

Scottish Affairs Committee

Oral evidence: [The relationship between the UK and Scottish Governments](#), HC 1586

Tuesday 5 February 2019

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Members present: Pete Wishart (Chair); Deidre Brock; David Duguid; Hugh Gaffney; Kirstene Hair; Christine Jardine; Ged Killen; John Lamont; Danielle Rowley; Tommy Sheppard; Ross Thomson.

Questions 128 - 195

Witnesses

I: Lord Wallace, former Deputy First Minister of Scotland, Lord McConnell, former First Minister of Scotland, and Sir Peter Housden, former Permanent Secretary to the Scottish Government.

II: Baroness Liddell, former Secretary of State for Scotland, Alun Evans, former Director of the Scotland Office, and Michael Moore, former Secretary of State for Scotland.

Written evidence from witnesses:

– [Add names of witnesses and hyperlink to submissions]

Examination of witnesses

Witnesses: Lord Wallace, Lord McConnell and Sir Peter Housden.

Q128 **Chair:** Welcome, gentlemen, and thank you very much for joining us today to help us with our inquiry into intergovernmental relations. We are looking at probably 30, 40 years of experience in this field, so we are looking forward to your evidence today. For the record, please say who you are, what your role was in this particular field and anything by way of a short introductory statement.

Lord McConnell: I thought if I am going to be making an introductory statement it should be positive rather than negative. By way of introduction, what I would like to say is that the last 20 years have seen some good moments in intergovernmental co-operation and some not so good moments, and that is maybe to be expected in the first two decades. There are some quite big issues to discuss about where we are today, but I think that, if the UK leaves the European Union and, therefore, has to think about how the UK governs itself in a post-Brexit world, there is perhaps an opportunity 20 years on to think radically about how the UK Government relate to the Scottish, Welsh and Northern Irish Governments. If that discussion was to be undertaken in a positive way, something good could come out of this year among all the other difficulties that we are going to experience.

Chair: That is a very positive note. Thank you for that.

Sir Peter Housden: If I could carry on in the same vein. I have worked as a Permanent Secretary in the UK Government and then in Scotland. Over that period of 10 years I saw quite a considerable evolution of the kinds of relationships that existed between the UK Government and not only the devolved nations but also cities and regions. There was a shift in the pattern of government over that decade, which saw some very interesting shifts in behaviour and achievements. For me, there are important things in all of this about personal relationships between officials and between Ministers and how those are important in determining outcomes. Also, what the policy intent is of the Government that you are working for was always the key question for a civil servant: what are the Government trying to do and what does that say about how we conduct ourselves with other Governments? We might talk a bit more about that later.

Chair: We most definitely will. Thank you for that.

Lord Wallace: I share much of what has been said already. It is a bit of a case of the curate's egg; some things have worked and some things have not worked quite so well. I am possibly one of the very few people who have served on a joint ministerial committee as both a Scottish Minister and a UK Minister, so I have been able to see it from both sides. I think the JMC Europe was one that by and large did work but, like Lord



McConnell has said, as we move forward if Brexit is to happen and we have much more UK-level decision-making, it is also important that we have a clearer understanding as to what the roles of the respective Administrations are. I share the view that personal relationships are vitally important but they cannot be a substitute for having some kind of structure that everyone has signed up to.

Q129 Chair: We will want to explore with you the type of formal arrangements in the course of this session, but I would like to ask Lord McConnell what it was like as First Minister when you had to deal with your counterparts down here. Did you find it an onerous task or was that something that you found relatively straightforward and simple?

Lord McConnell: A lot did depend on personalities. I never found the formal structures to be much help in any sense at all. I don't think we ever made any progress using formal structures and I don't think we ever had any setbacks using formal structures. Where there was progress, it was down to the attitude and the engagement of Ministers at both ends. Where there were setbacks, it was the reverse. Good examples would be the devolution of renewable powers in 2001-02, which led to the initial activity around renewable generation in Scotland, and a lot of that was the relationship between Ross Finnie and his Department and the relevant Departments down south. There was also the devolution of real powers with Alistair Darling in 2004-05 and perhaps the Home Office under David Blunkett, when the Fresh Talent initiative was launched, where a really positive approach by him saw that quite unique arrangement for visas and the general approach to immigration. None of these were achieved through joint ministerial committees. They were all achieved through political discussions, Civil Service discussions, trying to find solutions.

Q130 Chair: A feature of your time as First Minister is that there was a Labour Government here at Westminster, so these types of personal relationship would work a bit more effectively.

Lord McConnell: That is not necessarily always the case.

Chair: It is always characterised as a golden period of good intergovernmental relations because there was, but is there not a bar in the Scottish Parliament that is called the White Heather Club in response to your attempts to be called the Scottish Government? I remember those days and some of the tensions there were.

Lord McConnell: I think that might have been my predecessor but, yes, there were bad moments as well and they were down to perhaps political culture, perhaps lack of understanding. I would say a low point in that would be when we were rightly and clearly asserting our right to be engaged in decisions about the removal of the families, the children of asylum seekers who had failed in their applications for asylum. At that time I took the view very strongly—as did the Minister, Malcolm Chisholm—that because of our responsibilities for child welfare and child



protection in Scotland we had a right to be involved in those decisions and the way that those decisions were carried out. If people remember, that was a view at the time that was not shared by at least some Ministers, maybe not the whole Government but certainly some Ministers at the UK level. I think that was down to the political culture and a lack of understanding of the fact that we now had legislative autonomy in certain areas and that had to be respected.

Q131 Chair: I was here during that period and I certainly remember that. I don't know if you would see this as not so much a resentment but a suspicion about the upstarts up the road who were trying to secure all these new powers and responsibilities. Would that be a fair interpretation of some of the tensions that existed with Westminster getting used to a new devolved Parliament in Scotland at that point?

Lord McConnell: I have said this on the record before. I think Members of Parliament for English constituencies—and in particular Government Ministers who represented English constituencies—found the transition in the first decade easier than Scottish Members of Parliament who had to adjust to having less power in Scotland than they had before. Particularly Ministers in Scotland and some MPs who had been in Parliament for a long time found the reduction in their legislative power quite difficult, even though they had legislated for that autonomy for Scotland.

In terms of this inquiry, that affected intergovernmental relations. That was an issue between MPs and MSPs and between the two Parliaments but it meant an inconsistency between different Departments. Some Departments had a positive approach to working with the devolved Government. The Departments where Ministers either did not understand because they were too new or did understand and did not like the reality of devolved power were harder to deal with. It comes down to the point that Lord Wallace made: that individual personalities can have a big impact on this.

Q132 Chair: Coming to Lord Wallace, you were Deputy First Minister through the whole of the start of the devolution period. Would you share the assessment of Lord McConnell about how all these things worked out? Was it more about personalities and getting on with people than it was about the actual machinery and infrastructure?

Lord Wallace: That is largely true. If we can take some of the machinery, there was the joint ministerial committee at the top level of Prime Minister, Deputy Prime Minister, First Minister and Deputy First Minister. I remember meeting in Edinburgh and in Cardiff and, by the time we came to the third meeting in Downing Street, I don't think I am exaggerating in saying that Tony Blair spent most of the time looking out the window. Nothing much was achieved at them and no one could understand the point of them and that is when they fell away. I think they only revived after the Scottish National Party came to office in Edinburgh and there was perhaps arguably a greater need for them.



Personalities are important but the other point is that we all tended to know each other in these early years. Although I was a Liberal Democrat Member of a coalition Government, I was dealing with UK Ministers of a Labour Government who I had served with as an MP in Westminster and I did know a number of them. As the Justice Minister, I had a really good working relationship with Jack Straw. We operated on the basis of trying to make no surprises and that worked for the most part.

Then latterly, when I was the Enterprise and Higher Education Minister, I remember many dealings with Charles Clarke and with Alan Johnson who was his deputy. We had known each other as MPs. Everyone didn't always get what they wanted but they were constructive. If I fast forward on, when I was Advocate General in the UK coalition, my opposite number was the Lord Advocate, and that was an important relationship too, which we tried to foster.

Q133 Chair: Sir Peter, you would have seen the early days of devolution and then the change that came when there was an SNP minority Government. From what we have been told so far, that was when things started to change quite dramatically in intergovernmental relations. Is that a view that you hold?

Sir Peter Housden: Yes. That was an important step on the journey but I trace it back a little further than that. In the areas I worked in, particularly in education and local government, from the late 1980s onwards, you felt quite a force south of the border to suck powers and functions into the centre on the basis that was the way that the country was going to modernise. Education reform under Tony Blair and David Blunkett is a particular case in point, where the role of local authorities was significantly diminished on the grounds that more progress was needed and so on.

That was the backdrop in my time as permanent secretary, where we were swimming against the tide in Communities and Local Government. This was the early days of city deals and those kinds of regional arrangements and we were, by inclination, as a Department, more geared up to understanding where devolution came from and the kind of energies it could realise, be it in a city or region or nature.

As permanent secretary, one of my tasks was to go to Wales and Scotland and have intense engagement with people there to understand how they made these things work. If you were in Whitehall, where it was extraordinary to get interdepartmental co-ordination, there was a great fascination to visit a Government that had no Departments. Was this true? What happened? How was it different? All of that was important and that was the backdrop to all of this.

I would have this at three levels, Chair. I would have the broader movement over decades towards a more devolved sensibility and then the formal structures, which I think are important, have their functions but—as Lord Wallace and Lord McConnell have indicated—there is huge



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variety according to personality, relationships and simple ability to get things done. At one and the same time you could be at daggers drawn on issue X and in the same day making tremendous progress on issue Y. It was a very varied picture.

Q134 Ross Thomson: My question, first of all, is to Lord McConnell and Lord Wallace. I would be really interested to find out what role the Scotland Office played, in particular during your time in office, in relation to intergovernmental relations and how effective you felt the Scotland Office was during that time.

Lord McConnell: Jim covers a slightly wider period of this and can speak with more authority about the first couple of years. When I became First Minister, part of the tension and some of the difficulties in bedding in devolution in the first two and a half years had been the relationship between the Scotland Office and the Office of First Minister in particular; a slight rivalry perhaps for profile and status between the two. I never experienced that because, by the time I became First Minister, the position of First Minister was seen as the premier political position in Scotland and the position of Secretary of State for Scotland had moved slightly down the agenda, in terms of media and so on, but we tried to maintain good relations. I think the area where that became difficult was when we were almost trying to maintain relations for the sake of it.

The power in the UK Government lay in the Home Office or the Treasury or the Department for Transport or Department of Energy or whatever, where we were trying to get specific agreements on specific policies. While the Scotland Office could assist with that, the decisions lay elsewhere. That is why in 2003, when Tony Blair tried to change the structure of the Cabinet and create, effectively, a Secretary of State for the Nations and Regions—although I don't think he was going to call it that but a post of that sort—I was supportive of that position. I thought that, after the first term of the Scottish Parliament, the role of the Secretary of State for Scotland and the Scotland Office had to move on. I still hold that position quite strongly, not to diminish the individuals who held the post or the very co-operative way that they worked with me as First Minister but the realities of the structure of government now pointed in a new direction rather than the past.

Q135 Ross Thomson: Lord Wallace, just listening to that, you heard that the Scottish Executive at the time would liaise with Departments like the Home Office and Treasury. Did you find in your experience that the Scotland Office added any value to those interactions or was it something that you felt you could do directly, given the relationships?

Lord Wallace: I said in an earlier answer that my dealings, first as Justice Minister and subsequently as Minister for Enterprise and Lifelong Learning, were almost always with the relevant departmental Ministers. Thinking back, initially there certainly was intended to be a regular meeting between the First Minister and the Secretary of State, at the time Donald Dewar and John Reid. I don't know how often they did meet.



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I think I was called in once and no meeting of that nature ever took place when I was acting First Minister when Donald went in for his heart surgery, but I don't think anyone felt that there was a gap in the running of the Administration because of that.

As Jack said, it is not to diminish those who held the office because some very distinguished people held the office; interestingly enough, latterly holding the Scottish Office as well as being Transport Secretary or Defence Secretary, which might in itself suggest something. Effective dealings were almost always with your UK Government departmental counterparts.

To take another example my colleague, Ross Finnie, who was the Rural Affairs and Agricultural Issues Minister, would regularly have meetings with his counterparts in DEFRA and, for that matter, with Welsh and Northern Irish Ministers too. I can't remember any occasion where we channelled through the level of Secretary of State at the time.

Lord McConnell: Can I add one small point? I think part of the relationship at that time was that the First Minister and the Secretary of State were in the same political party. We were meeting constantly. When Helen Liddell or Alistair Darling was Secretary of State, I was seeing them and speaking to them constantly informally. Yet we were also having these formal meetings where we were trying to find things to put on the agenda and I am sure they were too. I think that relationship is different if it is two different political parties.

I am not discounting that the relationship is perhaps more important in that situation; the formality of that relationship is more important in a situation where there are two different political parties. We were seeing each other so regularly on an informal basis or we could lift up the phone to each other and the formality of the relationship did not really matter. The formal relationships that mattered much more were with the individual Departments.

Lord Wallace: I understand that you are taking evidence from Michael Moore. When I was Advocate General for Scotland we were taking devolution legislation through the UK Parliament, which led to the Scotland Act of 2012. The engagement with the Scotland Office was much more apparent then and much more necessary then. There were relationships and exchanges there that I do not remember happening in the earlier days of devolution with regard to the role of the Scotland Office.

Q136 **Ross Thomson:** On that point when you have two different political parties, I have a question for Sir Peter, particularly when you mentioned city deals. This is something I have taken some real interest in. These are fantastic examples of when the two Governments work together you can get some really good results. We visited the Oil & Gas Technology Centre yesterday to launch an oil and gas report and that is there because of that co-operation.



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At the same time, it can also show some dysfunction between the two sides, an example being that I know you were Permanent Secretary at the time of the Aberdeen city deal, which was announced in January 2015. I was involved in that as a local councillor and, although the funding had been signed off and we had agreed a comms plan between the council and both Governments and everything was ready to go, on the very day itself when they had an announcement that the Scottish Government were going to double the amount of money that was going to go in: why don't we try to match it? In hindsight, if you look at what happened, there was me and Kevin Stewart on TV arguing with each other over the funding and the rest of it, when the whole thing was a very good project and, if there had been better working at a political level, we could have celebrated what was a very good thing. We have seen that in the Tay Cities deal, the Stirling and Clackmannanshire.

What are your reflections about the workings on city deals during your time? Is there anything you think could be put in place to avoid some of the disagreement we see that comes in at the end, or is that entirely political and something that we can never really mitigate? I would be interested in your point of view about working between the two Governments.

Sir Peter Housden: That is a very interesting deep account. In my experience, those kinds of deals are a real challenge for the UK Government because they require a number of Departments to come together. You are dealing with a many-headed interlocutor in all of that. The strength of the political leadership at the centre is very important for the UK Government. The extent to which that individual is able to build a relationship with their counterpart in Scotland is important. There were also issues for the Scottish Government about the nature of the deal, how it was to be funded and what it said about interlocking responsibilities, so it was fraught with difficulty. There was always plenty of raw material around for people who wanted to find things to object to or to slow it down.

From the point of view of the Civil Service, you have to be very aware with your counterparts in the UK Government of exactly what you describe. That this will not be done until it is over the line and out there. You almost come to expect what is going to be pulled out of the hat here at the last minute, what might happen and how we might respond, and of course it is not a perfect science. But those deals get over the line—they did in Glasgow—all of those kinds of things, and they are a facet of how Governments now work with devolved Administrations all over.

Q137 Ross Thomson: Have there been challenges about understanding even now areas that are devolved, reserved and the different competencies? I know the Chair will have been involved in the Tay Cities deal. Sometimes there is disagreement about where responsibility lies. That is why you get to different levels of funding. If so much more of a project is devolved, the Scottish Government would be expected to put in a bit more and less is reserved—if that makes sense—but you are still trying to get to a point



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where both are putting in equal amounts. Did you find any challenges in understanding where the competencies lay during the city deal negotiations?

Sir Peter Housden: That is absolutely right. Lord McConnell referred to that in his earlier testimony. These things are not cut and dried and it is a lot about interpretation. One of the things you found is that officials would be locked into a position that they believed was defending the interests of their respective Governments. This position would then be unlocked in a phone call between the Secretary of State for Scotland and the Finance Minister—or whoever it would be—to move the thing forward. That was often the way that it worked.

Q138 **Kirstene Hair:** My question is in relation to the Chair's initial question about relationships. It was off the back of a quote from Lord McConnell in January 2018, when you said that egos had taken over the Brexit discussion between the Scottish Government and Westminster. It feeds into the discussion we were having at the beginning and how much you believe that the reason there are some issues with the relationship is down to process and how much is down to a personal relationship. You seem to have had that personal relationship during that time and we do not seem to have that now, but the backup process does not seem to be fully functioning either. How much do you think falls on people and the desire to want to achieve something and how much falls back on the process?

Lord McConnell: I think the reality is that, whenever you are in a situation that involves Governments and Parliaments, there is going to be politics and, therefore, there is going to be personalities. That is unavoidable. The sort of phone call that Peter just referred to in unlocking a discussion between the Scottish Government and the UK Government to get a deal happens inside Cabinets. One Minister phones another Minister and unlocks a discussion that is paralysed and is leading the Cabinet to not making a decision. Politics and personalities are interlinked. As a result of that, some of the relationships I had were very good and some were not so good.

I think that this becomes critical after Brexit. We have had 20 years now of being able to ride that particular horse. The devolution settlement was so clearly set out in reserving devolved powers that it has been possible to make it work over 20 years despite the ups and downs. After Brexit, when there are quite clearly some powers being repatriated from Brussels, but also with Britain's new role in the world with trade deals and so on—and so many of these areas involve both devolved and reserved powers—I think there is a need to have a new structure. I don't think it can be left to individual relationships and Department-to-Department liaison with a fall-back and a discussion at the JMCs.

That is one of the reasons I have called for a UK Council of Ministers, similar to the EU Council of Ministers. That would give proper respect and due weight to the devolved Governments alongside the UK Government



in joint decision-making, for example on fisheries but also perhaps in other areas. We are in a new era. While I think it has largely worked in the last 20 years—despite my occasional anger with it not working—we now need to be very clear that we have to change the way we do it, moving forward.

Q139 Kirstene Hair: This question is open to all panel members. I think it has been widely recognised that, since 2014, the weaknesses in intergovernmental relations have become a bit more apparent. We have a Westminster Government that are very much behind keeping the union together and a Scottish Government that want to take Scotland out of the union, so they are diametrically opposed on the constitution. Do you not think that that becomes entrenched into other policy areas and it is very difficult for them to agree about anything? As long as we have this constitutional question on the table—even with reform of the process as has been pointed to in the discussions this morning—do we believe that that will fundamentally change what we are seeing at the moment and what we have seen quite widely exposed since 2014? I agree that where there is a will there is a way, but can you come together if you have two diametrically opposed views of the future of your country?

Lord McConnell: To some extent that depends on the public. The public should be creating more of a stir about this. The example you gave is only one example of where we are in British politics—and to some extent Scottish politics—today, where people are taking stands and positions based on a primary, almost pure political objective rather than on where they are today and what they need to decide to improve people's lives. That is true of the whole Brexit discussion, in my opinion, and it is true of some of the relationship between the Scottish and UK Governments. Where that is put aside, you have great results; where it dominates, you get yourselves in corners and once you are in corners it is hard to get out of them.

Sir Peter Housden: It seems to me that it is one of those things that should not work in theory but it often does in practice. I was working in the moments when this was most sharply posed, when the framework for a referendum was being agreed. Alongside some literally existential discussions about the constitutional future of Scotland and the Union, deals were being made on other issues by the same people who were locked in debate elsewhere. Somehow or other it gets along.

From my point of view, working for the Scottish Government, what was driving it was there were two propositions. The Government wished to see an independent Scotland but they saw a necessary condition for public acceptance of that, that they could run a successful and efficient Government. A key part of that was: could it manage its relationships with its largest, most important economic and social partner with whom the country was very closely intertwined? When you asked as an official, "What is the purpose of the Government?" that was it. It was not an either/or. You had to demonstrate. On the one hand, you could make



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practical accommodations and deals that would benefit the people of Scotland at the same time as Ministers were prosecuting their own agenda towards independence. That duality is the nature of it.

Q140 Kirstene Hair: Do you think the Scottish people are aware of the agreements and decisions that are made that benefit them? I don't feel they are as widely publicised as the disagreements between the two Governments.

Sir Peter Housden: You put that very well. I am sure you are exactly right.

Q141 Tommy Sheppard: I would like to go back to the question of the relationships between the two Governments, particularly. It is interesting that, by 2003, it sounds as if we already had a situation where Scottish and UK Ministers had an operational relationship that was independent of the Scotland Office and certainly did not require it to be an interlocutor and a facilitator in any way. Our discussions over the last two years with UK and Scottish Ministers indicate that, if anything, that situation is more so now. Scottish Ministers routinely communicate and have relationships with UK Ministers, even on matters where they are diametrically opposed, and the relationships seem to be functioning.

That begs the question: what is the point of the Scotland Office? If its relevance was being questioned in 2003, surely two decades after devolution it needs to be questioned further. Could I invite you, if you wish to, to make the case for the continuation of the Scotland Office or to speculate on whether there might be any adverse consequences of it being wound up?

Lord Wallace: You will probably find me on record, from the early days of devolution, saying that there should not be a Scotland Office. Lord McConnell said earlier about the botched reforms that Tony Blair tried to introduce in 2003, that you would have a Department for constitutional affairs or for the nations and regions. The only qualification I would add to that is that, when I was involved and related to the Scotland Office, there was a lot of legislation going through on devolution, which I think no individual other Government Department could have dealt with as well as it being the primary responsibility of the Scotland Office. It obviously had to deal with other UK Departments as well as the Scottish Government on that. There was a role to play in dealing with that specific piece of legislation.

I was not there to see it when the 2016 Act went through, but I think you will find I am on record—from possibly even before the Scottish Parliament was established—saying that the natural consequence of this might be that you did not need a Scotland Office, as such, and there could be an office that looked over general constitutional issues.

Lord McConnell: As I perhaps hinted at earlier, there needs to be a fundamental change. In the UK Government and the Cabinet there should be a Secretary of State either for the nations and regions or for



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constitutional affairs. In my view, that person would almost automatically be a Deputy Prime Minister type individual of that standing in the Cabinet. Within that Department, I would have a Scotland Office, a Welsh Office and a Northern Irish Office for the functions that are required—including some of the legal functions that are clearly required—but I would also have an office for communities and local government. Local government and the regions of England are under-represented in the British Cabinet at the moment. It would do them a lot of good to have a more senior figure in the Cabinet representing their interests.

You could have a Department of Constitutional Affairs or a Department of the Nations and the Regions, which was headed up by a powerful Secretary of State who was a senior figure—one of the top four positions in the Cabinet—and you could retain offices within that Department that were responsible for some of the liaison on helping to resolve disputes and so on, the few functions that the Scotland Office has today. Alongside that, you need to have both the informal positive relationships between individual Departments, which we have already talked about, and a formal process for decision-making on areas where there is clearly going to be shared legislative responsibility post Brexit.

That is why I think that, alongside that Department, you should have a UK Council of Ministers. In relation to fisheries, for example, the Minister in Scotland, the Minister in Wales, the Minister in Northern Ireland and the Minister in the UK would meet on an equal basis and make joint decisions, co-decision-making on UK policy and legislation in those areas.

If you had those two structures in place, after 20 years and after Brexit—if it does indeed happen—the UK would look much more like a multinational governmental structure, which is why it should be given the legislative autonomy there is in Scotland, Wales and Northern Ireland now.

Q142 John Lamont: I want to drill down a bit more on the point about intergovernmental relations and what you are proposing. On the one hand, Lord McConnell, you mentioned that in your time you did not find the formal structures particularly helpful but you are now arguing for a new structure post Brexit, and particularly what you have said there about this joint Council of Ministers. Then you mentioned how sometimes these situations of conflict can be resolved just by a phone call. Where is the sweet point? Where do we get to?

Some argue that we need to have a structure whereby the Scottish Government could potentially block or need to give consent to things that the UK Government are doing that impact on Scotland. From my perspective, that is not acceptable because, when we have the stand-off scenario that Kirstene described, effectively the Scottish Government would have a veto over the ability of the UK Government to take action on a UK-wide basis. Where is that special place where we can get the Governments working together but we do not have one Government, for whatever reason, exercising some sort of right of veto?



Lord McConnell: I don't think it is beyond the wit, the creativity and the intellectual powers of people across the whole UK in 2019 to work out which powers should continue to be legislated for in Scotland in an autonomous way, as has been the case for the last 20 years, which powers need to be reserved to the Westminster Government and which powers they share. The reality of Britain's European Union membership was an acceptance—and the public may now have rejected this across the UK—since 1975 that, in certain areas of legislative competence, shared sovereignty in the European Union was the way to make those decisions. That included some aspects of environmental policy, fishing, and agriculture and so on.

The logic that drove the creation of that system of shared legislative competence at a European level applies in the UK for me just as much as it applies in the European Union. I don't think you can manage Scottish fishing waters separately from fishing waters in England or Wales or Northern Ireland and I don't think it would be right for the decisions on that to be made solely by the UK Government, given the breakdown in legislative responsibilities that was agreed in 1999.

Q143 **John Lamont:** Which is surely why we have Scottish MPs representing Scotland here at Westminster. The example you used with the EU is, in the Scotland sense, we had MEPs in Europe but Scotland still had no right of veto over the environmental measures or any other measures that the UK could put forward. Equally, on a UK basis, we elect MPs from Scotland to serve here at Westminster to hold the UK Government to account for the things that they are doing that affect Scotland.

Lord McConnell: I do not have a strong view on this one way or the other, but there were areas at the European level where majority voting applied and it would not be impossible to have a situation in the UK where, if three of the four Ministers agreed a position, the fourth Minister could not stand in the way, for example. If you had a UK Council of Ministers that had four Ministers on it, it would not be impossible to have a situation that would seriously threaten the sensibilities of the UK Government, I would imagine, because then three devolved Ministers could outvote the UK Government Minister.

That might appeal to certain people to see Scotland or Wales—or Northern Ireland, more likely than anybody perhaps—veto decisions. You have to have a situation where either all four Ministers had to agree and, therefore, had to work for compromise, had to get a consensus, or you would have to accept the ups and downs of majority decision-making.

Q144 **John Lamont:** But then surely that cuts across the argument, which I think most of us accept, that the UK Government still have competency over some policy areas. Under your proposal, potentially the Welsh and the Scots and the Northern Irish could come together and act in some sort of way to undermine that decision.



Lord McConnell: What I am suggesting is that the way in which the UK should exercise that competence should be to agree formally in legislation that there will be a UK Council of Ministers and that that Council of Ministers will operate in a certain way. It is the next step in the process.

Q145 **Chair:** There is also the issue that there is no devolved Government for England, so the UK is effectively the English Government too. When we go to the model that Lord McConnell is suggesting we start to get into real difficulties with that.

Lord Wallace: There is a host of issues that arise out of it. I do agree that there should be a UK Council of Ministers, if we move forward and have a situation where we are dealing with issues that were previously dealt with at a European Union level but had an impact on all parts of the United Kingdom. Let's remember that decisions were made at a European Union level but it was left very often to the UK Government to determine how they were implemented in England, to the Welsh Assembly how they were implemented in Wales and to the Scottish Government how they were implemented in Scotland. You could get some differential implementation but it was under the framework of a commonly agreed EU policy.

As we move forward, there will be areas—environment is an obvious one—where there is logic in having an overarching framework and that the respective Administrations implement it for their geographical area. That might have to take the form of some majority voting. As a federalist, it does not bother me that much. I can see the sensitivities among those who see the sovereignty of Westminster as the be all and end all, but I think we have to be pragmatic. The Welsh Government produced a paper about 18 months ago in which they set out some proposals that are worth looking at. We should be grown-up about this and address what would be the new reality.

The other two points I want to make is, first, you mentioned the English position and there is an issue there. I have seen it—and reflecting on what my colleague Ross Finnie sometimes said when he had been to meetings of, say, Fisheries Ministers of the respective parts of the UK—that there were some UK Secretaries of State who got it and understood that the English position was not necessarily the UK position. There were others who did not get it at all, could not for the life of them—with all good faith—see that conceivably there could be any difference between what were the interests of the UK and what were the interests of England. I think you have to work out how England gets its own distinctive voice that is not seen as the UK imposing.

The other point is dispute resolution. The current arrangements have not worked well. I cannot remember what happened in the end to the dispute over the London Olympics money and whether there were Barnett consequentials. Sir Peter might remember. It moved up and it was a very unsatisfactory thing.



Chair: I remember it very well. Maybe we will just leave it there. We have lots of questions, and I knew this would happen today when we have former colleagues coming in to give us evidence and speak to us. If we can try to get through questions as quickly as possible and ask for shorter, more concise answers. I know this session is going to overrun but we will try to do what we can to get everyone in.

Q146 **Christine Jardine:** If I can go back to something that Ms Hair touched upon, which is the working relationship between the two Governments has to a certain extent in the past four or five years been replaced by a rivalry. Certainly in the public sphere, all the public debate appears to be about the process of government in Scotland and at times issues seem to be secondary. To what extent do any of you feel that such an emphasis on process has been responsible for damaging the working relationship between the two Governments?

Lord McConnell: I take a slightly more relaxed attitude to this than a lot of my former colleagues, not because I like it, I don't like it at all, but I think it is inevitable. If you look around the world at countries that have different levels of government—I don't mean just administrative government but actual legislative government—at different levels there are times when people are working for the common good. There are times when they are having hearty policy debate and discussion and there are times when they are having standoffs on process, and this will happen. To some extent, we are still in the early years of devolution. Twenty years feels like a long time, but it is only 20 years and it is still less than half the amount of time that Britain has been in the European Union, for example. We need to be careful about being too clear-cut in our response to that.

I think perhaps the parties could have done more. I certainly advocated this back in the day before I was an MSP in the Labour Party—and it was not taken up at that time—that we should go and study international examples of how political parties have operated at different levels in other places. That debate in the UK has been coloured a little bit by a nervousness perhaps—particularly in the parties that do not support Scottish independence—of looking at international examples. When I was First Minister I spent a lot of time working with the Catalans, the Bavarians, the Flemish and the Québécois and you do learn from other places that have had their government structures longer than we have had. I would urge others to do that because we do not have all the knowledge and all the judgment here in the UK. We can learn from other places.

Lord Wallace: I think that is important when we look forward. For example, new trading arrangements will inevitably involve things that have to be done at a UK level but will also have clear implications for areas of devolved responsibility. We should be looking at experience in other places. For example, in Canada where my understanding is that when they were negotiating their agreement with the European Union the provinces and territories were very much involved and relevant in those



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negotiations. Looking forward to these kinds of trade negotiations, it is important that we devise some structures where the devolved Administrations can be involved.

- Q147 **Christine Jardine:** You touched on the problem of there not being an English devolved Administration. Do you think that will become a necessity for your suggestion of something like a UK Council of Ministers or a Department for the Constitution? Is that a prerequisite before we can take devolution to that next stage?

Lord Wallace: I think if it was a prerequisite we would still be having this conversation in 50 years' time. I don't honestly see the appetite for English devolution, even at an English level or a sub-English level. I have always maintained it is up to the English to decide how they want to govern themselves within England, so I don't particularly want to go too far down that road. But we have to be imaginative. If the same structures still exist for England and we do not have proper devolved government for England, there has to be some way that certain parts of England that have particular issues are represented.

Chair: I am conscious we are still on what is officially the second question and we have to get through a whole load. Maybe if people have a supplementary, just direct it to one of our guests.

- Q148 **Ged Killen:** I will direct my question to Lord McConnell, because he was responding to Christine Jardine. There is probably an inevitability about some of the competition and some of the dispute between the UK and the Scottish Governments, but I am wondering if the politicians are being slightly let off the hook on this. Currently, it is easier perhaps to fall into that dispute and people on the outside looking in would probably be amazed that the Scottish and the UK Governments ever agree on anything. Because we hear about the disputes. We do not hear about all of the thousands of transactions that happen where agreement is reached.

Do the UK Government—and the Scottish Government to an extent but we are here to talk about the UK Government's role—have a greater duty to make sure that people are aware of the mechanisms that are in place and the agreements that are reached, so that we are not always hearing about just the disputes?

Lord McConnell: In an ideal world, yes. Ross made the point about the two Governments competing on who gets the best headline on a City Deal. This is politics and people are going to try to get a little bit of a political advantage from an announcement. That happens at all levels of government.

There are two things that might help. One would be that I think there is an assumption, particularly among Scottish politicians—if I can gently suggest this—that people in Scotland know what their responsibilities are at different levels of government and understand the constitutional settlement 20 years on. I think that people in 1999 pretty much broadly



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did understand what they were voting for. That was because there had been 20 years of argument and debate about those powers. It was something that was constantly under scrutiny and challenge.

In the last 20 years we have been applying the new arrangements rather than debating them, so I am not sure there is the same level of understanding today in Scotland about who has responsibility for what. Both Governments could do more to help with public education and so on in that regard, and remind people constantly in a neutral way what that breakdown is.

The second point is that the solution to this is accountability. It is not to try to change what the media report—because we are not going to do that—and it is not necessarily to change the behaviour of politicians. What you can do is make politicians who have responsibility more accountable. If the behaviour of Ministers in both the Scottish Parliament and Westminster was more transparent and more accountable, I think you would get better behaviour if it was more in the public interest and less about political advantage.

I have made some comments recently about the accountability of Ministers in the Scottish Parliament and that their whole act could be sharpened up. I advocated, for example in the Brexit negotiations between the Scottish Government and the UK Government, that all the papers submitted to the joint ministerial committee should be published in advance and the agenda and the minutes should be widely available. If you had a situation where there was transparency in the relationship, it would force people on both sides to behave better because the public accountability would kick in.

Q149 David Duguid: I think we are still on question 2, aren't we? I will focus this directly to Lord Wallace. You said that you have been saying for a long time now that you would do away with the Secretary of State for Scotland, the Scotland Office. This is following on from Mr Sheppard's question. From the website of the Scotland Office it says, "The Office of the Secretary of State for Scotland (or the Scotland Office) is the ministerial department responsible for the representation of Scotland, and Scottish Affairs in the UK Government". Without that role at Cabinet level, how would you propose that Scottish interests would continue to be fully and actively represented at the heart of the UK Government?

Lord Wallace: For brevity, I adopt what my noble friend Lord McConnell has said about a very senior Minister who would have responsibility for the nations and regions. David Lidington does quite a lot of work in dealing with Scotland, Wales and Northern Ireland. There is something embryonic here. I suspect he carries more clout for Scotland's interests, if I dare say so, than Mr Mundell does. No disrespect to Mr Mundell but David Lidington probably has clout.

The other point I would make is that you are asking us about our experience. My experience as a Scottish Minister was not that I needed



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the clout of the Secretary of State for Scotland or the Scotland Office to try to get anything done or get arrangements. It was done on a departmental-to-departmental level, at both ministerial level and, quite crucially, an official level. That informed my view as to why I don't think we would have been any worse off if, in those early days of devolution, the Scotland Office had disappeared.

Q150 Ross Thomson: I will direct this to Lord McConnell. I am interested in this idea of a Minister for nations and regions. Some of my colleagues like Stephen Kerr have written about it. I know you don't have a plan right in front of you but just to tease out a little bit more from that, if you had a Secretary of State for nations and regions—following on from the point that David just made—how could you envisage that Minister representing the different needs of the nations at the level of Cabinet?

Sometimes there would be some divergence; maybe some of the challenges are different about connectivity or immigration. How could they actively be represented at Cabinet level? Would you see there being an impact on resources? At the moment there is a Scotland Office in Edinburgh and quite a lot of resources go into that. Do you envisage that still being the same? Would there be a change in that? It is just to tease out a little bit of that, if you have thought about it.

Lord McConnell: In relation to offices, I think it is as is needed. There shouldn't be any waste. That would be my number one thing. The advocacy at Cabinet would depend on the ability of the individual. If you envisage this post as being on an equivalent status to the Home Secretary, the Chancellor of the Exchequer and the Foreign Secretary—whether it would also encompass the Cabinet Office is another issue—as effectively the fourth great position of Secretary of State in the British Cabinet, it would have clout. The person in that position would be listened to at the Cabinet.

At the moment Cabinet in the UK has Ministers in attendance who are not full Cabinet members, so it is not impossible to have a situation of a Cabinet meeting where there was a specific discussion about something that affected Scotland, Wales or Northern Ireland and that Minister of State could go along with the Secretary of State and take part in the discussion. It is not an impossible situation to imagine, given that four or five Ministers of State have been attending Cabinet since the mid-point of Tony Blair's time and all the way through the last four Prime Ministers. There are solutions to all these things, but to me this is about the weight of the position and the structure of government.

If I am being absolutely honest, I was surprised in 1999 that there was still a Secretary of State for Scotland. I had assumed that that position would just go. I think 20 years on, what you need here is a big decision, a big change—not a wee incremental change, a big change—and in that way you would move on and move into a new era.

Q151 Ross Thomson: On the point on confidence, do you think the Scottish



public and the Scottish Government could have confidence that Scotland's interests are being represented properly in the Cabinet if that member is not a Scottish Member of Parliament? I just throw that out.

Lord McConnell: If you look at the Northern Irish example over the years, the people of Northern Ireland have never complained about the nationality of the Secretary of State. They have always complained about or praised the performance of the Secretary of State. I think it is the performance that matters, not the nationality.

Chair: Once again, I will appeal to my colleagues. We are going to overrun this session because there is so much interest in the responses that we have heard, but if we can try to restrict it to one short question to somebody on the panel and one concise response, gentlemen. Thank you.

Q152 **Tommy Sheppard:** A number of witnesses have said to us that they felt that the consultation with the Scottish Government on matters of new legislation was something of an afterthought. In your experience, do you feel that the UK Government engaged with you positively, effectively and timeously or was it something that perhaps they might rather have done without?

Chair: We have not heard from Sir Peter for a while. What do you think of that?

Sir Peter Housden: Unhelpfully, Mr Sheppard, I think the answer is very variable. I think that where there was a Department in Whitehall that was asking itself the basic question, "How will this play out across the UK?" and expecting officials to know that and to be engaged with interests in Wales, wherever it was, to be able to bring that to the table early, you tended to get a more informed and engaged response.

At the other end of the spectrum, there were examples where people at the 11th hour—often told by the Scotland Office—were advised that, "There are some significant devolution implications in what you are proposing" and then you are playing catch-up. It depends on the mindset and the sensitivities. I think it is a Civil Service responsibility, in each of those Departments, to pump into people as they are going through as leaders that sensibility and then you would get improved outcomes.

Lord McConnell: That is a very good question. I think it differed, partly for two different kinds of legislation. Where legislation was being developed by a Secretary of State because of a perceived national need or gap and was evolving through a discussion internally and externally led by that Secretary of State, we tended to be involved in that discussion if there were implications that were specific for our responsibilities.

Where the legislation was effectively pre-empted by a political initiative that was the result of a manifesto commitment or a political announcement, then it happened more quickly and generally with less



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consultation. We were affected by that in the same way as everybody else was. To some extent again it depends on politics, but I absolutely agree with Peter that the key to that is the relationship in the Civil Service.

One of the things I worry about 20 years on is that I am not convinced at all that there are enough civil servants in the UK Government Departments who have experience and knowledge of devolution in Scotland. I would have significantly more interchange at a younger level between the civil servants, so that they understand how the different levels of Government work and they can anticipate problems better because of that experience.

Q153 Ged Killen: My question is about how well UK officials understand devolution. Does it vary across Departments? Are there any practical barriers to Scottish civil servants quickly locating and approaching their UK counterparts? How effective have departmental devolution co-ordinators been in fostering the intergovernmental engagement? First, Sir Peter.

Sir Peter Housden: On the practical barriers, there are many. Departments can be very hard to navigate. People change jobs and, with the best will in the world, for officials with UK responsibilities—which often tend to be chopped up very small—the implications of something for a devolved Administration may just be a small part of what they are trying to deal with.

Our approach to that in the Scottish Government was to go towards that problem. We used to talk about shoe leather being important, so we expected Scottish Government officials to know who their counterparts were in Departments—and this was often multiple—to form relationships with them, to get upstream on things that might be happening to really own this kind of space, but it was difficult. Lord McConnell is exactly right: levels of understanding, awareness, appetite to engage with devolved concepts was often lacking.

One of the strengths in my time—nothing to do with me—was to see the UK Government up their game significantly on the connection between the Scotland Office and the Cabinet Office and the top of the Civil Service. There is now a permanent secretary that the Scotland Office is able to relate to, so you have a sort of direct connection into the college of permanent secretaries and all of that. All that helps and has improved, but it is quite challenging from both ends of the spectrum.

Last point: it is worth remembering that in the whole debate here, in terms of scale there are huge differences between the UK Government and even the largest devolved Government. It can be very challenging in the Scottish Government to gain the attention of officials in Department X for a particular issue. The answer: you have to be even more energetic and skilful in forming good relationships. You cannot expect this to happen.



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Q154 **Ged Killen:** Do you think a requirement for UK Government Departments to produce devolution impact assessments during policy development would help improve the understanding of devolution in Whitehall?

Sir Peter Housden: Yes.

Lord McConnell: Yes.

Lord Wallace: Very briefly, as a law officer, I had to regularly remind UK Government Departments that there could be Scottish law implications and they could not just cut and paste.

Chair: That is a very good point. Thank you for that.

Q155 **John Lamont:** My question would be to Sir Peter. Thinking back to 2014 and the referendum, is it fair to say that relations between the two Governments were quite tense?

Sir Peter Housden: Interestingly, yes. At senior level, they could not have been tenser on occasions. Nevertheless, there were important channels of communication that were being held open. I saw it as my responsibility with officials in the UK Government to keep those channels open. This is a lot about how senior people conduct themselves in these sorts of spaces and remember their broader commitment to Civil Service principles. I felt that was very well-adhered to on both sides of the equation.

There were occasions when I would absent myself from conversations around the permanent secretaries' table in order not to embarrass and to allow a full discussion of the UK Government interest. All of that worked in a way that many people outside Government and Parliament could not understand, but it did. For me it worked well and contributed to the outcome. We were able to keep those relationships going.

Q156 **John Lamont:** Are there any lessons from then that we could apply now in terms of how we are managing Brexit?

Chair: You could plead the fifth amendment.

Lord McConnell: I will plead the fifth amendment.

Chair: We will maybe just leave it. I know you have something to mention, but maybe you could shoehorn into your question that is further down the paper.

John Lamont: Yes, Chair.

Q157 **Deidre Brock:** We have already discussed to an extent the transparency and scrutiny that you think should exist a little more in the JMCs and so on, but ultimately the fact that the Westminster Government can overrule any decisions taken by devolved Governments—because Westminster remains sovereign at all times—how does that affect that joint decision-making? Does it influence the behaviour or the actions of the Ministers at JMCs or indeed civil servants? I am sorry, I am not quite sure who to



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direct this to, maybe Lord McConnell. Ultimately, can there ever be real parity between devolved Governments and the UK Government in terms of decisions? Because you are suggesting there might be something like that with the UK Council of Ministers, I think you suggested.

Lord McConnell: That is a very good question. I have thought a lot about that for more than 20 years. My experience of the reality was that there was almost as much pressure on the UK Minister when there was a real argument going on behind the scenes—or almost always as much pressure—as there was on the Scottish Minister because of that sovereignty relationship. Because while as a Scottish Minister you were maybe aware of the possibility, I suppose, that the settlement could change if it all broke down, I think a UK Minister has to always be aware of all the negatives that would be involved in overruling a decision by one of the devolved Governments.

In practice, people—certainly of our generation, if I can put it that way—wanted to make the settlement work and they understood how bad it would be for that settlement if there was ever any question of one level overruling the other level. What has happened in the last decade I cannot speak for but, certainly, what happened in the first decade, I would say that there was an understanding of a political pressure on the UK Ministers to not overstate their role.

Deidre Brock: Absolutely. Thank you, Lord Wallace.

Lord Wallace: I agree with that. In those earliest days, I never recall sitting in a meeting with a UK Government Minister where you felt that in his or her back pocket there was section 28(7) of the Scotland Act. That was not the atmosphere and that was not the nature of the conversation, “If you go too far, mate, I have the trump card”. That did not happen.

Q158 **Deidre Brock:** What has happened now with the UK Government taking the Scottish Government to court? Does that change things irreparably, in your view?

Lord McConnell: I was asked that question on the radio this morning. I have to say, I think it is a strength of the settlement that that has only happened once in 20 years. It is not a positive thing. We are at the stage where, whoever is right or wrong in that view—and we will maybe all have different views about that—the fact that it has only happened once is pretty impressive for a brand-new constitutional settlement in the most centralised country in the developed world.

Q159 **Deidre Brock:** Are there concerns though that this sets a precedent going forward? Are we going to see this happening more often?

Lord McConnell: I think it is a mark of the legislation. There was always going to be a time when the Scottish Parliament, against the advice of its Presiding Officer, passed legislation that was questioned for its competency and the UK Government would feel legally obliged to



challenge that. It is not a big surprise to me that it has happened. The biggest surprise to me is that it took 20 years to happen.

Sir Peter Housden: I think the exercise of power by the UK Government in those spaces is very wisely constrained, so people do not want to be saying no. You referred Lord Wallace to the Olympic consequential, and this is a word in defence of process. That was resolved through the process. There were interesting moments as it got unlocked, because the Prime Minister of the day, David Cameron—in the middle of a JMC meeting where this was going backwards and forwards like a shuttlecock—paused the conversation and said to the devolveds, “What I hear you saying is this” and he gave a complete accurate rendition of the points that were upsetting all of the devolved Administrations. The simple fact that the Prime Minister understood this and could play it back pitch perfect was a very important lubricant for the overall devolution mechanism. I was obviously not party to the discussions, but I think the UK Government decided, “Right, okay. This has gone on long enough. We cannot just have this hanging in the air forever. We will reach a compromise” and they did.

Chair: They did indeed.

Danielle Rowley: We have heard evidence that would suggest—and the Public Administration and Constitutional Affairs Committee has also suggested—that the JMC should meet more regularly, be put on a statutory footing and have a detailed agenda shared in advance. Do you think that this would have made a difference when you were in office? Specifically, do you think that an independent secretariat to the JMC would make a positive difference?

Lord Wallace: I generally would prefer it. I do not think it would have made much of a difference in times past, partly because of the Administration, there was a coalition in Scotland and a Labour Government; there was a big overlap. I am not going to repeat what was said, but I think you have heard about how things worked. But it should be subject to more scrutiny, greater parliamentary scrutiny. I do not for a moment suggest that that solves all the problems, but as we move forward—be it a UK Council of Ministers or some form of JMC—I do think it would be helpful if there was some secretariat, if agendas were published, if there was a statement.

We may get to the stage where, just as after every European Council meeting summit, the Prime Minister makes a statement to Parliament. After a major meeting of the First Ministers and Prime Minister, why shouldn't a statement be made to Parliament and to the respective Parliaments that would then allow MPs, MSPs and AMs to ask questions? I think that would be healthy.

Chair: A fascinating proposal. Thank you for that.

Q160 **David Duguid:** I will maybe direct my question—which is similar, but not quite the same—to Lord McConnell. The JMC dispute resolution process:



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do you think it is still fit for purpose, specifically in the context of more shared policy competencies created through Brexit common frameworks, for example, but also recent devolution of further tax and wealth powers?

Lord McConnell: The caveat I would put on that is that I have not been involved since 2007, so obviously this whole process has evolved since then. I am broadly in favour of the kind of improvements that could be made to the JMC process and I am broadly in favour of having a dispute mechanism process through that. But I do not think we should assume that that will significantly improve the situation. Ultimately, this comes down to the personalities of the people involved. If you have people involved at a JMC, a transparent system is better than a non-transparent system.

Even in a transparent system you can still turn up on the day and raise an issue, tell the media that morning that you are going to raise it and get the political advantage over the other side in a way that people have tried to do on both sides, particularly over the last decade or so. It is important to make these changes in the light of experience, but I do not think these kinds of incremental changes will significantly resolve some of the issues that are going to be there after Brexit. That is why I come back to my original point, which is that a bigger picture change is required at this time.

Q161 **Hugh Gaffney:** Devolved tax, finance, Finance Ministers and joint ministerial committees all seem to work a lot better inter-government. If so, why do you think the solutions were better in that area?

Lord McConnell: That is interesting. That was the Finance Minister in 1999. Even though the tax powers and the economic powers have changed over time, the subtle relationships that were put in place then have stood the test of time. There is an issue, given that we are here in Westminster and this is the Scottish Affairs Select Committee. There is perhaps an issue in the other direction, which is that I do not think it is satisfactory in a UK where there are significant economic and tax powers devolved to Parliaments and Government in Wales, Scotland and Northern Ireland to have budgets that are basically surprises on the day, not just for colleagues in Westminster, but for those devolved Governments.

That might have been appropriate for a centralised UK state based on majority Governments that pushed through their Budget every year within a couple of weeks and the tax changes were in place before the new tax year. To my mind, that is not appropriate in the 21st century in the UK. I think there is a need to look at international examples for how Budgets are delivered at the national Government level when there are significant economic powers devolved, whether it is within a federation or within other devolved systems.

I would like to see a process where the Chancellor engages with his or her Ministers, engages with the devolved Governments in advance of a



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Budget and where those discussions are much more transparent than they are at the moment.

Chair: Thank you for that. We are just about out of time. We have one last question from Danielle Rowley.

Q162 **Danielle Rowley:** Thank you for all of the experience and ideas that you have shared as well. It was one idea for reform that you think would help relationships that we should be considering as part of this inquiry.

Chair: You all get a chance to answer that one, as long as it is brief and concise. We will maybe start with you, Sir Peter.

Sir Peter Housden: I would underline Lord McConnell's point about exchange of real experience between the Scottish and UK Governments. It is not beyond the wit of man or woman to get that going on a quite systematic level. One of the good things that have happened—probably over almost a decade—is that the people deemed in the UK Civil Service to have the highest potential to succeed to Director General and other senior posts have spent two days in Scotland as part of their overall programme. They have loved it; the Scottish Government have loved it. You have two cohorts a year typically, so suddenly you have a couple of hundred people who know some of the personalities and who have felt it on the ground. That is like a real advantage, but something more systematic would be even stronger.

Lord Wallace: On an immediate practical level, I would endorse that. I was concerned initially that there was a divergence, that there was not a shared experience. It goes both ways, UK civil servants going to Scotland, civil servants in Scotland coming to Westminster. More fundamentally, I think we have to grasp the nettle in a grown-up way as to how you establish a proper UK Council of Ministers.

Lord McConnell: I will not repeat anything I have said. I have already mentioned the civil servants and the UK Council of Ministers and the need to change the UK Cabinet structure.

The thing that could make the biggest difference would be if you abolished the House of Lords and replaced it with a House of the Nations and Regions, where Scotland, Wales and Northern Ireland and the regions of England were properly represented by people who were accountable in some way to the people of those territories. That might change the balance of power in here more than any of the Government changes.

Chair: It is a wee bit maybe beyond the remit of this inquiry, but fascinating all the same. Thank you all, that has been absolutely fascinating, and thank you for concise responses to the questions.

Examination of witnesses



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Witnesses: Baroness Liddell, Alun Evans and Michael Moore.

Q163 **Chair:** I am sorry to detain you. You know what it is like when we have ex-colleagues around the table with us, so I am anticipating the same sort of interaction with this panel. Thank you very much for joining us today. Just for the record: who you are and anything by way of a brief introductory statement. Baroness Liddell.

Baroness Liddell: I am Helen Liddell. I was formerly Member of Parliament for Monklands East and Airdrie and Shotts. I was Secretary of State for Scotland between 2001 and 2003 and I am an active Member of the House of Lords.

Alun Evans: I am Alun Evans. I am Chief Executive of the British Academy, which is the National Academy for Humanities and Social Sciences. More importantly, before that, between 2012 and 2015, I was Head of the Scotland Office during the Edinburgh Agreement and the referendum, where one of my two Secretaries of State was the gentleman on my left.

Michael Moore: Delighted to be here. Thank you very much, Mr Wishart. I am Michael Moore, formerly the Member of Parliament for Berwickshire, Roxburgh and Selkirk, now represented by Mr Lamont, and I was Secretary of State for Scotland between 2010 and 2013, during quite an interesting moment for the Scotland Office and for Scottish politics.

Q164 **Chair:** Thank you. We have a whole range of different experiences in your various offices in the Scotland Office. Perhaps just to get things started, you can just tell us how you would characterise the relationship between the Scotland Office and the Scottish Parliament and Scottish Ministers during your time in office. Baroness Liddell.

Baroness Liddell: I am probably less use to you than anyone else, because I became Secretary of State at the time of the transition after the referendum and the first Parliament elections. It was also a time of very considerable turmoil because we had BSE, then we had a general election, which has a considerable impact on the backroom work of any Department. Then of course we had 9/11, all of which impacted on what was going on at the time. My view of it, first, is dated, and secondly, it was in a time of particular turmoil.

When I reflect on that period of time, I had been a Minister since 1997 in a range of other Departments, not least of which was Minister of State in the old Scottish Office, which was a big office with quite a considerable infrastructure. The Scotland Office—as it was then and still is—is a very small part of Government machinery. The area that worried me most was the role that we could play in Cabinet Committees. That is where the nuts



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and bolts work of Government is done. It is the dull and boring line by line stuff, where the work really is done.

I did worry that the civil servants were put under huge pressure to brief for Cabinet Committees. In some cases, we would go into—and remember, there were only two Ministers, the third was a law officer—these Cabinet Committees and we could be meeting maybe four Cabinet Committees in a day in the run-up to an election. The pressure on the Department was absolutely enormous. I was quite lucky that I had been a Minister before and had sat on a lot of these Cabinet Committees for other Departments, as indeed had my junior Minister. But it was that area that I felt the pressure in. It may have improved now—indeed, I believe it has improved now—but at that point there was a real sense that we were trying to be like swans, graceful above the water, but paddling frantically, and occasionally thinking we were going to sink.

Q165 **Chair:** You were my first Secretary of State when I was elected back in 2001.

Baroness Liddell: Was I? Goodness.

Q166 **Chair:** Indeed you were. I do not know if you heard any of the previous evidence from some of the colleagues from the Scottish Parliament.

Baroness Liddell: I heard some of it.

Q167 **Chair:** We have heard—and I do not know if this is your view, Baroness Liddell—that because it was a Labour Government that was here in Westminster and a Labour Executive that was in Scotland, that inter-government relations were perhaps a little bit more easy to pursue and relationships were better. Is that your recollection of those periods?

Baroness Liddell: Yes, I think it was. To some extent, if you are in a negotiation with somebody and know that person, you know their strengths and weaknesses, the buttons that you need to press to get them onside. We had also a lot of people in the Scottish Executive in very senior positions who had been Members of Parliament, people like Jim Wallace, for example, Donald Dewar, Sam Galbraith, Henry McLeish, people that we knew around the building and whose personal phone numbers you had.

There was that ability for the exchange but of course, when you have an exchange like that with people that you know very well, often they are much more frank than they would be in the elegant setting of the Lords ministerial conference room, so you would have much more of an exchange. The relationships were fairly good and, when they were not good, they were frank because we all knew one another.

Q168 **Chair:** I remember during these early periods that there was, I would say, a suspicion among Labour Members of Parliament about this new upstart Parliament up in Scotland. I mentioned the famous “White Heather Club”: “They can call themselves anything they want, but they’ll



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never be a Government. They can call themselves the White Heather Club”.

Did you get a sense, among your colleagues in that period, that they did not know how to quite handle the emerging Scottish Parliament and there was a tension or just a suspicion about what they were trying to do and achieve?

Baroness Liddell: I think some of the problem was not so much at ministerial level but at constituency level, because people who had been MPs for a long period of time had to get used to somebody else in their patch covering exactly the same patch, together with people who were on the list, and trying to get a modus operandi out of that was quite difficult. Having been an MP, we are very possessive about our constituencies, “How dare anybody trespass on our relationship with our constituents?” I think that was more of an issue than the relationship at ministerial level.

Q169 **Chair:** I think we are still trying to resolve that one. Mr Evans, how would you characterise the relationship?

Alun Evans: My period was obviously characterised by the referendum, which dominated everything. I felt—and Mike Moore can say more about this—there obviously were tensions at senior ministerial level. What struck me at official level was how good the working relationship was between me and my team and members of the Civil Service within the Scottish Government, and, even away from issues like the referendum, I think the management of the Commonwealth Games, which worked very smoothly, we worked extremely well together. The negotiation of the Edinburgh Agreement, a lot of it was down to the fact that we had very good working relationships at Civil Service level and it was because they were all from one unified Civil Service.

I am not sure how it is now. I do very strongly agree with Baroness Liddell that one of the issues with the Scotland Office being one of the smallest Departments was the pressure on two Ministers—one law officer and about 100 civil servants, compared with the size of some other Government Departments—was very high. I was deeply impressed by what my team accomplished during that time.

Q170 **Chair:** Of course, Mr Moore, you were Secretary of State when the referendum was called and the early days of it. What was it like for you?

Michael Moore: In the three years I was in the Scotland Office, the reality of the job changed markedly, when the SNP won its majority and then the independence referendum was on. I think Alun is right that of course there were tensions. It was difficult. There was a good team of people working in the Scotland Office. We had to do what Whitehall is very good at and co-opt other bits of Whitehall into the efforts that were going on, so the Scotland Office led presentations and lots of different things in terms of negotiations and relationships, but it had the resources of a wider Whitehall that it could adapt and deliver.



I take the point made—not just by Alun but made in the previous panel—that sometimes the politics and the egos and the policy thing will be challenging, but that goes to the heart of the reason for this inquiry. Are the intergovernmental relations fit for purpose in a very different world to the one we were in 20 years ago? I do not want to pre-empt your findings, but I would suggest my feeling is no and that it needs to catch up with reality.

We have had a great examination this morning already of the personality-driven nature of the relationships in the early days, irrespective of party, the fact that people had spent time here before they went to the Scottish Parliament and so on. There is now a flow the other way as well. That is great, but it seems to me that we have ended up with a situation where everything is rather ad hoc, the scope of what is done by these intergovernmental arrangements is pretty patchy and it is mostly pretty non-transparent, very opaque.

When you get challenges to the system, like the Brexit process at the moment, it becomes much harder in the absence of machinery that is clear about: how do you make decisions when you have conflicting policies and political interests? How do you then execute the policy that you have delivered?

When you look at the new arrangements for Scotland's devolution of financial powers, which I was involved in the 2012 Act, clearly we took that through in the Scotland Office in my time. I was on the Smith Commission afterwards, where we set out some ideas that have been adopted in the 2016 Act. The execution of all of that, how that is done, and then the accountability of you—as parliamentarians here—to your colleagues in the Scottish Parliament, how you work together to have that scrutiny, all of that it seems to me is still pretty early days.

Q171 Chair: We have had stress in the system and we have that with Brexit just now, but it strikes me that we were able to handle the referendum process a little bit more easily than we are dealing with the Brexit process. Was there something that we did in intergovernmental relations at that point that made that much more efficiently run? Because we have a number of issues just now, we are almost at breaking point, but we seemed to get through the referendum reasonably easily.

Michael Moore: Yes. At one level it was a bit more of a binary process. If we look at the Edinburgh Agreement that Alun and I were very closely involved in, there you were looking to do the very important business of establishing a framework in which that referendum could take place. If you remember, there were competitive processes underway. However, from the off we launched a consultation on how that referendum might be conducted and within days the Scottish Government had done likewise. There were at least two parallel processes. There was lots of scrutiny of it, but it was not a joined-up, joint effort to consult the public of Scotland and the rest of the UK on how it should be done.



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The politics was very hard for a period and then a bit of a change of personnel, a bit of a different political take on it. Nicola Sturgeon and I got in a room, officials supporting that very strongly, and within a very short period of time we were able to resolve it. But we were resolving how you would carry out the referendum, not how you would—dare I say it—create an independent Scotland had that been the decision that was taken. We are on the other side of a major decision in the United Kingdom to leave the European Union. That has opened up the Pandora's box of complexities and that is way harder to manage and I think the deficiencies in the system become way more stressed than they would be otherwise.

Q172 Ross Thomson: I asked a similar question to Lord McConnell and Lord Wallace, which is: in your time in office, Baroness Liddell and Mr Moore, would you say the Scotland Office was an instrumental player in the intergovernmental relations between the Scottish Executive Government and UK Government? We heard from our previous witnesses that they would tend to go to the Department directly, whether that was Home Office or MoD. Did you have a role in facilitating those discussions and do you think that was quite helpful for the Scottish Executive at the time?

Baroness Liddell: I think there are two tiers to it. There is the ministerial tier and there is the official tier. The official world would operate as it does in any Department. If, for example, you are in the Treasury, your officials spend an awful lot of time going around other Departments—they do not necessarily tell you about it—and you get the end product as a result of that. Ministers operate at a ministerial level, usually through these Cabinet Committees.

Other than the point that Mr Evans has made about the pressure and the tensions that exist through resources, having such a small Department, there was always a risk that the ball might be dropped. You never knew if the ball had been dropped until a problem arose, but it was a function not of incompetence or lack of will, it was more just because of the pressures on them.

At ministerial level I never had a problem. I felt I was in the loop. I had been a Minister for a long time, so I knew if there was an issue emerging say with Treasury, I knew who to phone in Treasury and say, "Can we have a cup of tea and talk about this?" A lot of it would have been done at that stage informally because we were still trying to work out what the formal structures would be that would work, so it was a bit suck it and see. It was never something that I thought, "Oh, this is causing us real problems" but a lot of it was more informal than formal.

Michael Moore: The Scotland Office, as I have already remarked, changed in its nature in the short period I was there, from a period where it might have been guilty and open to the criticisms Mr Sheppard and others made in the previous session about, "What is it for? Why would it be there?" My party and others suggested it should be abolished until we were in the office and then of course we wanted to stay.



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The challenge is: how does the United Kingdom Government wish to be represented in Scotland? Now, the Scotland Office can be front of house, can do the representative piece. As Scottish Secretary, that was very much my role and I went around the country talking about great subjects, like welfare reform and other things that were challenging and needed to be worked through.

There was always a problem that, after 20 years, the instinctive understanding or personal connections that Baroness Liddell talks about had disappeared to some extent. You would find bits of Whitehall Departments that just did not realise that what they were doing had consequences in Scotland or that by handing it—dare I say it—to the Scottish Government, they were selling a political pass that was not necessarily terribly helpful to us in the broader political front we were doing. There was a lot there that needed doing. I just think that that informality, that kind of ad hocery still is characteristic of the process, as far as I understand it today.

Q173 Ross Thomson: One of the questions I asked the previous panel was about city deals. Obviously during your time in office, you would have been there seeing through some of the city deals. The Scotland Office has played that intermediary between Treasury and others and trying to bring a package together alongside the Scottish Government.

Again, my experience has been that everything can get signed off, everything that is good between the two Governments at official level: you get agreement on the amount of money that is going to go in, the projects you are going to fund, the communications plan, the date that you are going to sign and how that is all going to look. It is all done in advance, and then on the day you have an announcement where it is a bit of one-upmanship in politics. I know Lord McConnell was intimating, “Well, that is politics”.

Do you think that there is anything that can be done in future to avoid that surprise? Do you think there is anything that can be done to improve those relations or do you think, as long as there are two different Governments of different colours, you are going to get this?

Michael Moore: You could set up more robust machinery for consulting, for developing policies on some of this, but I think Lord McConnell was correct. I do not think you are ever going to get away from the competitive politics and what happens.

The danger for us is we obsess about how the decision is taken or how the decision is announced. What about what is going on now? These deals, some of them are now three, four, five years old. How much scrutiny is there of how they have behaved and worked out in practice? Are they regarded as hybrids, where there is a bit of UK money and the UK Government and you, as UK parliamentarians, are responsible for looking after that and then another bit that is the Scottish Government?



I get no sense that that scrutiny and that joint executive bit that make a city deal work is fully in place around the country. There I think it is much realistic to say we can develop a model between the two Governments that says, "This is how we will manage these processes. This is where the scrutiny and the accountability will be". The announcement itself originally, no, I doubt that we will ever be able to tame the natural instincts of politics.

Q174 Ross Thomson: One other area you could help me with, and this may be a question for Mr Evans, perhaps. Baroness Liddell, I appreciate you say it is a smaller Department, understandably the Scotland Office. Just in my experience, having been in Dover House and the offices in Edinburgh, there are still a lot of personnel there, a lot of people who are Deputy Directors and policy people. I still do not understand what their role or contribution is. Does this have to change? Again, there are a lot of policy people, but I am not sure what policy they are working on in the Scotland Office. I would be grateful for your thoughts on that.

Alun Evans: If you think there are a lot of people in the Scotland Office, you should go to some other Department; you will find a lot more there.

Ross Thomson: I know, I agree.

Alun Evans: When I was there, there were about 90 people in total. My experience is coloured by being there during the referendum and there was certainly a role for the Scotland Office because—as Michael Moore was saying—we were not the only Department. We were one of four key Departments, which were No. 10, the Cabinet Office, Treasury and ourselves.

We were the smallest and, arguably, the least powerful out of those. However, we had two things that none of the other Departments had. One was the expertise in Scottish issues, particularly constitutional issues, and secondly—which was important at the time—expertise and knowledge on media and communications in Scotland, which, for all they might think, No. 10, the Cabinet Office and Treasury could not do. Michael Moore, as Secretary of State, co-ordinated a regular meeting of those four groups and that was what drove the referendum work. I would say during the period when I was Head of the Scotland Office, there was a clear role for the office, clearly, and I would say it worked quite well.

But coming back to your substantive point, I was very struck by your discussion with Lord McConnell. I have written to say I think there is a need for a Department of the Nations and Regions. The nature of the Scotland Office and particularly the Wales Office—Northern Ireland is slightly different—is not tenable in the post-devolution system we work in now. It would be far better for Government and governance as a whole, and the way Cabinet works, if there could be a Department of nations and regions headed by a powerful Secretary of State/Deputy Prime Minister.



Q175 **Ross Thomson:** Absolutely. My next point was that very question. I will throw that out to the two former politicians. Do you think that that is something that could work in practice, having that sort of David Lidington style of Deputy Prime Minister who represents nations and regions at Cabinet level? Do you think there would be enough confidence from people in someone being able to represent the nations adequately, given that there is divergence sometimes of views, of challenges and issues? Do you think that is something that could work?

Baroness Liddell: I always found the idea quite attractive, because there were great synergies that existed, particularly between us and the Welsh, although they had a very different constitutional settlement. As Lord McConnell said in his final remarks, I am also an advocate of reform of the House of Lords to take into account the nations and regions, because there is a democratic deficit in England. I was very conscious when I was Secretary of State—and I spoke to the Prime Minister at the time—that we needed to create a more homogenous and more punchy Department that took in all the consequences of the nature of, and expanding change in, the devolution settlement. I think there is a case for that.

The difficulty lies in practical politics. It relies on the nature of the person who would lead that Department. Are we going to have the kailyard of saying, “Oh, he is not Scottish, so he is no use”? All of that is stuff that you need to take into account, because it does have an impact on how the Scottish media would perceive it as well. A Department of the nations and regions, with somebody like the Deputy Prime Minister leading it, would have an awful lot more clout than diverse Departments.

Chair: As usual, you have irked a lot of interest with some of the comments that have been made. I have John Lamont, Tommy Sheppard and Christine Jardine.

Q176 **John Lamont:** I want to continue the discussion we had with Lord McConnell earlier, which I think some of you were in the room to hear, particularly around just how we formalise intergovernmental relations. Lord McConnell spoke of how he did not find the formal structures too much help and argued for some sort of new structure post-Brexit. At the same time, he spoke about how phone calls were sometimes required just to unlock the deadlock. Baroness Liddell, you spoke about having a cup of tea with people just to fix things.

What is the balance between ensuring that things are transparent and there is a process to make decisions and, at the same time, not getting ourselves into a situation where some people are pushing us towards where you have the Scottish Government effectively having to give consent or have some right of veto for the Welsh Government? How do we get to a point that is a compromise, recognising the UK Government and its role and at the same time involving the devolved Parliaments and Government?



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Baroness Liddell: One of the most impressive examples of joint working was post-9/11, because you confronted something incredibly dramatic that impacted upon the lives of everybody and there was no playing of politics, there was no playing of, "I am Scottish, so I will look after that". It started out with recognition of the difference between coroners' inquests in England and fatal accident inquiries in Scotland when remains were being repatriated, but then the greater complexity became apparent. I will not go into the detail for obvious reasons, because we then had to deal with counter-terrorism issues as well. I have to say, it worked superbly. There were no tensions. Everybody was facing in the one direction, because we all knew what had to be done.

How you replicate that I just do not know. You need to have everybody's buy-in to make something like that work. It was the enormity of what we were facing that caused that to happen. Indeed, one of the stars of that exercise was Jim Wallace. He was the Deputy Prime Minister, but also as a senior law officer.

It was very important to have the police services—everybody, in fact—looking in the same direction and moving in the same direction and prepared to go and do what needed to be done, bearing in mind that you were maybe doing it for a part of the United Kingdom that was not in your remit. How you replicate that politically in an adversarial political system I do not know.

Michael Moore: When you have two very different visions about Scotland's constitutional future, it is inevitable that there will be a lot of problems with structures that are brought in, "Is this a veto? Is this somebody being able to run roughshod over us?" That language is going to keep characterising the arguments and the debate and understandably so. But my goodness, we must be able to do better in terms of the underlying machinery.

The Chairman mentioned the Olympics dispute earlier. I think that is perhaps a sign of the success of the existing arrangements but also of its failure. The fact is I would characterise it as saying that, eventually, the Prime Minister just got bored hearing the same issue brought up every time we met in plenary session, so eventually he reckoned, "Can we solve this? Let's get it fixed". The personal, the interpersonal, cups of tea, lifting the phone, is the stuff of politics, of diplomacy, of getting anything in life fixed. But understanding how you funnel decision-making into mechanisms has to be different in a modern Scotland, where there is substantial devolution, not just of fiscal powers, but of welfare powers as well.

If you look through the machinery of Government, it was designed to look after their own. Some of it is in the JMC, some of it is in the JEC, some of it is in joint ministerial working groups on welfare and who knows what else. The whole Brexit framework discussion is obviously



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very challenging indeed. It becomes a lot harder because there are no set rules as to how that is done in the first place.

Q177 Tommy Sheppard: This question is to Baroness Liddell and Michael Moore, because it is about your experience as the Secretary of State in terms of consultation between the two Governments on matters of policy. Is it your experience that the UK Government did consult the Scottish Administration on matters of policy at an early stage? Do you feel that it did that adequately? What was the role of the Secretary of State in that process, in terms of aligning or interrelating with the relationship between the Scottish Government and a UK Government Department?

Finally, I would be interested to know if any difference in the answer to that question comes about when the Administrations do not align. Obviously if it is a situation where the UK Government and the Scottish Government are the same political party, does that make a difference when they are of different and opposed political parties?

Baroness Liddell: In my case it was much easier, because I was dealing with somebody who was in the same political party and who was a friend and there was an ease of discussion between us. In terms of being consulted by No. 10, I would frequently be called around for a chat about what was happening, what were the issues, why were these issues creating tension. There were enough people in there to circle the Prime Minister in his private office who would make these things happen, who were aligned with the issues. I never found tensions like that.

Sometimes when the issues were further down the chain of command, maybe parts of legislation that had been developed—and it is something that Mr Moore referred in relation to sometimes Departments not realising that something would impact upon Scotland—that is where the problem would come in: somebody taking a decision, let's say, to put something in a Bill, not realising that this was something that was devolved or, because of the structure and nature of Scotland, it would have impact. At the top level, the relationships were good.

I was quite lucky in that I had been in a lot of other Departments, as I said earlier on, so I knew how the machine worked. Often we were blindsided by things that came further down the chain of command, just by—as Michael Moore said—things happening that civil servants did not realise had an impact.

Michael Moore: I would love to say that it was perfect in the period when I was at the Scotland Office, but that would probably stretch credulity. If I may, I need to distinguish between complaints about lack of consultation when there was never any hope of agreement on the policy from the off, because Administrations were diametrically opposed to each other, and other areas where sometimes the implementation of particular policies or development of policies could have done with a lot better integration.



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I am not sure—say, for instance, on agriculture—that we always got the reform of the CAP discussions properly aligned between UK Ministers in DEFRA who were leading those negotiations and the different bits of the farming interests and Scottish Government interests on the other hand. There was a heck of a lot of politics in that, but behind the scenes I think we could have done better if we had more formal and regular ways of doing that.

To avoid Olympics consequentials type arguments, better consultation would help. On some of the bigger picture stuff, where the two Administrations are always going to be at odds with one another, I do not imagine that consultation would change very much about that. Is there room for improvement? Of course there is.

Q178 Tommy Sheppard: How would you characterise the role that you played? Was it to explain the UK Government policy to Scottish Ministers where UK Ministers felt they were not quite coming on board with it? Was it to advocate a Scottish interest, the other way around, to try to change UK policy or was it to mediate and seek compromise? How would you—

Michael Moore: It was kind of all of those things. I have no great wish to go back through the painful politics, never mind the personal difficulties of the people who were subjected to the policy experienced, but on the bedroom tax clearly there was a huge furore across the country about that. Was there a consultation in advance? Not enough. Were people in DWP uniquely aware or any way aware of how this would work in different concentrations around Scotland? No. There was an issue there for the Scotland Office, not to absorb a lot of the flak and the pain, but the politics and the public debate, of course, and going around council by council.

David Mundell and I went around each of the councils of Scotland and basically worked out, "How much extra money do you need to be able to offset this?" A bureaucratic, inelegant solution, but, "Can we do this?" We then persuaded the Chief Secretary at the time, Danny Alexander, that that extra budgetary allocation could be made. That was a role for the Scotland Office in trying to work out where has the biggest problems occurred and then seeing if we can find a fix.

I do not wish to suggest we sorted it or that there were not a lot of problems with that, but we were certainly central to trying to find that out. I think if it had just been left to—dare I say it—DWP versus the Scottish Government, we would never have found any position in the middle at all.

Q179 Christine Jardine: I will not ask when you were Secretary of State for Scotland for obvious reasons, if that is all right. I would like to know what you, Mr Moore, and Baroness Liddell think about the suggestion we heard earlier from Lord Wallace about a UK Council of Ministers as perhaps a way of developing devolution in the future.



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Michael Moore: Anything that will bring senior politicians together on a regular basis, not on a discretionary basis, has to be good. The idea that the plenary session of the JMC is an ad hoc thing that can happen randomly or not happen for a long period of time, that the JEC, the Joint Executive Committee, overseeing the financial arrangements, can meet for bursts of activity and then be dormant for a long of period of time, I think that is completely unacceptable. A Council of Ministers or something like it overseeing that process would be very useful.

You need to be able to distinguish what would be quadrilateral arrangements between the three devolved nations and the UK Government at the centre, on the one hand, and a lot of bilateral relationships that would need to exist because each of the devolution settlements is asymmetric.

The point that Baroness Liddell made earlier on and, also, we need to remember that, since all of this started, we now have elected Mayors in different parts of England as well and finding a voice for the regions of England in this process must be a priority as well.

Alun Evans: That brings it back to the point about the Deputy Prime Minister or Secretary of State for the nations and regions, because there is this variable geometry about the way devolution works both in the three other nations and within England. It is just not possible to think that the Prime Minister could or necessarily should be on top of all that, but a Deputy Prime Minister, who is responsible for all those relationships and to engage with the Mayors throughout England, seems to be a much more manageable function and possibly a smoother one than worked under the JMC relationship.

Baroness Liddell: In terms of a Council of Ministers, that idea has been kicking around for quite a long time, really since the start of devolution. I do not know what the proper structure is to make that work, taking into account the fact of the irregular devolution that there is in England. There is an irony that we are in the Wilson Room because, before some of you were born, I used to be an economist with the Scottish TUC and Harold Wilson used to bring the Cabinet to Scotland. I can remember the 1970s meetings of the Cabinet in Scotland. As a result of that, things like Hunterston happened. It is getting out of the south-east bubble and also allowing people to look wider to broaden the horizons of what is possible.

Modern Government is much more pressured now than it was in the 1970s, to some extent because of the media. I do not know if Michael Moore feels this: there is a bit of a nervousness on the part of Ministers in other Departments about doing anything that relates to Scotland, because they are scared of putting a foot wrong. We need to get people more comfortable with coming into Scotland. To some extent, it is because they get kicked about whenever they come to Scotland, so the attraction is not necessarily there. If we can find a way of getting people's interest wider and enthusing, not just about Scotland, but other



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parts of the UK—Cornwall, Wales, the rest—it is broadening the mind basically, which may be a romantic notion but nothing else has worked.

Michael Moore: I am just remembering some of the away days that the coalition Cabinet had to different parts of the country. It is fair to say that when we had Cabinet meetings in Scotland, they were quite lively welcomes that we got. Partly that was the politics of the moment, but also probably because it was a slightly exotic thing to happen. If it was a more regular part of what happened in the normal course of business, perhaps it would work out. I also recall a coalition Cabinet meeting in some portakabins near Birmingham; I think HS2 was the issue of the day. It is a slightly strange thing when the Cabinet goes walkabout.

Getting greater engagement, having somebody senior, as Alun has said, at the centre—be it a DPM or other kind of figure like that—would help enormously in smoothing out a lot of the hassles that we see in the relationships day-to-day.

Q180 **Chair:** I am fascinated. I think it was what Baroness Liddell said—or maybe it was you, Mr Moore—that there is a reluctance from other UK Departments to look at issues to do with Scotland because they are entering it with a bit of trepidation or concern. Did you find that, Mr Evans, when you were in situ? Is there a sense of the rest of Whitehall does not want to get to know Scotland particularly well?

Alun Evans: That is probably true. There were some issues, though—picking up the point that Michael Moore made—where the Scotland Office could add real value. The one I would pick out was, for example, around defence. A lot of Defence Ministers did not come up to Scotland, but there were many issues around the positioning of where barracks were or where they might close; the issue of RAF Leuchars at the time. This was something where the Scotland Office could add real value, partly because it did understand on the ground what was going on. If Defence Ministers came up, they did not necessarily have the weight, knowledge or political clout necessarily to make that point, so there is something in that.

Chair: Fascinating.

Q181 **Christine Jardine:** I am only going to say from my own experience with working in the Scotland Office, I recognise what Baroness Liddell says about this nervousness. Perhaps it was worse during the period of the referendum, because so much was at stake and UK Government Ministers did not want to say the wrong thing in Scotland. Do you think it has improved since then?

Michael Moore: I do not think I can add anything usefully to what you know yourselves on that. The reality is that it is a tough gig. The Scotland Office is always the one that is left behind after the Ministers or officials have disappeared, working with the communities in Leuchars or Lossiemouth or wherever it is. To Mr Thomson's earlier point about: why do you have policy officials? It is because you will be left dealing with the defence implications or the welfare implications or whatever it is in



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different parts of the country. Partly it is to explain it, but much of the time it is to make sure you keep those processes of Government going. They are heroic, the amount of work these guys do.

Q182 Deidre Brock: Baroness Liddell, you famously had time to learn French when you were Secretary of State for Scotland, but, despite the big increase in staff that we have seen in the Scotland Office, Mr Mundell seems to have been so busy that he did not have time to make amendments to the Withdrawal Bill and so those changes had to be made by unelected peers in the Second Chamber. How much harder do you think his job is now or is there some other explanation?

Baroness Liddell: Let me address the French point first. If you look at my CV, you will see that I was Minister for Competitiveness in Europe before I went to the Scotland Office. My conversational French at that time—not now—was very good. But I did have difficulty with the GDP ratio in Estonia in French with a Minister without a translator. The Foreign Office had asked Ministers who were European negotiators to get their French in slightly better order, and I was finishing the course that I had started when I was doing competitiveness in Europe.

It is difficult for me to judge Mr Mundell's workload. I imagine it is pretty dramatic, because it is those Cabinet Committees that you do not see that take up a huge amount of time. When I was Secretary of State it was during the transition and we had had these big issues, like BSE, a general election and 9/11. We were absolutely full on all of the time.

The thing about the Scotland Office is things can emerge without you expecting it, because something happens off-stage and suddenly you are in the middle of it and, because there are so few people, they are not around. There are not enough people around to backfill. It is a very demanding job because you do not have the infrastructure of a big Department.

I have been a Minister in a big Department. You have a lot of infrastructure; you have people who fill in. If you travel around—as the Europe Minister, I would maybe be in 23, 24 different countries in the space of two weeks—my private secretary would ensure that everything was up to speed. You cannot do that in the Scotland Office. In that case, you would have the guy who serves the tea having to come out and act as private secretary, because everybody had to backfill.

Q183 Deidre Brock: There has been a big increase in staff hasn't there—I think Mr Thomson referred to it—since your days?

Baroness Liddell: I do not think it matches anything like the size of even the smaller Government Departments and, in a sense, nor should it.

Q184 Deidre Brock: Yes, because you have a devolved Government now.

Baroness Liddell: But you do need access to policy advice. Also, the point that was made in the previous session about bringing in people



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from other Government Departments, because there is quite a lot of cross-fertilisation in Whitehall. I am not aware—but then my experience is dated—of the extent of the cross-fertilisation with the Scotland Office to the same extent, because that cross-fertilisation allows you to take shortcuts.

Q185 Deidre Brock: You were British High Commissioner to Australia, of course. Can you tell us how you thought the State Governments interacted with the Federal Government when you were there in comparison or contrast to how the UK Government's Administration interacts with devolved Governments today?

Baroness Liddell: They have a thing called the Committee of Australian Governments, COAG, which meets on a regular basis and brings the states together. The interesting thing about Australia—and most people are not aware of this—is most of the states were previously colonies. For example, most of them have diplomatic representation in London at the Court of St James's because they send Agent-Generals. They had a structure prior to federation that brought them together.

If I was strictly honest, I think that a lot of the powers that exist in Australia at a state level are greater. It is macro powers at the federal level, which is very different from our model. A couple of things have come from Australia to here: the establishment of HMRC, bringing together the customs and excise, and also the Second Chamber in Westminster Hall to allow English issues to be more adequately debated rather than just on the Floor of the House.

But COAG is key to that. COAG and the Federal Government at the moment, there is frequently tension—and there is some tension at the moment—but the balance of power is very different to what the balance of power is here, because the model between the states is roughly the same, whereas our devolution model is different with every devolved part.

Q186 Deidre Brock: There was a suggestion from the Constitution Unit that Whitehall treats the devolved Administrations as an afterthought. Could you talk about building up trust and information-sharing capacity between the Governments and reflect on that for us, please? Clearly, things are tense at present and it would be nice to hear your thoughts on how you think that situation might be improved.

Baroness Liddell: I think some of it is cross-fertilisation, moving people around, people seeing opportunities to move into the Scottish Executive or the Scotland Office as career progression. That is quite an important way of getting an understanding of what happens in Departments.

Michael Moore: If you look at the staff in the Scotland Office, most of them will have had Scottish Government backgrounds or experiences elsewhere, but a lot are from the Scottish Government or they go to the Scottish Government. A lot of the people I worked with, back in 2010 to



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2013, are in the Scottish Government; some of them that have been in the Scottish Government are now back in the UK Government. I think in the Scotland Office that is not so much an issue. You get there a great kind of repository of understanding of that.

The challenge is in the much bigger Whitehall Departments, where, even if you have one or two, they are just a tiny number of people. Yes, there were suggestions earlier on about people meeting for induction courses and spending two days in Scotland. That is great, but I would suggest that perhaps longer term, given the complexity of the developing devolution settlement, a greater understanding and more structure to that would be required.

Q187 **Deidre Brock:** What about the trust issue, though, Mr Moore? Would you condemn a Secretary of State who fabricated a story about the First Minister, for example?

Michael Moore: I am not aware of what you are talking about and it is perhaps best not to be drawn into it, if you do not mind.

Q188 **David Duguid:** I want to go back to the previous question, if that is okay. I was interested to hear Mr Moore, in particular—I think it was you, Mr Moore—talking about how the different Departments have a reluctance to deal with Scottish issues or to make issues that might affect Scotland for fear of something, I guess. We also hear that the opposite is sometimes true. That there is almost a “devolve and forget” process of, “Let’s just give that to the Scottish Government to deal with and we have absolved ourselves of responsibility”.

Maybe a question for Mr Evans as well, going back to the previous panel, in which we heard that there may be a lack of understanding, or certainly in the early days there was a lack of understanding of what devolution is, was or is going to be, or what is devolved versus what is reserved, my question is: what can be done to improve that understanding of devolution in Whitehall Departments, from your experiences in the Scotland Office?

Michael Moore: Having serious political oversight—as has been suggested already—with a senior Minister responsible for the different bits of devolution and having the power of the Whitehall machine serving that would be a great start; bringing all the different strands of intergovernmental relations within some regularised network, a sort of formal structure, that would be an extra bit of it; some formalised scrutiny between yourselves and the Scottish Affairs Committee and equivalent Scrutiny Committees in the Scottish Parliament I think would add into that. All three bits of this have to be better aligned than they are at the moment.

Alun Evans: I agree with all of that. Coming back to something that was mentioned early on, the Joint Ministerial Committee arrangements I think need to be much more robust and structured, perhaps with a joint secretariat. I think the issue of interchange between Scotland and maybe



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London-based Departments is a good one, although it is more expensive to do than interchange obviously within London-based Department.

But in answer to one part of your question, the nature of devolution has changed enormously with the change of political leadership in Scotland, because when the Labour-Lib Dem coalition was in power in Scotland, there was a fairly benign relationship with the UK Government. We now have a situation where you have two democratically-elected Governments with completely opposing views, particularly on issues such as independence. Now, that makes for a completely new set of relationships.

It seems to me that it is quite important to the UK Government to recognise that and having, as we said earlier, maybe a Secretary of State and a Deputy Prime Minister who recognises that would change it and bring a completely different dynamic to it, because undoubtedly there is still a case or the view that you have a Secretary of State for Scotland, Wales and Northern Ireland. They will say, "Is there any devolution issue?" right at the end of the meeting and there might be a discussion about it. It seems to me the issues and the challenges of devolution need to be integrated within the whole constitutional arrangements of the Government and the Civil Service in a way that they have not been in the past. Maybe post-Brexit, however we end up, it will be worthwhile looking at that root and branch from scratch, which is why I rather welcome this Committee's inquiry.

Q189 David Duguid: It has been mentioned several times from this panel and the previous panel the interpersonal relationships that were almost there automatically, particularly when it was Labour UK Government and a Labour-Lib Dem coalition in Holyrood. I guess we can expect every time there is going to be a significant change, whether the UK Government changes—some of us very much hope in 2021 the Government might even change in Holyrood—that we are going to have to reset every time that happens. As you were saying, although we must recognise the importance of the interpersonal relationship, that should not be seen as a surrogate or a replacement for that structure that needs to underpin all that, so that there is a kind of continuity, whatever happens. Would you agree with that, Baroness Liddell?

Baroness Liddell: If you look at the situation we find ourselves in at the moment with Brexit, often you make real headway when you have informal discussions with people and it is the ability to say, "Right, what is your bottom line? This is my bottom line". If you are able to have that discussion and act in good faith, because our system has become so adversarial—it was always adversarial, but because it has become so adversarial—it is quite difficult to have those discussions now.

Everybody is within a formalised setting and if you are only going to work in a formalised setting, you can only move forward quite slowly, as we have seen with the Brexit negotiations. You need to have an understanding and respect for where each other is coming from. Looking



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at it now as an observer, sometimes I do worry if that respect exists to the same extent that it needs to to make progress.

Q190 David Duguid: Just another question for Mr Evans, if I may. Going back to the time of the 2014 referendum, I think it has been mentioned again in both panels that at official level and ministerial level, relationships were perhaps strained. How much of that do you think has continued and what can we do to try to get back on to a level footing, if you like?

Alun Evans: As I said earlier on, they were clearly strained at ministerial level, but that was inevitable. I felt that the actual relationships at civil servant level between the UK Government and the Scottish Government were extremely cordial and robust, even though we were working for Ministers who were campaigning for different policies. On the whole, the administrative arrangements worked well. I cannot comment what it has been like since then, but I suspect it is just as good, because on the whole, I find—and I am a bit biased—that civil servants tend to be quite civil and they tend to serve their masters or mistresses as best they can, so the system tends to work. I just think that in a number of ways that we have been discussing, it could work even better in the future.

Michael Moore: Can I give another perspective on the tensions of the period of the referendum? Of course those were huge and there was a lot at stake and therefore understandably so. But after the SNP's electoral success in 2011, we were confidently told that the Scotland Bill that had been published the previous St Andrew's Day was going nowhere, the Calman proposals would finish. There is a lot of politics to that, but in the midst of all the sensitivities about who would run the referendum, who had the right to run the referendum, all that kind of stuff, Ministers as well as civil servants worked away at the process.

The Scotland Act of 2012 emerged in the course of a backdrop to a bigger, bolder, more abrasive discussion about the referendum. The two were linked, but we still got that Act through. It was not simply Westminster had been cunning in imposing or anything like that, it was about working through. I spoke to the now Deputy First Minister on a regular basis to try to work through what was going on and officials did the groundwork. As Baroness Liddell has said, that ministerial connection mattered, so we were still able to do that.

There were big changes in terms of defence and of course there were the aircraft carriers and all that kind of stuff, but a lot of change in the way the Army was structuring itself. The Scottish Government was getting more responsibility and taking more responsibility, whether we wanted it to or not, to look after the troops and their families and everybody else, firm base, welfare issues were big issues. Bruce Crawford, who had that responsibility for a period of this time, worked very pragmatically with colleagues in the Ministry of Defence and the Scotland Office would be brought into those conversations from time to time. We got on with that stuff. Tensions existed, but practical stuff was also done.



Q191 Hugh Gaffney: Based on your own experience, are intergovernmental relations in the UK too reliant on informal relationships between civil servants? If so, how could this be addressed? We have spoken a lot about this, about the personalities and how the civil servants work. Is there a connection with them or do we need to do this away day for two days to work with each other?

Michael Moore: I am sure that would be great. I think that we must encourage those connections. On a human level, that is always better. With your fiercest opponent, if you can have some common ground, at least you understand how they operate and what they are after and so on. It is way more effective if you have those relationships, so that should be done. But at the moment, frankly, I imagine many parliamentarians are challenged to explain how the intergovernmental relationships work on the fiscal framework that Scotland now has and how you make that accountable, never mind how the civil servants make it work. I think there is quite a lot that could be done on all sorts of levels here.

Q192 Ged Killen: How effective was the JMC's protocol for avoidance and settlement of disputes and could it be a more useful mechanism?

Michael Moore: I thought that the JMC was largely a great place to register disputes rather than solving them. The Olympics consequential is a well-rehearsed example here this morning. I think it is a rare example of something that went through that process and was resolved. In the end it was not the mechanism that resolved it, it was the then Prime Minister probably losing patience with the fact that this kept coming back and that it was of no great consequence in the greater scheme of things and it was resolved.

Where is the transparency about that though? Where are the other disputes between the Scottish Government and the UK Government on different things and what mechanism do they go through? Is it the JMC? Is it person to person, relations at ministerial or Civil Service level? It is not obvious to people like me now, who are outside the system, how that gets resolved.

Alun Evans: I do not think in my time the JMC worked particularly well and I did not think the disputes resolution worked well. I think there were exceptions. Lord Wallace earlier referred to JMC Europe, which did work quite well at times, but I would have thought that if the mechanism was going to work better, they should have more structure to it; meetings should be timed and timetables stuck to when the meetings are; as I mentioned, possibly a joint secretariat. It is incumbent on both Governments to try to avoid using it as an opportunity to make statements to the press immediately after JMC plenary, which seemed to be the main purpose during the referendum campaign.

Baroness Liddell: It was after my time.



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Q193 **Chair:** How do we move on from that then? This is the forum that we have for intergovernmental issues, the main location for these issues to be aired and discussed. You are saying that nothing gets resolved.

Alun Evans: Personally I think there should be a robust and perhaps an enforceable disputes mechanism. I am not as close to it as I used to be, but it comes back to—I do not want to sound too much like a cracked record—if one had a new approach to the relationship between the UK Government and all the devolved nations, one could address this afresh, one could have a new mechanism. One could put somebody probably other than the Prime Minister in charge of it and I think it would have a good chance of working more effectively than the current arrangements.

Q194 **Chair:** In your view, the core of what we are looking here in intergovernmental relations, at the heart of this, is it the JMC that we need to give most of our attention to?

Alun Evans: Yes.

Q195 **Hugh Gaffney:** Are there any other proposals to reform or improve the relationship between the UK and Scottish Governments that you think should be considered? One of the things I have been thinking about is would a mirror English Parliament work, away from Westminster, to the Scottish Parliament?

Michael Moore: Thanks for lobbying that one in.

Hugh Gaffney: I saved the best until last.

Michael Moore: I am going to reserve the right to pass on that particular one. That is slightly fraught and it is well beyond my experience of the issues. You need to ask English politicians, not former politicians, for that.

If I may refer you to the Smith Commission report, I think it is paragraph 30-whatever, which I was revising before coming here today, we agreed across the five political parties represented around the table there that the JMC needed to be reformed urgently and all the different issues addressed. I understand there have been some discussions of how that might be done, but not enough of it. I think that is why your inquiry is very welcome, because you can shine a light on it and come through with recommendations on that.

The basic mechanism is there. Now let's make it fit for purpose, bring in the fiscal framework side of it. The finance quadrilateral is a Treasury-run operation that has nothing to do with the JMC. The Treasury does that on the side and it hands out its thoughts on things and the devolved Administrations complain, but they do not have a lot of scope to do very much about it. Bringing that kind of thing within the JMC as well as specific things to do with Scotland I think would be a great step forward.

Alun Evans: I do not think an English Parliament would help, but if you are interested in these issues, I would refer the Committee to a book



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recently published by the British Academy on "Governing England" on all the aspects of how England could be better governed.

Baroness Liddell: When I first came into Parliament as a Member of Parliament, the Westminster Hall structure did not exist and it really arose out of what was happening with devolution, because a lot of Back-Bench issues for English Members of Parliament, there just were not enough time to get through them. That is why the Westminster Hall Second Chamber idea arose and was introduced at the time when I was there.

I was frequently called before it, particularly when I was doing energy and coalfield issues. I am not coming across a great call for an English Parliament, but I think there is recognition among those who worry about these things that this issue of a democratic deficit does exist: why should London have an Assembly and Liverpool doesn't, that kind of thing.

That cycles back again to the idea of I started as a unicameral, thinking you only needed one Chamber, until I had to put 800 amendments to the Utilities Bill and then I realised that you needed a Second Chamber to revise. I think the nature of the Second Chamber should take into account this democratic deficit and bring together the interests of every part of the United Kingdom.

Chair: I am grateful. Thank you ever so much for another fascinating session. Anything that you observe that you feel you could usefully contribute this inquiry, we are more than happy to accept any further representations, but, for today, thank you ever so much for coming along and helping us with this.