

Government response to the House of Lords Constitution Committee’s 13th Report on the “The Governance of the Union: Consultation, Co-operation and Legislative consent”

The Governance of the Union: Consultation, Co-operation and Legislative consent was published on 27 September 2024 and can be found here: <https://committees.parliament.uk/work/8250/the-governance-of-the-union-consultation-cooperation-and-legislative-consent/publications/>

The Government is grateful to the House of Lords Constitution Committee for their inquiry into whether the strains placed on intergovernmental relations and the Sewel convention by COVID-19 and the implementation of Brexit still persist, and whether the new intergovernmental relations structures put in place in 2022 are sufficiently robust to withstand future stresses and strains. The report highlights the importance of upholding and working within the intergovernmental structures set up in the 2022 Review of Intergovernmental Relations and underlines the importance of effective collaboration and respect between the UK Government and devolved governments. The Government shares the Committee’s view as to the importance of a strong relationship between the UK Government and devolved governments. We are committed to resetting the relationship with devolved governments in Scotland, Wales, and Northern Ireland to deliver for the people in all nations of the United Kingdom.

The Government’s view is that whilst the formal structures are important because they create guaranteed occasions for interaction and dialogue, so too is the tone of the relationship. This will often be set informally and through everyday contact. If everyone is trying to make the relationship work, this makes an enormous difference whatever formal structures are in place.

The response to the Committee’s recommendations is below:

CHAPTER 1: INTRODUCTION

This inquiry

Conclusion: As a Committee, part of our remit is to keep under review constitutional aspects of devolution. As such, we intend to return to this matter and will seek to examine the efficacy of the intergovernmental relations arrangements and the operation of the Sewel Convention again in the near future. (Paragraph 59).

Recommendation: In addition to responding to our report within the normal two-month timeframe, we also ask that the new Government undertakes to review both the operation of intergovernmental relations and the Sewel convention over the coming year, with a view to implementing the recommendations in our report. We invite the Government to provide an update to the Committee on progress made by the end of September 2025. (Paragraph 59).

Response: The Government is committed to working with the devolved governments of Scotland, Wales, and Northern Ireland to deliver effective outcomes across the UK. Nowhere has this been better demonstrated than through the Council of the Nations and Regions

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where the Prime Minister brought the First Ministers – and the deputy First Minister of Northern Ireland – together with English leaders to discuss some of the most important challenges and opportunities facing the UK. This was preceded by the Prime Minister’s bilateral meetings with each of the heads of the devolved governments, and a multilateral meeting with the Prime Minister, the Minister for Intergovernmental Relations, and those same heads of the devolved governments.

The structures for intergovernmental engagement were agreed by all governments in the 2022 Review of Intergovernmental Relations. This government is committed to strengthening relations at the highest level and has created the Council of Nations and Regions as part of the intergovernmental engagement.

Upholding and reviewing the operation of intergovernmental relations (IGR) is a joint responsibility shared by the UK Government and the devolved governments, and for the governments to take forward and agree together.

The Government committed in its manifesto to strengthening the Sewel Convention and delivering a new Memorandum of Understanding outlining how the nations will work together for the common good.

CHAPTER 2: ARE THE NEW INTERGOVERNMENTAL RELATIONS STRUCTURES WORKING?

The effectiveness of the new intergovernmental relations structures

Conclusion: As discussed in Chapter 1, the new intergovernmental relations structures are, on paper, a welcome initiative. They have the potential to remedy criticisms levelled at the previous intergovernmental structures by creating a more regular, transparent and formal system of intergovernmental working. However, the realisation of their full potential, as genuine vehicles for collaboration and co-operation, will require the new Government to fully embed them into the day-to-day business of government. The devolved administrations must also demonstrate commitment to engaging with the new structures. (Paragraph 73).

Recommendation: We recommend that intergovernmental meetings are scheduled consistently, at intervals deemed appropriate by both the UK Government and the devolved governments. Other than in exceptional circumstances, devolved governments should be given sufficient notice of meetings, allowing them the opportunity to contribute meaningfully to the development of meeting agendas. Where appropriate, meetings should be attended by the relevant Secretary of State and the cancellation of meetings at late notice should be avoided. (Paragraph 74).

Recommendation: We welcome the manifesto commitment made by the new Government to “renew opportunities for the Prime Minister and Heads of Devolved Government to collaborate with each other” and reiterate our previous recommendation that the Prime Minister and Heads of Devolved Governments Council should meet on a regular basis, and at least twice annually. (Paragraph 75).

Conclusion: As set out in paragraph 186, the effectiveness of the intergovernmental relations structures under the new government will be helped by the recent appointment of

the Chancellor of the Duchy of Lancaster as Minister for Intergovernmental Relations, with responsibility for devolution, and the location of this post in the Cabinet Office. (Paragraph 76).

Response: The Government is committed to fully embedding intergovernmental structures and welcomes the Committee's notes on the importance on doing so.

This has been evident from the first day of the new Government. The Prime Minister met with the First Minister for Scotland, the First Minister for Wales, and the First Minister and deputy First Minister of Northern Ireland, within the first three days of his appointment. Following this, there were multiple bilateral meetings conducted by Secretaries of States in the first few days of our government. At the State Opening of Parliament, this was further evidenced by the commitment made in the King's Speech to strengthen the Government's work with the devolved governments.

The inaugural Council of the Nations and Regions, which brings together the Prime Minister, heads of the devolved governments, the Mayor of London, and Mayors of Combined Authorities and Combined County Authorities met on 11 October 2024. The Council discussed how to work together on economic growth and attracting inward investment. The full Council meeting was preceded by bilateral and multilateral meetings between the Prime Minister and heads of the devolved governments.

The Government is committed to sustained and substantial engagement with devolved governments at different tiers – including at the Prime Ministerial level – and the intergovernmental principles that underpin this engagement. We recognise that it is for all governments to agree when to meet, and for each government to decide who is most appropriate to attend meetings to enable proper outcomes.

Scrutiny of intergovernmental relations

Conclusion: While we welcome the commitment by the governments of the United Kingdom to promote understanding of, and accountability for, intergovernmental activity through enhanced reporting to their respective legislatures, we are concerned by reports that information on intergovernmental activity is sometimes lacking. (Paragraph 81).

Recommendation: To fulfil their pledge to improve transparency and accountability, all four governments should ensure reporting on intergovernmental activity is timely and includes sufficient detail to facilitate effective scrutiny by their respective legislatures. (Paragraph 81).

Response: The Government agrees that transparency and accountability within the intergovernmental structures is important. As agreed in the 2022 Review of Intergovernmental Relations, each of the four governments are responsible for their own transparency activity. Transparency reports have been published annually by the UK Government, with the most recent Intergovernmental Relations Annual Report published in April 2024. The Government intends to publish routine transparency information on intergovernmental relations. We welcome an ongoing conversation with the Committee on the information that is useful, while respecting the confidentiality of intergovernmental meetings. Alongside this, an impartial IGR Secretariat was established following the 2022

review. The Secretariat will publish an annual report on intergovernmental activity across the UK Government and devolved governments.

Goodwill, attitudes and culture

Conclusion: The UK Government is more powerful than the devolved governments and, by its nature as the government for the entire UK, possesses information about policy choices that may impact on the devolved nations. As such, while successful devolution requires goodwill on the part of every government, it is particularly incumbent upon the UK Government to take account of the impact its decisions may have throughout the UK and therefore to demonstrate goodwill in its interaction with the devolved governments and share information in good faith. Devolution also requires goodwill, constructive engagement and sharing of information by devolved governments, but where they are themselves hostile to the Union such goodwill and cooperation can be lacking. (Paragraph 92).

Conclusion: Where different political parties are in power in different parts of the United Kingdom, underlying political differences are inevitable and unavoidable. If intergovernmental relations are to be effective and sustainable, then it is essential that all parties foster a culture of positive engagement; politicians throughout the United Kingdom, whatever their view of the current constitutional structures, must be prepared to overcome political differences in the interests of the people they serve. (Paragraph 93).

Recommendation: None

Response: The Government agrees with the Committee's conclusions regarding the importance of goodwill for effective intergovernmental relations. UK Government officials and Ministers have engaged with their devolved government counterparts ahead of the King's Speech to build a shared understanding of legislative priorities. This close engagement has continued as bills have been introduced to Parliament. Further examples of this culture of engagement include collaboration with the Scottish Government in establishing GB Energy, the independent Commission into the water sector jointly launched with the Welsh Government, and the Government's plans to work with the Northern Ireland Executive to make the most of opportunities in relation to the Mid South West and Causeway Coast and Glens City Deals.

The dispute resolution process

Conclusion: The dispute resolution process, as a feature of the new intergovernmental relations process, has not yet been tested. As referenced in paragraph 94, it has been initiated only once— in a dispute between the Northern Ireland Executive and the UK Government that was paused following the collapse of the Northern Ireland institutions in February 2022. It is therefore not possible, at this time, to assess the efficacy of the new dispute resolution process. (Paragraph 113).

Conclusion: Nevertheless, in many circumstances, engagement with the dispute resolution process is unlikely to be the most practical course of action. There are three particular reasons for this. Often, informal dialogue between governments will be more effective. Where legislation is involved, the speed and process by which bills and substantive amendments make their way through the legislatures may make it impracticable to pursue a complaint through the dispute resolution process. The reality of different political parties

holding power in different parts of the UK—some of which support the Union and others of which aspire to independence—is that publicity engendered by high-profile public disputes will at times be more appealing than resolving issues through established governance structures. For all these reasons it may be that use of the dispute resolution process will remain limited. We will keep this under review. (Paragraph 114).

Recommendation: None

Response: The Government agrees with the Committee’s conclusions on the importance of informal dialogue between governments to resolve disputes. As set out in the 2022 Review of Intergovernmental Relations, all governments committed to promoting collaboration, the avoidance of disagreements, and making use of intergovernmental machinery to resolve disputes at the lowest appropriate level possible.

The role of the civil service

Conclusion: If intergovernmental relations are to be a success, it is vital that civil servants have a comprehensive understanding of devolution and are encouraged, including by ministers, to engage effectively with their counterparts in the devolved administrations where policy proposals are likely to impact upon devolved competence. (Paragraph 126).

Recommendation: We urge the new Government to ensure that every department has a properly equipped team—and a Ministerial lead—with the knowledge and skills necessary to address, anticipate and engage with devolution matters as they arise, providing an identified point of contact for the devolved administrations. (Paragraph 126).

Response: The Government agrees with the Committee that civil servants need to have respect for, and a comprehensive understanding of, devolution. This requires a whole Government collective approach and is not just one official’s, team’s, or Minister’s responsibility.

Since 2015, the Cabinet Office has led the Devolution and You programme to embed devolution knowledge and intergovernmental working skills into the career of every civil servant. This includes building basic awareness for all civil servants and more advanced skills for key groups through a multi-tiered devolution learning curriculum. The programme impact is monitored through annual surveys that inform the approach.

Every UK Government department should have a senior responsible officer (SRO) and non-executive director (NED) with responsibilities for devolution matters. In addition, most departments also have a devolution team embedded within their structures. These devolution coordinators can provide more detailed advice on how devolution affects a UK Government department’s work.

Conclusion: We note that the Civil Service Devolution Capability Programme has been in place since 2015 yet concerns remain about civil servants’ knowledge of devolution. (Paragraph 127).

Recommendation: We reiterate our previous recommendation that to be effective, such training requires significant take up, from the most junior to the most senior civil servants. (Paragraph 127).

Response: The Devolution and You programme is an extensive Civil Service-wide programme that has been in place since 2015. It aims to improve the devolution and intergovernmental awareness of all civil servants, as well as making sure that target groups, including Senior Civil Servants, have more advanced skills and knowledge.

The Devolution and You Programme is currently focussed on:

- Building basic awareness for all civil servants and more advanced skills for target groups through a multi-tiered devolution learning curriculum. For example, modules are on cross-government platforms such as Civil Service Learning (CSL), hosting an annual Devolution Learning Week, and running regular introductory seminars to devolution.
- Continuing to embed devolution content and expectations into a civil servant's career journey. For example, inclusion in the policy profession standards and through Leadership Schemes.
- Building first-hand experience of working in other governments to improve delivery in shared priority areas through placements.

The Government has mechanisms in place to improve our understanding of the uptake of our learning offer and what civil servants across the UK know about devolution and intergovernmental working. The trend over time has been that attendance at Devolution and You learning has increased year on year. Since 2018, the Government has monitored progress on devolution capability through an annual survey of civil servants throughout the UK. In 2023 and 2024. We also added questions on devolution capability to the Civil Service People Survey to further triangulate our findings.

The responses from our monitoring continue to help inform our approach to devolution learning, support the development of appropriate training and resources, and be more targeted about where extra support is needed.

The restoration of Northern Ireland institutions

Conclusion: It is not yet clear how the re-establishment of Northern Ireland institutions in February 2024 will impact on the efficacy of the new intergovernmental relations structures. As such, a full assessment of the intergovernmental relations structures will require time to allow for Northern Ireland's full participation to bed in. (Paragraph 137).

Recommendation: None

Response: The Government welcomes the re-establishment of Northern Ireland institutions. Within days of their appointment, the Prime Minister and the Secretary of State for Northern Ireland met with the First Minister and deputy First Minister of Northern Ireland, reaffirming the Government's commitment to resetting the relationship with Northern Ireland. The Chancellor of the Duchy of Lancaster similarly visited Northern Ireland to meet with the First Minister and deputy First Minister of Northern Ireland within the first month of his appointment as Minister for Intergovernmental Relations. In addition to these UK

Government visits, the First Minister and deputy First Minister of Northern Ireland attended the Council of the Nations and Regions and the International Investment Summit alongside other First Ministers of the devolved governments and the Prime Minister.

Common frameworks

Conclusion: Despite significant setbacks—not least the collapse of devolved institutions in Northern Ireland in February 2022 and the criticisms levelled at the Internal Market Act 2020—common frameworks represent a positive example of intergovernmental cooperation, using a collaborative and consensus-driven approach. (Paragraph 153).

Conclusion: When fully implemented common frameworks have the potential to develop UK-wide policy through collaboration and consensus, while also acknowledging the autonomy of each of the devolved administrations in their area of competence and allowing for policy divergence on the basis of consent. In the words of the Common Frameworks Scrutiny Committee “[t]hey therefore have singular potential to strengthen cooperation between the administrations which is essential to maintaining the Union.” (Paragraph 154).

Conclusion: As part of our remit to keep under review constitutional aspects of devolution, this Committee maintains a watching brief on the operation of common frameworks. (Paragraph 155).

Recommendation: With the re-establishment of the devolved institutions in Northern Ireland, we urge the new Government to mobilise every effort to finalise and fully implement all 32 common frameworks agreed between the UK Government and the devolved governments. (Paragraph 155).

Response: The UK Government agrees that Common Frameworks are positive examples of intergovernmental cooperation. The majority of Common Frameworks are provisionally operational, and we are working closely with all four governments to progress them to full implementation. Whilst Common Frameworks were originally envisioned as common policy approaches to specific UK-wide policy, they have evolved as mechanisms for managing divergence across broad policy areas by, for example, agreeing common or interoperable approaches. It remains our ambition that Frameworks are used to help develop UK-wide policy where appropriate.

Oversight of the Common Frameworks programme is returning to the Cabinet Office under the Chancellor of the Duchy of Lancaster as Minister for Intergovernmental Relations. The Government welcomes the Committee’s watching brief, noting the important work that the Common Frameworks Scrutiny Committee previously did to support the programme.

CHAPTER 3: HOW CAN INTERGOVERNMENTAL RELATIONS BE IMPROVED?

The role of the territorial offices

Resources and spending power

Conclusion: The territorial offices have an important role to play in strengthening the Union by enhancing Whitehall understanding of devolution and the political context in the devolved nations, and by guiding UK Government policy accordingly. The secretaries of state for Scotland, Wales and Northern Ireland have a particular duty to engage constructively with,

and demonstrate respect for, the competences of the devolved administrations. They are in a position to represent the interests of the respective nations in the Cabinet and have direct access to ministers in other Government departments. We look forward to further clarity as to the respective roles of the territorial secretaries of state and the new Minister for Intergovernmental Relations. (Paragraph 180).

Recommendation: None

Response: The Government agrees with the Committee on the important role played by the Scotland, Wales, and Northern Ireland Offices. It is the role of the Secretaries of State, the Ministers, and officials in the respective Offices to represent the interests of Scotland, Wales, and Northern Ireland within the UK Government and to advocate for Government policies in those nations. They do this through formal Cabinet structures, as well as through daily close collaboration with ministers from other UK Government departments, and engagement with local and regional partners.

The Secretary of State for Scotland has regular meetings with the Deputy First Minister, where they discuss collaboration between governments on a range of issues – such as the joint investment plan to secure the industrial future of the Grangemouth site and bringing the Commonwealth Games to Glasgow. The UK and Scottish Governments have worked together on the enhanced £100 million Falkirk and Grangemouth Growth Deal, which will help to ensure the long-term future of the site and ensure the workers affected by this decision are well supported. The Government is also co-funding a feasibility study into future low-carbon options for the site.

The Secretary of State for Wales chairs the Tata Steel/Port Talbot Transition Board, working with the Welsh Government Cabinet Secretary for Economy, Energy and Planning as deputy chair of the Board, local government, unions, and the wider community to support those affected by Tata Steel’s decision to transition to greener steelmaking. In August, £13.5 million in funding was released to support supply chain businesses and workers affected by the transition.

In Northern Ireland, the Government plans to work with the Northern Ireland Executive to make the most of opportunities in relation to the Mid South West and Causeway Coast and Glens City Deals. Ahead of the Chancellor’s Budget Statement, the Secretary of State for Northern Ireland worked alongside the Chief Secretary to the Treasury, the Northern Ireland Department of Finance, delivery partners, and Treasury officials to provide the requisite detail on the deals and their intended impact on regional growth.

The Chancellor of the Duchy of Lancaster as Minister for Intergovernmental Relations leads the cross-government coordination and engagement with the devolved governments. The Chancellor of the Duchy of Lancaster works alongside the Secretaries of State for Scotland, Wales, and Northern Ireland.

Machinery of Government

Conclusion: We welcome the new Government’s appointment of a Minister for Intergovernmental Relations, based in the Cabinet Office, with responsibility for devolution. It will be important for the new Minister for Intergovernmental Relations and the Minister for the

Cabinet Office (Minister for the Constitution and European Union Relations) to work effectively together to ensure a common understanding of the devolution settlement and the constitution more broadly, including any implications for the integrity of intergovernmental relations. We look forward to engaging the ministers on the issues raised in this report. (Paragraph 186).

Recommendation: None

Response: The Government welcomes the Committee's conclusions on this issue.

Placing intergovernmental relations on a statutory basis

Conclusion: While intergovernmental co-operation through the new intergovernmental relations structures requires improvement, we do not believe they have been operational long enough to take a conclusive view as to whether such structures should be underpinned by a statutory framework. We reiterate our previous conclusion that attitudes and behaviours are key to making the new structures work effectively. (Paragraph 193).

Recommendation: We welcome the new Government's commitment in its manifesto to "ensure the structures and institutions of intergovernmental working improve relationships and collaboration on policy". (Paragraph 193).

Response: The Government agrees with the Committee's conclusion that attitudes and behaviours are key to making the new intergovernmental relations structures work effectively. This is why the Government is committed to resetting the relationship with the devolved governments. Within hours of his appointment, the Prime Minister spoke with the First Ministers of Scotland and Wales, and the First and deputy First Minister of Northern Ireland. The Prime Minister then travelled to meet them in the following days, emphasising the importance of this relationship to the Government.

The Government is strengthening its work with the devolved governments to deliver the best outcomes possible for people across the United Kingdom. This includes the recent establishment of the Council of the Nations and Regions. The Council will renew opportunities for leaders across the UK to collaborate with each other to address some of the most pressing challenges facing the UK and take best advantage of the excellent opportunities that working together will present. This will help to deliver on the UK Government's five missions.

The clear changed relationship is demonstrated by the positive and open approach establishing GB Energy, evidenced through the recent publication of the joint UK Government – Scottish Government agreement on partnerships between GB Energy and Scottish public bodies, the partnership working with Welsh Government on health, and the Mid South West and Causeway Coast and Glens City Deals in Northern Ireland. This shows the Government acting on its commitment to a new approach to intergovernmental relations.

A principle of positive engagement

Recommendation: We recommend a principle of positive engagement to be included among the principles for intergovernmental relations, currently listed in 'The Review of

Intergovernmental Relations' policy document. Such a principle would provide civil servants with a tool by which to remind ministers in the UK Government and the devolved governments of the expectation that they should engage with one another, including by working together on the development and implementation of policies of common concern. (Paragraph 201).

Recommendation: We welcome the new Government's commitment to work collaboratively with the governments in Scotland, Wales and Northern Ireland, and urge it to ensure that it fully respects the powers of the devolved governments under the devolution settlement. There is a reciprocal responsibility on behalf of the devolved governments to engage and work collaboratively with the UK Government. (Paragraph 202).

Response: It is the view of the Government that positive engagement is embedded across the approach and in the new Government's most recent intergovernmental actions. The Manifesto commitment to reset the relationship with the devolved governments is being delivered through positive engagement and collaboration.

This has been demonstrated, for instance, by the positive engagement and joint work between the UK Government and Scottish Government on the joint production of the Consultation on the Reform of Electricity Infrastructure Consenting in Scotland. The 2026 Glasgow Commonwealth Games are a further example of the UK and Scottish Governments working together to deliver for Scotland. The UK Government was able to invest £2.3 million as a contingency on security costs, as well as having facilitated talks between the Commonwealth Games Federation and the Scottish Government.

The UK and Welsh Governments have also been working in partnership to deliver better results for people in Wales. This includes a new partnership aimed at driving down NHS waiting lists in England and Wales, through the sharing of best practice and exploring cross-border collaboration between NHS trusts. In October, the UK and Welsh Governments jointly launched an Independent Commission into the water sector and its regulation. The Commission's work will form the basis of further legislation, building on the joint work in this area between the Governments through the first session Water (Special Measures) Bill. In the Budget Statement, the Chancellor confirmed that the short pause on the UK Government's contribution to the Mid South West and Causeway Coast and Glens City Deals had been lifted. The Government is committed to working with the Northern Ireland Executive and businesses to make the most of the huge economic opportunities that now lie ahead.

The Council of the Nations and Regions is another recent high-profile example of multilateral intergovernmental engagement, among many. The inaugural Council meeting facilitated the attendees at the highest levels of central, devolved, and local government confirming their commitment to work together to leverage maximum investment to all parts of the nations and regions and support economic growth.

Representation of England

Recommendation: We note the new Government's commitment in the King's Speech to establish a Council of the Nations and Regions, which will bring together the Prime Minister,

the heads of the devolved governments and the mayors of combined authorities. We also note the intention to bring forward an English Devolution Bill. This Committee will keep the government proposals under careful review and examine their constitutional implications in due course, including their capacity to represent parts of England that do not fall within a Combined Authority. (Paragraph 207).

Response: The Government welcomes the Committee's notes and continued interest in this. The first Council for the Nations and Regions took place on 11 October 2024. The Council allows the Prime Minister, heads of the devolved governments, and the mayors the forum to engage, ensuring governments and authorities with devolved responsibilities work together to deliver for people across the UK.

CHAPTER 4: OBSERVANCE OF THE SEWEL CONVENTION

Legislation amended to address the concerns of the devolved institutions

Conclusion: The Sewel convention generally operated well from 1999 until it was put under strain by the implementation of Brexit. Since Brexit, the UK Government has legislated without the consent of one or more of the devolved legislatures on multiple occasions, and at times has done so on bills unrelated to Brexit. (Paragraph 228).

Recommendation: We urge the new Government to commit to respecting the Sewel convention, namely by proceeding in accordance with the principle that the UK Parliament will not normally legislate with regard to devolved matters except with the agreement of the devolved legislature. (Paragraph 228).

Conclusion: However, we also recognise that the increased occasions on which the UK Government has legislated without consent may in part be the result of a trend since Brexit for the devolved governments to take a more expansive view of devolved competence. This has led to differences of opinion between the UK Government and the devolved government as to whether consent is required with regard to specific bills. In such circumstances, close and timely engagement between governments is required to address differences of opinion and, where possible, reach consensus. Occasions on which amendments have been made to bills to address the concerns of the devolved legislatures and ultimately secure their consent demonstrate the benefits of such engagement. (Paragraph 229).

Response: The Government agrees with the Committee's view on its importance. The Convention is an important part of the devolution settlements which recognises the competence of the devolved institutions for matters within their responsibilities, whilst also respecting the sovereignty of the UK Parliament. In recent years, the Sewel Convention has been under strain and has led to criticism and a lack of trust in the system.

To demonstrate its commitment to the Sewel Convention, the Government has committed to working on a new Memorandum of Understanding on legislation. This will establish a mutual baseline for engagement, and the importance of good policy outcomes, as the main objective of legislation UK-wide.

CHAPTER 5: STRENGTHENING THE SEWEL CONVENTION

Replacing the Sewel convention with a legally binding rule

Conclusion: While improving respect for the Sewel convention is essential, replacing the convention with an express legal duty that the UK Parliament will not legislate in areas of devolved competence without the consent of the relevant devolved legislature would be excessively rigid and would potentially involve the courts in what is fundamentally a political matter between the UK Government and the devolved governments. (Paragraph 241).

Response: The Govt agrees with the Committee's recommendation

Updating the Devolution Guidance Notes

Conclusion: The Devolution Guidance Notes are out of date. They do not take account of significant developments such as the return of powers following the UK's departure from the European Union and the development of common frameworks, or the introduction of new intergovernmental relations structures in January 2022. They also make outdated references; for example, they refer to the "Scottish Executive" instead of the Scottish Government and the "National Assembly for Wales" instead of the Senedd. (Paragraph 250).

Recommendation: We reiterate our previous recommendation that the Devolution Guidance Notes should be updated as a matter of priority, and we urge the new Government to do so without delay. This should be completed alongside long overdue updates to the Cabinet Manual. (Paragraph 250).

Recommendation: In updating to the Devolution Guidance Notes, the UK Government should consider the proposals made by the Senedd Legislation, Justice and Constitution Committee, and how these could be expanded to include the Scottish and Northern Irish institutions. (Paragraph 251).

Response: The devolution guidance notes (DGNs) set out valuable advice on working relations with the devolved governments. They should be read as part of a wide spectrum of guidance and publications on intergovernmental working, such as the 2022 Review of Intergovernmental Relations. They are supplemented by the extensive Civil Service wide devolution capability programme. This is an ambitious programme that has been in place since 2015 to enhance devolution knowledge and intergovernmental working skills of civil servants, enabling them to deliver more effectively when designing and implementing policies. Taken together, they enable civil servants to work across the UK Government, Scottish Government, Welsh Government, and Northern Ireland Executive. There is always scope to improve engagement and understanding of these processes.

A principle of positive engagement on legislation

Conclusion: For UK Government consultation with the devolved administrations on UK legislation to be meaningful and effectively resolve differences, it must be timely. We recognise that the legislative timetable in the UK Parliament can make early engagement a challenge and that there are, at times, conflicting accounts from the UK Government and the devolved administrations regarding the timing and quality of consultation. We nonetheless

reiterate our previous recommendation that instructions in the Devolution Guidance Notes regarding early consultation should be followed as a matter of course. (Paragraph 266).

Conclusion: We note that there is currently no reciprocal convention requiring the devolved administrations to give notice to the UK Government of devolved legislation that could affect reserved matters. (Paragraph 267).

Recommendation: We recommend the principle of positive engagement, discussed in paragraph 201, includes a requirement that the UK Government and the devolved governments engage on legislative proposals that impact upon one another's areas of legislative competence. This should be a feature of the new Government's manifesto commitment to strengthen the Sewel convention "by setting out a new memorandum of understanding outlining how the nations will work together for the common good." (Paragraph 267).

Conclusion: This memorandum of understanding could include a requirement that a decision by a devolved legislature to withhold consent to a bill be pre-conditioned by meaningful engagement on the part of the devolved government with the UK Government, with both parties having an obligation to make every effort to resolve any concerns raised. (Paragraph 268).

Conclusion: Early consultation via a principle of positive engagement would also help resolve differences of view between the UK Government and the devolved governments as to whether legislative consent is required for particular bills. (Paragraph 269).

Response: The Government recognises the importance of timely and positive engagement on legislation and agrees that this is a vital component in ensuring legislation can be made which works effectively across the UK. It is particularly crucial, as the Committee has noted, in relation to the Sewel Convention and when the legislative consent process is engaged.

The devolved legislatures' scrutiny function

Conclusion: Late consultation by the UK Government on legislation which potentially impacts upon devolved competence diminishes the devolved legislatures' and their committees' capacity to effectively scrutinise legislative consent motions. The UK Government should note the time required to consider adequately the increased number of legislative consent motions which are now being put before the devolved legislatures and should take account of the devolved legislatures' timetables to help ensure in as far as possible that sufficient time for scrutiny is available. (Paragraph 275).

Recommendation: None

Response: The Government agrees that early engagement with the devolved governments is crucial for enabling subsequent timely engagement with the devolved legislatures, to allow adequate time for their important scrutiny function. Every effort is made to ensure adequate time for this, taking into account the devolved legislatures' timetables. The proposed Memorandum of Understanding will help ensure this is always the case.

The role of the House of Lords

Conclusion: We recognise that the Explanatory Notes accompanying a bill set out the Government’s understanding of the territorial extent of the bill. However, they do not provide the House of Lords with an explanation of what engagement has taken place to date to secure the consent of the relevant devolved legislatures. (Paragraph 281).

Recommendation: We reiterate our previous recommendation and urge the new Government—on introduction of a bill to the House of Lords that engages the Sewel convention— to submit a memorandum to the House about the devolution implications of the bill and explain what engagement has taken place with the relevant devolved administrations. (Paragraph 281).

Recommendation: Where the UK Government considers consent is not required from a devolved legislature and proceeds to give effect to that view, we reiterate our previous recommendation that the Government should justify its approach to the House at the beginning of the bill’s consideration. (Paragraph 282).

Response: We note the Committee is recommending greater transparency on both the engagement which has taken place on bills with the devolved governments, and the devolution implications of any bill. We agree that it would be helpful for there to be greater transparency on these matters so that the Government can clearly demonstrate the work it is undertaking to ensure the devolved governments are fully involved, where relevant. We will consider the proposals as part of our wider work to deliver our manifesto commitment on Sewel and can update the Committee on this work in due course.

The Government sets out its understanding of the territorial extent of a bill when it is introduced to Parliament, as part of the bill’s explanatory notes. This generally includes a dedicated chapter explaining our reasoning on the bill’s territorial extent, as well as a clause-by-clause summary of where we consider the legislative consent process is engaged.

CHAPTER 6: SECONDARY LEGISLATION AND HENRY VIII POWERS

Consultation vs consent

Recommendation: We recommend the new Government develops a clear set of criteria regarding the appropriate use of delegated powers in areas of devolved competence. These criteria should be set out in guidance provided to the Office of the Parliamentary Counsel, which should be published. (Paragraph 305).

Recommendation: We reiterate our previous recommendation that formal engagement with the devolved administrations on the use of delegated powers in areas of devolved competence should be a requirement. UK Ministers should either consult devolved ministers or seek their consent, depending on the significance of the delegated power in question. In developing the criteria referred to in paragraph 305, the UK Government should set out the circumstances in which it ought “not normally” to exercise a delegated power without the consent of the relevant devolved institution. For instance, where UK legislation contains

powers which empower UK ministers to alter acts of the devolved legislatures, these powers should not normally be exercised without the explicit consent of the relevant legislatures. (Paragraph 306).

Recommendation: The process for consulting and seeking the consent of the devolved institutions on the use of delegated powers in areas of devolved competence should be set out in writing and should include recognition of the role of the devolved legislatures in scrutinising such powers. The Senedd's Statutory Instrument Consent Mechanism provides a useful model for achieving this. The process of consulting and seeking the consent of the devolved institutions on the use of such powers should form part of the principle of positive engagement discussed in Chapters 3 and 5 (Paragraph 307).

Response: The Government notes the Committee's recommendations on developing criteria and publishing guidance on the use of delegated powers in devolved areas, and on engagement with the devolved governments on the use of these powers. The Government will consider this as part of its work on engagement with the devolved governments on legislation.

The Government notes the Committee's conclusion.