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10.25 am

Witnesses: Dr Philip Rycroft and Helen MacNamara

Members present

Lord Cullen of Whitekirk (Chairman)
 Lord Brennan
 Baroness Dean of Thornton-le-Fylde
 Baroness Falkner of Margravine
 Lord Goldsmith
 Lord Lexden
 Lord Powell of Bayswater
 Baroness Taylor of Bolton

Examination of Witnesses

Dr Philip Rycroft, Director General, Deputy Prime Minister's Office, and **Helen MacNamara**, Director of the Economic and Domestic Affairs Secretariat

Q17 The Chairman: Can I welcome you both, Dr Rycroft and Helen MacNamara, to this, the second session dealing with our study of inter-governmental relationships? I have to give an apology on behalf of Chairman, Lord Lang, who is not able to be here today because of another pressing engagement, and he has asked me to chair the session in his place. The proceedings will of course be broadcast in the usual way. To begin with, in order to put the Committee and others in the picture as to what you do respectively, perhaps I could suggest that you briefly introduce yourselves and say what work you do, without taking too long—just briefly.

Dr Rycroft: If you would find it helpful, Chairman, I will just say what we do and indeed why it is us that are here before you today. I am the Director General in the Deputy Prime Minister's Office, and by virtue of his role on constitution issues I also manage the Constitution Group in the Cabinet Office. I manage the Scotland Office, the Advocate-General's office and the Wales Office. Ministers and the Cabinet Secretary will look to me and my teams for general advice on the devolution settlements and their relationships to wider constitutional issues and, clearly, to me and my team for specific advice on Scottish and Welsh issues.

We work very closely with Helen and her team in the Economic and Domestic Affairs Secretariat. The EDS services the JMC and the British-Irish Council machinery, but it also helps to ensure, as with any other domestic policy area, that collective decision-making holds for departmental activity in devolved policy areas. You will forgive us if the focus we have had over the last couple of years has not been on the machinery that underpins the devolved

settlements. Clearly, the priority of our work just up until September has been on the future of the union itself.

However, that the machinery continued to function through the referendum is a testament in some ways to its robustness, but from our perspective—it is worth the Committee being aware of this—there is no doubt that now is the right time to have a look at that machinery and its relationship to the way in which we in Whitehall manage the interface with the devolved Administrations. Indeed, I am not sure if the Committee is aware of this, but we were commissioned by the JMC at its last meeting to review its workings. I will be holding our first meeting in Edinburgh in February with the three devolved Administrations, with the territorial offices and Cabinet Office colleagues to kick off that process, so your inquiry comes at an extremely helpful time for us in those deliberations. By way of introduction, I hope that is useful to you.

The Chairman: Do you wish to add anything?

Helen MacNamara: Yes. As Philip said, I am the Director of the Economic and Domestic Affairs Secretariat and it is my team, on behalf of the Cabinet Secretary, that is responsible for the UK Government part of all the JMC machinery. That is what we can talk to you about today.

Q18 The Chairman: Dr Rycroft, I wonder if I could ask a question which is not among those of which you have had previous notice. It has come to the attention of the Committee that the Cabinet Office has had some difficulty with the idea that this Committee should hear from departmental witnesses before hearing from the Cabinet Office. You may have no personal knowledge of this, but can you assist us on this or not?

Dr Rycroft: Chair, it is simply a very practical issue about, if you like, the hierarchy of your engagement with Whitehall and Whitehall departments. It seems to us to make sense that you hear first from those of us at the centre of the organisation who have formal responsibility for the JMC machinery for inter-governmental relations—and then, as a result of that, clearly if there are issues you wish to explore in more detail with particular departments, we are absolutely very happy to facilitate.

The Chairman: This has a practical aspect to it, because today we were expecting to hear a witness from Defra, and that witness has withdrawn from giving evidence to us because, I think, of the attitude of the Cabinet Office. It is of concern to us, because, as a Committee, we have a limited amount of time in which to hear witnesses. It may be very difficult, if not impossible, to fit departmental witnesses into the rest of our programme, so there is a practical point about this.

Dr Rycroft: I am sorry to hear that, Chairman. Clearly, what we can do today between us is to cover the territory you wish to cover, but clearly this has all been happening at some speed from our perspective as well. However, it seemed to us to make sense for you to get the overview from the point of view of central government, if you like, before delving into some of the departmental issues in detail.

Q19 Lord Goldsmith: I apologise for not being able to stay for whole of this session, because of other commitments. I apologise for that, but I just want to make this point and invite your comment. This Committee might take the view that it is for it to decide, as a Select Committee of one of the Houses of Parliament, whom it wants to hear from, and it is not for officials to decide that. Forgive me. I can understand we have circumstances where we have the great privilege of talking to senior Ministers, including Mr Clegg, and we of course understand that on those occasions it often happens that there is a clash of commitments that prevents the Minister appearing. I have been on this Committee for several sessions now, but I cannot recall an occasion on which we have been told by officials in government, “Actually, we have decided you should speak to somebody else first”. It ought to be understood—at least it is my view—that it is not really acceptable. We decide whom we want to see and hear from, as do other Committees in the other House, and that is the way the Government should respond.

Dr Rycroft: I respect that point of view.

Lord Powell of Bayswater: It might be slightly better if you acted on that point of view rather than just respected it.

Dr Rycroft: Again, I understand that. Clearly, there is not much I can do about it immediately now, but, as I say, in terms of the organisation of this, in the discussions we had with the secretariat to the Committee, that is the approach we put forward. If the Committee wishes to handle it differently from today, clearly we will facilitate that. I had not realised that the problem expressed itself in a way such that you might not have time to call other witnesses. We thought it the best approach, certainly from our perspective, but I apologise to the Committee if that has caused you some perturbation.

The Chairman: Thank you for that.

Baroness Dean of Thornton-le-Fylde: When you say “we decided”, who is “we”?

Dr Rycroft: It is me working in co-operation with colleagues in the Cabinet Office, mainly.

Baroness Dean of Thornton-le-Fylde: Do you mean with officials?

Dr Rycroft: Yes.

Q20 The Chairman: Thank you for that, anyway. We will now proceed to the questions that you might have expected to be put to you. Could I begin by asking you this general question: to what extent do the Cabinet Office and the territorial offices co-ordinate inter-governmental relationships—in other words, between individual United Kingdom departments on the one hand and the devolved Administrations on the other? The second question, linked to the first, is this: how would you define and compare their respective roles—in other words, the Cabinet Office on the one hand and the role of the territorial offices on the other?

Dr Rycroft: That goes to the heart of the issue, Chairman. I like to see it as a hierarchy of intervention; it is a useful way to look at it. The vast majority of communication and interaction between the UK Government departments and the devolved Administrations takes place without direct Cabinet Office or territorial office oversight or involvement. Working with the devolved Administrations is and should be absolutely mainstream business for many UK Government officials across, as you can imagine, a whole range of government business. Moving up the hierarchy, I would expect my teams in the territorial offices to have a broad overview of all areas of activity, so they understand the broad terms of what is going on, and to be engaging directly with UK Government departments and, as necessary, with the devolved Administration on the most important areas.

If I could just exemplify, the Scotland Office was very heavily involved with BIS, with DECC, with the Treasury and with others on getting Grangemouth issues sorted out last year. The Wales Office worked very closely with DfT, the Treasury and others on issues around the electrification of the Welsh Valley Lines. These are significant policy issues that are going to engage the attentions of their Secretaries of State. Of course they get involved. On some particular issues, I would expect the territorial offices to lead, self-evidently when it comes to legislation—for example, the recently enacted Wales Act—or significant cross-cutting issues like the Commonwealth Games. There, the Scotland Office led in terms of the cross-government work that was required in Whitehall to interface with the Scottish Government and the games organisers through the games process. Coming up the hierarchy again to the Cabinet Office, the Cabinet Office would usually only get involved if there was a particular need to do so—for example, if an issue was proving particularly difficult to resolve and get a common position on in Whitehall, or if it had implications for the wider constitutional settlement.

That is the broad approach we take, but the point I would wish to emphasise is that the bulk of this activity goes on as day-to-day government activity; it does not require constant oversight from me or from Helen or, if you like, from the Cabinet Office as a formal bit of machinery.

The Chairman: That seems to put a premium on good communication. In practice, is there as good communication between the departments and the territorial offices as there should be? It has been suggested there are some weaknesses there.

Dr Rycroft: Nothing is perfect, and we can always absolutely improve the workings of the system, both at the more formal level and the less formal level. For a lot of departments, doing devolved business is absolutely essential and mainstream for operations, and you will find there is a very good, deep understanding across those departments of how to manage that business with the devolved Administrations. For other departments and for bits of other departments, their interaction with the devolved Administrations may be more ad hoc and more infrequent. It is important we ensure that, right the way across Whitehall, you have sensitivity for and understanding of how the devolved settlements operate, and how to engage constructively with the devolved Administrations. That is something we need to work constantly on to ensure Whitehall is at the right pitch on that all the time.

Q21 Lord Powell of Bayswater: Perhaps I could ask for Dr Rycroft's help on a more general aspect of this stemming directly from your question. Last week this Committee heard evidence from a number of academic witnesses who basically took the view that the problem was a lack of formal structures. They thought that there needed to be more formal structures and a better organised system of running inter-governmental relations. However, we have also had some written evidence from Professor Keating at Aberdeen that suggests, among other things, that if over-elaborate systems are constructed and committees proliferate they will not be used. The success of a system should not be judged on how many committees there are or how often they meet—and more in that vein. Personally I very much subscribe to that second view, but I wonder where you think the right balance lies between formal structures and sensible ad hoc contacts of the sort that you have largely described in your earlier answers.

Dr Rycroft: It is a very good question and an apposite time to be looking at that question. As I have described the way things work and have worked over the piece, if you think that we went through a period of considerable stress through the referendum campaign, it is testament to the strength and depth of those relationships that they largely continued to function successfully through that time. However, the devolution settlements are going through a period of change: in Northern Ireland, obviously, with the deal that was done before Christmas, the Smith deal coming through in Scotland, and Silk 2 and so on in Wales. In the course of the next two or three years, Whitehall will be facing substantially adjusted and enhanced devolution settlements. Hitherto, the machinery has worked imperfectly, perhaps, but it has largely kept relationships going on an even keel across the piece. The question we

need to ask is whether that machinery is fit for purpose in that new dispensation. Do we need to introduce more formality at a greater depth? I would not want to assume an answer to that at this stage. We need to hear from lots of voices around that—the academic community that you have already cited, obviously the work of this Committee, from the devolved Administrations themselves, from discussions with departments—to see if adding a degree of formality would help the flow of business.

If that is the direction of travel people wanted to go down, at least to some extent, I would not personally want that to be at the cost of the ease of doing business in terms of the good relationships on a day-to-day basis between officials in Whitehall departments and officials in the devolved Administrations, and between Ministers in Whitehall and Ministers in the devolved Administrations. Ultimately it is the quality of the relationships, and what sits behind that, that makes this stuff work.

Lord Powell of Bayswater: I have one final point, Chairman. You see a risk in over-bureaucratising the process, which could probably work without that as long as individual officials are well instructed in their responsibilities.

Dr Rycroft: In my rather careful phraseology about what the future might look like, you are implying a prejudice on my part. There is a risk of over-bureaucratising things; you can get locked into managing the process and losing sight of managing the issues. That is the balance we have to strike. Again, the work you do as a Committee and the evidence you hear will be material as to the advice we give to Ministers on this in future.

The Chairman: Do you wish to say anything about this subject, Ms MacNamara?

Helen MacNamara: Just that I share Philip's views. Too much structure gets in the way, but so does no structure at all. The best relationships work best when you are both able to work informally together and then there is an underpinning structure behind to give that some weight.

Q22 Lord Lexden: Can I ask how Northern Ireland fits into your pattern of work? I do not think that that constituent part of our country featured in your introductory remarks.

Dr Rycroft: It is a very good question, and there is a very straightforward answer to that. My introductory remarks were about my role; I am not responsible for the Northern Ireland Office. That sits under a different leadership, so it is not within my immediate purview in terms of the day-to-day running of the Northern Ireland Office or indeed working through the issues in that devolution settlement. Where I interact with the Northern Ireland Office is clearly around the devolution settlements generally, their relationships to the wider constitutional issues and, indeed, the quality of relationships between Whitehall and the

devolved Administrations generally. I meet with colleagues from the territorial offices on a regular basis—indeed, I met with them again as recently as yesterday—so that they hear from each other about what is going on in their respective territories and to have a collective discussion about our approach to Whitehall more generally. I will maybe come on to this later in response to some of your other questions, but I also bring together directors from right the way across Whitehall. Included in that are the NIO, the Scotland Office and the Wales Office, so that we have that connectivity between all the players in Whitehall who have an interest in devolution issues.

Lord Lexden: Can I take it that you feel that the Northern Ireland Office is fully locked in to the arrangements as necessary for its good Government?

Dr Rycroft: Yes, exactly.

Helen MacNamara: If I can add to that, we work with the Northern Ireland Office in the same way as we work with any other domestic policy department. Officials from the Northern Ireland Executive are of course part of the joint secretariat, so there are no distinctions as far as my bit of the Cabinet Office is concerned.

The Chairman: Before we move on to another topic, can I just ask you this particular question? Who—by which I mean which person—is ultimately responsible within the United Kingdom Government for maintaining good inter-governmental relations?

Dr Rycroft: In terms of Ministers, it is very clear: it is the Deputy Prime Minister. If you look to the officials side, in terms of the immediate official responsibility for that it would be me, but obviously I report ultimately to the Cabinet Secretary.

The Chairman: But in terms of Ministers, it is just the Prime Minister; is that right?

Dr Rycroft: It is the Deputy Prime Minister, in virtue of his responsibilities for constitutional matters generally.

Q23 Baroness Dean of Thornton-le-Fylde: Dr Rycroft—and, perhaps, Ms MacNamara, you might wish to add your views, too—you said earlier you do not need to get involved in the day-to-day running, because the departments are doing that in their normal day-to-day activity and that you really become involved if there is an issue to be resolved, but sometimes that may be too late. How do you, in the Cabinet Office, track the various policy developments in the devolved Administrations to ensure there is no overlap or to pick up on any overlap that may be developing?

Dr Rycroft: Could I ask Helen to lead off on that one?

Helen MacNamara: Yes, of course. The straightforward answer is that that is not a function that we are asked to fulfil at the moment in the Cabinet Office or one that we do—tracking

absolutely every element of policy that is developing in the devolved Administrations. In the Economic and Domestic Affairs Secretariat, we are responsible for collective agreement and we do an element of co-ordinating domestic policy. We definitely know when there are issues that are significant enough to come to our attention, so we are made aware of the problems rather than necessarily proactively making sure that everything is co-ordinated. Our expectation, and how it works at the moment, is that the territorial offices themselves—Philip may want to say something about this—have the overview of what is happening in a particular Administration, and our expectation and working practice is that each department will know, just via the day-to-day contact, if there is particularly interesting development in policy, and they will be able to keep track of what is happening, but we in the Cabinet Office do not sit and have an encyclopaedic knowledge of everything that is developing across all departments and across all Administrations at any one time.

Baroness Dean of Thornton-le-Fylde: Forgive me for coming back in before Dr Rycroft answers. You rely on the departments to let you know if there is a developing overlap or issue. Do you have an understanding with each of the departments—not necessarily as in a formal arrangement, but an understanding, perhaps—that they need to flag up to you early on if there is going to be an issue? Are they practising that? Are they carrying that out?

Helen MacNamara: There are three routes by which we know whether there are issues. Yes, there are the departments themselves—the domestic policy departments. There are also the territorial offices. There is also our day-to-day contact with the devolved Administrations. My team have fortnightly conversations with their counterparts in the DAs, so we would via any of those three routes know about something pretty early. Our working experience is we know pretty early where problems may arise.

Dr Rycroft: Maybe I could just reinforce that. It is the quality of the networks of intelligence. The territorial offices are relatively small: there are 60-odd folk in the Scotland Office and slightly fewer in the Wales Office, but they are very well plugged in to what is going on in Scotland and Wales, with multiple contacts in the Welsh and Scottish Governments—to speak of the ones that I look after. Through that, I would expect them to be spotting any issues very early on in their genesis to give us maximum time to get them sorted out. I spend a lot of time talking to my directors and their teams in both those organisations, and that will feed through to me and then I can feed that through to Helen's team as necessary. Again, however, it is the quality of the intelligence networks that is critical to this, so that we are alert to what is going on across the devolved Administrations and can deal with stuff as appropriate.

Baroness Dean of Thornton-le-Fylde: Chairman, could I just come back in quickly? The nature of the question may have directed the way you answered it. It is quite interesting for me to sit and listen. It is all about the devolved Administrations coming in to the centre, but it has to be a two-way street, does it not?

Dr Rycroft: Yes.

Baroness Dean of Thornton-le-Fylde: What responsibility do you have to feed back to the devolved Administrations when at the centre here in Whitehall we may be doing something where there is an overlap?

Dr Rycroft: By the term “overlap”, do you mean if policy is in conflict?

Baroness Dean of Thornton-le-Fylde: Yes.

Dr Rycroft: There are not huge numbers of instances where we are looking at direct policy conflict like that. There are probably more instances where it is important for the devolved Administrations to understand the direction of thinking in Whitehall and where that may require a more proactive approach, which I think is what you are driving at. Again, that is about the quality of the relationships between departments and their interlocutors in the devolved Administrations. By and large, the incentive is there for departments to keep their devolved colleagues up to speed with what they are trying to do and what they are thinking about. If I take for example the development of policy in the European context, a very specific example is fisheries policy. It clearly makes sense there for colleagues from Defra to be working very closely with their colleagues in the devolved Administrations so that they are working together to get an agreed UK position. On that example, my understanding is that they have fortnightly teleconference calls between Defra and the devolved Administrations to achieve precisely that. It is not just a reactive thing; it is a proactive thing as well. Again, that is what, underlying all of this, drives the quality of outcomes that we seek to achieve.

Q24 Lord Lexden: Can I ask if you think a major effort is needed to achieve greater consistency across government of knowledge and handling of the devolved Administrations? You will know that both the Silk commission and the Calman commission drew attention to inconsistency across UK Government departments. In this context, could I also draw attention to a clear criticism received from one of our academic papers? Professor Alan Page has told us the essential weakness of the current arrangement lies not so much in the framework within which inter-governmental relations are conducted as in the fact that inter-governmental relations are, for the most part, left to the unco-ordinated efforts of Whitehall departments. I know you will want to respond to these points.

Dr Rycroft: The answer to your question—could more or should more be done?—is yes. I have no doubt about that. The referendum campaign shone a very harsh light, if you like, on the understanding of devolution and the relationship between different parts of the UK and Whitehall. We have learnt from that and I hope we learnt through that over the course of the last two years in terms of departmental responsiveness to devolved issues. We were not starting from a base of zero; clearly, we were starting from a good solid base of day-to-day contacts, experience of working with the devolveds and respect for the devolution settlements. But could we do more on that? Could we improve the understanding of devolution across Whitehall? Absolutely. Is this a priority for the coming months and years? Absolutely.

As I said earlier, with the changes in the devolution settlements, if you look at what we are going to be doing as a result of the Smith agreement in terms of extending the powers of the Scottish Parliament over income tax and over welfare, this will require a new relationship between Whitehall and, in that instance, the Scottish Government—but the same will apply to the other devolved Administrations. It is something that I attach a lot of importance to. It is a big role of the territorial offices to help support their colleagues across Whitehall in their understanding of devolution.

How do you work successfully in the devolved context? As I said earlier, I chair a pretty much monthly meeting of senior officials from across Whitehall. At director level each department has an identified leader on devolution, so that we have one forum in which we can come together to think these things through and ensure that all departments are up to the right sort of speed. Let me just illustrate very briefly the sorts of things we are thinking about doing there. Just before Christmas I brought them together for an extended meeting. As it happens, I took them to Edinburgh so they could transact some of their business as well with the Scottish Government while they were there. That meeting was very much designed to share best practice and understanding. The thing we were focusing on was not so much about the high level of legislation; it was about the day-to-day engagement with the stakeholder community with interest in Scotland. How does Whitehall do that effectively in a devolved context? That is the sort of learning where we need to take the best practice and make sure that is the common practice.

The Chairman: In connection, could I ask you about this? Some witnesses before us have advocated the creation of a new department to replace the territorial offices in aid of consistency, better focus and to ensure compliance with the appropriate arrangements for inter-governmental working. What is your reaction to that, if you have one?

Dr Rycroft: This is a perennial question. It is way, way above my pay grade, I am afraid, in terms of prime-ministerial decisions and how they dispose of their resources in terms of the offices of Secretaries of State and so on. That will be a decision for an incoming Prime Minister after the next election. But where it has traction at official level is: are we most effectively disposed to support Ministers on the question of inter-governmental relations? Should we be looking at how we could improve what we are doing? Again, now is the juncture where we should be thinking that through. How do we make sure that Ministers—again, with a view of the way the devolved settlements are evolving—have the most effective support that they can in the transacting of that business, and how does it relate in particular to the wider set of constitutional issues? Ultimately, I am not just responsible for inter-governmental relations; I have obviously had responsibilities for thinking about the wider constitution as well. These things do interact. I am not going to predict what the priorities of an incoming Government might be, but part of my responsibility is to ensure that from day one that Government has the right resource, disposed in the right sort of way, to give it the support it needs to look at these questions.

Q25 Lord Powell of Bayswater: Lord Chairman, could we bring in question 5 at this point? It is very much related to what Dr Rycroft was saying. It is a question I was going to ask about the exchange of personnel in order to get people accustomed to ways of working together, because the broad thesis is that hitherto most of those working for the devolved Administrations have had Whitehall experience or experience of the Whitehall Civil Service, but that over the future years that will probably become less as others are brought in. How are you going to tackle that? Are there plans to get people on regular exchange? How can you make, bully or persuade departments to do it? Often one sets the goal of exchanging personnel, but nothing ever happens.

Dr Rycroft: That is a very good question and a very timely question. There is no doubt that there is less exchange now than there used to be under the old dispensation. You are probably looking at the last example of somebody who made the transition at a senior level from a devolved Administration to a mainstream Whitehall department, and that is me. That was about five years ago.

Most of the interchange at the moment is through the territorial offices, and there it is still very much part of the picture. Indeed, I have just appointed a new director to the Scotland Office who comes from the Scottish Government, and I have worked with two excellent directors in the Advocate-General's office, both on secondment from the Scottish Government. Through those organisations, and the Wales Office as well, there is lots of

exchange between the territorial offices and the devolved Administrations. Where it is less common now is in other Whitehall departments. That is something the Cabinet Secretary has asked me to look at in conjunction with the devolved Administrations to see if and how we can get back to something like the former practice.

From personal experience, there is enormous value in people understanding how work is transacted in those different environments. Perhaps I may just reveal a bit of a prejudice of mine. Whitehall has a huge amount to learn from how the devolved Administrations operate. It is a different sort of challenge. Par for par, officials in devolved Administrations are dealing with a far wider span of policy than their counterparts in Whitehall, and that has enormous benefits for the way they think and deal with policy and relate to the world out there. Whitehall has a huge amount to learn about that.

The final point I would make about this is that, as I say, we need to see whether we can get back to something like the old practice. It is not just about exchanges; it is also about finding opportunities for officials to learn together. If you take something like the high-potential development scheme, which is the route by which people who are aspiring to become directors general get a good, solid learning experience, colleagues from the devolved Administrations are part of that. I know, from people like Helen and others who have been on that, the value they get from having that interaction with these people over a sustained period of time and from the learning that that brings. We need to exploit those opportunities as well.

Lord Powell of Bayswater: Could you envisage a situation in future where, perhaps, appointment of the most senior Civil Service officers in Whitehall would depend on having had, at some stage in their career, a spell in a devolved Administration?

Dr Rycroft: I am probably very biased in my response to that as one of the very few that has. You had better ask the Cabinet Secretary that at some point.

Lord Powell of Bayswater: I thought that you might suggest it to the Cabinet Secretary; that was the point of my question.

Dr Rycroft: I may have done.

The Chairman: Do you want to comment on that subject?

Helen MacNamara: I agree with Philip: it is very important for Whitehall civil servants to have a different perspective, full stop. That definitely includes being able to understand how the devolved Administrations operate, and I absolutely support his view that this is not just about formal interchange but about finding opportunities to work closely together so that you understand and see each other's perspective. I know that I learnt a lot from hearing and

understanding what happens in devolved Administrations, and in my previous role as a policy official I found that tremendously useful.

Q26 Lord Brennan: To both of you, what is your view about the present balance of bilateral/multilateral relations between UK Government departments and their equivalents in the devolved Administrations? That involves at least three bilaterals and a quadrilateral. Secondly, what is to happen in the future as between the devolved Administrations, where there are three possible bilaterals and a trilateral to add to the numbers I have already produced? It has the makings of bureaucratic chaos. What is the plan for the future? If it is going to be discussed in Edinburgh in February, when are we going to find out?

Dr Rycroft: That was a series of very good questions again. The simple answer to what happens bilaterally/multilaterally is that it depends. I do not want to be trite in giving you that answer, but clearly the form should be driven by the salience of the business. Let me just give you a couple of examples. If you are looking at the Treasury's dealings with the devolved Administrations, an awful lot of that will be transacted on a bilateral basis, because they each have their own financial settlement. Those settlements throw out lots and lots of detailed, nitty-gritty issues, and it is appropriate that the Treasury is dealing with those issues on a one-to-one basis with the devolved Administrations. However, if you take European issues—I will come back to my Defra example—it absolutely makes sense for Defra to pursue the development of European policy on fisheries, the example I have cited already, on a multilateral basis, and that is precisely what they do.

We do not seek any sort of balance in that. Our interest is that Whitehall departments, supported by the territorial offices, are engaging effectively with the devolved Administrations in a way that delivers the best outcomes. That should continue to be the rubric in the future, and I do not see that necessarily changing dramatically, but what we may be looking at is the overarching machinery that supports all that.

As for the bilaterals and trilaterals between the devolved Administrations, again I have some experience of that from the other side of the fence. Clearly, that is up to them. That is not for us to drive, but, again, you can ask colleagues from the devolved Administrations about practice today. But certainly in the past I found those bilateral/trilateral contexts extremely helpful to understand what was going on in different policy areas as well as across the devolved settlements more generally.

Lord Brennan: Do the Treasury report to you in any way or do they deal with this independently?

Dr Rycroft: The Treasury reporting to anybody is—I would rather not say. That should be off the record, should it not? No, the Treasury do not report to me, unfortunately. I work extremely closely, however, with the Treasury. They have a dedicated devolution team. I spend a lot of time talking to them and understanding their concerns, and vice versa.

Q27 Baroness Taylor of Bolton: Can I bring this now on to policy development? I am interested in quite a few of the things you have already said. For example, you said that different departments have different understandings of the relationship, and I hope that at some stage you can go into some detail as to which departments have the different types and what the issues might be. But you also said that you spent a lot of time on the referendum campaign, as indeed a lot of people did. The phrase you used was that it shone a light on some of the weaknesses that had developed and implied that there was a lack of understanding in Whitehall of the full implications of the devolution that had already taken place. When you were talking about the relationships, you might almost say that if there was not that full understanding perhaps that was why the yes vote was so high, and therefore it is right to consider what you do next. But in terms of what you have been talking about, a lot of it has been “avoiding problems”. You used the phrase “get things sorted out”. It is almost troubleshooting, making sure difficulties do not arise. However, what has happened to joint policy and development? I do not mean awareness of what each other is doing, but working together on individual issues. Could you tell us more about that, please?

Dr Rycroft: Yes. Again, of course, that goes to the core of the quality of the relationships between Whitehall in general and the devolved Administrations and between particular departments and their counterparts in the devolved Administrations. There is a huge amount of business transacted and designed to deliver better outcomes that requires a collaborative approach. If I can maybe give you one example of this that we have not touched on until now, if you look at a department like DWP, hitherto the vast majority of their business has been reserved but has to be transacted in Scotland in very close co-operation with the Scottish Government where policy interests align—so, for example, on skills and employability—but also with local authorities, which have to deliver quite a lot of this policy as well, and with a vast number of other organisations in Scotland in the third sector and beyond, whose work is vital to help DWP deliver those outcomes. DWP have a very rich infrastructure of connectivity in Scotland. I do not want to overwhelm you with titles of forums and so on, but at the national level there are at least four important forums they run: the Scottish Employability Forum, National Delivery Group, Third Sector Employability Forum, Health and Employability Delivery Group and so on and so forth.

These are designed to provide points of connectivity between DWP and their operations in Scotland, the Scottish Government, local authorities and other actors in Scotland. They see, at a working level, the sort of detailed interaction that goes on on a day-to-day basis. However, there is also scope, and underexploited scope, to be thinking about more proactive policy development, where we in Whitehall are working with the devolved Administrations to think about how we together can get better quality outcomes.

If, again, I can just give you one good example of that, it would be the City Deal process. We have signed a deal with Glasgow. That has created a relationship between the UK Government, the Scottish Government and the local authorities in Glasgow and the surrounding area. That is focused on policy areas where the UK Government obviously has a role, i.e. innovation, employability or infrastructure. The intent of that, through that working together, is to deliver a better outcome for the people of Glasgow. Certainly, something that is on my radar screen, and on Ministers' radar screens, is how we build on that sort of example so that we are making the best out of the devolved settlements.

Baroness Taylor of Bolton: I understand where you are coming from and what you are saying there and how it could be productive. However, you did use the phrase there “we in Whitehall”. Indeed, one of our witnesses last week said that the area of policy development is much more difficult if it is one of the devolved Assemblies or parliaments that want to initiate something. How could that work? Does it work? Is that still a work in progress and we have not got there? You are talking about Whitehall initiating joint policy developments, but what if the idea is coming from Scotland or Wales et cetera?

Dr Rycroft: Again, that is about the quality of the relationships. I would not want for a minute to imply that the world is perfect, but it is not a black and white situation where it is either one thing or the other. Clearly there will be circumstances in which the devolved Administrations wish to push a policy proposal. Where that does not get traction, there will be occasions where they want to push something where it does get traction. Working through all that hinges off the broader quality of those relationships. I know there are instances where the departments have sat down and worked out how to take an approach that delivers better outcome for both sides of the equation.

One of the examples we are hearing about is in Edinburgh, where there is a common interest in looking—this is a small example, but an interesting one—at driver behaviour and drivers using mobile phones. This is a devolved issue. It is looked after by Transport Scotland and the Scottish Government, but there is a common issue there where both sides are broadly thinking through, “How do we approach this? How do we understand driver behaviour?”.

That ended up with a joint contract and we had both sides chipping into that. That, it seems to me, is a good example of what you are describing, where both parties have something to bring to it, both have a policy interest and through good joint working they deliver a better outcome that works for them both.

Baroness Taylor of Bolton: Can I tempt you to say anything more about the referendum and whether the lack of that smoothness in the machinery might have been a factor?

Dr Rycroft: I will resist to some extent; that takes us into a very much larger domain about the causalities in voter behaviour and so on. The point I was trying to make is that the exigencies of the political circumstance required us to look very hard at the quality of our understanding of the devolution settlement, obviously in this respect with regard to Scotland, the quality of the outreach from Whitehall in Scotland, and the way in which Whitehall dealt with policy issues that were of interest to people in Scotland. Using that as lever to improve and build on the understanding of the devolution settlements generally and to improve the quality of the relationships not just with Scotland but with Northern Ireland and Wales as well is something that we are very much focused on. It is taking that opportunity to make sure that, as we go into the next Parliament, the Whitehall machinery does this job to the absolute best of its ability.

The Chairman: We should move on now to the Joint Ministerial Committee and its sub-committees.

Q28 Baroness Falkner of Margravine: Ms MacNamara, I suspect you will want to answer these, but I would be very grateful, Dr Rycroft, if you came in as necessary. The JMC, which meets in plenary, seems to have quite a wide cast of characters. At a rough guess—I was looking at the notes about it—a dozen people potentially, depending on the topics under discussion, when you include the Ministers as well. One of our witnesses noted that it can be a forum for grandstanding and that one of the things it suffers from is the lack of an express right for the devolved Administrations to put items on the agenda. Would you agree with that? What would your views be on having an agenda where the devolved Administrations say what they consider we ought to be discussing?

Helen MacNamara: That surprises me. It is absolutely not for me to comment on the content of the meetings, but I do not recognise either the grandstanding or the fact that the DAs cannot put items on the agenda. Regarding the way the JMC operates, there is a joint secretariat, which is between all Administrations, that meets and talks very regularly. In order to put the agenda together for any JMC meeting, officials will meet and discuss and come up with ideas and talk about what might be appropriate, and that often comes from the things we

were talking about at the beginning of this Committee about where there might be policy areas or shared challenges or particular external events. All JMC agendas are agreed by all Ministers, so we as officials put joint advice to Ministers and then it is the Ministers together who decide the agenda items.

Baroness Falkner of Margravine: Including the First Ministers?

Helen MacNamara: Yes, absolutely. The secretariat operates very much on a joint basis, so my job, and that of the Economic and Domestic Affairs Secretariat, is a function of the UK Government, but within my team there are people whose job it is to operate as the joint secretariat, and they have a very close working relationship with their counterparts in the devolved Administrations.

Baroness Falkner of Margravine: How large is your team?

Helen MacNamara: We have 35 or 36 people in EDS, and I have two people whose job it is to be part of this joint secretariat.

Baroness Falkner of Margravine: Do UK Government departments also have the ability to prioritise items on the agenda?

Helen MacNamara: Yes. Would it help if I talked through, just for the JMC(P) perhaps, how the process works in detail? Would that be a useful thing?

Baroness Falkner of Margravine: I think we have time for that, my Lord Chairman.

Helen MacNamara: I can do it very quickly.

The Chairman: Yes, by all means.

Helen MacNamara: What I would do is sit down with my team and we would first work out, from a UK Government perspective, what other things we think would be useful to talk about. The memorandum of understanding provides for pretty much the parameters of JMC discussions, and they are as you would expect: inter-governmental relations, the boundaries between devolved and reserved policy. In recent times, Ministers have also very much wanted to talk about items that are shared challenges across the UK. We will come up with a list that will be based on our knowledge in the centre, but also conversations we will have with other Whitehall departments. It might be that a department has a particular issue that it would like to have discussed in the JMC format. I will chair a meeting and have discussions with my counterparts in the devolved Administrations, and then we will put our advice to Ministers. The Ministers will agree the agenda, so it is very much a joint process.

The Chairman: Does the fact that devolution is asymmetrical inhibit discussion, because it is difficult to find things that everybody is interested in?

Helen MacNamara: If you look at the items that have been discussed this Parliament, it has not been that challenging. There have been things like the challenges presented by an ageing population or what to do about UK Trade & Investment or the economy. It is always challenging to make sure the discussions are productive and fruitful and Ministers are well briefed and that the conversations are meaningful.

The Chairman: Does the system make it easy for an individual devolved Administration to bring up something that is peculiar to its own devolution? That is what I am really concerned with.

Helen MacNamara: I do not know if they would for this particular format. It probably is the case that, if there were an issue very much for one Administration, it would be unlikely to find its way into the JMC format. We have better discussions when they are more balanced, but there are plenty of shared challenges.

Baroness Falkner of Margravine: Could I raise a particular example from the recent past? That was, for example, the decision of this coalition Government to pass the European Union (Referendum) Bill. If the devolved Administrations, one or all of them, had a different view on it, would they have been able to express that through this forum—say, for example, Scotland?

Helen MacNamara: There is nothing that limits what could be put on the table for a JMC discussion. Theoretically, it could be anything. There are, of course, sub-committees. Economic matters tend to be discussed by the Finance Ministers. European/international issues tend to be discussed under JMC(E). There is nothing that stops anything being put on the agenda; it would just be for Ministers to decide what was appropriate.

The Chairman: Lady Falkner, do you want to ask about sub-committees?

Q29 Baroness Falkner of Margravine: Yes, I was just about to come on to that, because it flows from what you have said about Sub-Committee E. In terms of the domestic and the European sub-committees and the Finance Ministers' quadrilateral, can any devolved Administration decide that this would be an appropriate moment to convene a meeting?

Helen MacNamara: Absolutely, yes.

Baroness Falkner of Margravine: Has that happened? Have meetings been driven by devolved Administrations' desire to discuss a certain issue rather than your department deciding on a periodic basis that you need to have that meeting?

Helen MacNamara: I could not give a precise example of when one Administration has really pushed for a JMC against the will of the others. In preparing for this appearance, I tried very hard to find any example of where those sorts of things had happened and we could not

find anything. However, maybe through the course of your inquiry you will discover something we are not aware of at the moment. It works in a very straightforward way: there is an expectation, which is set out in the MoU, that the JMC meets once a year in plenary form and then it meets in its sub-committees as appropriate and as Ministers wish. JMC(D) has met once a year, usually, in this Parliament. European meetings happen more often, because they are to decide the stance the UK Government should take at European Council meetings. The Finance Ministers meet as appropriate, and it is for those Ministers to decide when they want to come together and meet.

Baroness Falkner of Margravine: There is a lack of entire transparency around some of those issues, which is why we are trying to flush this out, because the dates and agendas of officials' meetings are not published in the annual report. How frequently do those take place?

Helen MacNamara: Formally before every meeting, so before a JMC domestic meeting or a JMC plenary meeting, I will chair a formal officials' meeting where we will go through the agenda and make sure we understand the issues and are able to brief our Ministers to have productive discussions. However, informally there is whole range of contact that happens underneath that.

Baroness Falkner of Margravine: Can I go to Dr Rycroft? You said something in response to some of the other questions rather earlier on about how Whitehall does not know best and that sometimes it is very useful to have the insider experience of having served in devolved Administrations and then coming to Whitehall, as your own experience clearly shows. I wonder if the devolved Administrations have expertise—this is perhaps not for you in terms of Whitehall—of how the European Union institutions work. Of course on the one hand we are dealing with the expertise internally of the United Kingdom domestic agenda, but also, given how much legislation comes from Europe, there is also the lack of that experience. Do they have more experience of that than, perhaps, Whitehall does?

Dr Rycroft: This is now going back a little while to my previous experience, so, again, it is a question you will have to ask them as to where things stand now. In terms of European experience, certainly the practice in my time, in variously the Scottish Office, Executive and Government, was to ensure there was European experience embedded within those organisations. Indeed, I was one of their prime examples of that. I went and spent a couple of years working in Brussels myself. It is quite hard to keep these things going. It is expensive in terms of the opportunity cost of taking good people out of the operation for a while, but it is absolutely critical. Everybody would tell you that having people on all sides of the equation

within the UK who have that understanding of how Brussels works will help the transaction of business within the UK, because they understand the reality of European negotiations, how things work in the Council, how things work between the Permanent Representations and so on. That is an important part of the expertise that makes these systems function properly.

Baroness Falkner of Margravine: It is harder and harder to maintain, though.

Dr Rycroft: Yes.

Q30 Lord Lexden: Can I ask Helen MacNamara in particular how the devolution of further substantial powers is going to affect the current arrangements?

Helen MacNamara: We have been commissioned by the last JMC meeting to go away and do some work precisely to answer that question, which Philip referred to, and then go back to Ministers with a proposition of what we should do.

Lord Lexden: Can you share with us any indication of how your work is progressing?

Helen MacNamara: We have only just started it, is the honest answer. As Philip said at the beginning, one of the things that is useful for us is that we will be able to draw on the conclusions of your Committee's inquiry to help us.

Lord Lexden: Could I finally ask whether even our existing arrangement—one yearly meeting of the principal Ministers involved—is sufficient?

Helen MacNamara: Again, whether it is sufficient or not for those Ministers is a question more appropriately put to those Ministers. The meetings have been and are productive and useful, and the decision was made when the MoU was established that once a year was right for the plenary sessions, and then any other meetings and interactions should be as needed and as necessary. That may well be question when we come to what is appropriate in a very changed context. There may want to be more formality and more regularity in getting the Ministers together. There are of course, separate to JMC, any number of interactions between the First Ministers, the Prime Minister, the Deputy Prime Minister and their ministerial colleagues across Whitehall, so this is not the only place in which Ministers come together to discuss their shared issues.

The Chairman: Lord Lexden, did you want to speak about enforcement?

Helen MacNamara: I can give you my answer on enforcement.

Lord Lexden: Yes. Going back to Lord Powell's questions to you, would a statutory basis be a formality too far, much too far or would it have merit?

Helen MacNamara: Again, this will be an issue that will be considered in this next round of work we are about to embark on, and it will not be for me to decide. The balancing arguments are that there are obviously disputes or disagreements between the Administrations

that are technical, and we have a process that exists for that. There are disagreements and disputes that will be legal, and obviously the Supreme Court can be brought in as appropriate. I would imagine the question—ought there to be some sort of enforcement mechanism for the JMC so that people are bound by the outcome?—is quite a difficult one. Philip may wish to comment from a constitutional policy perspective, but if you have an elected Administration in the UK and one of the devolved Administrations disagreeing about something, we have to be realistic that there may well just be occasions where there is an element of political disagreement and things cannot be resolved.

The other thing I would say about enforcement is, again, that we could find no example of a decision or discussion or commitment that had been made in a JMC meeting that had not been followed through. You would have to question the problem that you were trying to solve.

Dr Rycroft: Maybe it is worth adding that, from a broader constitutional perspective, the question of putting these arrangements on a statutory, binding footing does raise some quite profound issues. What we have at the moment reflects the current constitutional settlement in the United Kingdom. The UK Government are attending the JMCs both looking after the interests of one particular part of the UK but also representing the whole, and the UK Government are ultimately accountable to this Parliament. If you begin to look at those accountabilities, the flow of accountability, statutory responsibilities, binding responsibilities and so on, it is not long before you get to the question of the relationship not just between Governments but between parliaments as well. This would, I suspect, be grist to your mill in terms of seeing how the evolution of this matches the evolution of wider constitutional thinking within the UK.

The Chairman: Leaving statute aside, is there or should there be a code of practice?

Dr Rycroft: Do you mean a code of practice beyond the MoU we have at the moment?

The Chairman: Yes.

Dr Rycroft: In response, I would ask: how would a code of practice develop from the MoU?

The Chairman: I notice that the Silk commission, for example, were in favour of a statutory code of practice. Leaving statute aside for a moment, is there a case for a code of practice?

Dr Rycroft: Again, genuinely we are not going into this with a blueprint. It is not so long since we got to the end of the referendum process, but since then we have been pretty heavily engaged with landing the Smith process—and, indeed, we have the next stage of that next week. Ministers have also been very keen that we work through the consequences of all that for Wales, which we are doing. Of course, there has been the Northern Ireland settlement as well. There has been a lot of work going on, which is a bit of a moving picture. Out of that,

we will be taking our consideration of “whither the JMC?”. Genuinely, we are not sitting here at the moment with a blueprint and saying, “This is the answer”. We are very open to, and indeed need, the input from as wide a range of interests and people as possible to help us answer precisely that question.

Q31 Lord Powell of Bayswater: Perhaps a final question on the JMC is about the dispute-resolution procedure. We notice from the annual report there have only been four disputes escalated to the top level. How many do you see at the working level, as it were, the official level? Are there many more?

Helen MacNamara: If I can go back to where you were asking about formal structures and informal arrangements, it is definitely the case that we would see it as a good thing that there have been so few formal disputes, because that is an indication that they are being sorted out at working level. It is very helpful to have the formal dispute-resolution structure. I know that most of the time, if there are disagreements, they are resolved in departments. If they cannot be resolved in departments, then either formally or informally either Philip or I are sometimes brought in to chair a meeting and try to resolve things. I can think of a couple of occasions where the threat of something becoming a formal JMC dispute has been the thing that has unlocked agreement. Like I say, it is quite helpful to have that as a formal back-up. I would not be able to quantify for you exactly how many disagreements there are in any given year between Whitehall departments and their devolved counterparts—it would be quite difficult to say—but I would say that the mechanisms we do have, both formal and informal, do provide ways for bringing people together and finding ways through.

Lord Powell of Bayswater: Who takes the decision to escalate them to the JMC? Can any member of the JMC do it or does it have to be the Prime Minister or the Deputy Prime Minister?

Helen MacNamara: No. Within the devolved Administrations, I would imagine there would be a hierarchy of officials who can decide if something should be a JMC formal dispute. It is quite a serious step to take, but either the devolved Administrations or the UK Government could decide that something was sufficient to bring in to the dispute mechanism. The first stage of that is a meeting that I would chair, bringing officials from the departments together, a cast list as appropriate at that point. During this Parliament, the memorandum of understanding has been revised to allow for, if it is appropriate, the commissioning of some sort of third-party analysis to help broker agreement. If that does not work, the next stage is formally putting the dispute into the JMC machinery and, rather than an independent official, it is an independent Minister that chairs the process and tries to find a resolution. That so far

has been enough to solve everything in this Parliament. If that had not worked, the latest stage is to go into the JMC(P), but, as I said to Lord Lexden, there may well be occasions where it is just impossible for politicians to agree about something, and that is the system that we have.

Lord Powell of Bayswater: Do the options include an outside, non-political, non-ministerial arbitrator?

Helen MacNamara: Not at the moment, no.

Lord Powell of Bayswater: Would that possibly be part of the considerations that you are now reflecting on?

Helen MacNamara: I know that is something people have called for, and I am sure it will be something we will examine. But, again, going back to the questions you would have to ask on a constitutional basis, are there grounds on which a non-elected third party could preside over something that was the decision of an elected politician?

Lord Powell of Bayswater: Perhaps the right word would have been “mediator”, not “arbitrator”.

Helen MacNamara: Yes. At the moment, however, that mediation function is either at official level or by an impartial Minister. It has worked.

The Chairman: Does any member of the Committee have any further questions to put? Is there anything further you would like to say, either of you?

Dr Rycroft: No, I think we have covered the territory.

The Chairman: Thank you very much indeed for filling our understanding as to what works and what is also planned to be done. We are most grateful for your attendance. It was slightly longer than we had anticipated, but it was useful time.

Dr Rycroft: Thank you.

Helen MacNamara: Thank you.