 129](#)

since 1997; arguably it has been the nature of the relationship between Scotland and the Union from much further back. They have always had separate legal and education systems. It seems to me that one is just recognising the direction of history and the need for greater asymmetry by continuing devolution into other areas.”<sup>348</sup>

261. Martin Sime, Chief Executive, Scottish Council for Voluntary Organisations, argued that “the interface between health and welfare is absolutely critical for the health of public finances and the delivery of public services”,<sup>349</sup> and that therefore all welfare powers should be devolved, along with the tax-raising powers to cover those responsibilities.
262. Professor Philip Booth, in a report for the Institute for Economic Affairs, advocated a variation on full fiscal autonomy within a federal structure, with substantial decentralisation to local government. The assumption would be for local control, with local areas able to join together to deliver some services where that was more appropriate. Pension policy, and the financing of health, education and working-age welfare, would be governed at the UK level, with local authorities responsible for all other policy and finance.<sup>350</sup>
263. Many of our other witnesses were opposed to full fiscal autonomy, telling us that it was unrealistic and internationally unprecedented for such a broad range of powers to be devolved.<sup>351</sup> Earlier in this report (paragraph 108), we noted some of the risks to economic union that arise from the increasing fiscal and borrowing powers of the devolved nations. These risks would be far greater in the context of full fiscal autonomy.
264. Professor Richard Rawlings, Professor of Public Law at University College London, told us full fiscal autonomy was “a poison pill for the Union”.<sup>352</sup> In particular it would undermine the social union by removing the common pool of resources to protect against asymmetrical shocks or to distribute resources to areas in need.<sup>353</sup> The Welsh Government told us that they did not support full fiscal autonomy for the same reason:

“Each part of the UK should be able to make its own choices at the margin about tax rates and so determine the total of resources available for public services in its territory; but there should be a common core UK standard, with resources being redistributed from areas with a stronger tax base to those with a weaker tax base to ensure this. We would strongly oppose any suggestion that each part of the UK should retain the product of its tax base and only pool resources for common services.”<sup>354</sup>

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348 [QQ 95-96](#)

349 [Q 176](#)

350 Philip Booth, ‘Federal Britain: The Case for Decentralisation’, *Institute of Economic Affairs* (4 November 2015): <http://www.iea.org.uk/publications/research/federal-britain-the-case-for-decentralisation> [accessed 9 May 2016]; [Q 104](#)

351 [Q 6](#) (Professor Adam Tomkins) and [Q 13](#) (Professor Robert Hazell)

352 [Q 269](#)

353 [Q 151](#) (Professor Neil Walker) and [Q 46](#) (Professor Jim Gallagher)

354 Written evidence from the Welsh Government ([UDE0024](#)); see also [Q 246](#) (Carwyn Jones AM)

265. Professor Tomkins argued that a move to full fiscal autonomy went against the will of the Scottish people as expressed in the 2014 referendum:

“Full fiscal autonomy ... is simply not compatible with a Union that pools and shares risks and resources. Those who advocate it, it seems to me, fail to honour the result of the 2014 referendum, in which two million Scots voted to maintain a Union that pools and shares risks and resources.”<sup>355</sup>

266. Professor John Curtice, Professor of Politics, University of Strathclyde, told us that “virtually all of the survey evidence shows that, if you ask about a domestic affair, people think that Holyrood should decide, and if you ask about defence and foreign affairs ... it is that Westminster should decide.” Yet people in Scotland were also keen, he told us, on the pooling and sharing of resources: “there is no doubt that people in Scotland want the best of both worlds. They want to make the decisions about welfare, but they are still quite keen on the UK-wide taxpayer having some responsibility for funding that. Human nature is thus.”<sup>356</sup>
267. **We are strongly opposed to the concept of full fiscal autonomy for any nation or region of the United Kingdom. It would end the pooling and sharing of risks and resources that is key to the social union and that brings security to all parts of the Union. Full fiscal autonomy would, in our view, break the Union apart.**

### Federalism

268. The term ‘federalism’ can be used to refer to two different concepts. The first is a set of institutional arrangements which feature a division of sovereignty between different levels of government. Second, it is used to refer to a type of decentralised government which might have one of a range of institutional structures, but that balances shared-rule and self-rule. Most of our witnesses used the term to refer to the former meaning.
269. Some of our witnesses told us that a federal structure was a sensible longer-term option for the UK.<sup>357</sup> Liberal Democrat Councillor Robert Brown told us that it was the only alternative to independence for Scotland.<sup>358</sup> The Federal Trust for Education and Research told us that further devolution and decentralisation may require “a federal structure to provide coherence to the overall system, and establish more clearly both the authorities it is appropriate to devolve, and the competencies that need to remain at the centre in the interests of constitutional and political cohesion.” They told us that the “most satisfactory way of managing asymmetry ... would be a fully federal constitution for the UK. It could ensure that every part of the UK possessed the same rights of national, regional and local autonomy, and was at the same time incorporated into the whole with the same status as its counterparts, perhaps via a federal upper chamber in the UK Parliament.”<sup>359</sup>

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355 Written evidence from Professor Adam Tomkins ([UDE0021](#))

356 [Q 62](#)

357 Written evidence from the Federal Trust for Education and Research ([UDE0018](#)), the Campaign for an English Parliament ([UDE0012](#)), Mr Christopher Luke ([UDE0011](#)), Ms Adrienne Elson ([UDE0014](#)), Mr David B Taylor ([UDE0050](#)); [Q 158](#) (Professor Michael Keating), [Q 167](#) (Willie Sullivan). See also evidence from Professor Philip Booth ([Q 100](#)), who advocates a federal system with a significant degree of powers devolved to local levels, and Plaid Cymru leader Leanne Wood AM ([Q 263](#)), who advocates a confederal model.

358 [Q 136](#)

359 Written evidence from the Federal Trust for Education and Research ([UDE0018](#))

270. A federal system would not inherently mean equal powers for each nation or region. Asymmetrical systems exist in other countries, such as Spain—and notably Canada, where Quebec has significantly greater powers than other provinces.<sup>360</sup> A federal structure could, we were told, accommodate shared national and British identities and “avoid the perception of a competition between the UK centre on the one hand and sub-UK autonomy on the other hand.”<sup>361</sup>
271. The Acts of Parliament that govern devolution to Wales, Northern Ireland and Scotland have some of the characteristics of federalism,<sup>362</sup> with the powers of their legislatures and executives set out in those statutes, limited by human rights compatibility and subject to adjudication in the courts (or by reference directly to the Supreme Court) where the boundaries of those powers are contested. Yet a fully federal structure for the UK would require a legal division of sovereignty between layers of government, including formal limits on power at the UK level, and a codified written constitution.<sup>363</sup> While these features may be welcomed by some,<sup>364</sup> they would require a significant shift in the UK’s constitution including a written constitution and the ending of the concept of parliamentary sovereignty.
272. Nonetheless, Professor Tomkins told us that “There is a lot in federalism that the United Kingdom can borrow from and learn from ... in terms of improving the governance arrangements of the United Kingdom, particularly when it comes to things like intergovernmental relations and fiscal federalism or the fiscal framework.”<sup>365</sup> Witnesses stressed that devolution requires shared rule as well as self-rule, a key part of federal systems.<sup>366</sup> Professor Nicola McEwen, Professor of Territorial Politics, University of Edinburgh, told us that federal or multi-level governance systems all have a balance of the two, but that “In the UK, at least with respect to Scotland, Wales and Northern Ireland, we have tended to focus rather more on the self-government aspects and have really neglected the shared rule dimension.”<sup>367</sup>
273. In our report on the draft clauses that became the Scotland Act 2016, and again in our report on inter-governmental relations in the UK, we noted the increase in shared competencies between the UK and Scottish Governments and the additional interaction required between the two administrations.<sup>368</sup> Professor Tomkins highlighted the difficulties faced in adapting to this new situation: “Where there is shared power there needs to be provision for shared decision-making as well as for shared accountability. At the moment we have the architecture for neither of these.”<sup>369</sup> We revisit some of the issues around inter-governmental co-operation in Chapter 7.

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360 Written evidence from Professor Colin Kidd ([UDE0007](#)) and Professor Charles Lees ([UDE0058](#))

361 Written evidence from the Federal Trust for Education and Research ([UDE0018](#)); see also [Q 112](#) (Ed Cox)

362 [Q 51](#) (Alan Trench), [Q 112](#) (Ed Cox), written evidence from Professor Michael Keating ([UDE0010](#))

363 Written evidence from the Federal Trust for Education and Research ([UDE0018](#)), Professor Sir Jeffrey Jowell ([UDE0053](#)), Mr Colin Murray ([UDE0051](#)) and Dr Andrew Blick ([UDE0029](#))

364 See [Q 78](#) (Brendan Donnelly), [Q 81](#) (Alexandra Runswick), [Q 256](#) (Kirsty Williams AM)

365 [Q 5](#); see also written evidence from Professor Michael Keating ([UDE0010](#))

366 [Q 1](#) (Professor Sir Jeffrey Jowell) and written evidence from Professor Richard Rawlings ([UDE0009](#)), Dr Paolo Dardanelli ([UDE0035](#)) and Dr Bettina Petersohn ([UDE0043](#))

367 [Q 83](#)

368 Constitution Committee, [Proposals for the further devolution of powers to Scotland](#), paras 10 and 20, and [Inter-governmental relations](#), p 5 and Box 2

369 Written evidence from Professor Adam Tomkins ([UDE0021](#))

274. We were reminded that in 1973, the Royal Commission on the Constitution (the Kilbrandon Commission) concluded that: “As far as we are aware no advocate of federalism in the United Kingdom has succeeded in producing a federal scheme satisfactorily tailored to fit the circumstances of England”. Federalism would require either a dominant English Parliament or English regional assemblies, which raise their own questions of powers and imbalance.<sup>370</sup> This is the fundamental problem with creating a federal system in the UK: it must include England and it is not clear how a federal structure could handle England as a discrete entity given its disproportionate size compared to the other nations in the Union.<sup>371</sup> For a federal structure, the overwhelming size of England is a major obstacle and likely source of instability; we heard that there is nothing comparable to this situation in existing federal systems worldwide.<sup>372</sup> The Federal Trust acknowledged that the size of England a significant problem. They felt that treating England as a single unit was likely to be unacceptable, concluding a federal model made up “English regions, none of which was large enough to predominate, would seem to be more likely to succeed.”<sup>373</sup> We address the problems of both the single-unit and regional solutions to the governance of England in Chapter 8.
275. **Some believe that federal constitutions provide useful lessons regarding the effective management of shared competencies which may prove of use as these become more common with the implementation of the Scotland Act 2016. We concur with the conclusion of the Kilbrandon Commission in 1973 that there is no federal structure currently proposed that could accommodate England as a discrete entity. Nor is there public or political support at present for the creation of regional assemblies within England which might otherwise provide a viable basis for a federal system. Federalism does not, therefore, provide a solution to the tensions in the UK’s territorial constitution.**

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370 Kilbrandon Report, p. 159; see also written evidence from Dr Paolo Dardanelli ([UDE0035](#))

371 [Q 127](#) (Fiona Hyslop MSP), [Q 317](#) (Oliver Letwin MP), written evidence from Dr Andrew Blick ([UDE0029](#))

372 [Q 86](#) (Professor Nicola McEwen), [Q 5](#) (Professor Adam Tomkins), [Q 242](#) (Carwyn Jones AM), [QQ 69](#) and [75](#) (Brendan Donnelly), [Q 97](#) (Alun Evans), [Q 272](#) (Professor Robert Thomas)

373 Written evidence from the Federal Trust for Education and Research ([UDE0018](#))



## CHAPTER 7: ADAPTING TO DEVOLUTION

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276. One thing that became clear to us during our work on devolution and inter-governmental relations is that the UK Government has not adapted to the creation of the devolved institutions. Peter Riddell, Director of the Institute for Government, told us that:

“it is crucial that the Government and the political parties behave as if they actually believed in a UK. By that I mean ... that they recognise that they have responsibilities in Scotland and Wales, rather than almost treading around them—Northern Ireland being slightly different, for obvious reasons—which means engaging with elected politicians in Scotland and Wales. That would be trying to break away from this silo mentality, because the Union will atrophy unless Ministers and other politicians at Westminster behave as if there is a Union. That applies to the Civil Service, too.”<sup>374</sup>

277. With the current evolution of the devolution settlements increasing the number and scope of shared and overlapping competencies, the UK Government and Civil Service should incorporate the consequences of devolution into its day-to-day activities.

278. In this chapter, we highlight areas in which the UK Government has failed adequately to adapt to devolution thus far. These include:

- promoting the meaning, purpose and benefits of the Union;
- developing effective inter-governmental relations with the three devolved administrations;
- ensuring that the public understand what the UK Government does, distinct from devolved national governments; and
- foreseeing the strain devolution places on the unified UK Civil Service.

279. The chapter ends by addressing two more general concerns: oversight of constitutional change within the UK Government, and parliamentary involvement in referendums affecting the integrity of the UK.

### Promoting the Union

280. The history of the Union shows the ongoing need to balance unity and diversity. Devolution recognises and accommodates diversity; it needs to be matched by a recognition of the continuing importance of unity.<sup>375</sup> Sir Paul Silk, who chaired the Commission on Devolution in Wales, told us that “The United Kingdom Government must have the responsibility for promoting the benefits of the Union, involving all four parts of it.”<sup>376</sup> Alexandra Runswick, Director of Unlock Democracy, told us that: “if you want people to identify with the Union, you have to make a case for the Union; you have to make a case for what the Union is and why it matters”.<sup>377</sup>

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374 [Q 42](#)

375 [Q 225](#) (Professor Matthew Flinders) and written evidence from Professor Arthur Aughey ([UDE0003](#)). Professor Colin Kidd stressed the importance of ‘Britishness’ as a unifying force, rather than the Union, but also recommended its active promotion ([UDE0007](#)).

376 [Q 22](#)

377 [Q 82](#); see also [Q 50](#) (Professor Alan Trench), [Q 56](#) (Professor Charlie Jeffery)

281. Professor Charlie Jeffery, Professor of Politics at the University of Edinburgh, described two attempts, made during the Scottish referendum campaign, to promote unity. One had focused on a “cultural appeal to history, heritage and shared achievement”, the other on the benefits of the social union and the pooling and sharing of risks and resources. He was sceptical that either approach would work without what he called a “diffuse belief in the values that it [the Union] is trying to embody”, which he felt was “absent”.<sup>378</sup> Other witnesses stressed that the purpose and benefits of the Union must be articulated in a way that resonated with people’s priorities.<sup>379</sup> Some noted that people take the Union for granted, making it hard to promote its benefits: “it is quite difficult for people to evaluate 300 years of rather familiar furniture and what difference it has made”.<sup>380</sup>
282. Maggie Chapman, co-convenor of the Scottish Green Party, told us that during the independence referendum the media preferred “telling us stories about doom and gloom. That is how it works. Being able to articulate the positive case for the Union was not easy. The mainstream media was not interested.”<sup>381</sup> The current political situation, where different parties are in power in each of the different nations of the UK, may also lead to an emphasis on the differences between nations and parties, rather than commonalities. Parties that are popular in the devolved nations may have different agendas and priorities from the UK Government, potentially driving a public sense of isolation from the UK Government in the devolved nations and undermining efforts to promote the benefits of a Union governed by a party that is unpopular in that a devolved nation.<sup>382</sup>
283. **The stability of the Union requires careful management of the balance between unity and diversity. The development of devolution in recent decades, and the emerging ‘devolution deals’ in England, have accentuated diversity in the Union. A counter-balancing effort to support and promote unity is now required. The Government should set out a strategy for taking this work forward.**

#### **Inter-governmental relations: A new mindset**

284. In March 2015 this Committee published a report on inter-governmental relations in the UK. We concluded that: “The structures and practices of inter-governmental relations should serve to strengthen, and provide constitutional stability to, the Union.”<sup>383</sup> Revisiting the subject, we consider below three different areas in which change is required: the formal structures of inter-governmental relations; the approach within the UK Civil Service and Government; and parliamentary scrutiny.

#### *Formal structures of inter-governmental relations*

285. Badly designed institutions can exacerbate divisions within nations, rather than strengthening the state as a whole. Professor Michael Keating, Professor of Scottish Politics, University of Aberdeen, used the example of Belgium where, he told us, “all the institutions that people interact with are within

378 [Q 46](#)

379 [Q 270](#) (Professor Richard Rawlings), [Q 66](#) (Dr Jan Eichhorn), and written evidence from Professor Nicola McEwen ([UDE0061](#))

380 [Q 57](#) (Professor John Curtice), [Q 149](#) (Professor Neil Walker)

381 [Q 135](#) – Ms Chapman campaigned for a ‘yes’ vote in the independence referendum.

382 [Q 135](#) (Claire Baker MSP and Maggie Chapman)

383 Constitution Committee, *Inter-governmental relations*, para 16

their community. They can vote only for candidates from the two language groups, and so you get a separation of politics and an appeal to intra group solidarity, and there is no incentive at all to appeal to the other side”, to Belgian identity and solidarity.<sup>384</sup> Professor Neil Walker, Regius Professor of Public Law and the Law of Nature and Nations, University of Edinburgh, noted that resolving institutional questions “in a way that does not seem unfair to any of the constituent parts” was “vital” to ensuring the support of all four nations for the Union.<sup>385</sup>

286. In 2002, this Committee published a report on inter-institutional relations in the United Kingdom. It recommended that:

“further use should be made of the formal mechanisms for intergovernmental relations, even if they seem to many of those presently involved to be excessive. Formal mechanisms, such as the Joint Ministerial Committee (JMC), are not intended to serve as a substitute for good relations in other respects, or for good and frequent informal contacts, but rather to serve as a framework for such relations and to act as a fall-back in case informal personal relations cease to be sufficient. Such mechanisms are likely to become increasingly important when governments of different political persuasions have to deal with each other.”<sup>386</sup>

287. The evidence we received for our 2015 report found that little progress had been made in the intervening 13 years. Witnesses were generally critical of the effectiveness of the Joint Ministerial Committee.<sup>387</sup> They suggested the JMC and its sub-committees had become venues for grandstanding and the airing of grievances, rather than a forum for mutual co-operation and collaboration.<sup>388</sup> Those concerns were echoed in evidence to this inquiry, with several witnesses commenting on the need for an improvement in the structures of, and approach to, inter-governmental relations.<sup>389</sup>

288. In 2015, we recommended that the JMC structure be used to facilitate joint policy-making and co-ordination, incorporating mechanisms by which “policy initiatives can come from the devolved administrations, as well as from the UK Government”. In addition, the JMC should be provided with the ability to create temporary sub-committees on particular cross-cutting issues, and formal bilateral forums co-ordinating the operation of the fiscal devolution settlements should be “brought within the auspices of the JMC structure, to ensure that their work is co-ordinated as part of a wider inter-governmental relations strategy”.<sup>390</sup> To try to counter the perception of UK Government dominance, the hosting of the JMC meetings should be rotated around the devolved nations.<sup>391</sup>

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384 [Q 153](#)

385 [Q 152](#)

386 Constitution Committee, [Devolution](#) (2nd Report, Session 2002–03, HL Paper 28) para 29

387 The Joint Ministerial Committee is the main formal mechanism for meetings between ministers from the UK, Scottish and Welsh Governments and the Northern Ireland Executive. The JMC, and inter-governmental relations more generally, is governed by a Memorandum of Understanding between the four administrations, supplemented by bilateral concordats between UK Government departments and other administrations. For more information see Chapter 2 of our report [Inter-governmental relations](#) (11th Report, Session 2014–15, HL Paper 146)

388 Constitution Committee, [Inter-governmental relations](#), para 42

389 See written evidence from the Welsh Government ([UDE0024](#)), Professor Adam Tomkins ([UDE0021](#)) and the Institute for Government ([UDE0048](#)), [Q 146](#) (Sir John Elvidge), [Q 250](#) (Carwyn Jones AM)

390 Constitution Committee, [Inter-governmental relations](#), paras 62, 70 and 71

391 Constitution Committee, [Inter-governmental relations](#), para 101

289. We also recommended that the UK Government should consider “whether the framework of inter-governmental relations should be set out in statute”, setting out “the existence and membership of the Joint Ministerial Committee and its core sub-committees, along with the core principles governing relations between administrations.”<sup>392</sup>
290. **We have yet to receive a Government response to our 2015 report on inter-governmental relations. Many of its recommendations relate to a review of the Memorandum of Understanding (MoU) currently being undertaken by the four administrations, and there have been no plenary meetings of the Joint Ministerial Committee (JMC) since March 2015 at which changes to the MoU could have been agreed. The fact that the JMC has not met for well over a year encapsulates our concerns about the inadequate nature of the formal structures currently in place for managing relations between the UK Government and the devolved administrations.**
291. **We reiterate the conclusions from our 2015 report on inter-governmental relations. The formal structures of inter-governmental relations—in particular, the JMC—must not be allowed to degenerate into a forum for grandstanding and gesture politics which emphasise differences, conflict and division. Instead, the JMC should be reformed to promote and manage co-operation and coordination between the UK Government and the devolved administrations.**

*The working of central government*

292. A number of witnesses noted that the creation of the devolved institutions seemed to have had little impact on the structure and working practices of the UK Government and Civil Service. Professor Richard Wyn Jones, Professor of Welsh Politics at Cardiff University, told us during our 2015 inquiry that: “if you look at the central institutions of the state, almost nothing, frankly, has changed [since devolution in 1999]. We still have the territorial offices. ... There has been very little change at the centre, and you have had this fundamental change in the devolved territories.”<sup>393</sup>
293. Former Scotland Office Director Alun Evans told us that the culture of the Civil Service had yet to adapt to devolution: “The more important issue is to get a different culture within UK Government departments, to recognise and build on what has been achieved in the devolution model rather than somehow, if not fighting against it, being slightly grudging in celebrating what goes on.”<sup>394</sup>
294. Some witnesses suggested that this approach within the UK Government manifested what Lord Empey, Chair of the Ulster Unionist Party, called a “devolve and forget” mentality towards devolution. He suggested that the Civil Service was keen to take a hands-off approach to devolved policy areas: “The departments seem to want to push it over, so that it is off the table, in a way, and they can forget about it and go on to something else.”<sup>395</sup> Mr Riddell made a similar observation:

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392 Constitution Committee, *Inter-governmental relations*, para 86

393 Constitution Committee, *Inter-governmental relations*, para 107

394 [Q 99](#)

395 [Q 290](#)

“One thing that has struck us a lot ... has been the sense within Whitehall particularly, although also in Westminster, that says, ‘Right. Scotland, Wales and Northern Ireland are looking after their own affairs. We don’t have to think about them’. ... Psychologically, people post-1999 were almost saying, ‘Oh well, we’ve done devolution’.”<sup>396</sup>

295. It may be that this attitude of “devolve and forget” initially derived from a fear that well-intentioned continuing involvement might be seen as interference. Yet this attitude has now become entrenched and widespread, to the detriment of effective relations and the interests of the people of the devolved nations.
296. Part of the problem is the inconsistency with which inter-governmental relations are handled within Whitehall. Professor Alan Page, Professor of Public Law, University of Dundee, told us in 2015 that: “intergovernmental relations are for the most part left to the uncoordinated efforts of Whitehall departments”.<sup>397</sup> He was echoed by the Institute for Government which noted that: “There is also a wider frustration at the devolved level about the variable performance of Whitehall in consulting and engaging the devolved governments when developing policy that affects devolved areas.”<sup>398</sup>
297. This inconsistency is exacerbated by the fact that inter-governmental relations tend to be informal, rather than structured through formal mechanisms. We quoted Lindsey Whyte, Deputy Director in charge of Devolution at HM Treasury, in our 2015 report: “I would characterise the current situation by saying that the vast majority of our interaction is informal, and also bilateral with individual devolved administrations.”<sup>399</sup>
298. Owen Kelly, Chief Executive of Scottish Financial Enterprise, suggested that where businesses needed to interact with more than one government, they had to take matters into their own hands:
- “One of the things we have been trying to do ... is to look for ways in which we can bring round the same table the Scottish Government and the UK Government to talk about the things that affect our industry. That is not always easy to achieve, which is, again, understandable: there are different political parties in Government. But I think people have now come to accept the task of having to take our own steps to ensure coordination that suits our interests.”<sup>400</sup>
299. **A number of the recommendations in our Inter-governmental relations report were about the role and duties of the Civil Service and are relevant to addressing the concerns expressed above. These included the following, which we continue to commend to the Government:**
- **The changing devolution settlements will result in a more complex arrangement of devolved and reserved policy areas, particularly in areas such as welfare and tax policy. In the light of these changes, we recommend that the Government consider whether more formal structures are needed at a Civil Service**

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396 [Q 32](#)

397 Constitution Committee, *Inter-governmental relations*, para 148

398 Constitution Committee, *Inter-governmental relations*, para 149

399 Constitution Committee, *Inter-governmental relations*, para 142

400 [Q 171](#)

level to manage these increasingly complex inter-governmental relations—particularly in the context of those departments which are most affected by the changes.

- **We recommend that the concordats setting out relations between UK government departments and the devolved administrations be reviewed at least once during each Parliament and, in particular, each time there is a change in the devolution settlements. Devolution guidance notes should also be reviewed and updated regularly.**
- **Departmental concordats should set out clearly how the devolved administrations should be consulted on, and alerted to, forthcoming changes to UK Government policy that might have an effect on the devolved administrations.**
- **We recommend that the Government sets out a strategy for ensuring that senior civil servants have either experience of, or training in, working with devolved administrations.**<sup>401</sup>

300. Some changes have occurred since the publication of our report. The most noteworthy is the creation of a UK Governance Group led by the Cabinet Office, which “brings together under one command [officials working in] the Scotland Office, the Wales Office, the Office of the Advocate General for Scotland and the Constitution Group (part of the Cabinet Office).”<sup>402</sup> While territorial offices continue to exist (and the Northern Ireland Office is not included in the UK Governance Group), we were told by Akash Paun of the Institute for Government that this does represent “an attempt to create that more coherent centre” that was previously lacking.<sup>403</sup> We also note that the UK Government has improved the provision of information about devolution for officials with online resources,<sup>404</sup> blog posts on devolution and inter-governmental co-operation written by officials from different departments and administrations,<sup>405</sup> and a new ‘Devolution toolkit’.<sup>406</sup>

301. **Part of the challenge facing the UK Government in adapting to devolution is to embed awareness and knowledge of the devolved administrations across Whitehall. We welcome the changes that the UK Government has made in the last year, including the creation of new guidance and training for civil servants, and the establishment of the UK Governance Group. We look forward to hearing about these changes and any other improvements in more detail in their response to our 2015 report on inter-governmental relations.**

302. **These changes must be seen as merely the start of a larger process. Civil servants in Whitehall departments must consider how they can engage with their counterparts in the devolved administrations across the breadth of government policy. The UK Government must work towards a situation where policy is developed in consultation**

401 Constitution Committee, *Inter-governmental relations*, paras 147, 162, 173, and 170

402 Written evidence from Oliver Letwin MP ([UDE0070](#))

403 [Q 33](#)

404 Cabinet Office, ‘Devolution: Guidance for civil servants’ (29 July 2015): <https://www.gov.uk/government/publications/devolution-guidance-for-civil-servants/devolution-guidance-for-civil-servants> [accessed 6 April 2016]

405 Civil Service Blog, Posts tagged ‘devolution’: <https://civilservice.blog.gov.uk/tag/devolution/> [accessed 6 April 2016]

406 Cabinet Office, ‘A Devolution toolkit, version 1.0’ (September 2015): <https://www.gov.uk/government/publications/devolution-toolkit> [accessed 6 April 2016]

**and collaboration with the devolved administrations. Where different policy choices are made, it is important that the different administrations work together to consider the potential cross-border impacts or UK-wide effects of those choices.**

303. **Adapting to devolution will require fundamental changes in how the UK Government operates. Devolved competencies range across so many areas of public responsibility that the delivery of government policies often requires collaboration and the sharing of information between the UK and devolved governments. The UK Government should undertake a thorough review, covering the whole Civil Service, to consider how the devolved administrations can be more effectively, and more consistently, involved in policy development and implementation.**
304. **One suggestion the UK Government should consider taking forward is establishing branches of core government departments such as the Treasury and the Cabinet Office in Scotland. This would ensure that there are staff based in Scotland to facilitate collaboration and co-operation and to manage the increased complexities of the overlapping and shared competencies that will result from the Scotland Act 2016.**
305. **This must be the start of a new mindset throughout the UK Government and Civil Service with regard to relations with the devolved nations. The mechanisms by which the UK Government manages relations with the devolved administrations must strengthen, rather than weaken, the Union. The UK Government must recognise that it retains an overarching responsibility for ensuring that the governance of the UK operates effectively. Instead of a ‘devolve and forget’ attitude they should be engaging with the devolved administrations across the whole breadth of government policy: not interfering, but co-operating and collaborating where possible and managing cross-border or UK-wide impacts that may result from differing policy and service delivery choices. The UK Government should work to reach an agreement with the devolved administrations to ensure a constructive approach to this engagement is introduced and maintained for the long-term on all sides.**

*Transparency and parliamentary scrutiny*

306. Our 2015 report concluded that the current system of inter-governmental relations was insufficiently transparent.<sup>407</sup> The Institute for Government and Professor Sir Jeffrey Jowell, Director of the Bingham Centre for the Rule of Law, echoed this view in their evidence for this inquiry.<sup>408</sup> In our report we focused our conclusions on transparency and scrutiny of the Joint Ministerial Committee. While acknowledging the need to balance openness and confidentiality, we concluded that “the current lack of information is not acceptable” and recommended “that the dates, venues and headline agenda items of Joint Ministerial Committee meetings be announced further in advance” and that the Government should consider what additional information could be published after JMC meetings.<sup>409</sup>

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407 Constitution Committee, *Inter-governmental relations*, paras 174-188

408 Written evidence from Professor Sir Jeffrey Jowell ([UDE0053](#)) and the Institute for Government ([UDE0048](#))

409 Constitution Committee, *Inter-governmental relations*, paras 184-85

307. That report also included recommendations aimed at making the work of Whitehall departments more transparent. We suggested that “UK Government departments detail in their annual reports which areas of their work are devolved and which are reserved. They should also set out the forums and bodies through which they engage with the devolved administrations, reporting at a high level on their activity over the past year.”<sup>410</sup>
308. Transparency is also vital for parliamentary scrutiny. In our 2015 report we recommended a number of measures to improve the ability of the UK Parliament to scrutinise inter-governmental relations. These included a recommendation that “the Prime Minister should make an annual statement to the House of Commons after the plenary meeting of the Joint Ministerial Committee” (which echoes a conclusion in our 2002 report). We also supported “an independent annual audit of inter-governmental relations.”<sup>411</sup>
309. Having made these recommendations about the importance of parliamentary scrutiny of inter-governmental relations, we were disappointed by the manner in which the Scotland Act 2016 was taken through Parliament with little scope for scrutiny or amendment.<sup>412</sup> That the Bill had almost completed its passage before the vital fiscal framework was published is indicative of a wider problem. Opportunities for parliamentary scrutiny are often limited.
310. Our 2015 recommendations echoed similar proposals to improve transparency put forward by the Smith Commission. The Commission recommended that the UK and Scottish Governments work together to create a more transparent relationship, including “the laying of reports before respective Parliaments on the implementation and effective operation of the revised MoU”, and “the pro-active reporting to respective Parliaments of ... the conclusions of Joint Ministerial Committee, Joint Exchequer Committee and other inter-administration bilateral meetings.”<sup>413</sup>
311. The Scottish Parliament’s Devolution (Further Powers) Committee published a report on parliamentary scrutiny of inter-governmental relations in October 2015, in which they made a number of recommendations for greater transparency.<sup>414</sup> In response, the Scottish Government committed to provide committees in the Scottish Parliament with additional information about inter-governmental meetings:

“Subject to [respect for the confidentiality of meetings], the Scottish Government agrees to provide, to the relevant committee of the Scottish Parliament, as far as practicable, advance written notice at least one month prior to scheduled relevant meetings, or in the case of meetings with less than one month’s notice, as soon as possible after meetings are scheduled. ... Advance written notice will include agenda items and a broad outline of key issues to be discussed, with recognition that agenda items, from time to time, may be marked as ‘private’ in recognition of the need for confidentiality.

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410 Constitution Committee, *Inter-governmental relations*, para 188

411 Constitution Committee, *Inter-governmental relations*, paras 202 and 203, and *Devolution*, para 37

412 We highlighted our concerns about the lack of the fiscal framework in Constitution Committee, *Scotland Bill*, paras 14-16

413 Smith Commission, Report, recommendations 30(2)

414 Scottish Parliament Devolution (Further Powers) Committee, *Changing Relationships: Parliamentary Scrutiny of Intergovernmental Relations* (8th Report, 2015 (Session 4), SP Paper 809)



“After each inter-governmental ministerial meeting within the scope of this Agreement, the Scottish Government will provide the relevant committee of the Scottish Parliament with a written summary of the issues discussed at the meeting as soon as practicable and, if possible, within two weeks. Such a summary will include any joint statement released after the meeting, information pertaining to who attended the meeting, when the meeting took place, and where appropriate, subject to the need to respect confidentiality, an indication of key issues and of the content of discussions and an outline of the positions advanced by the Scottish Government.”<sup>415</sup>

312. **The Smith Commission recognised the need for greater transparency of inter-governmental relations and made several recommendations to that end. Given the rigorous and uncompromising way in which the UK Government has sought to implement the Smith Commission’s recommendations, we trust that the UK Government’s response to our recommendations about the transparency of inter-governmental relations will be as constructive as the Scottish Government’s recent commitments to the Scottish Parliament on that issue.**
313. **A change of mindset throughout the UK Government with regard to inter-governmental relations should be reflected by a change in how Parliament scrutinises the UK Government’s activities in this area. Both Houses should consider how they might appropriately hold the UK Government to account for its progress towards more constructive and stable relationships with the devolved institutions. The recommendations in our 2015 report *Inter-governmental relations in the UK* provide a foundation on which we hope both Houses will build. These include a recommendation that the Prime Minister should make an annual statement to the Commons after each plenary meeting of the Joint Ministerial Committee, and support for an independent annual audit of inter-governmental relations.**

#### **Providing clarity over the role of the UK Government**

314. In Chapter 4, we noted the importance of clarity in the context of the Union and the devolution settlements. By granting nations (and increasingly areas within England) greater powers, devolution complicates the picture of what the UK Government does: it does different things in different parts of the UK depending on their respective devolution settlements. This reduces the capacity for a UK-wide narrative around issues addressed by Parliament or through Government actions. This is inescapable, but it is therefore all the more important that action be taken to clarify what activities are undertaken by the UK Government and to use that information to promote the importance of the Union.
315. We heard suggestions from a number of witnesses about ways in which the UK Government and its departments could promote the Union and clarify to citizens in devolved nations the respective roles of their two governments. The suggestions we heard ranged from a special ‘UK’ or ‘Union Day’ to

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<sup>415</sup> The Scottish Government and The Scottish Parliament, ‘Inter-governmental relations written agreement between the Scottish Parliament and Scottish Government’ (3 March 2016) paras 11-12: [http://www.parliament.scot/20160309\\_IGR\\_Agreement3.pdf](http://www.parliament.scot/20160309_IGR_Agreement3.pdf) [accessed 9 May 2016]

celebrate the Union,<sup>416</sup> to investing in railway infrastructure linking the nations instead of building High Speed 2 within England.<sup>417</sup>

316. Another group of suggestions centred on clarifying the role of UK government departments and other government bodies to help people to understand what is—and what is not—done at the Union level. One example would be to highlight the activity of UK government departments through appropriate branding. Baroness Goldie, former leader of the Scottish Conservatives, recalled the way in which the EU applied its branding to works that it had funded:

“We are moving into an age where the Westminster Government, of whatever political hue, should be cognisant of the need to make more visible to the recipients of its services throughout the United Kingdom that it has provided them. Whether it is in an emblematic Union Jack, a logo on letterheads or whatever it may be, I do not know, but something needs to give a visible connection to the provision of service. Despite the new powers coming to the Scottish Parliament, a very significant part of core funding will still come from the United Kingdom Treasury and that will fund essential services in Scotland.”<sup>418</sup>

317. The need for improvement was highlighted by Alun Evans who told us that, as Director of the Scotland Office during the independence referendum campaign, he went to “the Isle of Skye and to the jobcentre there and [heard] what a good job it does. The assumption of most people there was that this was part of the Scottish Government as opposed to the UK Government, because there is no celebration and no real branding of what the UK Government do for Scotland in Scotland.”<sup>419</sup> Several witnesses noted that there were more UK civil servants in Scotland and Wales than civil servants working for the respective devolved governments.<sup>420</sup> Some of these officials deliver reserved services for local citizens; jobcentres, for example, are staffed entirely by officials working for the Department for Work and Pensions. Others work for central UK Government departments. For example, the Department for International Development has a substantial presence in Scotland, as does the Department for Transport in Wales.<sup>421</sup> Clear branding of the work that these officials do could help to demonstrate the importance of UK-wide services to local communities, and the extent to which UK Government departments provide employment opportunities and support the local economies.
318. We note that City Deals have been agreed for cities in Wales and Scotland. The Deals so far agreed outside England involve Glasgow and Clyde Valley, Aberdeen City Region and Cardiff Capital Region.<sup>422</sup> These deals represent co-operation between local, devolved and UK governments and provide a useful opportunity to highlight both the role of the UK Government in devolved nations and the benefits of co-operation and collaboration between different levels of government.

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416 Written evidence from Stewart Connell ([UDE0006](#)), Adrienne Elson ([UDE0014](#)), and United Against Separation ([UDE0046](#))

417 [Q 266](#) (Professor Richard Rawlings)

418 [Q 135](#)

419 [Q 94](#); see also written evidence from Scotland in Union ([UDE0017](#))

420 [Q 32](#) (Peter Riddell), written evidence from Alun Evans ([UDE0062](#))

421 See Gavin Freeguard, et al, *Whitehall Monitor 2014* (November 2014) p 68: <http://www.institute.forgovernment.org.uk/sites/default/files/publications/IFG%20-%20Whitehall%20Monitor%202014.pdf> [accessed 9 May 2016]

422 These are different from the ‘devolution deals’ recently announced in England. See para 388.

319. **The division of responsibilities between local government, devolved government and the UK Government can be hard for members of the public to disentangle. One consequence is that it can be unclear to the public which services are provided by the UK Government, potentially weakening their perception of the value of the Union.**
320. **We recommend that the UK Government consider the ways in which all UK Government services and departments could be branded, to make clear to citizens the distinction between services provided by devolved and local government and those provided by the UK Government. This should be part of a long-term strategy to develop better public understanding of the respective roles of the UK and devolved governments and legislatures.**
321. The Economic Affairs Committee warned in their report on financial devolution to Scotland that with the devolution of almost complete control of income tax to the Scottish Parliament, “It may not be clear to people in Scotland how [their taxes] fund reserved services and which Government is accountable for them. There is a risk that this will weaken the connection between the Scottish electorate and the UK Government.”<sup>423</sup>
322. Steps should be taken to clarify the two governments’ respective roles. The UK Government has, since 2014, sent a personalised Annual Tax Summary to members of the public setting out how their taxes were spent. This offers an opportunity to set out the reality of how—and by whom—revenue is raised and spent in the devolved nations. In 2015, HM Revenue and Customs sent Scottish citizens a letter informing them about the Scottish Rate of Income Tax, which subsequently came into force in April 2016 under the Scotland Act 2012. Former leader of the Scottish Conservatives Baroness Goldie told us that this was “just a part of what is now going to confront the Scottish populace in terms of the new powers”.<sup>424</sup> In combination, these communications to taxpayers could be beneficial for clarity over powers and responsibilities. **The Annual Tax Summary sent to each taxpayer in the devolved nations should set out how they are contributing through their taxes to the revenue of their devolved government and the UK Government, and on what services the revenues raised by different governments are spent.**
323. Another element of clarification and branding is the presentation of the work of Whitehall departments that do not deliver UK-wide services. We heard that almost half of Welsh people thought that the NHS in Wales was run from Westminster rather than Cardiff.<sup>425</sup> Liberal Democrat Councillor Robert Brown told us that it was time for “a separation at Westminster and Whitehall of the functions that are specific to the UK and the functions that are specifically English.”<sup>426</sup> Similarly, the Society of Conservative Lawyers proposed a realignment of the remit of the UK Government departments whose remit almost solely relate to England to make them “100% English”. This would mean the Department for Education, Department of Health and the Department for Communities and Local Government incorporating “the English Department for” into their titles. They also proposed HM

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423 Economic Affairs Committee, *A Fracturing Union?* para 62; see also [Q 89](#) (Professor Nicola McEwen)

424 [Q 136](#) (Baroness Goldie MSP)

425 [Q 262](#) (Andrew RT Davies AM) and [Q 287](#) (Steve Thomas)

426 [Q 136](#)

Treasury being rebranded as the UK Treasury for clarity over its continued UK-wide role.<sup>427</sup>

### The Civil Service

324. The Welsh and Scottish Governments are supported by officials who are part of the same Home Civil Service that supports the UK Government. The Northern Irish Civil Service is a parallel but ‘semi-detached’ body with its roots in 1920s devolution and the pre-partition administration of Ireland.<sup>428</sup> One of the concerns we discussed with our witnesses was the role of the Civil Service when faced with conflicting priorities or directives from the devolved governments on the one hand and the central UK Government on the other. Civil servants have a duty to serve the Crown, and when the Crown is represented by two sets of ministers with different and potentially conflicting objectives there is the potential for tension and uncertainty. The most extreme example of this was during the 2014 Scottish referendum. In particular, we were concerned that civil servants with a duty to the United Kingdom as a whole were being placed in a position where they had to act in ways that went against the interests of the Union.
325. In 2002, this Committee published a report on inter-institutional relations in the United Kingdom in which we recommended that a unified Home Civil Service should be retained.<sup>429</sup> That recommendation was later echoed by the Silk and Calman Commissions.<sup>430</sup>
326. Sir John Elvidge, former Permanent Secretary to the Scottish Government, was clear that the unified Civil Service was still alive and well. He told us that the ethos had always felt slightly different in Scotland compared to Whitehall but that the unified Civil Service was “an important piece of glue in our very unusual constitutional settlement”.<sup>431</sup> Dame Gill Morgan, former Permanent Secretary to the Welsh Government, noted there were “significant advantages” to retaining a unified Civil Service.<sup>432</sup> Lord O’Donnell and Lord Kerslake, Heads of the Home Civil Service from 2005–11 and 2012–14 respectively, were both clear that the unified Civil Service was still very much the reality.<sup>433</sup>
327. Yet in 2015, following the Scottish independence referendum, the House of Commons Public Administration Select Committee (PASC) produced a report entitled *Lessons for Civil Service impartiality from the Scottish independence referendum*. They found that:
- “In practice the single unified Civil Service has become something of a constitutional fiction, since civil servants in Scotland are expected to serve the Scottish Government in the same way as civil servants in Whitehall departments serve the UK Government.”<sup>434</sup>

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427 Written evidence from the Society of Conservative Lawyers ([UDE0028](#)).

428 [Q 304](#) (Professor Derek Birrell), [Q 50](#) (Alan Trench)

429 Constitution Committee, [Devolution](#), para 169

430 Silk Commission, *Legislative Powers to Strengthen Wales*, recommendation R.57 and Calman Commission, *Serving Scotland Better*, para 4.91

431 [QQ 147, 141](#)

432 Written evidence from Dame Gill Morgan ([UDE0066](#))

433 [Q 238](#) (Lord O’Donnell and Lord Kerslake)

434 House of Commons Public Administration Select Committee (PASC), *Lessons for Civil Service impartiality from the Scottish independence referendum* (Fifth Report, Session 2014–15, HC 111), para 24

PASC concluded, however, that “the advantages that flow from having a single Home Civil Service justify the retention of a single UK Civil Service”.<sup>435</sup>

328. There are undoubtedly significant advantages deriving from the existence of a single Home Civil Service. Lord O’Donnell and Lord Kerslake argued that as part of the single service, the permanent secretaries of the devolved governments were better connected to UK-wide issues and priorities: they attended the heads of departments’ regular meetings; had the Head of the Civil Service as their line manager; and were recruited from the same pool of officials as served the UK Government. They contrasted this with the situation for the Northern Ireland Civil Service, whose senior members were not necessarily in the same Civil Service ‘loop’ and whose officials were less likely to have the opportunity to work in other administrations across the UK.<sup>436</sup>

329. Dame Gill Morgan described other benefits to a unified Civil Service, suggesting that it brought:

“significant advantages, with our complex devolution settlements, to have civil servants who share a unifying ethos, common skills and standards and know each other. This helps joint working on shared and non-devolved issues and allows problems and disagreements to be resolved.”<sup>437</sup>

Other witnesses were also generally in favour of retaining a unified Civil Service.<sup>438</sup>

330. Yet while the Civil Service may be unified in an administrative sense—and with the consequential administrative benefits outlined above—it cannot still be considered a unified civil service in political terms. Dame Gill told us that political tensions affected the unified nature of the Civil Service: “Maintaining common approaches became harder with changes in Governments and with increased discussions about potential Scottish Independence.”<sup>439</sup>

331. Dame Gill elaborated on the potential tensions civil servants in the devolved administrations now face:

“Differing political parties in power lead to more inherent policy conflicts for which both Governments have an electoral mandate. Where there is common purpose, Civil Servants can deliver both for the [devolved administration] and for the UK. Often however there is a need to ensure that differing policies can dovetail together to make a coherent whole. This requires negotiation and flexibility at both ends ... It can be challenging as the default in London is that the UK position trumps the [devolved administration] position despite the parallel mandates and even though delivery mechanisms may differ significantly. In other areas the positions adopted are irreconcilable.”<sup>440</sup>

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435 PASC, [Lessons for Civil Service impartiality](#), para 24

436 [QQ 228-230](#). Mark Durkan MP told us that in his time as a minister in Northern Ireland, the NICS had given the impression that they considered Whitehall the ‘mothership’ ([Q 307](#))

437 Written evidence from Dame Gill Morgan ([UDE0066](#))

438 [Q 98](#) (Alun Evans) and written evidence from the Welsh Government ([UDE0024](#))

439 Written evidence from Dame Gillian Morgan ([UDE0066](#))

440 Written evidence from Dame Gillian Morgan ([UDE0066](#))

332. Lord O'Donnell acknowledged that the referendum was a challenge for the Civil Service: "If you were thinking of trying to devise a stress test for a unified Civil Service, what would you do? You would have a referendum where the Scottish Government are in favour of it, and the UK Government are on the other side."<sup>441</sup> Yet he felt that the unified Civil Service weathered the storm well. Sir John Elvidge felt that the Civil Service "withstood the strains of that experience pretty successfully."<sup>442</sup> Lord Kerslake agreed, telling us that: "The striking thing about the referendum was how few challenges came up", although he acknowledged that there were "a few bumps along the way".<sup>443</sup>
333. The former senior civil servants we heard from were clear as to the duties of civil servants in the context of the Scottish independence referendum. Lord O'Donnell told us that: "The Scottish Civil Service had to support the Scottish Government in its objective in terms of independence, just as the UK Government [civil servants] had to support the UK position."<sup>444</sup> Asked whether it was the duty of a civil servant working in Scotland to seek to preserve the unity of the United Kingdom, he answered "No".<sup>445</sup>
334. Civil servants working for the three governments across Great Britain are bound by the Civil Service Code, which sets out the values of the Civil Service and the standards of behaviour expected of civil servants. Although each administration has its own version, their wording is almost identical.<sup>446</sup> Each code sets out the accountability of officials to ministers. As Sir John told us, "Civil servants are faced with a very clear statement that their loyalty to the Crown ... is for all practical purposes expressed through their loyalty to the sovereign's Ministers of the day".<sup>447</sup> In the case of the devolved administrations, this means that civil servants serve their ministers in the devolved governments in the same way that they would serve departmental ministers in the UK Government.<sup>448</sup>
335. Our witnesses drew a comparison between the impartiality required from officials during a change of UK Government, and the challenges facing civil servants in Scottish independence campaign. Ken Thomson, Director-General Strategy and External Affairs in the Scottish Government, told us that it was "the same principle that you have on a change of party in Government: the loyalty of the Civil Service needs to transfer to the ministers of the day".<sup>449</sup> Lord O'Donnell also compared the Scottish independence referendum with the referendum on the Alternative Vote in 2011, with members of the Coalition Government "having to go out there, argue completely different things, and then once that had been decided come back and form together."<sup>450</sup>

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441 [Q 226](#)

442 [Q 141](#)

443 [Q 226](#)

444 [Q 232](#)

445 [Q 234](#)

446 The three Codes are available on the Civil Service Commission website: <http://civilservicecommission.independent.gov.uk/code/> [accessed 18 April 2016]. The Northern Ireland Civil Service has a separate Code of Ethics: <http://www.nicscommissioners.org/code-of-ethics.htm> [accessed 28 April 2016]

447 [Q 141](#)

448 UK Government Civil Service Code, "Civil servants are accountable to ministers, who in turn are accountable to Parliament"; Welsh Government Civil Service Code "Civil servants are accountable to Ministers. They are in turn accountable to the National Assembly for Wales"; Scottish Government Civil Service Code, "As a civil servant, you are accountable to Scottish Ministers, who in turn are accountable to the Scottish Parliament".

449 [Q 133](#); see also [Q 234](#) (Lord O'Donnell)

450 [Q 226](#)

336. But such comparisons do not bear close scrutiny. In the case of a general election, there is only one set of ministers in place at a time, whereas during the Scottish referendum there were two sets of ministers in two Parliaments taking diametrically opposing views. Moreover, there could be no question of coming together again afterwards in the event of the ministers who supported independence winning the referendum.
337. PASC investigated two high-profile controversies surrounding the role of the Civil Service that arose during the referendum. The first was the publication of Permanent Secretary to the Treasury Sir Nicholas Macpherson's advice to the UK Government on sharing a currency with an independent Scotland, which PASC concluded should not have been published.<sup>451</sup> The second was the production of the Scottish Government's White Paper *Scotland's Future*,<sup>452</sup> about which they concluded:

“The contents of the Scottish Government White Paper, *Scotland's Future*, included a description of the SNP's proposed programme for government that was contingent upon their winning the 2016 Scottish Parliament elections. This did not uphold the factual standards expected of a UK Government White Paper and therefore raised questions about the use of public money for partisan purposes.

Parts of the White Paper should not have been included in a Government publication. Civil servants should always advise against the appearance of partisan bias in Government documents—and they should not be required to carry out ministers' wishes, if they are being asked to use public funds to promote the agenda of a political party, as was evident in this case.”<sup>453</sup>

338. Referendums on such fundamental issues as Scottish independence make impartiality a particularly acute issue in a unified Civil Service. The Civil Service Code, in its UK, Scottish and Welsh versions, does not address the fundamental issue of an existential referendum. Sir John Elvidge told us that, in relation to the referendum, “nothing in what passes for a rule book, in the Civil Service Code, contained any obvious preparation for a challenge of that kind” and that “it might be helpful if there were more explicit recognition of the existence of devolution in the code and in various other places”.<sup>454</sup> Dame Gill stated that the referendum made “the concept of a unified civil service more complex to manage”, and added: “The Civil Service code is, as yet, blind to these issues.”<sup>455</sup>
339. While guidance was issued by both Governments ahead of the ‘purdah’ period,<sup>456</sup> it is notable that the controversial *Scotland's Future* White Paper was published in November 2013, well before the referendum guidance was published.

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451 PASC, [Lessons for Civil Service impartiality](#), para 69.

452 Scottish Government, *Scotland's Future*

453 PASC, [Lessons for Civil Service impartiality](#), paras 58-59

454 [Q 141](#)

455 Written evidence from Dame Gill Morgan ([UDE0066](#))

456 Cabinet Office, Scottish referendum: guidance for UK government civil servants [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/344686/Scottish\\_referendum\\_guidance\\_for\\_UK\\_government\\_civil\\_servants\\_on\\_their\\_role\\_and\\_conduct\\_15\\_August\\_2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/344686/Scottish_referendum_guidance_for_UK_government_civil_servants_on_their_role_and_conduct_15_August_2015.pdf) [accessed 26 April 2016], Scottish Government, *Approaching the referendum: Supporting Ministers in Scotland – Good Practice Advice in the Run-Up to the Referendum on Independence* (May 2012): <http://www.gov.scot/Resource/0043/00438792.pdf> [accessed 26 April 2016]

340. **We are surprised that the Civil Service, unified or not, should have failed to provide clear and definitive guidance in advance for the circumstances surrounding the Scottish independence referendum. They were clearly signalled. Although guidance was issued to civil servants ahead of the 28-day purdah period, in reality the referendum campaign lasted considerably longer as almost two years elapsed between the Edinburgh Agreement and the date of the referendum.**
341. **Referendums that affect the integrity of the UK should be handled by the Civil Service as though they were elections: civil servants may support ministers to the extent of gathering information for them but may not become actively involved in the campaign or the drafting of manifesto-like material. We endorse the House of Commons Public Administration Select Committee’s recommendation that “the Civil Service Code should be revised to specifically refer to referendums and provide civil servants across the UK with clear and definitive guidance on their role in respect of referendum campaigns ... so that the provisions which apply in respect of parties in elections in the Code also apply in respect of the ‘yes’ and ‘no’ campaigns in referendums, and so that any future referendum does not give rise to the same uncertainty and controversy”.<sup>457</sup> This guidance should make clear how Civil Service impartiality will be protected in these difficult circumstances, and in particular during the ‘long campaign’ leading up to the shorter official ‘purdah’ period.**
342. **In addition, we recommend that the Civil Service Code be amended to reflect the reality of devolution, and in particular the pressures that may be placed on civil servants faced with conflicting political priorities. As the Commons Public Administration Select Committee concluded, “There is now an opportunity to strengthen and clarify the Civil Service Code based on the culture and practice of government since the advent of devolution”.<sup>458</sup>**

### **The Government’s approach to the process of constitutional change**

343. In our reports on the office of Lord Chancellor and on inter-governmental relations, we expressed concerns about the lack of clear ministerial oversight of the constitution.<sup>459</sup> In the latter report, we were particularly concerned that the Cabinet Minister responsible for devolution was not a member of the devolution Cabinet Committee.<sup>460</sup> We were pleased that, following the 2015 general election, the Cabinet Minister with oversight of the constitution, Oliver Letwin MP, was named as Chair of a new Constitutional Reform Cabinet Committee, whose remit was: “To consider matters relating to constitutional reform within the United Kingdom”.<sup>461</sup>
344. We were subsequently concerned to hear from Mr Letwin that in the nine months since the general election the Committee had met only once.<sup>462</sup> The reason given by Mr Letwin was that “we have used the home affairs

457 PASC, [Lessons for Civil Service impartiality](#), paras 60 and 78.

458 PASC, [Lessons for Civil Service impartiality](#), para 76

459 Constitution Committee, [The Office of Lord Chancellor](#) (6th Report, Session 2014–15, HL Paper 75) para 101, and [Inter-governmental relations](#), paras 126–134

460 Constitution Committee, [Inter-governmental relations](#), para 127

461 Cabinet Office, ‘List of Cabinet Committees’: <https://www.gov.uk/government/publications/the-cabinet-committees-system-and-list-of-cabinet-committees> [accessed 4 April 2016]

462 [Q 320](#)— that meeting discussed English votes for English laws.



committee for clearance processes rather than the constitutional affairs committee because it is better to involve all these other ministries in general.”<sup>463</sup> We recognise that almost all of the members of the Constitutional Reform Committee are also members of the much larger Home Affairs Committee.<sup>464</sup> **We are concerned, however, that the consideration of constitutional issues as simply one part of the work of the much broader-ranging Home Affairs Cabinet Committee risks the loss of any explicit focus on the constitutional implications of the UK Government’s policies.**

345. **If the remit and membership of the Constitutional Reform Cabinet Committee as constituted at the start of this Parliament were not appropriate to its role overseeing changes to the constitution, then they should have been improved, rather than a decision being taken simply to abandon the Committee. The fact that another committee brings together a similar but broader range of ministers does not mean that it will scrutinise proposals in the same way, and with an appropriate focus on the impact of proposals on the constitution as a whole. We would welcome an explanation from the UK Government as to how the focus on the *constitutional* elements of policy that should have been the remit of the Constitution Reform Cabinet Committee has been integrated into the work of the Home Affairs Cabinet Committee.**
346. Several of our witnesses talked about the importance of a Cabinet Minister leading a drive to ensure that proper consideration was given to issues relating to the territorial constitution.<sup>465</sup> Professor Jeffery told us that: “We have seen, I am afraid, a real absence of territorial statecraft—thinking about how the state as a whole can accommodate the demands for decentralisation in its various parts. Unless we do that, we will continue on this ratchet process of gradual disintegration.”<sup>466</sup> Professor Jim Gallagher of Nuffield College, Oxford, agreed: “you need a senior Cabinet Minister with a substantial department of state, money to spend, authority in the Cabinet and the vision to do the statecraft that [Professor Jeffery] has described.”<sup>467</sup>
347. The fact that Mr Letwin has responsibility for constitutional matters and that a permanent secretary under him heads the UK Governance Group goes some way to addressing those concerns.<sup>468</sup> However, it is notable that HM Treasury—in addition to its powerful role managing the financial side of devolution through the Block Grant and the fiscal framework—has been leading on the ‘devolution deals’ addressed in the next chapter, showing yet another dispersal of responsibility for the UK’s governance.<sup>469</sup> Oversight by a Cabinet Committee with an appropriate focus on the constitution is therefore all the more necessary.<sup>470</sup>

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463 [Q 320](#)

464 Cabinet Office, ‘List of Cabinet Committees’: <https://www.gov.uk/government/publications/the-cabinet-committees-system-and-list-of-cabinet-committees> [accessed 4 April 2016]

465 [Q 44](#) (Professor Alan Trench)

466 [Q 56](#)

467 [Q 56](#)

468 Supplementary written evidence from Oliver Letwin MP ([UDE0070](#))

469 [Q 43](#) (Peter Riddell), written evidence from Alun Evans ([UDE0062](#))

470 The Chancellor of the Exchequer is one of the few ministers on the Constitutional Reform Committee who is not a member of the Home Affairs Committee.

### Secession referendums and Parliament

348. In our 2010 report on referendums, we stated that proposals for “any of the nations of the UK to secede from the Union” were the kind of constitutional question that should be decided by a referendum.<sup>471</sup>
349. The constitution is a reserved matter. This means that UK Parliament legislation is required to enable a lawful referendum on secession to take place.<sup>472</sup> Parliament used an Order in Council under section 30 of the Scotland Act 1998 to allow the Scottish Parliament to legislate to hold the independence referendum,<sup>473</sup> which they subsequently did through the Scottish Independence Referendum Act 2013.<sup>474</sup> Under the Northern Ireland Act 1998, a referendum on whether Northern Ireland should remain in the UK or form part of a united Ireland may be held under UK secondary legislation.<sup>475</sup>
350. This Committee, in its second report on the Scottish referendum arrangements published in November 2012, stated that use of a section 30 Order “significantly curtails the opportunity of the UK Parliament to have an effective input into the process”. It was “hard to avoid the conclusion that more could have been done to include the United Kingdom Parliament in this process.”<sup>476</sup>
351. **The constitution being a reserved matter, provision for any future referendum on an issue as fundamental to the Union as the secession of one of its four nations should be set out in primary legislation by the UK Parliament. This will enable proper scrutiny by representatives of all four nations.**

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471 Constitution Committee, *Referendums in the United Kingdom*, para 94

472 See Constitution Committee, *Referendum on Scottish independence* (24th Report, Session 2012–13, HL Paper 263), Chapter 2

473 The Scotland Act 1998 (Modification of Schedule 5) Order 2013 ([SI 2013/242](#))

474 [Scottish Independence Referendum Act 2013](#); in addition, the [Scottish Independence Referendum \(Franchise\) Act 2013](#) set out the franchise for the referendum.

475 Northern Ireland Act 1998, [section 1](#) and [Schedule 1](#).

476 Constitution Committee, *Agreement on a referendum on independence for Scotland*, (7th Report, Session 2012–13, HL Paper 62) paras 18–22

## CHAPTER 8: ENGLAND

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### The English Question and the governance of England

352. The preceding chapters have focused on the Union against a background of national devolution to Scotland, Wales and Northern Ireland. Attention should be paid, however, to England's governance and place in the Union. England predominates in the UK both economically and demographically. Its representatives have an overwhelming majority in the House of Commons. It could be argued that devolution is a way for the other nations in the UK to distinguish themselves from England. The 'English Question' encompasses a number of questions about England's governance. How, within the Union, should England be governed? Is there a way to allow England a separate voice within the UK without undermining the Union? Should power be devolved or decentralised, and if so how?
353. The governance of England is becoming a key concern for those considering the territorial constitution. Witnesses noted the absence of consideration of England when politicians discussed devolution, one of them calling it the "elephant in the room".<sup>477</sup> They called for a more general discussion of the purpose and benefits of the Union for England, which has so far been lacking.<sup>478</sup>
354. The need for England and its role in the Union to be considered has become increasingly clear in recent years. Professor Charlie Jeffery, Professor of Politics at the University of Edinburgh, told us that the English had recently begun to question the purposes and benefits of the Union, having previously felt comfortable as the dominant nation in the Union.<sup>479</sup> This was the likely result of the Scottish referendum which highlighted issues of nationality, identity and governance that had not been prominent in English politics prior to the referendum campaign. Professor Roger Scully, Professor of Political Science, Cardiff University, told us there was 'devo-anxiety' within England over a perception that the nations with devolved institutions were gaining advantages at England's expense.<sup>480</sup>
355. Professor Jeffery noted the emergence of England as a theme in the 2015 general election. He argued:
- "It was no coincidence because there is growing evidence that people in England—all the way across England—feel short-changed by the way in which the UK is governed. They feel short-changed in the representational sense: the West Lothian question, to which English votes on English laws is some kind of answer. They feel short-changed by disparities in levels of public spending between the different parts of the UK; they feel this as a 'fair share' argument, and that England is not getting its fair share. That transforms the debate about the Union."<sup>481</sup>

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477 [Q 261](#) (Andrew RT Davies AM)

478 [Q 261](#) (Kirsty Williams AM and Andrew RT Davies AM), [Q 105](#) (Ed Cox), [Q 24](#) (Sir Kenneth Calman), [QQ 125](#) and [127](#) (Fiona Hyslop MSP) and [Q 272](#) (Professor Robert Thomas)

479 [Q 45](#)

480 Written evidence from Professor Roger Scully ([UDE0069](#))

481 [Q 45](#)

356. There has been little public engagement or discussion about England’s part in the Union, or of devolution and decentralisation in this highly-centralised nation.<sup>482</sup> The Political Studies Association told us:

“the whole debate on English devolution has been an elite-to-elite one. Whilst making occasional reference to how [English votes for English laws], City Deals and the Northern Powerhouse agenda would help [in] improving democracy, in practice so far the government has paid very little attention to what the people really want from devolution in England (or if they have any appetite for it at all).”<sup>483</sup>

357. Alexandra Runswick, Director of Unlock Democracy told us that public discussion of England’s governance is beginning to happen.<sup>484</sup> Where it has happened, however, we heard that it has rarely addressed the issue of England as a whole.<sup>485</sup> Witnesses contrasted the public discourse in Scotland during and after the independence referendum with the lack of public engagement in England.<sup>486</sup>

### Principal options for the governance of England

358. The potential solutions or partial remedies to the English Question that we explored can be grouped into four principal options:

- English votes for English laws
- An English Parliament
- English regional assemblies
- Local government devolution

359. These potential solutions fall into two camps, reflecting the two major facets of the English Question: the representation of England as a whole, and devolution or decentralisation to regional or local levels within England. An English Parliament or arrangements in the UK Parliament to pass English laws differently attempt to address the former; regional assemblies and moves to empower local government the latter.<sup>487</sup> Solutions in either camp often struggle to answer the challenges of the other: all-England solutions do not bring power closer to people and communities, while regional and local solutions do not address the desire for recognition of England as a single entity.

360. The difficulty of disentangling the different elements of the English Question is reflected in the opinion polling data on the subject. There is no one single solution.<sup>488</sup> Dr Jan Eichhorn, Chancellor’s Fellow in Social Policy, University of Edinburgh, told us that:

“There is not a one-size-fits-all solution. If you ask people about different options for devolution in England—arrangements to address this—we find that there is some form of support for doing something that affects

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482 See [Q 272](#) (Professor Robert Thomas) and written evidence from the Political Studies Association ([UDE0033](#))

483 Written evidence from the Political Studies Association ([UDE0033](#))

484 [Q 73](#) (Alexandra Runswick)

485 [Q 40](#) (Peter Riddell)

486 [Q 140](#) (Robert Brown and Maggie Chapman)

487 See supplementary written evidence from Professor Ailsa Henderson ([UDE0065](#))

488 [Q 273](#) (Professor Richard Rawlings)

England at a whole level, but it depends on how you phrase the questions and how you engage with it.”<sup>489</sup>

Similarly, Ed Cox, Director of IPPR North, told us that people are clear that they want some form of devolution but not on what form they want.<sup>490</sup>

361. Some preferences are discernible, however. The 2014 Future of England Survey report concluded that there was very low support for the status quo and for regionalism and no clear preference for strengthening local government, but “very significant support” for proposals that would recognise England as a nation, with English votes for English laws emerging as the preferred option.<sup>491</sup>

### *English votes for English laws*

#### *The West Lothian Question*

362. The West Lothian Question is a common articulation of one particular concern about English representation in the Union—it is thus one facet of wider concerns expressed by the English Question. The West Lothian Question gained its name through its articulation in debates on devolution in the 1970s by the MP for West Lothian, Tam Dalyell, who opposed devolution.<sup>492</sup>
363. The Question relates to the difference that the creation of devolved legislatures made to the responsibilities and power of MPs from each of the different parts of the UK. It can be illustrated by way of an example of a policy area that is devolved to all three devolved legislatures, such as education. MPs representing Scottish, Welsh or Northern Irish constituencies are able to debate and vote on laws affecting education in England where it is not devolved. Meanwhile MPs for English constituencies cannot debate or legislate on education in the other nations because the devolved national legislatures are responsible for the policy. MPs representing seats in the devolved nations also have no say over education in their constituencies. Where votes are close, this situation can create—and has on a small number of occasions created—a situation where proposed laws affecting England alone are passed (or rejected) against the wishes of a majority of MPs for English constituencies.<sup>493</sup>
364. Arguably the situation creates two types of MP: those able to vote on all matters relating to their constituencies, and those unable to vote on the whole range of issues affecting their local area because some have been devolved to other institutions.<sup>494</sup> The latter are, however, able to vote on all matters relating to the formers’ constituencies.

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489 [Q 63](#)

490 [Q 114](#)

491 Jeffery et al, *Taking England Seriously*, pp 5, 19-20; see also written evidence from Professor Roger Scully ([UDE0069](#))

492 The name ‘West Lothian Question’ was applied to it by Enoch Powell. See House of Commons Public Administration and Constitutional Affairs Committee, *The Future of the Union, part one: English Votes for English laws* (5th Report, Session 2015–16, HC 523), para 11

493 Divisions in 2003 and 2004 on higher education tuition fees, foxhunting, and foundation hospitals are widely-cited examples. A recent division on Sunday trading hours (which did not extend to Scotland but was not subject to the EVEL procedure) was controversial as the result would have been different if Scottish MPs’ votes were not included: see Daniel Gover and Michael Kenny, ‘Sunday trading and the limits of EVEL’, *Constitution Unit Blog* (10 March 2016): <https://constitution-unit.com/2016/03/10/sunday-trading-and-the-limits-of-evel/> [accessed 28 April 2016]

494 See written evidence from the Campaign for an English Parliament ([UDE0012](#))

365. The dilemma arose during debates on Irish Home Rule from the 1880s. Various proposals were put forward as a result, including simply not having MPs for Ireland in the UK Parliament or having ‘in and out’ MPs only able to debate and vote on UK-wide issues.<sup>495</sup> When power was devolved to the new legislatures in Wales, Scotland and Northern Ireland in the late 1990s, the West Lothian Question was left unanswered. The new ‘English votes for English laws’ procedures in the House of Commons are this Government’s attempt to address it.

*English votes for English laws in the House of Commons*

366. ‘English votes for English laws’ (EVEL) refers to a way of attempting to address the West Lothian Question by changing the way that the House of Commons legislates. This can either mean excluding MPs from constituencies outside England (or England and Wales) from debates and votes on matters that have been devolved, or allowing MPs for English (or English and Welsh) constituencies to express a separate view on matters which only affect England (or England and Wales). Although it is not a top priority for citizens, opinion polls since the late 1990s have shown strong support for removing the right of Scottish MPs to vote on English-only matters.<sup>496</sup> The principle is popular in both England and Scotland, with surveys showing at least 64% support in England (and less than 15% opposition) and around 50% support in Scotland.<sup>497</sup> Professor John Curtice, Professor of Politics, University of Strathclyde, told us that polling after the referendum had shown continued support for EVEL in Scotland, although it was not clear whether that had changed since the May 2015 general election at which the Scottish National Party made significant electoral gains. The election result has the potential to change the future narrative of EVEL in Scotland: “what originally appeared an embarrassment for Labour is now, perhaps, at risk of being portrayed as an attempt to silence ‘Scotland’s party’, viz. the SNP”.<sup>498</sup>
367. The Coalition Government appointed a Commission under a former Clerk of the House of Commons, Sir William McKay, to investigate “the consequences of devolution for the House of Commons”. The McKay Commission recommended a principle be adopted by the Commons that “decisions at the United Kingdom level with a separate and distinct effect for England (or for England and Wales) should normally be taken only with the consent of a majority of MPs for constituencies in England (or England and Wales)”. It did not recommend the exclusion of MPs from Northern Ireland and Scotland (and Wales for England-only decisions) from debates and votes on those issues in Parliament. It recommended a number of new procedures to incorporate gaining consent from English (or English and Welsh) MPs and suggested the creation of a Devolution Committee in the House of

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495 See House of Commons Library, *The West Lothian Question*, 1995, [Research Paper 95/95](#), pp 13-14

496 [Q 63](#) (Professor John Curtice) and written evidence from the Mile End Institute ([UDE0042](#)). Professor Curtice also noted that we do not know whether this option would have been popular prior to legislative devolution as well as after it began.

497 [Q 63](#) (Professor John Curtice) What Scotland Thinks: <http://whatscotlandthinks.org/questions/do-you-agree-or-disagree-that-now-that-scotland-has-its-own-parliament-scottish> [accessed 8/3/2016] and <http://whatscotlandthinks.org/questions/do-you-agree-or-disagree-that-scottish-mps-should-not-be-allowed-to-vote-on-en-6> [accessed 8/3/2016]

498 Written evidence from Professor John Curtice ([UDE0056](#))

Commons to consider the working of the new system and any cross-border effects.<sup>499</sup>

368. The Conservative Government elected in May 2015 brought forward proposals for English votes for English laws, which—after several debates and revisions—resulted in changes to the Standing Orders of the House of Commons, passed in October 2015. The new procedures broadly reflect those proposed by the McKay Commission, but with an express ‘veto’ for English (or English and Welsh) MPs over legislation affecting only their nation(s) in areas that are the responsibility of devolved legislatures elsewhere.<sup>500</sup> Both the EVEL procedures themselves and the manner in which they have been adopted have been controversial. The House of Lords was unable to express a view on the Government’s proposals since the changes were made by Standing Order, rather than primary legislation.
369. Neither the new procedures adopted by the House of Commons nor the McKay Commission’s proposals prevent Scottish, Welsh or Northern Irish MPs from voting on matters that only affect England—as EVEL is more widely understood to mean<sup>501</sup> (and as it is phrased in public opinion surveys<sup>502</sup>). All MPs are still able to debate and vote on all legislation before the House, but the new procedures allow for some consideration to be conducted only by English (or English and Welsh) MPs and creates a double veto requiring a majority among all MPs and among English (or English and Welsh) MPs in divisions on bills, clauses and statutory instruments certified as English (or English and Welsh) only.
370. **We have committed to undertake a review of the impact of the English votes for English laws procedures and their constitutional implications for the Union. We will therefore publish our conclusions about EVEL as part of that inquiry, which will feed into the UK Government’s planned review of the EVEL procedures later this year.**<sup>503</sup>

### *An English Parliament*

371. One suggested solution to the asymmetry of representation produced by legislative devolution, and the West Lothian Question, has been for England to have its own devolved Parliament, with the UK Parliament taking on the role of a federal legislature.
372. The Campaign for an English Parliament propose that England should have a devolved legislature and executive with the same powers as the Scottish Parliament and Government. They emphasise equality between the nations and equality of representation, achieved through having four devolved

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499 McKay Commission, *Report of the Commission on the Consequences of Devolution for the House of Commons* (March 2013): <http://webarchive.nationalarchives.gov.uk/20130403030652/http://tmc.independent.gov.uk/wp-content/uploads/2013/03/The-McKay-Commission-Main-Report-25-March-20131.pdf> [accessed 9 May 2016]

500 For further details, see Cabinet Office, *English Votes for English Laws: Revised Proposed Changes to the Standing Orders of the House of Commons and Explanatory Memorandum – October 2015*: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/468329/english-vote-english-laws-revised-explanatory-memorandum.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/468329/english-vote-english-laws-revised-explanatory-memorandum.pdf) [accessed 9 May 2016]

501 Written evidence from Professor John Curtice (UDE0056)

502 See John Curtice, ‘How Popular is EVEL?’. What Scotland Thinks (4 September 2015): <http://blog.whatscotlandthinks.org/2015/09/how-popular-is-evel/> [accessed 11 April 2016]. Professor Curtice notes that Ipsos Mori conducted a poll in July 2015 that asked respondents about the veto option as well as the exclusion option, showing slightly higher levels of support for the former.

503 See HC Deb, 22 October 2015, col 1180.

national legislatures.<sup>504</sup> The idea of an English Parliament was supported only by a small number of our other witnesses and is closely tied to the idea of a federal structure for the UK.<sup>505</sup> It also has significant support among English voters, although it is not as popular as other proposals for addressing the English Question. Professor Scully told us:

“When various potential solutions ... are put to the public one at a time, one can get substantial support for all of them. When several possible ways of governing England are offered to people simultaneously, and they are asked to select their most favoured option, then there is usually no clear majority for any particular option. That said ... More radical proposals, like an English Parliament, tend to command less support.”<sup>506</sup>

373. The creation of an English Parliament is an apparently simple solution, which would address the desire for a single, separate voice for England. However, it throws up problems of potential instability at least as great as those it attempts to solve. The overwhelming size of England and thus the political and economic power of an English Government compared with the Scottish and Welsh Governments and Northern Irish Executive would not bring real symmetry to the system and could risk instability and resentment.<sup>507</sup> Brendan Donnelly, Director of the Federal Trust for Education and Research, stated bluntly that “England would dominate a UK federation if it were a single unit”.<sup>508</sup> Professor Adam Tomkins, John Millar Professor of Public Law, University of Glasgow, elaborated:

“If you had an English First Minister with the powers of the Scottish First Minister, that English First Minister would have a bigger budget than and would be more powerful and important than the United Kingdom Prime Minister. That is a recipe for collapsing the Union rather than strengthening the Union.”<sup>509</sup>

374. Professor Jim Gallagher of Nuffield College, Oxford, expressed similar concerns:

“If instability is to be created by English legislative powers, an English Parliament is the way to do it, because an English Parliament produces an English Government, and an English Government becomes dominant in English politics in the same way as the Scottish Government are dominant in Scottish politics, and the vestigial federal level is not disabled. It seems to me that stability requires that this place [the UK Parliament] remains England’s legislature.”<sup>510</sup>

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504 See written evidence from the Campaign for an English Parliament ([UDE0012](#))

505 [Q 261](#) (Leanne Wood AM) and written evidence from Dr Paolo Dardanelli ([UDE0035](#)); Professor Philip Booth advocated an English Parliament as part of a federal structure ([Q 100](#)).

506 Written evidence from Professor Roger Scully ([UDE0069](#))

507 [Q 5](#) (Professor Adam Tomkins), [Q 86](#) (Professor Nicola McEwen), [Q 55](#) (Jim Gallagher), [Q 272](#) (Professor Robert Thomas and Dr David S Moon), and written evidence from Professor Charles Lees ([UDE0058](#))

508 [Q 75](#); see also written evidence from Dr Ben Wellings ([UDE0032](#))

509 [Q 5](#)

510 [Q 55](#)



375. The Campaign for an English Parliament rebutted these concerns, telling us that it was “wrong to assert that an English first minister would be more powerful than the UK Prime Minister. Firstly their functions would be different and second a Union parliament reflecting the whole of the UK politically would prevent an overbearing presence of an English first minister.”<sup>511</sup>
376. **Given the relative size of England within the UK, the creation of an English Parliament would introduce a destabilising asymmetry of power to the Union. Meanwhile, creating a new legislature and administration covering 84% of the population that the UK institutions currently serve would not bring decision-making significantly closer to the people and communities of England.<sup>512</sup> An English Parliament is not a viable option for the future of the governance of England.**

*English regional assemblies*

377. An alternative to recognising England as a discrete nation within the Union is devolution to the regions of England. One way to do this would be to establish regions of roughly equal size, to which powers would be devolved; a further decision would be needed on whether these would have administrative or executive functions, perhaps with the potential to acquire legislative powers subsequently. This would echo (although not necessarily replicate) the approach taken in the 2002 White Paper *Your Region, Your Voice*, with its proposed division of England into the eight regions used for European Parliament elections, each with a directly-elected assembly.<sup>513</sup> The Kilbrandon Commission recommended regional advisory councils with a mixture of nominated and indirectly-elected members rather than elected regional assemblies.<sup>514</sup>
378. Peter Riddell, Director of the Institute for Government, told us that “The problem ... is in defining the regions to do it”.<sup>515</sup> Lord Salisbury, convenor of the Constitution Reform Group, said that “there is huge geographical difficulty in splitting up England into regions ... When you begin to draw divisions between southern, south-eastern and the Midlands of England, you just have to ask yourself the question, ‘Does it work?’”<sup>516</sup> There is also a question around the size of regions and whether individual counties could be regions in their own right.
379. Some regions already have discrete identities, and indeed wish to control greater powers as a regional unit. Councillor Julian German of the Campaign for a Cornish Assembly spoke for some parts with a discrete regional identity when he told us that “we perceive Cornwall as a distinctive region. We are happy for England to decide what it wants to do, but we see Cornwall as a discrete territory.”<sup>517</sup> We heard that it might be possible to make a regional

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511 Written evidence from the Campaign for an English Parliament ([UDE0012](#))

512 [Q 190](#) (Lord Porter of Spalding), [Q 197](#) (Sir Richard Leese), [Q 272](#) (Professor Robert Thomas), supplementary written evidence from the Campaign for a Cornish Assembly ([UDE0063](#))

513 Deputy Prime Minister, *Your Region, Your Voice: Revitalising the English Regions*, Cm 5511, May 2002: [http://dera.ioe.ac.uk/10161/1/Your\\_region\\_your\\_choice\\_-\\_revitalising\\_the\\_English\\_regions.pdf](http://dera.ioe.ac.uk/10161/1/Your_region_your_choice_-_revitalising_the_English_regions.pdf)

514 Kilbrandon Report Chs 24-25. These are the main recommendations, they were not unanimous and other proposals are also recorded in the report.

515 [Q 39](#); see also written evidence from the Federal Trust for Education and Research ([UDE0018](#))

516 [Q 209](#)

517 [Q 115](#)

tier of government using a mixture of historical regions and new creations.<sup>518</sup> Alternatively, a “mezzanine tier of governance” might emerge from administrative (and particularly transport) bodies developing at present.<sup>519</sup>

380. A common argument against elected regional assemblies is that they do not command public or political support, and that the idea was killed off by the rejection of the proposed North East Assembly in 2004.<sup>520</sup> Some witnesses noted the “half-baked” or “watered-down” version of devolution offered in that referendum and the lack of concerted political support for the North-East Assembly,<sup>521</sup> which implies that there may be scope to engender greater support for a stronger assembly model. But the shift from a regional policy to the ‘devolution deals’ approach (see below) suggests that the creation of regional assemblies is not currently on the table as an option.
381. The Citizens’ Assembly pilots suggested a relatively positive view of new regional bodies among citizens who had engaged in informed discussion of devolution. Professor Matthew Flinders of the University of Sheffield told us that participants preferred an elected assembly, with greater powers than those offered to the North East in 2004, to the mayoral model proposed under ‘devolution deals’ (see next section).<sup>522</sup>
382. Public opinion surveys, however, do not paint an encouraging picture for supporters of the idea of regional assemblies. English votes for English laws and an English Parliament were preferred over regional assemblies by respondents to the 2014 Future of England Survey.<sup>523</sup> Dr Eichhorn told us that his research had shown majority support for elected regional assemblies (as well as for other options offered) across the regions of England, but when a single preference was asked for it came second to EVEL in only three regions and was generally no more popular than the status quo.<sup>524</sup>
383. **Elected regional assemblies are not currently an option being considered for devolution within England and are unlikely to gain any traction in the near future. Regional assemblies will not provide a realistic solution to the governance of England unless a coherent strategy were to be brought forward implementing regional assemblies across England and making appropriate changes to the UK’s constitution and existing governance structures.**

#### *Local Government and ‘devolution deals’*

384. The current Government’s devolution policy for England centres on ‘devolution deals’ made between the UK Government and local authorities, usually groups of local authorities proposing a new combined authority. There was some disagreement over the typology of this transfer of powers: Mr Riddell described them as decentralisation, rather than devolution.<sup>525</sup> Professor Flinders cited Lord Heseltine’s description of them as neither of those things but rather a new model of partnership between central and local government.<sup>526</sup>

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518 [Q 71](#) (Brendan Donnelly)

519 [QQ 112-113](#)

520 [Q 5](#) (Professor Adam Tomkins), [Q 304](#) (Professor Derek Birrell) and [Q 55](#) (Jim Gallagher)

521 [Q 38](#) (Peter Riddell), [Q 70](#) (Brendan Donnelly) and [Q 209](#) (Lord Hain)

522 [Q 224](#)

523 Jeffery et al, *Taking England Seriously*, Table 13

524 Written evidence from Jan Eichhorn ([UDE0055](#))

525 [Q 38](#)

526 [Q 225](#)

385. Sir Richard Leese, the leader of Manchester City Council, told us that this difficulty of definition in part reflected the variety of what was being agreed:

“We have started using devolution as a catch-all phrase for a number of things. It now covers devolution, decentralisation and delegation. That is reflected in what is in devolution deals. To distinguish two of the ambitions of Greater Manchester, on skills, our view would be that the skills offer in Greater Manchester should be totally determined locally; on employment programmes, currently the Work Programme, our view is that they should be jointly commissioned with central government.”<sup>527</sup>

386. We do not comment on what term should be used. The deals are not devolution in the sense that Scotland, Wales and Northern Ireland have devolved power,<sup>528</sup> but for ease of understanding we use the phrase ‘devolution deals’ to describe the current Government policy.

387. Various witnesses raised concerns about the degree to which power has been centralised in Scotland and Wales since powers were devolved to their national institutions.<sup>529</sup> However, local government is devolved in both nations and this chapter consequently addresses only the situation in England.<sup>530</sup>

*‘Devolution deals’ and Combined Authorities*

388. ‘Devolution deals’ are the most recent focus of the ‘localism’ agenda promoted by the UK Government since 2010, in place of the previous Labour Governments’ regional approach. These ‘deals’ allow for the devolution of a bespoke set of powers and the reorganisation of local government in a county, city or region; they usually including the creation of a combined authority with a directly-elected mayor. These follow on from the policy Coalition Government’s ‘City Deals’ with the largest cities across England (although the policy also extends to Scotland and Wales) granting each city additional powers with the aim of promoting their economic growth.<sup>531</sup> Further City Deal negotiations have taken place since May 2015, notably with cities in Scotland and Wales, while the primary focus in England has been on ‘devolution deals’.

389. The first ‘devolution deal’ was announced in November 2014, creating a Greater Manchester Combined Authority.<sup>532</sup> It was followed by deals for Sheffield and Cornwall by the summer of 2015. In late 2015, further deals were announced for the North East, Tees Valley, the West Midlands, and Liverpool. Four more deals were announced in the Budget in March 2016, covering East Anglia, Greater Lincolnshire, and the West of England.<sup>533</sup> As Table 1 (in Chapter 2) shows, these ten regions contain a significant proportion of the population of England: 16.1 million people (29.7%). Added to London’s population of 8.6 million this means some 45% of England will be living in areas with some form of devolved or decentralised power.

527 [Q 194](#)

528 [Q 304](#) (Professor Derek Birrell and Professor Arthur Aughey), [Q 267](#) (Professor Richard Rawlings), and written evidence from Justice for Wales ([UDE0025](#))

529 [Q 78](#) (Alexandra Runswick), [Q 190](#) (Sir Richard Leese), [Q 139](#) (Maggie Chapman), [Q 179](#) (Martin Sime), [Q 288](#) (Steve Thomas), and written evidence from Scotland in Union ([UDE0017](#)); see also Bingham Centre, *A Constitutional Crossroads*, p 34.

530 [Q 78](#) (Brendan Donnelly)

531 House of Commons Library, City Deals, [Briefing Paper 7158](#), 16 March 2016

532 Sir Richard Leese told us that the combined authority had its roots in proposals brought forward in 2006 ([Q 191](#))

533 Additional deals were announced for Sheffield in October 2015 and Liverpool in March 2016.

These areas include parts of England with significant economic strength, comprising a substantial part of the English economy.

390. Many witnesses welcomed the ‘devolution deals’ as a positive development;<sup>534</sup> a welcome shift of focus by the Government away from London and a way of strengthening local government and the regions.<sup>535</sup> Other witnesses were less supportive, describing the plans as incoherent, unsustainable, a “classic British *ad hoc* muddle”, and a technocratic or political response to the fact of devolution in the rest of the UK.<sup>536</sup>
391. Sir Richard Leese welcomed that the process had encouraged local authorities to work collaboratively and to find innovative solutions relating to their specific circumstances.<sup>537</sup> Ben Cottam, Head of External Affairs, Federation of Small Businesses Wales, told us that even in areas that did not agree a deal, the process could become a template for better collaboration between local authorities.<sup>538</sup>
392. Paul Nowak, Assistant General Secretary, Trades Union Congress told us that he was concerned that the deals might result in a shift in responsibility from central to local government without sufficient resources to meet those responsibilities.<sup>539</sup> Professor Flinders was concerned that the deals’ focus on economic growth left out other aspects of citizens’ lives that could have been addressed.<sup>540</sup> Concern about the narrow focus on economic growth was shared by Professor Jeffery and the Political Studies Association.<sup>541</sup> The latter warned more generally that the Government’s current ‘deals’ approach “has the potential to further destabilise the already fragile architecture of English governance, creating frictions within English regions, and towards the centre”.<sup>542</sup>
393. The legislative vehicle for the ‘devolution deals’ is the Cities and Local Government Devolution Act 2016, which empowers the Secretary of State to make significant changes to local authority structures, create directly-elected mayors, and transfer functions from other public bodies to new combined authorities. In our report during the Act’s passage through Parliament we noted the wide-ranging powers granted to the Secretary of State, who may make significant changes through secondary legislation. We compared this unfavourably with “the devolution processes for Scotland, Wales and Northern Ireland in 1997–98, where the statutes clearly identified the recipients of devolved authority, the matters devolved, and the limitations upon those powers.”<sup>543</sup> Given how much of England’s economy is based in areas that will be covered by these deals, the broad ministerial powers are particularly concerning. We also commented on the increased complexity inherent in the bespoke arrangements under the Act, the potentially

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534 For example [Q 273](#) (Professor Richard Rawlings) and Bingham Centre, *A Constitutional Crossroads*, Chapter 5

535 [Q 140](#) (Claire Baker MSP)

536 [Q 272](#) (Dr David S Moon), [Q 55](#) (Professor Charlie Jeffery) and [Q 38](#) (Peter Riddell)

537 [QQ 191](#) and [195](#)

538 [Q 283](#)

539 [Q 217](#)

540 [Q 225](#)

541 [Q 55](#) (Professor Charlie Jeffery) and written evidence from the Political Studies Association ([UDE0033](#))

542 Written evidence from the Political Studies Association ([UDE0033](#))

543 Constitution Committee, *Cities and Local Government Devolution, Psychoactive Substances and Charities (Protection and Social Investment) Bills* (2nd Report, Session 2015–16, HL Paper 9), para 8

considerable asymmetry across the country, and the pace at which the proposals were being taken forward, without pre-legislative consultation or scrutiny.<sup>544</sup>

394. Our witnesses' comments focused on four main issues which we cover in turn:

- the asymmetrical nature of the 'devolution deals' being agreed;
- the requirement for directly elected mayors;
- the negotiation process; and
- public engagement and consultation.

*An asymmetrical patchwork of deals*

395. The asymmetry inherent in the bespoke 'devolution deals' approach drew a mixed reaction. Professor Robert Hazell, Director of the Constitution Unit, University College London, warned that it could lead to fragmentation, a concern that Professor Flinders felt was exacerbated by the speed at which the deals scheme was being pursued.<sup>545</sup>

396. There were concerns among many witnesses about areas being left behind, particularly rural areas.<sup>546</sup> Mr Cox was concerned that asymmetry between cities and counties was fuelling a sense of unfairness: "There is a real sense of unfairness among counties that cities are being privileged, both in the process by which their 'devolution deals' are being negotiated and in the deals themselves, which are considered more substantive than the deals that are being brokered with counties."<sup>547</sup> Lord Porter of Spalding, Chairman of the Local Government Association, was frustrated by the small proportion of non-metropolitan areas engaging with the 'devolution deals' process, but felt that areas being left behind was not a long-term concern as citizens in those areas would pressure their elected representatives to get their local authorities involved in the process.<sup>548</sup>

397. Lord Porter and other witnesses were more positive about the asymmetry of the 'devolution deals'. We heard that an asymmetrical process allowed different areas to adapt their deal to the specific characteristics, opportunities and needs of their area, and reflected the differing capacities of areas to take on additional powers.<sup>549</sup> Lord Porter told us that the Local Government Association had previously followed a 'one size fits all' approach. Local Government had now adopted an approach, as Sir Richard Leese put it, of moving "at the speed of the fastest, dragging other people along. If we believe in localism, different places have different needs and that implies that you do different things in those places. One size fits all does not relate to those different needs."<sup>550</sup>

544 Constitution Committee, *Cities and Local Government Devolution, Psychoactive Substances and Charities (Protection and Social Investment) Bills*, paras 13-15

545 [Q 17](#) (Professor Robert Hazell) and [Q 225](#) (Professor Matthew Flinders)

546 [Q 120](#) (Scilla Cullen), [Q 182](#) (Martin McTague), and written evidence from the Political Studies Association ([UDE0033](#))

547 [Q 106](#)

548 [QQ 191](#) and [195](#). Since this evidence was taken, further 'devolution deals' have been announced covering non-metropolitan areas.

549 [Q 122](#) (Julian German), [Q 182](#) (Martin McTague) and [Q 191](#) (Sir Richard Leese)

550 [Q 191](#)

398. We heard that in any case there was likely to be increasing symmetry as the process developed. Mr Cox and Stephen Herring, Head of Taxation at the Institute of Directors, told us that the process was likely to lead to a more symmetrical position in the end. In the meantime they suggested it was acceptable for different areas to get there in an asymmetrical way or at different speeds. Mr Cox felt that the deals being announced were more similar than the Government's presentation of them suggested.<sup>551</sup>
399. In a recent report, the House of Commons Communities and Local Government Committee tabulated the areas covered by the first eight 'devolution deals': almost all of them included a devolved, consolidated transport budget, bus franchising and smart ticketing on local transport, control over further education and adult skills funding, and various common business support provisions.<sup>552</sup> Differences notwithstanding, there is clearly a core set of powers being agreed for most combined authorities as part of the 'devolution deals' process.
400. One of the problems of devolving to regions in England, as noted above, is the difficulty of establishing what regions should be used. The 'devolution deals' approach addresses this by broadly reflecting functional economic areas.<sup>553</sup> This does not necessarily match citizens' sense of identity, which could limit the extent to which the new combined authorities answer the English Question. While it is clear that people feel Cornish or Mancunian, it is less obvious that the people of Cambridgeshire, Peterborough, Norfolk and Suffolk will feel that the proposed East Anglia Combined Authority reflects their local identities.
401. Although he supported asymmetry in the 'devolution deals' process, Mr Cox told us that it was piecemeal and partial and should be replaced by a more systematic and coherent scheme for devolution in England:
- “[If] we are to get to a position on decentralisation that is coherent and credible, we need a 10-year process, based on some clear principles. Those clear principles need to include understanding the purpose of our devolution in the first place. We need a clear and co-ordinated approach over 10 years that allows for asymmetry but has some clear outcomes at the end of it, be those economic, or on public services or democratic devolution.”<sup>554</sup>
402. Lord Porter was opposed to a more systemic approach, equating it with central direction and “centralised localism” rather than devolution.<sup>555</sup> We do not consider that there is an automatic link between a more systematic approach and central direction. We note that a recent Political Studies Association Research Commission report called for 'light touch' guidance “on (i) central government objectives (ii) what policy areas might be included in the deals (iii) characteristics of a successful bid (iv) how implementation

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551 [QQ 106](#) and [108](#) (Ed Cox) and [Q 182](#) (Stephen Herring)

552 Communities and Local Government Committee, *Devolution: the next five years and beyond* (1st Report, Session 2015–16, HC 369), Table 1

553 [Q 197](#) (Sir Richard Leese); see also supplementary written evidence from Campaign for a Cornish Assembly ([UDE0063](#))

554 [Q 107](#)

555 [Q 195](#)

might be monitored and (v) central and local government expectations for consultation and engagement.”<sup>556</sup>

403. We are concerned that the Government’s lack of vision at the level of the Union seems to be replicated in relation to the governance of England. Mr Nowak told us that:

“The one thing that is missing from our perspective is, if we agree that there is no blueprint for what devolution looks like, do we have a shared vision of what we want devolution to deliver? It is clear, because of those funding pressures, lots of local authorities are reaching out for these deals ... However, they are reaching out without clearly thinking through what they want devolution to deliver.”<sup>557</sup>

404. Oliver Letwin MP, the UK Government Minister responsible for the constitution, told us that the Government’s aim was “to arrive at an England in which there is a great deal more power a great deal nearer to the people and less of it controlled further away from them. Exactly what powers reside exactly where is something which will evolve and continue to evolve.”<sup>558</sup>
405. **We generally support the principle of decentralising power within England, and consequently we cautiously welcome the ‘devolution deals’.**
406. **We have concerns, however, about the apparent lack of consideration given to how these deals will affect the overall governance of England in the longer-term, and the wider territorial constitution of the UK. It is unclear whether the UK Government has a clear set of objectives in mind to guide the development of the ‘devolution deals’. Clarity on these matters would not only help guide local government when they seek to reach agreement with the UK Government, but would also give Parliament a yardstick against which to measure the success of the UK Government’s devolution agenda in the future. As with any development of devolution across the UK more generally, the UK Government should set out a vision of what it seeks to achieve with these reforms and where it envisages the process of ‘devolution deals’ will eventually lead.**

*Directly-elected mayors*

407. One controversial aspect of the ‘devolution deals’ is the Government’s insistence on a near universal adoption of a directly-elected mayor model for the new combined authorities.<sup>559</sup> The mayoral model has been advocated by successive governments in recent years, but has proven less than popular with electors. The Coalition Government promised to create directly-elected mayors for the 12 largest English cities and towns other than London.

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556 Political Studies Association Research Commission, *Examining the role of ‘informal governance’ on devolution to England’s cities* (March 2016): <https://www.psa.ac.uk/sites/default/files/page-files/PSA%20Informal%20Governance%202016.pdf> [accessed 5 May 2016]

557 [Q 215](#)

558 [Q 325](#)

559 The Cornwall deal does not include a directly-elected mayor, but the agreement includes a statement that “any future Devolution Deal will be predicated on strengthening of local governance, which would meet the Government’s ambition for visible and accountable leadership that enables residents to understand who is taking local decisions.” Department for Communities and Local Government, ‘Cornwall Devolution Deal’ (July 2015) p 21: <https://www.gov.uk/government/publications/cornwall-devolution-deal> [accessed 9 May 2016]

Liverpool and Leicester adopted the model without a referendum but nine of the 10 other cities rejected the mayoral model in 2012.<sup>560</sup>

408. The idea of a directly-elected mayor was popular with some of our witnesses. Andrew RT Davies AM, leader of the Welsh Conservatives, told us of the beneficial impact of the elected mayor of Bristol, while Martin McTague, National Policy Vice-Chairman, Federation of Small Businesses, told us that members of the Federation favoured the model.<sup>561</sup> Other witnesses were uneasy, not so much with the idea of directly-elected mayors as with the apparent requirement for them as part of an area's 'devolution deal'. The imposition of a mayoral model on areas like Manchester that have already rejected the model in recent referendums was found to be particularly objectionable by some witnesses.<sup>562</sup>
409. Mr Cox felt the problem was that, although there were high levels of support for more devolution, the public did not have a clear vision of how they wanted England to be governed: "[if you] ask the general population, 'Do you want mayors?', they say that they do not know. ... It is the form that people are less clear about, not the fact that they want more devolution."<sup>563</sup>
410. ResPublica's concern was that the model, while suitable for conurbations, was not suited to all areas that might seek to become combined authorities: "The model is appropriate where a clear metro region is already in existence, but there exist[,] too[,] clearly and logically defined regions where local factors—such as the lack of a single dominant conurbation—make it inappropriate."<sup>564</sup> The Communities and Local Government Committee echoed these concerns in a recent report, warning that mayors were better suited to urban areas. They recommended that local areas should be able to decide whether to adopt the mayor model, and be able to propose an alternative model, as part of their deal.<sup>565</sup>
411. Mr Letwin stated that the UK Government was not imposing mayors on the combined authorities, because "to impose would be to say that from a certain date everyone shall have an elected mayor."<sup>566</sup> Instead, he argued that:

"We are saying, 'We are open to bids. We are willing to transfer powers from the centre to the localities, but only under certain conditions. You have to choose. If you do not like our conditions you do not have to take the powers'. The reason for doing that is that we want to ensure that there is perspicuous democratic accountability where we have transferred significant powers".<sup>567</sup>

412. **Notwithstanding the Minister's narrow definition of the meaning of "impose", it is clear that in the majority of cases the UK Government is imposing elected mayors on authorities which wish to take advantage**

560 House of Commons Library, *Directly-elected Mayors*, Briefing paper, [SN05000](#), May 2016. London's unique mayor-and-assembly model came from different legislation and was approved in a referendum in 1998.

561 [Q 255](#) (Andrew RT Davies AM) [Q 184](#) (Martin McTague)

562 [Q 272](#) (Professor Robert Thomas), [Q 215](#) (Tony Armstrong), and written evidence from the Political Studies Association ([UDE0033](#)) and the Campaign for an English Parliament ([UDE0012](#))

563 [Q 113](#)

564 Written evidence from ResPublica ([UDE0039](#))

565 Communities and Local Government Committee, [Devolution](#), para 70

566 [Q 317](#)

567 [Q 317](#)



of the UK Government's 'devolution deals'. In some cases, this will result in mayors being installed in areas that have previously rejected elected mayors in referendums. The UK Government should explain why they have seen fit to override the publicly expressed wishes of the electorate in this way.

413. **Earlier in this report we concluded that the benefits of tailoring devolution settlements to local circumstances outweighed the potential problems caused by asymmetry (see paragraph 180). Consequently, it would be more appropriate for a wider range of governance structures for combined authorities to be available for negotiation, rather than for the UK Government rigidly to apply a single model regardless of local circumstances and wishes.**

*The negotiation process*

414. Paul Nowak of the TUC and Tony Armstrong, Chief Executive Officer of Locality, both echoed this Committee's concerns about the speed with which the 'devolution deals' were being rolled out. They criticised the timescale for the 'devolution deals', which were "artificial" deadlines set by the Government. Time needed to be taken, Mr Armstrong told us, to "build up that conversation across civil society, [otherwise] we are definitely guaranteed to have alienation from the process and poor access to decision-making processes".<sup>568</sup> The timetable was also criticised in recent reports by the Institute for Government and the Communities and Local Government Committee.<sup>569</sup>
415. Mr Nowak and Mr Cox also stressed the difficulty of ensuring that there was capacity on both sides of the 'deal' process. Mr Nowak told us that time was required to allow the community and volunteer sectors and trade unions to engage with the process and new structures.<sup>570</sup> On the other hand, Mr Cox was concerned that Whitehall did not have the capacity and capability to deal with the large number of applications; a concern shared by the Commons Communities and Local Government Committee.<sup>571</sup>
416. **The speed with which the UK Government expects the 'devolution deals' process to proceed may impair the ability of some areas to put forward proposals, or to achieve the optimal deal for their area.**
417. **Our apprehension about the speed with which the 'devolution deals' are being agreed is compounded by our concern that they will receive little parliamentary scrutiny, given that they will be enacted by secondary legislation under extremely broad powers delegated to the Secretary of State in the Cities and Local Government Devolution Act 2016. The breadth of delegated powers is something we have previously expressed concern about, both in this context and more generally.**<sup>572</sup>

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568 Q 216.

569 Institute for Government, *Making devolution deals work* (January 2016) p 9: <http://www.instituteforgovernment.org.uk/sites/default/files/publications/4681%20IFG%20-%20Making%20a%20Devolution%20final.pdf> [accessed 5 May 2016] and Communities and Local Government Committee, *Devolution*, para 60

570 Q 216 (Paul Nowak and Tony Armstrong)

571 Q 106; Communities and Local Government Committee, *Devolution*, para 49

572 See Constitution Committee, *Cities and Local Government Devolution, Psychoactive Substances and Charities (Protection and Social Investment) Bills*, and *Delegated Legislation and Parliament: A response to the Strathclyde Review* (9th Report, Session 2015–16, HL Paper 116)

*Public and civic engagement*

418. The most substantial criticism of the ‘devolution deals’ approach was of its lack of engagement with the public or civil society. Many of our witnesses told us that it should be more open; the deals were seen as simply “agreements between central government and the elites within local authorities”.<sup>573</sup> Mr Nowak suggested that “if you are serious about reinvigorating local democracy ... it is important to find ways right at the outset of engaging the broader spread of civic society, rather than this being seen as a deal done behind closed doors by local authority leaders.”<sup>574</sup> We heard that businesses were also concerned that they were not sufficiently engaged in the ‘devolution deals’ process.<sup>575</sup>
419. There is no requirement for the Government or the areas bidding for deals to consult with local electors or civil society.<sup>576</sup> It is entirely down to the local authorities themselves to decide whether and how to engage with their communities, meaning that public engagement has been largely arbitrary.<sup>577</sup> We heard that Cornwall Council had consulted on its proposals,<sup>578</sup> while Mr Armstrong told us that negotiations over a West Yorkshire deal occurred without any public accountability or scrutiny.<sup>579</sup>
420. The Greater Manchester Combined Authority deal was a particular focus for comment, given that it was the first deal announced and is, in many ways, the flagship deal of the Government’s policy. Dr Eichhorn told us it was “a process that did not involve the public, full stop—that is very problematic”. It was, he said, “exactly the opposite of what should happen from a point of view of getting people along and participating”.<sup>580</sup> Professor Robert Thomas, Professor of Public Law, University of Manchester, told us that the deal was “imposed top-down, in an elite-driven process”.<sup>581</sup> Sir Richard Leese conceded that communication and public engagement around the proposed combined authority had not been “particularly good”, although he stated it something they were “now putting right”.<sup>582</sup>
421. Mr Cox felt that there was a problematic “cynicism on the part of both central government and local authority leaders” leading them “to strike relatively secretive deals in order to transact power from one to the other. They believe that it is better to do it that way than to involve the general public in these things”.<sup>583</sup> Lord Porter rejected the criticism of secrecy, however, saying that the deals were announced and passed through the local democratic process and that there was no indication of dissatisfaction with the ‘devolution deals’ in the press or in complaints to councillors and MPs.<sup>584</sup>

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573 [Q 162](#) (Willie Sullivan); see also [Q 4](#) (Professor Sir Jeffrey Jowell), [Q 17](#) (Professor Robert Hazell), [Q 109](#) (Ed Cox), [Q 181](#) (Martin McTague), [Q 209](#) (Lord Salisbury), [Q 215](#) (Paul Nowak), [Q 224](#) (Professor Matthew Flinders); see also written evidence from the Political Studies Association ([UDE0033](#))

574 [Q 215](#)

575 See, for example, [Q 182](#) (Mr Herring and Mr McTague)

576 [Q 223](#) (Professor Matthew Flinders)

577 [Q 225](#) (Katie Ghose)

578 [Q 120](#) (Julian German)

579 [Q 217](#) (Tony Armstrong)

580 [QQ 61](#), [66](#)

581 [Q 272](#); see also [Q 222](#) (Professor Matthew Flinders)

582 [Q 201](#)

583 [Q 109](#)

584 [Q 201](#)

Since then, some local authorities have rejected recently-announced deals.<sup>585</sup> Moreover, the results of the pilot Citizens’ Assemblies, held in areas where deals had been announced (see paragraph 235), suggest that although people were “generally in favour of the Government’s plans for devolution within England”, they were “not in favour of the specific model that was currently on offer”.<sup>586</sup>

422. Given the importance of responsiveness and consent, it is of great concern that so little emphasis has been placed on consulting and engaging with the public on the content and form of the ‘devolution deals’. Mr Letwin argued that it was important to trust local politicians rather than advocate “rule by plebiscite in each locality”, given that those politicians would, in the end, have to submit themselves for re-election.<sup>587</sup> While that is undoubtedly true, it does not alter the fact that the public are not only unable to have an input into negotiations, but are often being kept in the dark about what is being discussed. The fact that they may, *once the deals have been agreed*, be able to express a view at the ballot box about the outcome, will not alter the deals that have been agreed, nor will it allow them to express their view about specific aspects of the proposals—such as the imposition of directly-elected mayors.
423. Public perception is of great importance if the territorial constitution is to retain the confidence of the public. Public support for the devolution of power was required in Scotland, Wales, Northern Ireland and London. **The lack of public and community engagement around the ‘devolution deals’ is a weakness in the current policy for the governance of England. There should be a requirement for informing and engaging local citizens and civil society in areas bidding for and negotiating ‘devolution deals’.**<sup>588</sup> **Local politicians seeking ‘devolution deals’ should lead this engagement.**
424. **If public concerns about the governance of England are properly to be addressed, the UK Government, and individuals engaged in political activity at all levels, need to engage with the public on these issues and to understand their concerns. There needs to be a greater effort to understand what people and communities want from devolution or decentralisation. This requires far greater public engagement, both in general across England and in those areas seeking or agreeing greater powers, with real discussions about what those powers should be and by whom they should be exercised.**

### Devolution assessment process

425. In Chapter 5, we proposed a list of important matters that should be addressed when considering any proposals for the devolution of powers to the nations of the UK. A similar assessment should also be made when considering the devolution of power within England. For the foreseeable future this will relate to the devolution or decentralisation of power to local government or combined authorities.

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585 ‘Osborne’s devolution plans hit by dissenting councils’, *Financial Times* (24 March 2016): <http://www.ft.com/cms/s/0/3b859fec-f0f8-11e5-aff5-19b4e253664a.html> [accessed 21 April 2016]

586 [QQ 222–223](#)

587 [Q 325](#)

588 [Q 217](#) (Paul Nowak)

426. Being required to address these issues should help ensure that the Government—and the local authorities involved in ‘devolution deals’—put more effort than has hitherto been in evidence into engaging with the public and establishing clarity over responsibility and accountability for the powers under consideration.

427. **As with any proposals for further devolution to the devolved nations, when bringing forward proposals for devolution or decentralisation of power in England, the UK Government should produce a Devolution Impact Assessment. This would include a thorough analysis of the proposals, addressing (but not restricted to) the following elements:**

- **Whether and how the proposed devolution of powers is likely to lead to better policy outcomes for citizens in the area in question, and what evidence from previous national, regional or local devolution of powers supports that analysis;**
- **Where the proposed devolution or decentralisation is not nation-wide, whether the benefits of the proposed devolution are particular to the area in question or could be applied to other similar areas or to local government more broadly;**
- **The extent of public demand for the changes proposed, demonstrating suitable consultation with the public and civil society, including how consent be obtained (whether through a local referendum or through elected councillors, etc.);**
- **At what level of government (UK, national, regional/combined authority or local authority) the powers in question would most effectively be exercised and why;**
- **An assessment of the implications for the future funding of the area in question and any effects that may have on the funding of local authorities in the region and across England;**
- **Whether the proposed changes would provide a coherent set of powers, both internally within the set of changes being considered and in combination with the powers already held at local/combined authority level, including a clear statement of the responsibilities of each level of government to enable greater accountability. It should also set out clearly the chain of responsibility for exercising the proposed powers;**
- **An assessment of the proposals against the list of core responsibilities (as recommended in Chapter 5) to ensure that the proposals will not impact negatively on the cohesiveness of the Union;**
- **An assessment of the UK-wide implications and impact of the proposals, including any cross-border or bilateral arrangements that might be needed as a result; and**
- **An assessment of the likely start-up and administrative costs of the change for the region or local authority and for the UK.**

### **An answer to the English Question?**

428. **The English Question encompasses both concerns about the representation of England within the Union, and about the devolution or decentralisation of power within England. Part of the reason that the English Question remains unanswered is that nobody has yet put forward a solution, or set of solutions, that provide a coherent answer to both facets of the Question, and that are likely to command political and public support.**
429. **The approach the UK Government has taken to addressing public concerns over the representation of England within the Union, English votes for English laws, is (when asked) the English public's preferred approach. It was, however, viewed unfavourably by a number of our witnesses, including many of those representing the devolved nations. Likewise, the UK Government's 'devolution deals' may address some of the concerns about the centralisation of power within England—but without a clear vision of where the process might lead it is hard to tell to what extent.**
430. **It is too soon to know whether EVEL and the 'devolution deals', separately or in combination, will provide an answer to the English Question. What is clear is that the English Question remains one of the central unresolved issues facing decision-makers grappling with the UK's territorial constitution.**

## SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

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### Introduction

1. The four nations of the United Kingdom are stronger united than apart. The Union has brought stability, peace and prosperity to the United Kingdom. (Paragraph 3)

### What is the Union?

2. The Union has the support of a majority of people in each of its constituent nations. (Paragraph 28)
3. Decision-makers in all four nations have a duty to recognise popular support for the continuance of the Union and to work constructively to ensure that the Union operates as effectively as possible for the benefit of everyone in the United Kingdom. (Paragraph 29)

### *Key elements of the Union*

4. The Union reflects the unity and diversity that makes up the United Kingdom. It is made up of nations, regions and people with a strong shared history and culture, and yet with distinctive local or national identities. The five key elements we have identified—the economic union, the social union, the political union, the cultural union and the security and defence union—collectively provide advantages to the constituent nations of the UK that go beyond what each could achieve on its own and unite the people from all four nations as citizens of one country. (Paragraph 71)
5. Core values are shared across the United Kingdom. These include democracy, equality, personal liberty and the rule of law. These values are not unique to the UK, but they are intrinsic to the Union, rooted in history, and are widely shared by the people and institutions of all four nations. They contribute to what could be said to be a sixth union—one of attitudes and beliefs, of emotional loyalty and a sense of belonging, especially in troubled times. (Paragraph 85)
6. The core features of the economic union are the single market with a single currency and single fiscal and macroeconomic framework. It provides all citizens of the UK with a large and diverse market and international influence; and it protects individual nations and regions of the UK against economic shocks. (Paragraph 46)
7. The fundamental principle of the social union is the pooling of common funds at a UK level which are then expended on the basis of need, on a UK-wide basis. The social union is a manifestation of the solidarity that sees the people of the Union collectively support each other, no matter where in the UK they reside. (Paragraph 56)
8. The political union is embodied in the sovereign UK Parliament and the UK Government, which represent and act on behalf of the whole United Kingdom. The UK Government provides a single voice for the UK internationally, with more influence than any individual nation in the Union would have. The political union also recognises the importance of accommodating distinctive national identities, manifested by the devolved institutions that represent the citizens of Scotland, Wales and Northern Ireland. (Paragraph 60)

9. The cultural union is found in the connections between people across the UK. It includes the bonds of family and kin that ignore national boundaries and that have developed over generations. It is perpetuated by our common language and common institutions—such as the NHS, the BBC and the monarchy—and in the shared heritage and history of the country. (Paragraph 66)
10. The security and defence union is represented by the British Armed Forces—the Army, the Royal Navy and the Royal Air Force—and the UK security services. The UK also has a single borders and immigration policy. (Paragraph 69)
11. The five elements that we have identified combine to allow the nations of the Union to work together as a single state. They allow for the expression of discrete national identities within the Union, while providing a structure within which all the constituent parts of the United Kingdom can support each other and work towards common objectives and ideals. (Paragraph 77)
12. Whilst the way these elements are expressed has changed, and will undoubtedly continue to change, over time, we consider that ending or substantially weakening the Union in any of these respects would cause grave damage to the Union as a whole. (Paragraph 78)

### Risks to the Union

#### *The cumulative impact of devolution on the Union*

13. While the UK constitution has proved flexible and resilient over the centuries, it recently faced a serious existential threat in the form of a referendum on Scottish independence. We regret that Oliver Letwin MP, the responsible Government minister, does not recognise the concerns expressed by this Committee and many others at the pressures being placed on the UK constitution by the manner in which the devolution of powers has taken place, and continues to take place, with little consideration of the status and needs of the Union. (Paragraph 98)
14. There is no evidence of strategic thinking in the past about the development of devolution. There has been no guiding strategy or framework of principles to ensure that devolution develops in a coherent or consistent manner and in ways which do not harm the Union. Instead, successive Governments have responded individually to demands from each nation. Devolution has thus developed in an *ad hoc* fashion, with different constitutional conversations taking place separately in different parts of the country. (Paragraph 99)
15. We do not share the confidence expressed by Mr Letwin that all the pieces for a stable constitutional settlement are in place. Once the forthcoming Wales Bill has completed its passage through Parliament, we recommend that the UK Government commission a thorough evaluation of the impact on the Union and its constituent nations of the cumulative effect of the devolution settlements and its plans for decentralisation within England. (Paragraph 100)
16. The UK Government needs fundamentally to reassess how it approaches issues relating to devolution. What affects one constituent part of the UK affects both the Union and the other nations within the UK. Devolution needs to be viewed through the lens of the Union, with appropriate consideration

given to the needs of, and consequences for, the Union as a whole. We recommend how this might be achieved in Chapter 5. (Paragraph 101)

*The allocation of resources within the United Kingdom*

17. We support the principle of fiscal responsibility. However, increasing the fiscal powers of the devolved institutions will present risks to the redistributive role of the Union. The greater the amount of revenue raised and spent locally, the less scope for the allocation of resources on the basis of need by central government. This allocation is vitally important to ensure that the social union is supported by a pooling and sharing of resources across the whole UK. In our view, to perpetuate the use of the Barnett Formula, which takes no account of relative need, makes a mockery of the Government's duty to ensure a fair distribution of resources across the UK. (Paragraph 116)
18. We recommend that the UK Government reconsider its use of the inadequate Barnett formula and establish a mechanism that takes into account the relative needs of different nations and regions in allocating funds. (Paragraph 117)
19. Devolving responsibility for welfare risks damaging the common, UK-wide welfare system that is a key element of the social union. (Paragraph 120)
20. Where powers relating to the welfare system are to be devolved, the UK Government should retain the ability to ensure a minimum level of provision. The shared-responsibility model established in the Scotland Act 2016 may provide a useful template, whereby a devolved government may supplement from its own resources (but not reduce) a UK-wide level of welfare support. (Paragraph 126)
21. Political barriers make it impracticable for the UK Government to attempt to impose minimum provision for public services in policy areas which have already been devolved. Should any currently reserved powers be devolved in the future, the UK Government should address the case for introducing UK-wide minimum provision in policy areas that affect an individual's rights and entitlements. (Paragraph 130)

*Diverging policy and service delivery choices*

22. Policy difference is an inherent consequence of devolution: indeed it is part of the point of devolving power. However, it creates a risk of real or perceived unfairness in respect of differing levels of service provision or government support which can be damaging to social solidarity. The public should be clear why policy differences exist and who is responsible, so that the appropriate politicians can be held to account for their decisions at the ballot box. (Paragraph 141)

*The cultural union and emotional affinity*

23. We consider that the BBC and other public service broadcasters play an important role in maintaining a common British identity. By providing a shared source of culture and information, they act as a unifying force within the Union. It is vitally important that independent public sector broadcasters continue to provide a common UK-wide service in addition to regional and local coverage, particularly in relation to topics such as news and current affairs. (Paragraph 153)



### Principles underlying the Union and devolution

24. We disagree with the view that setting out general principles to underpin consideration of the Union and devolution would be unproductive. There is a strong case for creating a flexible framework, based on appropriate principles, as a guide to future action within which any further demands for devolution can be considered in a coherent manner. This would help to ensure that such considerations take into account the interests of the Union and of all four constituent nations of the United Kingdom, rather than proceeding in the reactive, *ad hoc* manner in which devolution has been managed to date. A guiding set of principles, while not prescriptive and still less absolute, would provide a yardstick against which the current devolution settlements, and any proposals for further devolution, could be measured and appraised. (Paragraph 160)

### *Solidarity*

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

### *Diversity*

26. The benefits of recognising the diversity of the UK’s different nations outweigh the potential confusion and public perceptions of unfairness that may result. However, the wider impact of asymmetry on the Union and on other nations in the UK must be properly considered as part of any assessment of devolution proposals. (Paragraph 180)
27. The differences in the devolution settlements reflect the perceived needs and circumstances of each nation. They also reflect governmental decisions taken about devolution to Scotland and Wales in 1997. Any future proposal to devolve power should be assessed in light of the merits of devolving a particular power to a particular nation, as well as against its impact on the Union as a whole. (Paragraph 181)

### *Consent*

28. The principle of consent has become fundamental to the development of devolution in the UK, and should continue to be a guiding principle in the future. The circumstances in which changes to the devolution settlements require the consent of the people via a referendum are unclear. They should be clearly set out in any statement of these principles. (Paragraph 186)

*Responsiveness*

29. Devolution settlements have been ‘demand led’, with successive UK Governments responding to demands for greater powers and responsibility. While it is right that the UK Government listens and responds to the desires of the constituent nations of the UK, successive Governments have neglected their duty to do so in a manner that takes into account the wider needs and wishes of the Union and of all its constituent nations. (Paragraph 194)

*Subsidiarity*

30. Subsidiarity is a principle that provides a useful benchmark against which to test any proposals for devolution. Where powers can be exercised more effectively at a lower level of government, then it should be open for those powers to be devolved. That is contingent upon the needs of the Union and the ability of the devolved body to exercise those powers effectively. Powers should not, however, be devolved solely because they can be—power should be devolved to a particular nation only when doing so would benefit the people of that nation or region and without detriment to the Union as whole. (Paragraph 198)

*Clarity*

31. A certain amount of complexity in the devolution settlements is inevitable, given the combination of devolved, reserved and shared powers in each nation. Yet it is important that the public understand where power lies if the democratic process is to work effectively. While voters can assess the outcome of public policies, they cannot accurately express a judgement on their elected representatives at the ballot box if they are ill-informed about the division of responsibilities between different levels of government. All those involved in developing devolution settlements should ensure that the division of powers is made as clear as possible, to aid public understanding of what responsibilities lie at each level of government. (Paragraph 205)

**Strengthening the Union***Taking into account the needs of the Union*

32. Earlier in the report we concluded that ending or fundamentally weakening any of the five key elements of the Union—the economic, social, political, cultural and security and defence unions—could threaten the Union as a whole. The question that needs to be resolved is to what extent devolution can take place in policy areas relating to the key elements of the Union, in particular the economic and social unions, without undermining those elements and thus the Union itself. (Paragraph 215)
33. We recommend that the UK Government identifies which public responsibilities are essential to the effective functioning of the Union, and therefore need to remain the responsibility of the UK Parliament and Government. This should help to ensure that the coherence and stability of the Union can be properly protected in any further discussions regarding the devolution settlements. (Paragraph 218)
34. This work should reflect a wide range of views. There should be engagement with the public and civil society which must reach beyond those interested in constitutional matters and make explicit the connection between devolution and the decisions and service provision that affect people’s lives. The process

will also require discussion with the devolved institutions and consultation with the UK Parliament. (Paragraph 219)

35. Powers should not be devolved simply because theoretically they can be exercised at a lower level of government. We therefore do not advocate a “draw down” model of devolution in which all powers outside the core functions of the Union are ‘devolvable’ upon a request by a nation or region. There are core powers that should only be exercised by the UK Government and Parliament. They are not necessarily, however, the only powers that can be managed most effectively at the level of Union. (Paragraph 222)
36. There is no single list of the powers that could or should be devolved across the board. In the event that there are further demands for powers to be devolved, these should only be considered as part of an appropriate process that takes into account the needs of the Union and all the nations within it. (Paragraph 223)
37. Proposals for further devolution, whether brought forward by the UK Government in response to suggestions by devolved administrations or by independent Commissions, should present any case for devolution alongside a Devolution Impact Assessment. (Paragraph 226)
38. This assessment should include a thorough analysis of the proposals, addressing (but not restricted to) the following elements, and based on the principles described in Chapter 4:
  - An assessment of the proposals against core UK responsibilities (as recommended earlier in this chapter) to ensure that they will not impact negatively on the cohesion of the Union;
  - An assessment of the UK-wide implications and impact of the proposals, including any cross-border or bilateral arrangements that might be needed as a result, and how the interface of any shared or concurrent powers will be managed;
  - Whether and how the proposed devolution of powers is likely to lead to better outcomes for citizens in the devolved nation as well as its impact on the citizens of other nations in the Union. Where possible this should include evidence from a results-based analysis of the devolution of similar powers in other parts of the country;
  - An assessment of the implications for the future funding of the devolved nation in respect of the Block Grant;
  - Whether the proposed changes would provide a coherent set of powers, both internally and in combination with the current devolution settlements, and avoid confusion over who is responsible for exercising those powers. It should also set out clearly the chain of responsibility for exercising the proposed powers;
  - The extent of public demand for the changes proposed, demonstrating suitable consultation with the public and civil society, including how national consent should be obtained; and
  - An assessment of the likely start-up and administrative costs of the change for the devolved nation and for the UK. (Paragraph 227)

*Public information, engagement, consultation and consent*

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

*Other recent proposals**A new Charter or Act of Union*

40. We acknowledge and are grateful for the work done by the Bingham Centre for the Rule of Law on their proposed Charter of the Union and by the Constitution Reform Group on their new Act of Union. Their work in establishing the principles and common values underlying the Union and devolution will prove valuable for future discussions on these issues. (Paragraph 257)
41. Rather than being the result of a top-down process, the devolution settlements have, to date, been driven by the demands of the devolved nations without any proper consideration of the overall needs of the Union and its constituent nations. While we understand the intention behind the Constitution Reform Group's proposal for a new Act of Union, we are concerned that taking the wishes of the devolved nations as a starting point, rather than the needs of the Union, risks perpetuating the existing approach of focusing on diversity at the expense of UK-wide solidarity. (Paragraph 252)
42. We recognise that variations in the law across the UK can cause difficulties. We are unconvinced, however, that a statutory statement of common values will provide sufficient certainty to ensure that issues involving fundamental rights such as freedom of speech or marriage will be protected in the same way across the UK. (Paragraph 248)
43. We have not considered in any detail the case for harmonising law across the UK where it affects fundamental rights. We note, however, that any attempts to tackle this issue would require primary legislation in the UK Parliament. (Paragraph 249)

*Full fiscal autonomy*

44. We are strongly opposed to the concept of full fiscal autonomy for any nation or region of the United Kingdom. It would end the pooling and sharing of risks and resources that is key to the social union and that brings security to all parts of the Union. Full fiscal autonomy would, in our view, break the Union apart. (Paragraph 267)

*Federalism*

45. Some believe that federal constitutions provide useful lessons regarding the effective management of shared competencies which may prove of use as these become more common with the implementation of the Scotland Act 2016. We concur with the conclusion of the Kilbrandon Commission in 1973 that there is no federal structure currently proposed that could accommodate England as a discrete entity. Nor is there public or political support at present for the creation of regional assemblies within England

which might otherwise provide a viable basis for a federal system. Federalism does not, therefore, provide a solution to the tensions in the UK's territorial constitution. (Paragraph 275)

### **Adapting to devolution**

#### *Promoting the Union*

46. The stability of the Union requires careful management of the balance between unity and diversity. The development of devolution in recent decades, and the emerging 'devolution deals' in England, have accentuated diversity in the Union. A counter-balancing effort to support and promote unity is now required. The Government should set out a strategy for taking this work forward. (Paragraph 283)

#### *Inter-governmental relation: A new mindset*

47. We have yet to receive a Government response to our 2015 report on inter-governmental relations. Many of its recommendations relate to a review of the Memorandum of Understanding (MoU) currently being undertaken by the four administrations, and there have been no plenary meetings of the Joint Ministerial Committee (JMC) since March 2015 at which changes to the MoU could have been agreed. The fact that the JMC has not met for well over a year encapsulates our concerns about the inadequate nature of the formal structures currently in place for managing relations between the UK Government and the devolved administrations. (Paragraph 290)
48. We reiterate the conclusions from our 2015 report on inter-governmental relations. The formal structures of inter-governmental relations—in particular, the JMC—must not be allowed to degenerate into a forum for grandstanding and gesture politics which emphasise differences, conflict and division. Instead, the JMC should be reformed to promote and manage co-operation and coordination between the UK Government and the devolved administrations. (Paragraph 291)
49. A number of the recommendations in our Inter-governmental relations report were about the role and duties of the Civil Service and are relevant to addressing the concerns expressed above. These included the following, which we continue to commend to the UK Government:
- The changing devolution settlements will result in a more complex arrangement of devolved and reserved policy areas, particularly in areas such as welfare and tax policy. In the light of these changes, we recommend that the Government consider whether more formal structures are needed at a Civil Service level to manage these increasingly complex inter-governmental relations—particularly in the context of those departments which are most affected by the changes.
  - We recommend that the concordats setting out relations between UK government departments and the devolved administrations be reviewed at least once during each Parliament and, in particular, each time there is a change in the devolution settlements. Devolution guidance notes should also be reviewed and updated regularly.
  - Departmental concordats should set out clearly how the devolved administrations should be consulted on, and alerted to, forthcoming

changes to UK Government policy that might have an effect on the devolved administrations.

- We recommend that the Government sets out a strategy for ensuring that senior civil servants have either experience of, or training in, working with devolved administrations. (Paragraph 299)
50. Part of the challenge facing the UK Government in adapting to devolution is to embed awareness and knowledge of the devolved administrations across Whitehall. We welcome the changes that the UK Government has made in the last year, including the creation of new guidance and training for civil servants, and the establishment of the UK Governance Group. We look forward to hearing about these changes and any other improvements in more detail in their response to our 2015 report on inter-governmental relations. (Paragraph 301)
  51. These changes must be seen as merely the start of a larger process. Civil servants in Whitehall departments must consider how they can engage with their counterparts in the devolved administrations across the breadth of government policy. The UK Government must work towards a situation where policy is developed in consultation and collaboration with the devolved administrations. Where different policy choices are made, it is important that the different administrations work together to consider the potential cross-border impacts or UK-wide effects of those choices. (Paragraph 302)
  52. Adapting to devolution will require fundamental changes in how the UK Government operates. Devolved competencies range across so many areas of public responsibility that the delivery of government policies often requires collaboration and the sharing of information between the UK and devolved governments. The UK Government should undertake a thorough review, covering the whole Civil Service, to consider how the devolved administrations can be more effectively, and more consistently, involved in policy development and implementation. (Paragraph 303)
  53. One suggestion the UK Government should consider taking forward is establishing branches of core government departments such as the Treasury and the Cabinet Office in Scotland. This would ensure that there are staff based in Scotland to facilitate collaboration and co-operation and to manage the increased complexities of the overlapping and shared competencies that will result from the Scotland Act 2016. (Paragraph 304)
  54. This must be the start of a new mindset throughout the UK Government and Civil Service with regard to relations with the devolved nations. The mechanisms by which the UK Government manages relations with the devolved administrations must strengthen, rather than weaken, the Union. The UK Government must recognise that it retains an overarching responsibility for ensuring that the governance of the UK operates effectively. Instead of a 'devolve and forget' attitude they should be engaging with the devolved administrations across the whole breadth of government policy: not interfering, but co-operating and collaborating where possible and managing cross-border or UK-wide impacts that may result from differing policy and service delivery choices. The UK Government should work to reach an agreement with the devolved administrations to ensure a constructive approach to this engagement is introduced and maintained for the long-term on all sides. (Paragraph 305)

55. The Smith Commission recognised the need for greater transparency of inter-governmental relations and made several recommendations to that end. Given the rigorous and uncompromising way in which the UK Government has sought to implement the Smith Commission's recommendations, we trust that the UK Government's response to our recommendations about the transparency of inter-governmental relations will be as constructive as the Scottish Government's recent commitments to the Scottish Parliament on that issue. (Paragraph 312)
56. A change of mindset throughout the UK Government with regard to inter-governmental relations should be reflected by a change in how Parliament scrutinises the UK Government's activities in this area. Both Houses should consider how they might appropriately hold the UK Government to account for its progress towards more constructive and stable relationships with the devolved institutions. The recommendations in our 2015 report *Inter-governmental relations in the UK* provide a foundation on which we hope both Houses will build. These include a recommendation that the Prime Minister should make an annual statement to the Commons after each plenary meeting of the Joint Ministerial Committee, and support for an independent annual audit of inter-governmental relations. (Paragraph 313)

*Providing clarity over the role of the UK Government*

57. The division of responsibilities between local government, devolved government and the UK Government can be hard for members of the public to disentangle. One consequence is that it can be unclear to the public which services are provided by the UK Government, potentially weakening their perception of the value of the Union. (Paragraph 319)
58. We recommend that the UK Government consider the ways in which all UK Government services and departments could be branded, to make clear to citizens the distinction between services provided by devolved and local government and those provided by the UK Government. This should be part of a long-term strategy to develop better public understanding of the respective roles of the UK and devolved governments and legislatures. (Paragraph 320)
59. The Annual Tax Summary sent to each taxpayer in the devolved nations should set out how they are contributing through their taxes to the revenue of their devolved government and the UK Government, and on what services the revenues raised by different governments are spent. (Paragraph 322)
60. We are surprised that the Civil Service, unified or not, should have failed to provide clear and definitive guidance in advance for the circumstances surrounding the Scottish independence referendum. They were clearly signalled. Although guidance was issued to civil servants ahead of the 28-day purdah period, in reality the referendum campaign lasted considerably longer as almost two years elapsed between the Edinburgh Agreement and the date of the referendum. (Paragraph 340)
61. Referendums that affect the integrity of the UK should be handled by the Civil Service as though they were elections: civil servants may support ministers to the extent of gathering information for them but may not become actively involved in the campaign or the drafting of manifesto-like material. We endorse the House of Commons Public Administration Select Committee's recommendation that "the Civil Service Code should be revised

to specifically refer to referendums and provide civil servants across the UK with clear and definitive guidance on their role in respect of referendum campaigns ... so that the provisions which apply in respect of parties in elections in the Code also apply in respect of the ‘yes’ and ‘no’ campaigns in referendums, and so that any future referendum does not give rise to the same uncertainty and controversy”. This guidance should make clear how Civil Service impartiality will be protected in these difficult circumstances, and in particular during the ‘long campaign’ leading up to the shorter official ‘purdah’ period. (Paragraph 341)

62. In addition, we recommend that the Civil Service Code be amended to reflect the reality of devolution, and in particular the pressures that may be placed on civil servants faced with conflicting political priorities. As the Commons Public Administration Select Committee concluded, “There is now an opportunity to strengthen and clarify the Civil Service Code based on the culture and practice of government since the advent of devolution”. (Paragraph 342)

### *The UK Government’s approach to the process of constitutional change*

63. We are concerned that the consideration of constitutional issues as simply one part of the work of the much broader-ranging Home Affairs Cabinet Committee risks the loss of any explicit focus on the constitutional implications of the UK Government’s policies. (Paragraph 344)
64. If the remit and membership of the Constitutional Reform Cabinet Committee as constituted at the start of this Parliament were not appropriate to its role overseeing changes to the constitution, then they should have been improved, rather than a decision being taken simply to abandon the Committee. The fact that another committee brings together a similar but broader range of ministers does not mean that it will scrutinise proposals in the same way, and with an appropriate focus on the impact of proposals on the constitution as a whole. We would welcome an explanation from the UK Government as to how the focus on the *constitutional* elements of policy that should have been the remit of the Constitution Reform Cabinet Committee has been integrated into the work of the Home Affairs Cabinet Committee. (Paragraph 345)

### *Secession referendums*

65. The constitution being a reserved matter, provision for any future referendum on an issue as fundamental to the Union as the secession of one of its four nations should be set out in primary legislation by the UK Parliament. This will enable proper scrutiny by representatives of all four nations. (Paragraph 351)

### **England**

#### *English votes for English laws*

66. We have committed to undertake a review of the impact of the English votes for English laws (‘EVEL’) procedures and their constitutional implications for the Union. We will therefore publish our conclusions about EVEL as part of that inquiry, which will feed into the UK Government’s planned review of the EVEL procedures later this year. (Paragraph 370)



*An English Parliament*

67. Given the relative size of England within the UK, the creation of an English Parliament would introduce a destabilising asymmetry of power to the Union. Meanwhile, creating a new legislature and administration covering 84% of the population that the UK institutions currently serve would not bring decision-making significantly closer to the people and communities of England. An English Parliament is not a viable option for the future of the governance of England. (Paragraph 376)

*English Regional Assemblies*

68. Elected regional assemblies are not currently an option being considered for devolution within England and are unlikely to gain any traction in the near future. Regional assemblies will not provide a realistic solution to the governance of England unless a coherent strategy were to be brought forward implementing regional assemblies across England and making appropriate changes to the UK's constitution and existing governance structures. (Paragraph 383)

*Local Government and 'devolution deals'*

69. We generally support the principle of decentralising power within England, and consequently we cautiously welcome the 'devolution deals'. (Paragraph 405)
70. We have concerns, however, about the apparent lack of consideration given to how these deals will affect the overall governance of England in the longer-term, and the wider territorial constitution of the UK. It is unclear whether the UK Government has a clear set of objectives in mind to guide the development of the 'devolution deals'. Clarity on these matters would not only help guide local government when they seek to reach agreement with the UK Government, but would also give Parliament a yardstick against which to measure the success of the UK Government's devolution agenda in the future. As with any development of devolution across the UK more generally, the UK Government should set out a vision of what it seeks to achieve with these reforms and where it envisages the process of 'devolution deals' will eventually lead. (Paragraph 406)
71. Notwithstanding the Minister's narrow definition of the meaning of "impose", it is clear that in the majority of cases the UK Government is imposing elected mayors on authorities which wish to take advantage of the UK Government's 'devolution deals'. In some cases, this will result in mayors being installed in areas that have previously rejected elected mayors in referendums. The UK Government should explain why they have seen fit to override the publicly expressed wishes of the electorate in this way. (Paragraph 412)
72. Earlier in this report we concluded that the benefits of tailoring devolution settlements to local circumstances outweighed the potential problems caused by asymmetry. Consequently, it would be more appropriate for a wider range of governance structures for combined authorities to be available for negotiation, rather than for the UK Government rigidly to apply a single model regardless of local circumstances and wishes. (Paragraph 413)

73. The speed with which the UK Government expects the ‘devolution deals’ process to proceed may impair the ability of some areas to put forward proposals, or to achieve the optimal deal for their area. (Paragraph 416)
74. Our apprehension about the speed with which the ‘devolution deals’ are being agreed is compounded by our concern that they will receive little parliamentary scrutiny, given that they will be enacted by secondary legislation under extremely broad powers delegated to the Secretary of State in the Cities and Local Government Devolution Act 2016. The breadth of delegated powers is something we have previously expressed concern about, both in this context and more generally. (Paragraph 417)
75. The lack of public and community engagement around the ‘devolution deals’ is a weakness in the current policy for the governance of England. There should be a requirement for informing and engaging local citizens and civil society in areas bidding for and negotiating ‘devolution deals’. Local politicians seeking ‘devolution deals’ should lead this engagement. (Paragraph 423)
76. If public concerns about the governance of England are properly to be addressed, the UK Government, and individuals engaged in political activity at all levels, need to engage with the public on these issues and to understand their concerns. There needs to be a greater effort to understand what people and communities want from devolution or decentralisation. This requires far greater public engagement, both in general across England and in those areas seeking or agreeing greater powers, with real discussions about what those powers should be and by whom they should be exercised. (Paragraph 424)

#### *Devolution assessment process*

77. As with any proposals for further devolution to the devolved nations, when bringing forward proposals for devolution or decentralisation of power in England, the UK Government should produce a Devolution Impact Assessment. This would include a thorough analysis of the proposals, addressing (but not restricted to) the following elements:
- Whether and how the proposed devolution of powers is likely to lead to better policy outcomes for citizens in the area in question, and what evidence from previous national, regional or local devolution of powers supports that analysis;
  - Where the proposed devolution or decentralisation is not nation-wide, whether the benefits of the proposed devolution are particular to the area in question or could be applied to other similar areas or to local government more broadly;
  - The extent of public demand for the changes proposed, demonstrating suitable consultation with the public and civil society, including how consent be obtained (whether through a local referendum or through elected councillors, etc.);
  - At what level of government (UK, national, regional/combined authority or local authority) the powers in question would most effectively be exercised and why;

- An assessment of the implications for the future funding of the area in question and any effects that may have on the funding of local authorities in the region and across England;
- Whether the proposed changes would provide a coherent set of powers, both internally within the set of changes being considered and in combination with the powers already held at local/combined authority level, including a clear statement of the responsibilities of each level of government to enable greater accountability. It should also set out clearly the chain of responsibility for exercising the proposed powers;
- An assessment of the proposals against the list of core responsibilities (as recommended in Chapter 5) to ensure that the proposals will not impact negatively on the cohesiveness of the Union;
- An assessment of the UK-wide implications and impact of the proposals, including any cross-border or bilateral arrangements that might be needed as a result; and
- An assessment of the likely start-up and administrative costs of the change for the region or local authority and for the UK. (Paragraph 427)

*An answer to the English Question?*

78. The English Question encompasses both concerns about the representation of England within the Union, and about the devolution or decentralisation of power within England. Part of the reason that the English Question remains unanswered is that nobody has yet put forward a solution, or set of solutions, that provide a coherent answer to both facets of the Question, and that are likely to command political and public support. (Paragraph 428)
79. The approach the UK Government has taken to addressing public concerns over the representation of England within the Union, English votes for English laws, is (when asked) the English public's preferred approach. It was, however, viewed unfavourably by a number of our witnesses, including many of those representing the devolved nations. Likewise, the UK Government's 'devolution deals' may address some of the concerns about the centralisation of power within England—but without a clear vision of where the process might lead it is hard to tell to what extent. (Paragraph 429)
80. It is too soon to know whether EVEL and the 'devolution deals', separately or in combination, will provide an answer to the English Question. What is clear is that the English Question remains one of the central unresolved issues facing decision-makers grappling with the UK's territorial constitution. (Paragraph 430)

## ANNEX A: THE DEVELOPMENT OF DEVOLUTION IN THE UK SINCE 1922

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1. In Chapter 2, we gave a brief history of the Union as it developed into its modern form. In this Annex, we set out a further brief history of devolution across the UK since what is now the Republic of Ireland left the Union in 1922. We focus in particular on the development of the devolution settlements since 1997.

### Devolution prior to the 1990s

#### *Northern Ireland*

2. Northern Ireland's history in the Union since 1922 has been markedly different from those of the other nations. From the start of its existence it had a devolved Parliament and Government. Importantly, though, as Professor Arthur Aughey, Professor of Politics, University of Ulster, told us:

“The legitimacy of Northern Ireland as a part of the Union has been challenged at three distinct but interrelated levels: first, politically; secondly, constitutionally [as the Republic of Ireland's constitution sought reunification]; and, thirdly, as of course we have experienced over the last quarter of a century, violently.”<sup>589</sup>

3. After southern Ireland became an independent dominion in 1922, Northern Ireland continued in the Union governed by the powerful devolved government and legislature established by the Government of Ireland Act 1920. By the late 1960s, civil rights protests over the Northern Irish Government's failure to address discrimination against Catholics had turned into violent confrontation. British Army troops were deployed in an attempt to restore order, but the violence continued. In 1972, the UK Parliament suspended devolution and restored direct rule. Inter-communal relations, the violence and legacy of the Troubles, and relations with the Republic of Ireland, have shaped Northern Ireland's history and continue to dominate its politics.

#### *Great Britain*

4. Against a background of growing concern that the UK Government and Parliament were not dealing effectively with economic difficulties in Scotland and Wales (allied to linguistic grievances in Wales), and in light of the growing electoral appeal of nationalist parties, Labour and the Conservatives both explored the potential for devolution. In the ‘Declaration of Perth’, Conservative Leader Edward Heath declared his party's support for devolution and set up a committee on the subject that brought forward proposals for a devolved Scottish Assembly. Meanwhile, the Labour Government set up a Royal Commission on the Constitution in 1969, known as the Kilbrandon Commission.<sup>590</sup> A majority of its members favoured the creation of Scottish and Welsh assemblies with legislative powers, elected by proportional representation, and the creation in England of “regional co-ordinating and advisory councils, partly indirectly elected by the local authorities and partly nominated.”<sup>591</sup>

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589 Q 299

590 After Lord Kilbrandon, who chaired the Commission following the death of Lord Crowther in 1972.

591 Kilbrandon Report, Chs 24-25. These are the main recommendations, they were not unanimous and other proposals are also recorded in the report.

5. Scotland and Wales Acts were passed in 1978 providing for the creation of devolved institutions. They required approval through a referendum with a threshold of 40% of electors voting in favour. The Scottish Assembly would have limited primary legislation powers, and the Welsh Assembly only executive functions and no separate government. In 1979, referendums were held in which Wales gave a clear ‘no’ vote. In Scotland, meanwhile, 51.6% voted in favour of devolution but while achieving a majority, this was below the threshold of 40% of the electorate.<sup>592</sup> Neither assembly was created.
6. Supporters of devolution continued to campaign and to make progress during the 1980s and 1990s, with the early introduction of the Community Charge (‘poll tax’) in Scotland adding impetus to the campaign. The most prominent part of this campaign was the Scottish Constitutional Convention, which began in 1989 by signing a ‘Claim of Right’<sup>593</sup> and in 1995 published detailed proposals for a Scottish Parliament.<sup>594</sup>

## The modern devolution settlements

### *The creation of the devolved institutions*

7. Referendums on devolution to Scotland and Wales were held once again in 1997. In Scotland, the referendum process gave clear approval for a Scottish Parliament with the power to vary tax rates. The Parliament came into being in 1999; it had a reserved-powers model,<sup>595</sup> the power to make primary legislation, and the ability to vary income tax by up to three pence in the pound.
8. Following a narrow vote in favour of devolution in the Welsh referendum, the National Assembly for Wales was also created in 1999. It had only secondary legislative power (meaning that primary legislation for Wales continued to be passed by the UK Parliament), a conferred powers model of devolution,<sup>596</sup> and an Executive that was a committee of the Assembly rather than a separate entity. Tax-varying powers were not offered in the referendum on Welsh devolution.
9. In 1998 a referendum in Northern Ireland ratified the Belfast Agreement, or the Good Friday Agreement, which brought an end to the Troubles and returned devolved rule in Northern Ireland. The Agreement contained three strands reflecting the unique cross-community and cross-border nature of the settlement:<sup>597</sup> a new Northern Ireland Assembly and power-sharing Executive; an institutional relationship with the Republic of Ireland in the North-South Ministerial Council; and new East-West institutions in the

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592 It was instead only 32.9% of the electorate. Calman Commission, *Serving Scotland Better*, para 1.76-77. The referendum result in Wales was 79.7% ‘no’ to 20.3% ‘yes’.

593 This asserts “the sovereign right of the Scottish people to determine the form of government best suited to their needs.”

594 The main organisations involved in the Convention were the Labour Party, Liberal Democrats, Scottish Green Party, trade unions including the Scottish Trade Union Congress, local government, the Church of Scotland and other organisations from Scottish civil society. Calman Commission, *Serving Scotland Better*, paras 1.76-77

595 Whereby those powers reserved to the UK Parliament were set out in Schedules to the Scotland Act 1998, giving the Scottish Parliament control of all non-reserved matters.

596 Whereby only powers explicitly listed in the Government of Wales Act 1998 were devolved.

597 Written evidence from Dr Andrew Blick ([UDE0029](#))

British-Irish Council to improve relationships and co-operation across the British Isles,<sup>598</sup> and the British-Irish Intergovernmental Conference.<sup>599</sup>

10. Akash Paun of the Institute for Government told us that the UK Government's approach to devolving power "was to try to change as little as possible of the pre-1999 administrative devolution arrangements."<sup>600</sup> The new Scottish and Welsh institutions largely took over the responsibilities of the Scottish and Welsh Offices.<sup>601</sup> The Northern Irish Assembly and Executive, in turn, inherited the extensive powers of the old Parliament and Government including the tripartite structure of 'reserved', 'excepted' and 'devolved' powers.<sup>602</sup>
11. Notably less attention was paid at that time to English governance. Regional Development Agencies were established and unelected regional chambers promoted as part of a regional policy for England, but there was no institutional recognition of England itself. An attempt to create devolved institutions in England's regions saw a directly-elected mayor and Assembly created for London (after a referendum in 1998) and, in 2002, a proposal for elected regional assemblies. The only referendum under these proposals produced a resounding 'no' vote from the people of the North East region in 2004 in response to what we were told was a "half-baked" proposal lacking in clear political support.<sup>603</sup>

### *The continuing evolution of devolution*

12. The devolution settlements have evolved since 1999. In Wales, the Government of Wales Act 2006 separated the Government and Assembly and—following another referendum in 2011—gave the Assembly the power to make primary legislation. Two reports from the Commission on Devolution in Wales (the Silk Commission) have led to the Wales Act 2014 and the draft Wales Bill published in 2015.<sup>604</sup> While some of the changes proposed are controversial, they would—if and when fully enacted—provide the Assembly with tax-varying powers; the capacity to alter its composition and the franchise for its elections; and a reserved-powers model akin to that used in Scotland.
13. The Commission on Scottish Devolution (the Calman Commission) reported in 2009.<sup>605</sup> Many of the Commission's recommendations were reflected in the Scotland Act 2012, including an increase in the Scottish Parliament's control of income tax that came into effect in April 2016. Those changes were, to some extent, overtaken by events. During the independence

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598 Made up of the governments and administrations of the Republic of Ireland, the UK, Northern Ireland, Scotland, Wales, the Isle of Man, Jersey and Guernsey.

599 Northern Ireland Office, *The Belfast Agreement* (10 April 1998): [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/136652/agreement.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/136652/agreement.pdf) [accessed 9 May 2016]

600 [Q 32](#)

601 The London-based parts of those departments became the modern Scotland and Wales Offices.

602 [Q 303](#) (Professor Derek Birrell)

603 [Q 38](#) (Peter Riddell).

604 Silk Commission, *Empowerment and Responsibility: Financial Powers to Strengthen Wales* (November 2012): <http://webarchive.nationalarchives.gov.uk/20140605075122/http://commissionondevolutioninwales.independent.gov.uk/> [accessed 9 May 2016], and *Legislative Powers to Strengthen Wales*. The draft Bill was the result of the 'St David's Day Agreement', which reviewed the recommendations of the Silk Commission's report *Legislative Powers to Strengthen Wales* and the applicability to Wales of the Smith Commission's recommendations relating to Scottish devolution (See Wales Office, *Powers for a purpose: Towards a lasting devolution settlement for Wales* (27 February 2016): [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/408587/47683\\_CM9020\\_ENGLISH.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/408587/47683_CM9020_ENGLISH.pdf) [accessed 9 May 2016]).

605 Calman Commission, *Serving Scotland Better*, para 1.1

referendum campaign in 2014 the pro-Union parties promised a further devolution of power to Scotland. That promise, encapsulated in ‘the Vow’ made by the party leaders and published on the front of the *Daily Record* on 16 September 2014,<sup>606</sup> resulted in the convening of the cross-party Smith Commission following the referendum. The Commission produced a set of proposals for further devolution in only two months,<sup>607</sup> following which the UK Government published draft clauses in early 2015 before introducing a Scotland Bill in May 2015.

14. Our report on the draft clauses expressed our concern that the process did not allow for proper consultation and engagement with the UK and Scottish Parliaments. Nor did the Smith Commission process meet the standards expected for the production of proposals for constitutional change.<sup>608</sup> Nonetheless, the Scotland Act 2016 received Royal Assent on 23 March 2016. The Act provides for significant further devolution, including almost full control of income tax and significant powers over welfare.
15. The history of Northern Irish devolution since 1998 has been far more difficult than in Scotland or Wales, again reflecting its particular history and circumstances. One witness told us that members of his organisation in Northern Ireland described the devolution arrangements as “more like a peace treaty than a proper devolution deal. The process is more about keeping warring factions at arm’s length than proper devolution.”<sup>609</sup> Professor Aughey told us that Northern Ireland politics was “almost in political neutral. The engine is revving and there is a lot of activity going on. It is using precious fuel, but in some ways the engine is not engaged and major issues are not addressed within the institutions”.<sup>610</sup>
16. Issues around the legacy of the Troubles and, more recently, debates around welfare have strained relations in the power-sharing Executive. Devolved rule was suspended sporadically in 2000–2001 then completely from 2002 until 2007. A breakdown was again feared in late 2014, but was averted after talks that resulted in the Stormont House Agreement.<sup>611</sup> Further problems over the welfare changes and alleged activity by the Provisional IRA saw most of the leadership of the Democratic Unionist Party resign temporarily from the Executive, including then First Minister Peter Robinson MLA in September 2015. The situation was resolved in November 2015 with a ‘Fresh Start’ agreement.<sup>612</sup> As Democratic Unionist Party MLA and Minister Lord Morrow told us, “The issue of political stability in Northern Ireland is one which must still be taken into consideration.”<sup>613</sup>

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606 ‘David Cameron, Ed Miliband and Nick Clegg sign joint historic promise which guarantees more devolved powers for Scotland and protection of NHS if we vote No’, *Daily Record* (16 September 2014): <http://www.dailyrecord.co.uk/news/politics/david-cameron-ed-miliband-nick-4265992#pDGgQRR38gyJWoDQ.97> [accessed 7 April 2016]

607 Smith Commission, Report

608 Constitution Committee, *Proposals for the devolution of further powers to Scotland*; see also [Q 270](#) (Professor Richard Rawlings)

609 [Q 188](#) (Martin McTague)

610 [Q 301](#)

611 Northern Ireland Office, *Stormont House Agreement* (December 2014): <https://www.gov.uk/government/publications/the-stormont-house-agreement> [accessed 9 May 2016]

612 Northern Ireland Office, ‘A fresh start for Northern Ireland’ (17 November 2015): <https://www.gov.uk/government/news/a-fresh-start-for-northern-ireland> [accessed 7 March 2016]

613 Written evidence from Lord Morrow ([UDE0068](#))

## ANNEX B: DRAFT CHARTER OF THE UNION FROM THE BINGHAM CENTRE FOR THE RULE OF LAW

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### Draft Charter of the Union with explanatory notes

Sir Jeffrey Jowell QC with the assistance of former Parliamentary Counsel Daniel Greenberg

Based on the Report, *A Constitutional Crossroads: Ways Forward for the United Kingdom* (May, 2015) drafted for the Bingham Centre for the Rule of Law by a commission consisting of Sir Jeffrey Jowell QC (Chair), Professor Linda Colley, Gerald Holtham, Professor John Kay, Sir Maurice Kay, Professor Monica McWilliams, Professor Emerita Elizabeth Meehan, Philip Stephens, Professor Adam Tomkins (Rapporteur), Professor Tony Travers & Alan Trench (Advisor)

[www.binghamcentre.biicl.org](http://www.binghamcentre.biicl.org)

### A BILL TO

Lay down the fundamental principles of the United Kingdom's constitution in relation to devolution to its constituent nations and parts.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

#### 1 Purpose of Charter

- (1) The purpose of this Act is to enact a Charter of the Union setting out the fundamental principles governing the allocation of powers and constitutional relationships between the United Kingdom and its constituent nations and parts.
- (2) Any enactment (whether passed before or after this Act) is subject to the fundamental principles.
- (3) Accordingly, the following are to have regard to the fundamental principles wherever relevant—
  - (a) the courts,
  - (b) public authorities, and
  - (c) the devolved legislatures.

#### 2 The fundamental principles

The Union of the UK nations and parts is based on the following fundamental principles—

1. That the United Kingdom is a voluntary union of the UK nations and parts expressed through informed and democratic processes.
2. That each UK nation and part should have a form of government which respects the cultural characteristics and identities of its people.
3. That each UK government should have powers that reflect the principles of autonomy and subsidiarity to the extent that they are best suited to providing for the particular needs of its people.



4. That self-government, through devolution or otherwise, is an option that should not be imposed on any UK nation or part that has not expressed a majority wish for it.
5. That the United Kingdom and the UK nations and parts share a commitment to democracy, the rule of law, equality and the protection of human rights and freedoms throughout the United Kingdom.
6. That respect for the rule of law (including transparency, accessibility and certainty) must be reflected in all inter-governmental processes of the United Kingdom and of each UK nation and part.
7. That the Government of the United Kingdom is accountable to Parliament, and the devolved governments are accountable to the devolved legislatures.
8. That the United Kingdom takes collective responsibility for the defence and security of the people.
9. That the United Kingdom and the UK nations and parts constitute a single market, with a single currency and a common macro-economic framework.
10. That the United Kingdom and the UK nations and parts are committed to a fair pooling of resources, such that each government has sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation.
11. That the United Kingdom and the UK nations and parts are committed to the sharing of risks so that the burden of adversities falling on one nation or part is shared by the others.
12. That the Government of the United Kingdom and the devolved governments should cooperate with each other in a spirit of trust, fair dealing and good faith.

### **3 Consent by referendum**

- (1) A UK nation or part shall not leave the United Kingdom except on the basis of a referendum of the people of that UK nation or part held in accordance with the provisions of the Political Parties, Elections and Referendums Act 2000.
- (2) A devolved government of a UK nation or part may initiate a referendum to ask whether the people of that nation or part wish to leave the United Kingdom.
- (3) A referendum under subsection (2) (a “secession referendum”) may not be held less than 15 years after the holding of a previous secession referendum for that nation or part.

### **4 The courts**

- (1) A selection commission for the Supreme Court convened under section 26 of the Constitutional Reform Act 2005 must take account of the importance of ensuring that the court—
  - (a) represents each of the UK nations and parts; and

- (b) has the necessary authority and experience for the resolution of disputes between the Government of the United Kingdom and the UK nations and parts, or between UK nations or parts, in accordance with the fundamental principles in section 2.
- (2) Acts of the devolved legislatures shall be construed in accordance with the fundamental principles of the United Kingdom (and in a manner that respects the national status of each legislature).

## 5 Interpretation

- (1) A reference in this Act to the nations and parts of the United Kingdom is a reference to—
  - (a) England;
  - (b) Scotland;
  - (c) Wales;
  - (d) Northern Ireland; and
  - (e) any other area which is given devolved powers of government under an enactment.
- (2) The “devolved governments” are—
  - (a) the Scottish Government;
  - (b) the Welsh Government; and
  - (c) the Northern Ireland Executive.
- (3) The “devolved legislatures” are—
  - (a) the Scottish Parliament;
  - (b) the National Assembly for Wales; and
  - (c) the Northern Ireland Assembly.
- (4) A “public authority” is any authority exercising functions of a public nature in the United Kingdom or in a UK nation or part (including Ministers and government departments).

## 6 Technical provision

- (1) This Act extends to the whole of the United Kingdom.
- (2) This Act comes into force on Royal Assent.
- (3) This Act may be cited as the Charter of the Union 2016.

## Charter of the Union Bill explanatory notes

### Introduction

- 1. These Notes accompany the Bingham Centre for the Rule of Law’s Draft Charter of the Union Bill and are designed to help the reader to understand the purpose and effect of the draft Bill.

## The Report

2. The purpose of the draft Bill is to show how legislation could give effect to the recommendations in *A Constitutional Crossroads—Ways Forward for the United Kingdom*<sup>614</sup> (“the Report”) relating to a new Charter of the Union.
3. The Report identifies a series of principles of union constitutionalism which it argues should be codified in a new Charter of the Union. Although not possessing the entrenched framework of a written constitution, the Charter of the Union would guide the allocation of powers within the UK and the constitutional relationships within and between the centre and the constituent nations and parts.
4. The principal discussion of the new Charter is to be found in Chapter 4 of the Report.

## Pre-legislative consent

5. Both principle and practical politics require that before the draft Charter were presented to the Westminster Parliament it would be necessary to secure the substantive consensus and formal support of the devolved legislatures and administrations.
6. Accordingly it is proposed that something along the lines of the Legislative Consent procedures in each of the devolved legislatures would be applied to consideration and approval of a draft of this Charter, before it were introduced into the Westminster Parliament.

## Clause 1

### *Purpose of Charter*

7. Clause 1 provides that the purpose of the resultant Act would be to enact a Charter of the Union setting out the fundamental principles governing the allocation of powers and constitutional relationships between the United Kingdom and its constituent nations and parts.
8. The fundamental principles are entrenched by provision in Clause 1(2) expressly making any enactment, whether passed before or after the Charter, subject to them. This would provide a degree of permanence to our devolution arrangements within the limits of Parliamentary sovereignty, similar to the entrenching approach taken to other “constitutional statutes”<sup>615</sup>, including the European Communities Act 1972 and the Human Rights Act 1998. Clause 1(3) includes an express requirement for the courts, public authorities and the devolved legislatures to have regard to the fundamental principles wherever relevant.
9. A number of recommendations in the Report are not dealt with in this Draft Charter but they accord implicitly with the implementation of the fundamental principles. For example—
  - (a) the principles of certainty and transparency also suggest that there should be a clear enactment that the UK Parliament does not legislate

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614 Bingham Centre for the Rule of Law, British Institute of International and Comparative Law, May 2015

615 Which are protected from at least implied repeal – see *Thoburn v Sunderland City Council* [2002] EWHC 195 (Admin) (the “Metric Martyrs” case) and *R. (on the application of Buckinghamshire CC) v Secretary of State for Transport* [2014] UKSC 3 (the HS2 case).

- on devolved matters without the consent of the devolved legislature, rather than addressing this issue by means of an informal convention (the “Sewel Convention”) (Chapter 3 of the Report);
- (b) the principles of equality and autonomy would govern the requirement that Scottish MPs do not vote on matters affecting England alone (Chapter 5 of the Report).
10. The fundamental principles are equally applicable in relation to regional devolution in England (or elsewhere); and legislation providing for regional devolution would be expected to apply these principles.

### *Clause 2*

#### *The fundamental principles*

11. Clause 2 sets out the fundamental principles which constitute the basis of the Union of the four parts of the United Kingdom. The principles are drawn directly from Chapter 4 of the Report.
12. Principles 1 to 4 express the voluntary nature of the Union, with each component part being entitled to a form of government which respects the cultural characteristics and identities of its people and is most responsive to its needs in accordance with the principles of autonomy and subsidiarity.
13. Principles 5 declares democracy, the rule of law, equality and fundamental rights and freedoms as inherent in the constitution of the United Kingdom and the constituent nations and parts. Principle 6 requires features of the rule of law to guide the processes of inter-governmental arrangements, replacing the uncertain and un-transparent arrangements that now exist (Chapter 2 of the Report).
14. Principle 7 entrenches executive responsibility to the legislature on the part of both HM Government and the devolved governments.
15. Principle 8 identifies defence and security as key objectives of the Union.
16. Principles 9 to 11 set out the economic principles of the Union, based on a single market and the fair pooling of resources and sharing of risks.
17. Principle 12 establishes a fundamental principle of fair dealing between the UK governments.

### *Clause 3*

#### *Consent by referendum*

18. The Report says<sup>616</sup>: “The principle of consent is of cardinal importance. The United Kingdom is a voluntary union of nations. The means by which each nation may express what the Scottish Claim of Right called the “sovereign will” of its people is, in the modern era, the referendum.” Clause 3(1) accordingly establishes the principle that a part of the United Kingdom should not leave except on the basis of a referendum.
19. The responsibility for arranging for a secession referendum would fall on the relevant devolved government, in accordance with clause 3(2). But the Report was concerned that “It is important that referendums do not become ‘neverendums’ in which the same question is repeatedly put to the electorate

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616 Paragraph 4.2

until the ‘correct’ answer is returned.”; so clause 3(3) provides that secession referendums may not be held more frequently than once in 15 years.

#### *Clause 4*

##### *The courts*

20. Clause 4 turns to the way in which the principles may ultimately be enforced through the courts. The Report recommended<sup>617</sup> “that the Supreme Court give careful consideration to whether devolution appeals should ordinarily be heard by enlarged panels of seven or nine Justices, to include judges from Scotland, from Northern Ireland, from England and Wales and, as Welsh law may increasingly diverge from English law, from Wales”.
21. In order to ensure that this recommendation can be implemented, clause 4(1) requires Supreme Court selection commissions (which appoint judges when vacancies arise) to take account of the importance of ensuring that the Supreme Court represents each of the UK nations and parts, and has the necessary authority and experience for the resolution of disputes between the UK Government and the UK nations and parts, or between the UK nations or parts. (That could include, in practice, ensuring that a case turning on Scots law was decided by a Bench with a majority of judges whose professional and judicial practice has been in Scots law.)
22. The Report also recommended<sup>618</sup> that “In anticipation of the Supreme Court playing a larger part in the adjudication of our territorial system, ... legislation ... set out principles to guide judicial interpretation of the extent of the devolved authorities’ powers as plenary law-maker”. For this purpose clause 4(2) requires Acts of the devolved legislatures to be construed in accordance with the fundamental principles of the United Kingdom and in a manner that respects the national status of each legislature.

#### *Clause 5*

##### *Interpretation*

23. The definition in clause 5(1) of “the nations and parts of the United Kingdom” is designed to reflect the fact that not all the parts of the United Kingdom presently necessarily see themselves as having separate nation status.
24. Paragraph (e) of the definition also ensures that any regions or areas which acquire devolved government are regulated in their relationship with the remainder of the United Kingdom by the same principles as determine the relationship between the existing parts.
25. Were a decision taken to establish an English Parliament and an English Government, they would need to be added to the lists in clause 5(2) and (3).

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617 Paragraph 3.3

618 Paragraph 3.3

## APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

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### Members

Lord Brennan  
 Lord Cullen of Whitekirk  
 Baroness Dean of Thornton Le Fylde  
 Lord Hunt of Wirral  
 Lord Judge  
 Lord Lang of Monkton (Chairman)  
 Lord Lester of Herne Hill  
 Lord MacLennan of Rogart  
 Lord MacGregor of Pulham Market  
 Lord Morgan  
 Lord Norton of Louth  
 Baroness Taylor of Bolton

### Declarations of interest

Lord Brennan  
*No relevant interests declared*

Lord Cullen of Whitekirk  
*No relevant interests declared*

Baroness Dean of Thornton-le-Fylde  
*Member, Business and Oversight Board of the Law Society*

Lord Hunt of Wirral  
*Partner, DAC Beachcroft LLP (Solicitors)*  
*Chair, Society of Conservative Lawyers*

Lord Judge  
*As Chief Surveillance Commissioner, I have identical responsibilities in England and Wales, Scotland and Northern Ireland. The appointment is made jointly by the Prime Minister and the Scottish First Minister*

Lord Lang of Monkton (Chairman)  
*No relevant interests declared*

Lord Lester of Herne Hill  
*Bingham Institute Advisory Council*

Lord MacGregor of Pulham Market  
*No relevant interests declared*

Lord MacLennan of Rogart  
*CAP funding for a working farm in Caithness*

Lord Morgan  
*Fellow, Institute for Welsh Affairs*  
*Former Vice Chancellor, University of Wales*  
*Member, Kings College Research Group which produced “Towards a new Magna Carta”, 2014*  
*Council Member, Constitution Unit, UCL*  
*Member ‘Prospect’ Group on Constitutional Reform*  
*Author of many books, chapters and occasional papers on Constitutional matters, notably “Revolution to Devolution” (University of Wales Press, 2014)*  
*Have given evidence to Welsh Assembly Committees & Richard Committee*  
*Wife is a French Constitutional lawyer who writes, inter alia, on devolution*

Lord Norton of Louth

*Chairman, Commission to Strengthen Parliament (2000)*

*Member, Hull Independent Commission of Inquiry into effective government in Hull and East Riding [reported Jan 2016]*

*Author of many books, chapters and occasional papers on constitutional matters*

Baroness Taylor of Bolton

*No relevant interests declared*

A full list of members' interests can be found in the Register of Lords' Interests:

<http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/>

Professor Mark Elliott, Professor of Public Law at the University of Cambridge, and Professor Stephen Tierney, Professor of Constitutional Theory at the University of Edinburgh, are the legal advisers to the Committee. They both declared no relevant interests.

## APPENDIX 2: LIST OF WITNESSES

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Evidence is published online at <http://www.parliament.uk/union-and-devolution> and available for inspection at the Parliamentary Archives (020 7219 5314).

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

### Oral evidence in chronological order

**	Professor Adam Tomkins, University of Glasgow	<a href="#">QQ 1–9</a>
**	Professor Sir Jeffrey Jowell QC, Bingham Centre on the Rule of Law	
**	Professor Robert Hazell, University College London	<a href="#">QQ 10–17</a>
*	Sir Paul Silk, former Chairman of the Commission on Devolution in Wales	<a href="#">QQ 18–31</a>
*	Sir Kenneth Calman, former Chairman of the Commission on Scottish Devolution	
**	Rt Hon. Peter Riddell, Director of the Institute for Government	<a href="#">QQ 32–43</a>
**	Akash Paun, Fellow, Institute for Government	
*	Professor Charlie Jeffery, University of Edinburgh	<a href="#">QQ 44–56</a>
*	Professor Jim Gallagher, Nuffield College, University of Oxford	
*	Professor Alan Trench, University of Ulster	
**	Professor John Curtice, University of Strathclyde	<a href="#">QQ 57–67</a>
**	Dr Jan Eichhorn, University of Edinburgh	
**	Brendan Donnelly, Director of the Federal Trust for Education and Research	<a href="#">QQ 68–82</a>
*	Alexandra Runswick, Director of Unlock Democracy	
**	Professor Ailsa Henderson, University of Edinburgh	<a href="#">QQ 83–92</a>
**	Professor Nicola McEwen, University of Edinburgh	
**	Alun Evans, former Director of the Scotland Office	<a href="#">QQ 93–99</a>
*	Professor Philip Booth, Institute for Economic Affairs	<a href="#">QQ 100–104</a>
*	Ed Cox, Institute for Public Policy Research	<a href="#">QQ 105–114</a>
**	Scilla Cullen, Campaign for an English Parliament	<a href="#">QQ 115–122</a>
**	Councillor Julian German, Campaign for a Cornish Assembly	
*	Fiona Hyslop MSP, Cabinet Secretary for Culture, Europe and External Affairs, Scottish National Party	<a href="#">QQ 123–133</a>



	Ken Thomson, Director-General Strategy and External Affairs, Scottish Government	
*	Claire Baker MSP, Scottish Labour Party	<a href="#">QQ 134–140</a>
*	Baroness Goldie MSP, Scottish Conservatives	
*	Maggie Chapman, Scottish Green Party	
*	Councillor Robert Brown, Scottish Liberal Democrats	
*	Sir John Elvidge, former Permanent Secretary to the Scottish Government	<a href="#">QQ 141–148</a>
**	Professor Michael Keating, University of Aberdeen	<a href="#">QQ 149–159</a>
*	Professor James Mitchell, University of Edinburgh	
*	Professor Neil Walker, University of Edinburgh	
*	Willie Sullivan, Director of Electoral Reform Society Scotland	<a href="#">QQ 160–167</a>
*	Owen Kelly, Chief Executive, Scottish Financial Enterprise	<a href="#">QQ 168–174</a>
*	Garry Clark, Head of Policy and Research, Scottish Chambers of Commerce	
*	Martin Sime, Chief Executive, Scottish Council for Voluntary Organisations	<a href="#">QQ 175–179</a>
**	Stephen Herring, Head of Taxation, Institute of Directors	<a href="#">QQ 180–189</a>
*	Martin McTague, National Policy Vice Chairman, Federation of Small Businesses	
*	Sir Richard Leese, Core Cities	<a href="#">QQ 190–201</a>
*	Lord Porter of Spalding, Chairman, Local Government Association	
**	Lord Salisbury, Constitution Reform Group	<a href="#">QQ 202–210</a>
**	Lord Hain, Constitution Reform Group	
**	Daniel Greenberg, Constitution Reform Group	
*	Paul Nowak, Assistant General Secretary, Trades Union Congress	<a href="#">QQ 211–218</a>
*	Tony Armstrong, Chief Executive, Locality	
**	Professor Matthew Flinders, Sheffield University	<a href="#">QQ 219–225</a>
*	Katie Ghose, Chief Executive, Electoral Reform Society	
*	Lord O’Donnell, Former Head of the Civil Service	<a href="#">QQ 226–241</a>
*	Lord Kerslake, Former Head of the Civil Service	
**	Rt Hon Carwyn Jones AM, First Minister of Wales	<a href="#">QQ 242–254</a>

- \*\* Dr Hugh Rawlings, Director, Constitution Affairs and Inter-Governmental Relations, Welsh Government
- \* Andrew RT Davies AM, Welsh Conservatives [QQ 255–263](#)
- \* Kirsty Williams AM, Welsh Liberal Democrats
- \* Leanne Wood AM, Plaid Cymru
- \*\* Professor Richard Rawlings, University College London [QQ 264–273](#)
- \* Professor Robert Thomas, University of Manchester
- \* Dr David S Moon, University of Bath
- \* Jessica Blair, Institute of Welsh Affairs [QQ 274–280](#)
- \* Dr Victoria Winckler, Bevan Foundation
- \* Ben Cottam, Federation of Small Businesses in Wales [QQ 281–288](#)
- \* Steve Thomas, Welsh Local Government Association
- \* Lord Empey, Ulster Unionist Party [QQ 289–298](#)
- \*\* Professor Arthur Aughey, University of Ulster [QQ 299–304](#)
- \*\* Professor Derek Birrell, University of Ulster
- \* Professor Colin Harvey, Queen’s University, Belfast
- \* Mark Durkan MP, Social Democratic and Labour Party [QQ 305–311](#)
- \*\* Rt Hon Oliver Letwin MP, Chancellor of the Duchy of Lancaster [QQ 312–327](#)

### **Alphabetical list of all witnesses**

- A Force for Good [UDE0023](#)
- \* Tony Armstrong, Locality (QQ 211-218)
- \*\* Professor Arthur Aughey, Ulster University (QQ 299-304) [UDE0003](#)
- \* Clare Baker MSP, Scottish Labour Party (QQ 134-140)
- John Bingley [UDE0047](#)
- \*\* Professor Derek Birrell, Ulster University (QQ 299-304) [UDE0052](#)  
[UDE0071](#)
- \* Jessica Blair, Institute of Welsh Affairs (QQ 274-280)
- Dr Andrew Blick [UDE0029](#)
- \* Professor Philip Booth, Institute of Economic Affairs (QQ 100-104)
- The British Academy [UDE0037](#)

- \* Councillor Robert Brown, Scottish Liberal Democrats (QQ 134-140)
- Dame Rosemary Butler AM, Presiding Officer, National Assembly for Wales [UDE0038](#)
- Peter John Cairns [UDE0049](#)
- \* Sir Kenneth Calman, Chairman of the Commission on Scottish Devolution (QQ 18-31)
- \* Garry Clark, Scottish Chambers of Commerce (QQ 168-174)
- \* Maggie Chapman, Scottish Green Party (QQ 134-140)
- Mr Stewart Connell [UDE0006](#)
- \*\* Constitution Reform Group (QQ 202-210) [UDE0045](#)
- [UDE0072](#)
- The Constitution Society [UDE0019](#)
- \* Ben Cottam, Federation of Small Businesses in Wales (QQ 281-288)
- \*\* Scilla Cullen, Campaign for an English Parliament (QQ 115-122) [UDE0012](#)
- \*\* Professor John Curtice, University of Strathclyde (QQ 57-67) [UDE0056](#)
- Dr Paolo Dardanelli, University of Kent [UDE0035](#)
- \* Andrew RT Davies AM, Welsh Conservatives (QQ 255-263)
- Professor Russell Deacon, Swansea University [UDE0020](#)
- \*\* Brendan Donnelly, the Federal Trust for Education and Research (QQ 68-82) [UDE0018](#)
- \* Mark Durkan MP, Social Democratic and Labour Party (QQ 305-311)
- \*\* Dr Jan Eichhorn, University of Edinburgh (QQ 57-67) [UDE0055](#)
- Ms Adrienne Elson [UDE0014](#)
- \* Sir John Elvidge, former Permanent Secretary to the Scottish Government (QQ 141-148)
- \* Lord Empey, Ulster Unionist Party (QQ 289-298)
- \*\* Alun Evans, former Director of the Scotland Office (QQ 93-99) [UDE0062](#)
- \*\* Professor Matthew Flinders, University of Sheffield (QQ 219-225) [UDE0067](#)
- \* Professor Jim Gallagher, Nuffield College, University of Oxford (QQ 44-56)

- \*\* Councillor Julian German, Campaign for a Cornish Assembly(QQ 115-122) [UDE0063](#)
- \* Katie Ghose, Electoral Reform Society (QQ 219-225)
- \* Baroness Goldie MSP, Scottish Conservatives (QQ 134-140)
- \*\* Daniel Greenberg, Constitution Reform Group (QQ 202-210) [UDE0045](#)  
[UDE0072](#)
- \*\* Lord Hain, Constitution Reform Group (QQ 202-210) [UDE0045](#)  
[UDE0072](#)
- Mr John Hartigan [UDE0013](#)
- \* Professor Colin Harvey, Queen's University Belfast (QQ 299-304)
- \*\* Professor Robert Hazell, Constitution Unit, University College London [UDE0054](#)
- \*\* Professor Ailsa Henderson, University of Edinburgh (QQ 83-92) [UDE0065](#)
- \*\* Stephen Herring, Institute of Directors (QQ 180-189) [UDE0064](#)  
Mr Ruairi Hipkin [UDE0002](#)
- \* Fiona Hyslop MSP, Cabinet Secretary for Culture, Europe and External Affairs, Scottish Government (QQ 123-133)
- Mr James Jeavons [UDE0016](#)
- \* Professor Charlie Jeffery, University of Edinburgh (QQ 44-56)
- \*\* Rt Hon. Carwyn Jones AM, First Minister of Wales (QQ 242-254) [UDE0024](#)
- \*\* Professor Sir Jeffery Jowell QC, Bingham Centre on the Rule of Law (QQ 1-9) [UDE0053](#)  
Justice for Wales [UDE0025](#)
- \*\* Professor Michael Keating, University of Aberdeen (QQ 149-159) [UDE0010](#)
- \* Owen Kelly, Scottish Financial Enterprise (QQ 168-174)
- \* Lord Kerslake, former Head of the Civil Service (QQ 226-241)
- Professor Colin Kidd, University of St Andrews [UDE0007](#)  
Professor Charles Lees, University of Bath [UDE0058](#)
- \* Sir Richard Leese, Core Cities, Manchester City Council (QQ 190-201)
- \*\* Rt Hon. Oliver Letwin MP, Chancellor of the Duchy of Lancaster (QQ 312-327) [UDE0070](#)

	Mr Christopher Luke	<a href="#">UDE0011</a>
	Dr Cormac Mac Amhlaigh, University of Edinburgh	<a href="#">UDE0036</a>
	Mr Ian Martlew	<a href="#">UDE0040</a>
**	Professor Nicola McEwen, University of Edinburgh (QQ83-92)	<a href="#">UDE0061</a>
*	Martin McTague, Federation of Small Businesses (QQ 180-189)	
	The Mile End Institute, Queen Mary University of London	<a href="#">UDE0042</a>
*	Professor James Mitchell, University of Edinburgh (QQ 149-159)	
*	Dr David S Moon, University of Bath (QQ 264-273)	
	Dame Gillian Morgan	<a href="#">UDE0066</a>
	Rt Hon. the Lord Morrow	<a href="#">UDE0068</a>
	Mr Colin Murray, Newcastle Law School	<a href="#">UDE0051</a>
	Mr Bill Noakes	<a href="#">UDE0026</a>
*	Paul Nowak, Trades Union Congress (QQ 211-218)	
*	Lord O'Donnell, former Head of the Civil Service (QQ 226-241)	
**	Akash Paun, Institute for Government (QQ 32-43)	<a href="#">UDE0048</a>
	Dr Bettina Petersohn, University of Swansea and Centre on Constitutional Change	<a href="#">UDE0004</a>
	Political Studies Association of the UK	<a href="#">UDE0033</a>
*	Lord Porter of Spalding, Local Government Association (QQ 190-201)	
**	Dr Hugh Rawlings, Director, Constitution Affairs and Inter-Governmental Relations, Welsh Government	<a href="#">UDE0024</a>
**	Professor Richard Rawlings, University College London (QQ 264-273)	<a href="#">UDE0009</a>
		<a href="#">UDE0022</a>
	Dr Carlotta Redi, Centre on Constitutional Change	<a href="#">UDE0044</a>
	ResPublica	<a href="#">UDE0039</a>
**	Rt Hon. Peter Riddell, Institute for Government (QQ 32-43)	<a href="#">UDE0048</a>
*	Alexandra Runswick, Unlock Democracy (QQ 68-82)	
**	Lord Salisbury, Constitution Reform Group (QQ 202-210)	<a href="#">UDE0045</a>
		<a href="#">UDE0072</a>
	Scotland in Union	<a href="#">UDE0017</a>
	Mr Paul Scott, University of Southampton	<a href="#">UDE0027</a>

	Professor Roger Scully, Cardiff University	<a href="#"><u>UDE0069</u></a>
	Mr Donald Shell	<a href="#"><u>UDE0030</u></a>
★	Sir Paul Silk, Chairman of the Commission on Devolution in Wales (QQ 18-31)	
★	Martin Sime, Scottish Council of Voluntary Organisations (QQ 175-179)	
	Mr Rolf Smith	<a href="#"><u>UDE0026</u></a>
	Society of Conservative Lawyers	<a href="#"><u>UDE0028</u></a>
★	Willie Sullivan, Electoral Reform Society (Scotland) (QQ 160-167)	
	Mr David B Taylor	<a href="#"><u>UDE0050</u></a>
★	Steve Thomas, Welsh Local Government Association (QQ 281-288)	
★	Ken Thomson, Director-General Strategy and External Affairs, Scottish Government (QQ 123-133)	
★	Professor Robert Thomas, University of Manchester (QQ 264-273)	
★★	Professor Adam Tomkins, University of Glasgow (QQ 1-9)	<a href="#"><u>UDE0021</u></a> <a href="#"><u>UDE0057</u></a>
★	Professor Alan Trench, University of Ulster (QQ 44-56)	
	United Against Separation	<a href="#"><u>UDE0046</u></a>
★	Professor Neil Walker, University of Edinburgh (QQ 149-159)	
	Dr Ben Wellings, Monash University, Australia	<a href="#"><u>UDE0032</u></a>
	The Welsh Government	<a href="#"><u>UDE0024</u></a>
★	Kirsty Williams AM, Welsh Liberal Democrats (QQ 255-263)	
★	Dr Victoria Winckler, Bevan Foundation (QQ 274-280)	
★	Leanne Wood AM, Plaid Cymru (QQ 255-263)	

### APPENDIX 3: CALL FOR EVIDENCE

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The House of Lords Constitution Committee, chaired by Lord Lang of Monkton, is conducting an inquiry on devolution in the United Kingdom.

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

The deadline for written evidence submissions is 5pm on Friday 2 October. Public hearings will be held from October 2015. The Committee will report to the House in 2016.

#### Background

Devolution has radically changed the way in which the United Kingdom is governed. It is now, in effect, a permanent feature of our constitution and marks the latest evolution of the structure of our country.

The UK is a ‘union state’ formed through the incorporation of Wales in 1536 and the Acts of Union between England and Scotland in 1707 and between Great Britain and Ireland in 1800. Since 1998 the process of devolving power from the centre to the regions and constituent nations of the UK has progressed apace. From the 1998 devolution Acts and the Good Friday Agreement to the current Scotland Bill and proposals for further devolution to Wales, extensive powers have been, and are still being, devolved to Scotland, Wales and Northern Ireland. While devolution has not been implemented wholesale in England, London has a directly-elected mayor and Assembly, and English local authorities are being offered considerable powers if they combine and adopt an elected-mayor model.

We are concerned that this devolution of powers has been the result of *ad hoc*, piecemeal change, rather than the result of a considered and coherent process that takes into account the needs of the Union as a whole. We warned in our March 2015 report, *Proposals for the devolution of further powers to Scotland*, that the lack of a coherent vision for the Union undermined the notion of an ‘enduring’ devolution settlement.<sup>619</sup> With Scotland voting in the 2014 referendum to remain part of the UK and little support elsewhere for ending the Union,<sup>620</sup> now is the time to consider how to establish a more stable settlement that will preserve and strengthen the Union as a whole.

Our inquiry will focus on two key themes. First, we are seeking to identify and articulate the principles that should underlie the existence and governance of the Union and the exercise of power, both centrally and by the devolved nations. Secondly, we are considering what practical steps could be taken to stabilise and strengthen the Union in line with those underlying principles.

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619 See Constitution Committee, *Proposals for the devolution of further powers to Scotland* (10th Report, Session 2014–15, HL Paper 145), paras 22–24.

620 A 2013 Ipsos Mori poll found that 65% of Northern Irish voters supported Northern Ireland remaining in the UK. A 2015 survey by ICM research found that, given a range of options, 6% of respondents in Wales supported independence, compared with 40% supporting further powers for the National Assembly.

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

### **Principles underlying the Union and devolution**

#### *The Union*

1. What are the essential characteristics of a nation state? Are these different for a state in which power is devolved and, if so, how?
2. What are the key principles underlying the Union between England, Wales, Scotland and Northern Ireland? Are there principles that are unique to the UK's Union?

*Some of the areas from which principles for the Union might be drawn include the economic and social union; the constitution; individual rights and the rule of law; European policy and foreign policy; and security and defence.*

#### *Devolution*

3. On what principles are the UK's devolution settlements based, or on what principles should they be based? Have principles emerged through the process of devolving power, or as power has been exercised by the devolved nations and regions?
4. Are there applicable examples from other countries with multi-level governance structures?

*Principles of devolution might include, for example, subsidiarity (that decisions should be made at the most local level practicable); reciprocity (a duty on all parts of the Union to work for the good of the whole); and representation.*

#### *Implementation*

5. How might these two sets of principles be embedded in the UK's constitution, or entrenched in the work of governments and legislatures across the UK?

### **Practical steps to strengthen the Union**

6. What is the effect on the Union of the asymmetry of the devolution settlement across the UK? What might be the impact of the further proposed devolution of powers to Scotland, Wales, Northern Ireland and English local government? Is the impact of asymmetry an issue that needs to be addressed? If so, how?
7. What might be the effect of devolving powers over taxation and welfare on the economic and social union within the UK? Are there measures that should be adopted to address the effects of the devolution of tax and welfare powers?
8. What other practical steps, both legislative and non-legislative, can be taken to stabilise or reinforce the Union? How should these be implemented?
9. Is the UK's current constitutional and legal structure able to provide a stable foundation for the devolution settlement? What changes might be necessary?

*Practical steps might include, for example, mechanisms to encourage legislatures and government to consider the good of the Union as a whole when developing policy; special arrangements for referendums of an existential nature; or measures to ensure thorough representation of all interested parties in policy-making at all levels of government in the UK.*