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House of Lords Constitution Committee Inquiry into the Future Governance of the UK

1. This submission responds to the second question in the committee's call for evidence – 'What are the current challenges for multi-level governance in the UK and how can these be addressed?' It focuses specifically on arrangements for interparliamentary relations, discussing existing UK and international experience in this area, and possible options for reform.
2. We draw on ongoing research that we have conducted as part of a wider collaborative project, *Between Two Unions: The Constitutional Future of the Islands After Brexit*, funded by the Economic and Social Research Council. Our study has involved an analysis of past and present arrangements for interparliamentary relations in the UK, including the work of the Interparliamentary Forum on Brexit, and desk research into relevant international experience. Interim outputs include a chapter in *Parliament and Brexit*, published by UK in a Changing Europe and the UCL Constitution Unit in March 2020, and several blog posts.¹ We made a similar written evidence submission to the House of Commons Procedure Committee in November 2020, for their inquiry into 'The procedure of the House of Commons and the territorial constitution'.² This submission reflects the authors' own views only.
3. We make the following key points:
 - Brexit and coronavirus have led to an increased need for co-operation between the UK Government and the devolved administrations. Strengthening arrangements for interparliamentary relations could enhance the ability of legislatures to engage with these processes and hold their respective governments to account.
 - Interparliamentary relations within the UK has developed in an *ad hoc* manner, and has generally been limited in frequency and scope.
 - Interparliamentary relations arrangements of some form are found within many devolved and federal states, and there is also considerable experience of interparliamentary relations between legislatures of different state. While there is no off-the-shelf model that can be straightforwardly applied to the UK, aspects of existing models may serve as useful precedents.
 - There is a strong case for widening the scope of House of Commons and House of Lords Standing Orders to enable i/ select committees to meet jointly with committees from any devolved legislature; ii/ committee chairs to invite members of committees in the devolved legislatures to attend meetings as guests; iii/ the establishment of *ad hoc* joint committees of the UK parliament and any of the devolved legislatures; and iv/ UK select committees and committees of the devolved legislatures to publish joint reports
 - There is also a strong case for establishing a working group involving members and officials from all four legislatures to consider the possibility of a permanent interparliamentary body.
 - Procedural changes could not transform the nature and extent of interparliamentary relations on their own. Nevertheless, inviting both chambers of the UK Parliament to endorse changes to procedure could help to encourage and legitimise interparliamentary relations at Westminster, and represent a symbolically important recognition of the multi-parliamentary context of the contemporary UK.

Preliminary remarks

4. Brexit, the coronavirus pandemic and wider pressures on the Union have raised a

series of issues that have brought inter-institutional relationships within the UK into focus. With the constraints of EU law lifted, 'common frameworks' are being jointly developed by the UK and devolved governments to govern policy divergence in areas that are devolved but which were previously subject to and constrained by EU law. The UK Internal Market Act has introduced far-ranging new provisions to regulate and monitor policy divergence within the UK, which are highly controversial. Over the past year, the coronavirus pandemic has exposed the extent to which there is often inter-dependence between devolved and reserved competences under the current devolution arrangements. For instance, devolved governments have been responsible for 'lockdown' restrictions, while the UK government has been responsible for providing financial support to individuals and businesses impacted by these measures. Each of these issues has and will continue to mean that there is an increase in intergovernmental co-operation.

5. A joint review of intergovernmental relations involving the four governments has been ongoing since 2018. Following several delays, an update on progress with this review was published in March 2021.³ This indicated agreement had been reached around a number of relatively modest, but potentially important, reforms that have been proposed for some years, including: incorporating consensus decision-making into the terms of reference for IGR; routinely rotating chairs and venues for some intergovernmental forums; establishing additional sub-forums for regular meetings of sectoral ministers with equivalent portfolios; and revising the dispute resolution process to provide for independent mediation. While we would welcome an increase in the volume and quality of engagement between the UK's governments, intergovernmental relations can lack transparency and so can be difficult for parliaments to scrutinise. Strengthened arrangements for interparliamentary relations could help legislatures across the UK to redress this balance, enhancing parliamentarians' ability to engage with intergovernmental processes and hold their respective governments to account.
6. It is important to emphasise that strengthening interparliamentary relationships could serve a variety of purposes, not just limited to scrutiny. By facilitating connections between members of the different legislatures, interparliamentary relations can help to promote mutual understanding of the perspectives of politicians in different parliaments. More generally, sharing of information and evidence between different parliaments, committees or individuals can be an important outcome of interparliamentary relations in itself. Our comparative research suggests that only in some cases does interparliamentary relations involve conducting joint scrutiny, and/or lead to joint outputs.
7. Interparliamentary relations can involve various groups of actors. While the main focus of our evidence submission is on engagement between members of legislatures, in practice engagement between parliamentary officials is often the bedrock of interparliamentary relations. This should be encouraged and facilitated, and it is important to ensure that this set of relationships is not overlooked in developing any new set of arrangements.
8. Interparliamentary relations must be seen as legitimate by participants from all participating institutions. For this to be achieved it is essential that interparliamentary relations does not encroach on the autonomy of each of the UK's individual parliamentary institutions to conduct scrutiny and agree positions independently, and that it is conducted in a manner that is genuinely reciprocal and without hierarchy. This culture should be established from the outset by co-designing any new arrangements. A system of interparliamentary relations imposed on the devolved legislatures by the UK Parliament would be counter-productive, especially in the current context of tense inter-institutional relationships within the UK.
9. Procedural changes at Westminster would in practice be only one element in bringing about greater interparliamentary activity. The onus is ultimately on key actors within each legislature such as committee chairs/convenors to form constructive interparliamentary relationships with their counterparts in the other legislatures and to initiate joint activities. This will require shared and sustained

commitments to interparliamentary working, across institutional and partisan divides.

Experience of interparliamentary relations in the UK

10. Interparliamentary relations within the UK have developed in an *ad hoc* manner and have generally been limited in frequency and scope. The only permanent body that brings together members of the UK Parliament and all three devolved legislatures on a regular basis is the British-Irish Parliamentary Assembly, but its remit is focused on UK-Irish relations so it does not consider issues relating to devolution within the UK.
11. House of Commons Standing Order 137A provides for any Commons committee to 'communicate its evidence' to committees from any of the devolved legislatures. However, it explicitly references joint working between Commons committees and the devolved legislatures only in relation to the Welsh Affairs Committee, which 'may invite members of any specified committee of the National Assembly for Wales to attend and participate in its proceedings (but not vote)'. This provision can be traced to the early years of Welsh devolution, when the Senedd Cymru/Welsh Parliament had secondary legislative powers in areas where primary legislative powers remained at Westminster, meaning that the respective committees often had overlapping scrutiny interests.⁴ Joint evidence sessions between the Welsh Affairs Committee and committees of the Senedd Cymru/Welsh Parliament have occurred periodically since then, most recently during scrutiny of the draft Wales Bill in 2015.
12. Two joint evidence sessions involving the Scottish Affairs Committee and the Scottish Parliament's Social Security Committee were held in March 2017, focusing on co-operation between the UK and Scottish governments in relation to the implementation of newly devolved welfare powers under the Scotland Act 2016. Members of both committees were able to fully participate in the evidence sessions, but the representatives of the 'visiting' committee at each session were procedurally treated as witnesses of the 'home' committee, in order to work around the absence of Standing Orders enabling joint meetings.⁵ Following these evidence sessions the respective committee chairs published a joint letter addressed to the responsible ministers in each of the UK and Scottish governments.
13. House of Lords Standing Order 66 makes provision for Lords select committees to meet concurrently with Commons committees, but makes no reference to joint working with any of the devolved legislatures.
14. In July 2017, the House of Lords EU Committee recommended that 'inter-parliamentary dialogue and cooperation be strengthened', with a focus initially on 'the Brexit negotiations themselves and the accompanying domestic legislation'.⁶ That led to the establishment of the Interparliamentary Forum on Brexit, which met eight times between October 2017 and September 2019. This body had no formal status in Standing Orders or legislation. The Interparliamentary Forum's meetings were attended by members of committees with remits covering domestic constitutional issues, EU affairs and statutory instruments from across the Commons, Lords, Scottish Parliament and the Senedd Cymru/Welsh Parliament (there was no Northern Ireland representation as the Assembly was not sitting during this period). Its meetings were not held in public and were informal in character, with participants updating each other on the scrutiny work of their respective committees and discussing topical issues.⁷ It often met with a minister from one of the governments. A statement summarising the issues that had been discussed was published following each meeting and letters were sent to ministers in the UK Government on a number of occasions, outlining joint positions.
15. The Interparliamentary Forum on Brexit lost momentum following the 2019 general election and the subsequent outbreak of the coronavirus pandemic, and it has not

met since September 2019. This has left a significant gap in the ability of parliaments to engage in joint-discussion and consideration of issue, including developments related to Brexit and coronavirus.

International experience of interparliamentary relations

16. Interparliamentary relations arrangements of some form are found in many devolved and federal states, although as in the UK, it is often relatively under-developed compared to intergovernmental relations. There is considerable variation in the forms taken and intensity, typically reflecting local political and institutional contexts. This means that there is no off-the-shelf model that can be straightforwardly applied to the UK. Nevertheless, aspects of existing models may be useful precedents for the development of UK interparliamentary relations.
17. The most heavily institutionalised examples of intra-state interparliamentary relations include those in Switzerland. Where an agreement between cantonal executives is proposed, an interparliamentary scrutiny commission of seven members per cantonal legislature is established, which can propose amendments.⁸ There are also permanent interparliamentary commissions set up to scrutinise inter-cantonal public bodies after their establishment.⁹ In addition there are standing bodies that bring together members of the different cantonal legislatures in each of French-speaking Switzerland and German-speaking Switzerland. The body bringing together the French-speaking cantons meets three times per year, while the body bringing together the German-speaking cantons is more informal and meets only at the request of two or more cantons.¹⁰
18. In Belgium provisions were introduced in 2014 for establishing interparliamentary commissions consisting of members of regional and community parliaments to scrutinise and adopt 'joint decrees'.¹¹ To be adopted the decrees must be supported by a majority of members of each delegation. Separately, in 2017 an Interparliamentary Climate Dialogue involving parliamentarians from the various Belgian assemblies, including both federal chambers, was established. Meetings were successively held in the Flemish Parliament, Brussels Parliament and Walloon Parliament, and a joint declaration was agreed.¹² Following this a common resolution was proposed and adopted across Belgian parliaments in late 2018.¹³
19. In Australia and Canada relations between sub-state legislatures are managed primarily through the regional branches of the Commonwealth Parliamentary Association. These bodies can facilitate relationship-building and information-exchange, but tend not to be involved in scrutiny of governments or take joint policy positions.
20. It is also worth considering lessons that can be learned from the extensive experience of international interparliamentary relations. The House of Commons itself participates in several large international interparliamentary organisations, for instance the Parliamentary Assembly of the Council of Europe and the NATO Parliamentary Assembly. There are also numerous well-established smaller scale institutions that bring together representatives of neighbouring parliaments. Members of the UK and Irish parliaments, the devolved legislatures and the legislatures of the British Crown dependencies participate in the British-Irish Parliamentary Assembly, established in 1990, which focuses on British-Irish relations. The Nordic Council and Benelux Parliament are other examples, focused on cross-border co-operation. More recently, there have been attempts at innovation in more *ad hoc* forms of inter-state interparliamentary relations involving the Commons – the Defence Committee has conducted a joint inquiry with a committee of the French *Assemblée Nationale*, while the Digital, Culture, Media and Sport Committee led the way in establishing an 'International Grand Committee' to investigate issues relating to disinformation, 'fake news' and 'big data'.¹⁴

Possible procedural steps to facilitate interparliamentary relations between

committees

21. In this section we discuss possible changes to UK Parliament procedure, specifically in relation to bringing about greater joint working between committees of each of the UK's devolved legislatures and committees in Westminster. We reiterate that any procedural changes will need to be accompanied by sufficient political will across the different legislatures to make use of new procedures and proceed with greater joint working, in particular among the key actors likely to be involved in initiating joint activities such as committee chairs/convenors. Nevertheless, inviting the Commons and the Lords to endorse changes to procedure would be an important step towards encouraging and legitimising interparliamentary relations, and would represent a symbolically important recognition of the multi-parliamentary context of the contemporary UK.
22. In our evidence to the House of Commons Procedure Committee, we argued that House of Commons Standing Order 137A should be revised to enable all Commons select committees to meet jointly with committees from any devolved legislature, as has previously been recommended by the Public Administration and Constitutional Affairs Committee in 2016 and endorsed by the then National Assembly for Wales' Constitutional and Legislative Affairs Committee in 2018.¹⁵ We believe that expanding the scope of House of Lords Standing Order 66 in a similar manner would also be beneficial. There are many policy areas in which joint scrutiny might be appropriate. The devolution of extensive financial and welfare-related powers to the Scottish Parliament in 2012 and 2016 has increased the number of areas of overlapping competence in Scotland, reflected in the joint evidence sessions the Scottish Affairs Committee held with the Scottish Parliament's Social Security Committee in 2017. The implementation of the Northern Ireland protocol under the EU Withdrawal Agreement means that crucial aspects of policy affecting Northern Ireland now cut across the responsibilities of Westminster and Stormont. Meanwhile, post-Brexit common frameworks and the regulation of the 'internal market' are issues of interest to committees in all parts of the UK.
23. In our view an extension of House of Commons Standing Order 137A and House of Lords Standing Order 66 should enable interparliamentary meetings involving all committees, not just those with a territorial remit. That would potentially allow for joint meetings between subject committees with common interests. For instance, it would enable the equivalent constitutional committees such as the Lords Constitution Committee, PACAC, the Scottish Parliament Finance and Constitution Committee and the Senedd Legislation, Justice and Constitution Committee to meet jointly. As per the current Standing Order 137A, any revised provision should be framed so as to enable joint meetings where this is considered to be mutually beneficial, rather than requiring joint meetings to take place.
24. The separate provisions under House of Commons Standing Order 137A and House of Lords Standing Order 64, which enable committees to invite members of other committees within their respective chambers to attend meetings but not vote, could be extended so that members of committees in the devolved legislatures could be invited as 'guests'. If guests from committees from across the UK's parliaments were able to participate in Westminster committees at the invitation of the chair of the relevant committee, this would enable a relatively low-resource form of interparliamentary relations where a single member could attend an evidence session in another parliament and 'bring home' evidence for their own committee's work. If implemented, this would ideally be accompanied by reciprocal provisions in the Standing Orders of the devolved legislatures to allow members of Commons and Lords committees to be invited to attend their committees as guests. In order to encourage relationship-building and the sharing of private reflections, guests could also be invited to attend the host committee's pre-meeting preparations and any post-meeting 'wash-up' sessions, either virtually or in person. This would allow guests to share in interparliamentary dialogue and reflect on the views of the host committee, as well as benefiting from the publicly-obtained evidence.

25. Standing Orders could also provide for the establishment of *ad hoc* joint committees of the Commons, Lords and any of the devolved legislatures. If there were sufficient appetite within all parliamentary chambers, a freestanding joint committee could conceivably be a valuable vehicle for scrutiny in certain instances, for example where draft legislation involves a devolved policy area or has implications for devolved competences. The terms of reference of any such committee would need to be jointly agreed with the devolved legislatures and be established on the basis of mutually agreed principles, as per para 8 above.
26. We further believe that it would be useful to provide in Standing Orders for committees from parliaments across the UK to publish joint outputs such as reports, letters or recommendations. While joint outputs will not always be appropriate, there are circumstances in which they could strengthen the collective voice of legislatures, potentially carrying more weight with governments and other organisations than the report of a single committee. Although there is nothing in existing Standing Orders to prevent identical outputs being agreed by committees from multiple institutions in accordance with their own procedures, explicitly permitting this could enhance the status of such outputs and encourage committees to consider this option.
27. As a final point in this section we would suggest that the increased experience of using online video-conferencing platforms gained within all of the UK's legislatures during the coronavirus pandemic may help to make joint working between committees of Westminster and the devolved legislatures more feasible. In the past a major practical barrier to interparliamentary relations has been the significant burden on members' time of travelling to a meeting away from their 'home' legislature. Participating in interparliamentary meetings online would clearly overcome this problem, though we acknowledge that it may also take longer to develop informal relationships via digital communication so some in person contact should ideally also be facilitated.

An interparliamentary conference for the UK?

28. Some recent proposals for enhanced interparliamentary relations envisage establishing a permanent interparliamentary institution for the UK, building on the Interparliamentary Forum on Brexit. For example, in 2019 the House of Lords EU Committee called for 'formalising interparliamentary dialogue', and addressing issues such as membership and resourcing.¹⁶ The Interparliamentary Forum on Brexit itself, in the communique issued following its sixth meeting in January 2019, concluded that 'at some point, consideration of more formal interparliamentary structures will be needed'.¹⁷
29. The primary rationale behind calls for a permanent interparliamentary body is a view that *ad hoc* arrangements may not be sufficient to establish interparliamentary relations as a more regular, and meaningful, part of the UK's inter-institutional architecture. Some of the limitations of *ad hoc* interparliamentary relations have indeed been highlighted by the failure of the Interparliamentary Forum on Brexit, which had no formal basis, to resume meeting after the 2019 general election. It can also be argued that interparliamentary relations is an important counter-balance to increased intergovernmental relations, and so the former should be enhanced as and when the volume of the latter increases, as has happened as a result of the Brexit process. For some – though not all – proponents a new interparliamentary institution is also part of a wider vision of a reformed Union, featuring institutional structures more akin to those found in federal countries.

30. No proposals for a permanent interparliamentary body have yet been accompanied by detailed recommendations or much elaboration on what exactly is envisaged. The numerous examples of well-established international and intra-state interparliamentary conferences that we have encountered through our comparative research (see para 20) suggest that such a body is entirely feasible if there is sufficient support across institutional and political divides. It might take the form of a permanent interparliamentary committee that would be enshrined in the Standing Orders of each component chamber, or might alternatively be a freestanding body like the British-Irish Parliamentary Assembly. Either way, there would be many challenging issues to resolve before a new interparliamentary body could be established, including its prospective purpose, composition, size, meeting patterns, outputs, staffing and funding. These would all require careful thought.
31. If such an institution were to have a chance of succeeding, it would be essential for it to be co-designed by representatives of the different component legislatures and not solely by members of one of the legislatures. If there were sufficient appetite among parliamentarians from across the different legislatures to proceed with considering establishment of a body of this sort, the most sensible next step towards would therefore be to establish a working group involving members and officials from the Commons, Lords and the three devolved legislatures. This could seek to reach consensus on detailed proposals and report back to the respective committees responsible for procedure. As set out in para 8 above, our view is that any such arrangements should be designed with key common principles in mind such as ensuring that interparliamentary relations respects the autonomy of each legislature, is genuinely reciprocal and is without hierarchy.

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¹ J. Sheldon and H. Phylip 'Devolution arrangements within the next UK during the next phase of Brexit', in UK in a Changing Europe and UCL Constitution Unit, in *Parliament and Brexit*, March 2020, <https://ukandeu.ac.uk/brexit-and-intergovernmental-coordination-within-the-uk/>, pp. 34-35, last accessed 28 October 2020; J. Sheldon and H. Phylip, 'Strengthening interparliamentary relations in the UK: first steps and possible future directions', PSA Parliaments Group, December 2019, <https://psaparliaments.org/2019/12/05/strengthening-interparliamentary-relations/>, last accessed 13 October 2020; J. Sheldon, 'The scrutiny challenge posed by common frameworks', Scottish Parliament Information Centre, January 2020, <https://spice-spotlight.scot/2020/01/22/the-scrutiny-challenge-posed-by-common-frameworks/>, last accessed 2 November 2020.

² J. Sheldon and H. Phylip, Written evidence to the House of Commons Procedure Committee inquiry on the procedure of the House of Commons and the territorial constitution, November 2020, <https://committees.parliament.uk/writtenevidence/14593/pdf/>, last accessed 26 April 2021.

³ UK Government, 'Progress Update on the Review of Intergovernmental Relations', March 2021, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/972983/Progress_update_on_the_review_of_intergovernmental_relations.pdf, last accessed 26 April 2021.

⁴ A. Evans, 'Inter-parliamentary relations in the United Kingdom: devolution's undiscovered country?', *Parliaments, Estates and Representation* 39:1 (2019), pp. 98-112.

⁵ Evans (2019).

⁶ European Union Committee, *Brexit: devolution* (HL Paper 9 2017-19, July 2017), §297.

⁷ Sheldon and Phylip (December 2019), <https://psaparliaments.org/2019/12/05/strengthening-interparliamentary-relations/>

⁸ Republic and Canton of Geneva, 'Examination of intercantonal conventions in preparation', http://ge.ch/grandconseil/gc/intercantonale_fr/examenConventions, last accessed 13 October 2020.

⁹ Republic and Canton of Geneva, 'Interparliamentary control', http://ge.ch/grandconseil/gc/intercantonale_fr/controle, last accessed 13 October 2020.

¹⁰ Republic and Canton of Geneva, 'The Interparliamentary Coordination Office' http://ge.ch/grandconseil/gc/intercantonale_fr/bic, last accessed 13 October 2020; N. Bolleyer, 'Executive-legislative relations and inter-parliamentary coordination in federal systems – lessons for the European Union', *Journal of European Public Policy* 24:4 (2017), pp. 520-543.

¹¹ N. McEwen, B. Petersohn and C. Brown Swan, *Intergovernmental Relations & Parliamentary Scrutiny: A Comparative Overview. Report prepared for the Devolution (Further Powers) Committee* (Edinburgh: Centre on Constitutional Change, 2015).

¹² Brussels Parliament, 'Inter-parliamentary Climate Dialogue', <http://www.parlement.brussels/dialogue-interparlementaire-climat/>, last accessed 13 October 2020.

¹³ R. Thissen, 'Climate: Parliamentarians Put the Belgian Government Under Pressure', CNCD, <https://www.cncd.be/Climat-belgique-les-parlementaires-mettent-le-gouvernement-sous-pression>, last accessed 13 October 2020.

¹⁴ A. Evans, 'A Parliamentary *Entente Cordiale*? The House of Commons Defence Committee's Joint Inquiry with the Assemblée Nationale's Standing Committee on National Defence and the Armed Forces', *Political Quarterly* 91:1 (2020), pp. 228-234; CIGI, 'Timeline: The International Grand Committee on Disinformation and "Fake News"', <https://www.cigionline.org/igc/timeline>, last accessed 13 October 2020.

¹⁵ Public Administration and Constitutional Affairs Committee, *The Future of the Union, part two: Inter-institutional relations in the UK* (HC 839 2016-17), §96; Constitutional and Legislative Affairs Committee, *UK governance post-Brexit* (February 2018), §145.

¹⁶ European Union Committee, *Beyond Brexit: How to Win Friends and Influence People* (HL Paper 322 2017-19, March 2019), §173.

¹⁷ Interparliamentary Forum on Brexit, '6th Meeting: 17 January 2019', <https://old.parliament.uk/documents/lords-committees/eu-select/interparliamentary-forum-on-brexit/ipd-sixth-statement-jan.pdf>, last accessed 13 October 2020.