

## **HM Government – Written Evidence (EOS0002)**

### **Lords Constitution Committee Inquiry: Executive oversight and responsibility for the UK Constitution**

1. The Government welcomes the opportunity to provide written evidence to inform the Committee's inquiry.
2. The UK's constitutional arrangements are complex and wide-ranging. As set out in the Cabinet Manual, the UK does not have a codified constitution. Instead, the constitutional order has evolved over time and continues to do so. It consists of various institutions, statutes, judicial decisions, principles and practices that are commonly understood as 'constitutional'.
3. The Government takes seriously its responsibility to uphold and support the UK's constitutional arrangements. This extends from its commitment to maintain high standards in public life and the rule of law, to delivery of the reform agenda set out in the manifesto, including reform of the House of Lords and resetting the UK Government's relationship with the devolved governments in Scotland, Wales, and Northern Ireland.

### **Historical Overview**

4. Since 1997, several government departments have held responsibility for the constitution. The nature and extent of this responsibility have changed over time. Between 1997 and 2003, the Lord Chancellor's Department performed a constitutional oversight and guardianship role, seeking to ensure constitutional propriety in government, alongside its responsibility for policy relating to the judiciary and courts.
5. As a signatory to the Good Friday Agreement, along with the Irish Government, in 1998, the UK Government brought forward the Northern Ireland Act 1998 which sets out the constitutional arrangement for Northern Ireland in UK statute. Northern Ireland's place in the UK is enshrined in the Agreement and by the principle of consent set out within it, which is given effect in the Northern Ireland Act 1998.
6. Since devolution in 1999, the Secretary of State for Scotland, and the Secretary of State for Wales, and the Secretary of State for Northern Ireland have been supported by the Scotland Office, Wales Office and Northern Ireland Office respectively. They have acted as custodians of the respective devolution settlements and hold responsibility for setting the overall strategic direction of the UK Government in Scotland, Wales and Northern Ireland.
7. In 2003, as part of the-then Government's constitutional reform agenda, the Lord Chancellor's Department became the Department for

Constitutional Affairs (DCA). Still led by the Lord Chancellor, the DCA was responsible for political and constitutional reform. In 2007, the DCA was disbanded and its functions transferred to the newly created Ministry of Justice (MoJ). Here, the Lord Chancellor was responsible for major constitutional issues alongside judicial policy.

8. From 2010, under the Coalition Government, constitutional responsibility was split between the MoJ and the Office of the Deputy Prime Minister (ODPM) situated within the Cabinet Office. Constitutional matters affecting Parliament, elections and reform were transferred to the ODPM, while the MoJ retained responsibility for constitutional matters related to the justice system, such as the judicial review process.
9. In 2015, the constitutional responsibilities of the ODPM were fully transferred to the Cabinet Office. The UK Governance Group was established to coordinate constitutional and devolution policy across government departments. Comprising the Constitution Group (with responsibility for constitutional, devolution and elections policy) and the offices of the secretaries of state for Scotland and Wales and the Advocate General for Scotland, it also acted as the primary source of constitutional advice for UK government departments.
10. In September 2021, responsibility for several constitutional issues, including devolution and elections, was transferred to the Department for Levelling Up, Housing and Communities (DLUHC).
11. In September 2024, responsibility for Union and devolution policy was transferred from the Ministry of Housing, Communities and Local Government (MHCLG, formerly DLUHC) to the Cabinet Office to support cross-government coordination and engagement with the devolved governments and action to support the effective function of devolution settlements in Scotland, Wales and Northern Ireland. The transfer of responsibility for Union and devolution policy to the Cabinet Office is in line with the appointment of the Chancellor of the Duchy of Lancaster as Minister for Intergovernmental Relations. Its proximity to No10 and the work to deliver missions illustrates how the government intends to embed Scotland, Wales and Northern Ireland understanding into policy and legislative considerations, supported by the Territorial Offices. MHCLG remains responsible for devolution policy in England and engagement with Mayors and local government.

### **Ministerial Responsibilities**

12. As the Sovereign's principal adviser and the most senior member of the government, the Prime Minister is ultimately responsible for overseeing the UK's constitutional arrangements. In addition, the Prime Minister has a specific constitutional role in advising the Sovereign on the exercise of the Royal Prerogative in relation to the appointment, dismissal and

acceptance of resignation of other ministers. As the Ministerial Code states: "the Prime Minister is responsible for the overall organisation of the Executive and the allocation of functions between Ministers in charge of departments". This includes allocation of ministerial responsibilities for the UK constitution. He is supported by the Cabinet Secretary as his most senior policy adviser.

13. Constitutional matters are relevant to all departments and all ministers. Several Ministers and departments, however, have particular responsibilities. The Cabinet Office leads on policy related to the constitution and the Union. The Chancellor of the Duchy of Lancaster has oversight of all Cabinet Office policy and, as Minister for Intergovernmental Relations, leads coordination and engagement with the devolved governments in support of the Prime Minister, including via the Council of Nations and Regions. The Paymaster General and Minister for the Cabinet Office (Minister for the Constitution and European Union Relations) has specific responsibility for the constitution and House of Lords reform. This includes leading for the Government during the passage of the House of Lords (Hereditary Peers) Bill in the Commons and ensuring that devolution issues are considered during the preparation of legislation.
14. The Leader of the House of Commons and the Leader of the House of Lords also have a role to play as the Government's representatives in the legislature and representatives of the Commons and the Lords, respectively, in Government. The Leaders are responsible for representing the interests of both Houses and ensuring that the customs and principles that make Parliament unique are properly represented.
15. The Secretaries of State for Scotland, Wales and Northern Ireland are responsible for representing Scotland, Wales and Northern Ireland respectively within the UK Government. These ministers have lead responsibility for their respective devolution settlements and provide expert advice to other Government departments to ensure that the interests of Scotland, Wales and Northern Ireland are factored into UK Government policy and legislation. As part of this, Ministers also support engagement and collaboration between the UK Government and the Devolved Governments.
16. The Secretary of State for Northern Ireland has specific statutory functions named in the Northern Ireland Act 1998.
17. The office of Lord Chancellor remains pivotal to the constitutional relationship between the executive and judicial branches of the state. In keeping with this position, the Lord Chancellor has a number of judiciary-related responsibilities that are protected from delegation to other Ministers. The Lord Chancellor shares responsibility with the Lady Chief Justice and Senior President of Tribunals for the running of the courts and

tribunals in England and Wales, and has a statutory duty to have regard to the need to defend the continued independence of the judiciary within the UK and in relevant international tribunals. The Constitutional Reform Act 2005 recognises the Lord Chancellor's continued constitutional role in relation to the principle of the rule of law, notwithstanding the changes to the office the Act made. The Ministry of Justice also manages the UK's constitutional relationship with the Crown Dependencies.

18. The Attorney General, together with the Solicitor General and Advocate General for Scotland, are the chief legal advisers to the UK Government. They promote the rule of law, a fundamental principle of the UK's unwritten constitution, at home and internationally. The law officers' primary role is to advise on legal matters, helping ministers to act lawfully and in accordance with the rule of law. They should generally be consulted on matters of constitutional significance and in particular have a range of powers to ensure that the boundaries of the devolution settlements are properly enforced and respected, including the power to refer a devolved Bill to the UK Supreme Court.

## **Governance**

19. In addition to the central constitutional role played by Cabinet, the Government has established a Union and Constitution Cabinet Committee to consider matters related to the Union and constitutional reform.<sup>1</sup> Chaired by the Prime Minister, the Committee's membership also includes the following Ministers (with other Ministers invited according to the agenda):

- a. Deputy Prime Minister and Secretary of State for Housing, Communities and Local Government
- b. Chancellor of the Duchy of Lancaster (Deputy Chair)
- c. Lord Chancellor and Secretary of State for Justice
- d. Secretary of State for Northern Ireland
- e. Secretary of State for Scotland
- f. Secretary of State for Wales
- g. Lord President of the Council and Leader of the House of Commons
- h. Lord Privy Seal and Leader of the House of Lords
- i. Chief Secretary to the Treasury
- j. Attorney General
- k. Paymaster General and Minister for the Cabinet Office (Minister for the Constitution and European Relations)

20. As with all government decisions, decisions on constitutional policy are subject to collective agreement across government. There are also arrangements in place to ensure constitutional issues are considered during the development of policy, for instance in the process of approving legislation for introduction to Parliament.

## **Intergovernmental Relations**

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<sup>1</sup> [List of Cabinet Committees - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

21. The manifesto committed to ensuring that the structures and institutions of intergovernmental working were reset to improve relationships and collaboration on policy. As part of this, it also committed to renew opportunities for the Prime Minister and the heads of the devolved governments to collaborate with each other through the Council of the Nations and Regions. The Prime Minister has been clear that the purpose of the Council is genuine, meaningful, and focused partnership to unlock the whole of the UK's untapped potential to make everyone, everywhere better off. The Government remains committed to the intergovernmental engagement principles agreed with devolved governments as part of the Intergovernmental Relations Review completed in 2022.
22. There has been significant early ministerial engagement between the UK Government and the devolved governments. The Prime Minister spoke to the First Ministers of Scotland and Wales, the First and deputy First Minister of Northern Ireland on his first day in office, before visiting each nation and meeting them in the following few days. In these meetings, the Prime Minister emphasised the Government's commitment to working constructively with the devolved Governments, demonstrated further by the personal priority that he has placed on this. UK Government Ministers have continued to engage their counterparts both bilaterally and through established fora such as Interministerial Groups, including a meeting of the Net Zero, Energy and Climate Change Interministerial Group in Edinburgh on 17 October, and the British-Irish Council.
23. Other Cabinet Ministers are also investing time and energy into building relationships with their counterparts in Scotland, Wales, and Northern Ireland. This is in addition to significant official-level engagement between all governments. The Government remains committed to the Union by actively fostering and strengthening collaborative relationships with the devolved governments in Scotland, Wales, and Northern Ireland. This approach supports the design and delivery of policy for the whole of the UK, working closely with the devolved governments, local partners and civil society to shape policies that maximise impact on the ground.
24. The Council met for the first time on 11 October 2024 in Edinburgh. The Prime Minister met both individually and collectively with the heads of the devolved governments before chairing the Council meeting.<sup>2</sup>
25. The purpose of the Council is to facilitate partnership working between the UK Government, devolved governments, the Mayor of London, and Mayors of Combined Authorities and Mayors of Combined County Authorities. The Council brings together governments and authorities with devolved responsibilities to determine actions for tackling some of the

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<sup>2</sup> [Prime Minister and Heads of Devolved Governments Meeting communiqué 11 October 2024 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/prime-minister-and-heads-of-devolved-governments-meeting-communiqué-11-october-2024); [Council of the Nations and Regions: Inaugural meeting on 11 October 2024 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/council-of-the-nations-and-regions-inaugural-meeting-on-11-october-2024)

biggest and most cross-cutting challenges the country faces. The Council will meet biannually to deliver on people's priorities across the UK.<sup>3</sup>

26. The Inter-Parliamentary Forum exists to facilitate dialogue and cooperation between the UK Parliament and the devolved legislatures. It met for the fifth time in February 2024.

27. In terms of the Government's commitment to further local devolution, the Deputy Prime Minister has also written to areas without a devolution deal, inviting them to come forward. As we get closer to the Government's ambition to fill the map, more areas will be represented by Mayors with devolved powers who have the opportunity to attend the Council.

28. The Leaders Council, which met for the first time in October 2024, also facilitates partnership working between local government representatives in England and the UK Government.

*7 November 2024*

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<sup>3</sup> [Council of the Nations and Regions: Terms of Reference - GOV.UK \(www.gov.uk\)](https://www.gov.uk)