

# Review of UK Government Union Capability

November 2019



# Lord Dunlop



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# Foreword

**In the 20 years or so since the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly met for the first time, significant powers have been transferred from the UK Parliament and Government to devolved institutions.**

During this period much less attention has been paid to the implications of this power transfer for the way our Union runs. The focus has not been on the machinery and arrangements which enable the UK Government to discharge sensitively its own unique duties to people across all parts of the country, and to work constructively with devolved governments where responsibilities overlap. This machinery and these arrangements are part of the essential glue that binds together our United Kingdom.

The UK's withdrawal from the European Union – with the accompanying repatriation of powers from Brussels – makes a review of these arrangements urgent. They are, in any case, ripe for review as the devolution settlements have evolved since 1998, with increasing areas of shared competence.<sup>1</sup>

Working together is no longer an optional extra, if ever it was. It is fundamental to the business of government in these islands. More importantly, it's what people across the UK want and expect from their elected governments.

Our Union – the United Kingdom – is the most successful multinational state in the world. Its success is built, in part, on an ability to adapt

to change. Devolution has been a significant constitutional change. It has empowered local decision-making while also preserving the UK's ability to act collectively when size and heft matters.

Diversity is a feature of devolution and the management of difference one of its natural consequences. Solidarity is an attribute of the Union and the promotion of common interests one of its essential roles. Being able to successfully marry the two offers the whole country the best of both worlds.

A core principle underpinning our devolution settlements is the respect of the UK Government and the devolved governments for each other's areas of competence. For the last 20 years this has largely worked remarkably well.

More recently, the working relationships devolution requires have been tested by withdrawal from the European Union. In such a highly contested political space, it is often not possible to resolve fundamental differences. It should nevertheless be possible to establish professional working relationships based on a higher level of trust than currently exists.

How the UK Government is structured and operates can make a significant contribution to developing relationships and building trust. It can also improve democratic accountability by encouraging a better understanding of the respective roles of the UK and devolved governments, and in particular the UK Government's role in serving people across the country.

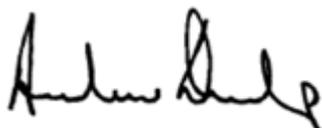
This report assesses the UK Government's current Union capability and makes a set

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<sup>1</sup> By which the Review means a dependence on respective competences.

of practical recommendations, which can be taken forward in a timely manner to strengthen the working of the Union. They are intended to:

- embed the Union at the heart of UK Government policy development and decision-making
- achieve the optimum balance between the representational value of the offices of the Secretaries of State for Scotland, Wales and Northern Ireland, and the convening power of the Cabinet Office
- provide a more predictable and robust process for managing intergovernmental relations

A handwritten signature in black ink, appearing to read 'Andrew Dunlop', written in a cursive style.

**Lord Dunlop**

# Summary

The recommendations in this report aim to ensure that the UK Government is working in the most effective way possible to realise fully all the benefits of being a United Kingdom. It makes the case for a transformation to guarantee that the Union is a mainstream consideration embedded in policy development, decision-making and delivery, and sets out a package of measures to support this change.

This report proposes:

- a new Great Office of State in the Cabinet
- a new structure supporting the separate offices of the Secretaries of State for Scotland, Wales and Northern Ireland with a single Permanent Secretary
- a new fund for UK-wide projects, including joint projects with devolved governments
- a new UK Intergovernmental Council (replacing the Joint Ministerial Committee), supported by an independent secretariat

These proposals, taken together, form a coherent plan to make sure that both the Union and devolution sensitivity are a fundamental part of the structure of the UK, delivering better governance for the UK as a whole. Trust, respect and co-operation between governments would be more than aspirations – they would be built into our system of government. Some of this will require increases in resources, and some requires existing resources to be redirected more effectively.

These changes will require leadership from the highest level of the UK Government. It is recommended that **a new senior Cabinet position** is formally recognised within the machinery of government with specific

responsibility for the constitutional integrity of the United Kingdom. The new role, with the suggested title ‘Secretary of State for Intergovernmental and Constitutional Affairs’, should have a status akin to the Chancellor of the Exchequer, Foreign Secretary or Home Secretary. The new Secretary of State will speak in Cabinet for the constitution and will take a holistic view across the UK, arbitrating between other ministers. Just as the Lord Chancellor is responsible for defending judicial independence (as recognised in the Cabinet Manual), the new Secretary of State will have a duty to uphold the integrity of the constitution, including intergovernmental relations.

The Secretary of State for Intergovernmental and Constitutional Affairs should be supported by **a new Cabinet sub-committee** tasked with preparing cross-government strategic priorities to enhance the Union and ensure their effective delivery.

These suggested changes will give Union issues greater visibility at ministerial level. To amplify these effects, departments too must sharpen their focus on the vitality of the Union. It is therefore recommended that HM Treasury set aside **a fund for UK-wide projects**, which aims to incentivise and support departments to initiate projects that strengthen the Union. Allocation of the funding would be the responsibility of the new Cabinet sub-committee under the leadership of the new Secretary of State and fully involving the Secretaries of State for Scotland, Wales and Northern Ireland and Treasury ministers.

In addition, **a second portion of the fund, open to bids from UK Government departments and devolved governments working in co-operation** will be made available. This part of the fund will

encourage collaborative working and policy innovation in different parts of the UK. Departments will have an incentive to find support from devolved governments, and devolved governments will have an incentive to work in co-operation with UK Government departments.

In tandem with the new government structure and funding initiatives, the Civil Service must also meet the challenges of delivering policies for the whole of the UK. To that end, there should be system-wide reforms to the structure of departments to equip them with the necessary Union and devolution capability. **Any civil servant with ambitions to reach the higher levels of the service should acquire such capability.**

In particular, devolution teams should not be peripheral within departments – they should be located at the heart of strategy and policy development. As a matter of urgency, departments should address the need for an increased policy presence in Scotland, Wales and Northern Ireland. There should also be more opportunities for loans and secondments between the UK, Scottish and Welsh Governments, and also greater interchange with the Northern Ireland Civil Service.

It is also important to address the question of the relationship between the UK Government and the devolved governments in Scotland, Wales and Northern Ireland. There is a broad consensus, with which the Review agrees, that the UK's intergovernmental relations machinery is not fit for purpose. The problem should be addressed by **the creation of a UK Intergovernmental Council (UKIC)**. It would replace the Joint Ministerial Committee and reset relationships for the future. It would be a forum for co-operation and joint working on both opportunities and challenges. As well as looking to make decisions by consensus on areas of devolved or shared responsibility,

it should provide a platform for informed consultation by the UK Government on reserved matters.<sup>2</sup> Greater transparency, and scrutiny by Parliament, would incentivise the new body to reach consensual decisions.

UK Government ministers should be able to reach agreement at the Cabinet sub-committee. As a consequence, UK Government representation at the UKIC meetings could be smaller, and more effectively tailored to the agenda, which should improve intergovernmental discussion and make consensus easier to achieve.

To give all parties to the UKIC confidence that it is run fairly and impartially, it **should be supported by a standing independent secretariat**. Sub-committees should be constituted with specific aims and objectives.

Taken as a whole, these proposals are intended to build trust and respect between the institutions of government in the UK. The UK Government is the government of the whole UK and, if the relationship between the UK Government and devolved governments is to be fully mature, its role in all parts of the UK must be visible and transparent. If the UK Government's activities in Scotland, Wales and Northern Ireland are not recognised publicly, democratic accountability will be lost. It is recommended, therefore, that spending by the UK Government in Scotland, Wales and Northern Ireland **should be clearly marked with UK Government branding**.

To ensure a focused and effective communications strategy, UK Government departments should keep up-to-date and accurate data about activities and spending in Scotland, Wales and Northern Ireland. This would allow the UK Government to test the effect of their policies across the four nations and equip UK Government ministers visiting any part of the UK with the information they

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<sup>2</sup> In this report, the term 'reserved' is used, for ease of expression, to matters which are not within the competence of the devolved legislatures.

need to explain the impact of their own departments on that part of the country. The new Secretary of State for Intergovernmental and Constitutional Affairs should oversee a communications strategy for Scotland, Wales and Northern Ireland.

The report also notes the important roles and responsibilities of the many public bodies in the UK. Although these bodies often have responsibilities in all parts of the UK, it is not clear the extent to which a sensitivity to Union issues is baked into the appointments process and organisational culture. It is suggested that an audit of public bodies is undertaken. It is also recommended that the new Secretary of State for Intergovernmental and Constitutional Affairs should ensure that public bodies with a UK-wide remit are representative of the UK as a whole in the future.

**There are some words which readers will see repeated in this report: trust, transparency, strategic, co-operation. These words encapsulate its overall theme. Government in the United Kingdom needs a cohesive and co-operative approach, which these recommendations aim to achieve. Solidarity and diversity are central to the character of the Union. The public expect UK and devolved institutions to work together in the interests of all. This report is intended to bring about a step-change to how government thinks and acts to meet public expectations.**

### **Strengthening the Secretaries of State for Scotland, Wales and Northern Ireland.**

Taken together, the Review's recommendations **greatly enhance the status** and voice of the Secretaries of State in Government, through:

a more **focused role**, working alongside the new senior Secretary of State for Intergovernmental and Constitutional Affairs

a requirement – in the **Cabinet Manual** – to be **consulted on policy** before it is submitted for collective agreement via the new Secretary of State's officials

a new Cabinet sub-committee to agree **UK Government positions** ahead of engaging with the devolved administrations

**direct influence** over a **specific budget** aimed at improving the UK Government's delivery in Scotland, Wales and Northern Ireland, as well as cross-border

a new shared policy function which retains distinct nation-specific coverage, **improving the range** of areas covered and **enhancing the quality** of the advice and support they receive

# Introduction

As the United Kingdom prepares to leave the European Union, it does so with a very different constitutional architecture to the UK that joined the European Economic Community in 1973. In 1998, significant powers were devolved from the UK Parliament to legislatures in Scotland, Wales and Northern Ireland. In the years since, further powers have been transferred. The Government of Wales Act 2006 created the Welsh Government and, following a further referendum in 2011, greater fiscal and legislative functions were devolved by way of the Wales Acts of 2014 and 2017. In 2014, voters in Scotland chose decisively to remain part of the United Kingdom and following the referendum, the recommendations – including the power to raise taxes – of the Smith Commission were enacted by the Scotland Act 2016.

England has been subject to decentralisation: as well as in the capital, which is governed by the mayor-led Greater London Assembly, many other cities across the country now have directly-elected mayors. The many forms which devolution takes across the UK result in constitutional asymmetry and indeed there has been a long debate over the ‘West Lothian question’.<sup>3</sup> That is, whether MPs from Scotland, Wales or Northern Ireland should be able to vote on matters that affect only England. Following the McKay Commission (2013), English Votes for English Laws was implemented by the UK Parliament in 2015 to seek to address this.

The UK Government remains responsible for huge swathes of UK-wide policy, for example defence, foreign affairs, pensions and the macroeconomy.

As the devolution settlements have evolved, the UK Government and, as a corollary, the Civil Service, have evolved to meet this changing constitutional landscape. It is timely for the UK Government to consider how, through its institutional arrangements, it ensures that the Union continues to prosper in the years ahead. This is more than understanding and being sensitive to devolution – the UK Government must consider its decisions through the specific lens of their impact on every part of the Union.

## Review of UK Government Union capability

Following an announcement in July 2019 this Review has considered, within the context of the existing devolution settlements, how the UK Government can work to most effectively realise the benefits of being a United Kingdom and how institutional structures can be configured to strengthen the working of the Union. The objective is to articulate a coherent plan to deliver better governance for the UK as a whole, guided by the core principles of trust, respect and co-operation.

The recommendations are intended to improve the effectiveness of UK Government Union capability regardless of any future changes in the political makeup of the UK Government or devolved administrations. While the Review has been undertaken in the context of continuing challenges around the lack of an Executive in Northern Ireland its recommendations aim to be applicable both in the current situation and following the return of an Executive.

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<sup>3</sup> The question of the perceived imbalance in voting rights between MPs representing constituencies in Scotland, Wales or Northern Ireland and those representing English constituencies has been known as the ‘West Lothian Question’ since 1977 when it was raised by the MP for West Lothian at that time during a debate on devolution.

The findings of the Review were shaped by discussions with a range of stakeholders across the UK. These stakeholders included politicians, officials and academics. The wealth of literature, including academic papers and parliamentary inquiries, was of great help in informing these conversations. The Review was also aided by a number of UK Government departments including those which provided clarification on factual background.

The Review is indebted to all those involved in discussions, who provided input, or who engaged with the Review via its webpage.

## Report structure

This report seeks to address a number of areas. **Chapter 1** discusses how the machinery of government has adapted to devolution. In particular, this section looks at whether the structure of the UK Government and its departments enables proper consideration of the Union in the process of policy development and delivery.

**Chapter 2** explores the capability of the Civil Service in respect of the Union. This constitutes an assessment of departmental capability to deliver policies for the whole of the UK and an examination of the support civil servants receive to learn and develop the necessary skills to be effective in a UK-wide context.

In **Chapter 3**, the report turns to the role of spending and whether there should be financial incentives across government to encourage more collaborative working and the development of Union-enhancing policies.

**Chapter 4** examines intergovernmental relations and how, particularly given the UK's exit from the European Union, these might be reformed with a new set of structures to replace the Joint Ministerial Committee.

The role of appointments in ensuring public services are delivered for the whole of the UK is the subject of **Chapter 5**. Finally **Chapter 6** considers the strategic role of communications in strengthening how the Union works.

The Review is not intended to be a complete implementation plan, but rather a package of reforms across a wide range of areas. Taken together, the reforms respond to the significant constitutional changes of the last 20 years and aim to transform the conduct of government business to put the Union at the heart of decision-making.

# Chapter 1

## Machinery of government

Over the last ten years, successive Prime Ministers have been increasingly explicit about the priority they attach to the overall health, strength and value of the Union. Their commitment cannot be doubted. The challenge has been to determine how this translates to practical policy development, decision-making and delivery to ensure that Union considerations are integral to the way in which Whitehall thinks and acts.

Sensible improvements have been made to the way in which the UK Government works and its awareness of devolution issues has improved. These represent helpful steps in the right direction. However, it is widely accepted that there is still some way to travel to reach a consistent and systematic consideration of how the UK Government delivers for the whole of the UK, with robust actionable plans. Moreover, it has never been more important for officials and ministers to possess a heightened sense of awareness of the implications of UK Government policy and action for Scotland, Wales and Northern Ireland at this critical juncture. Understanding the devolution settlements is necessary, but is not sufficient to enable officials and ministers to deliver a holistic Union strategy. The UK Government should be sophisticated enough to design policy for the UK as a whole or differential policy for its constituent parts. A transformation is required to make the Union a mainstream policy consideration. There is no silver bullet to achieve this – a package of mutually reinforcing measures is necessary to provide the right balance of incentives to bring about change.

### Ministerial responsibility

The UK Government has, since 1998, organised itself in a variety of ways to manage its responsibilities in Scotland, Wales and Northern Ireland and relationships with devolved institutions.

Ministerial responsibilities for these interests have ranged from having Secretaries of State for Scotland, Wales and Northern Ireland jointly appointed to another department, through to the Deputy Prime Minister, First Secretary of State or Chancellor of the Duchy of Lancaster having specific responsibility for the UK Government's relationship with devolved administrations. More recently, the Prime Minister has added the title 'Minister for the Union' to his portfolio and set up a new unit in Number 10 to consider Union issues more carefully. Both these steps demonstrate the importance he attaches to the Union.

However, although a current priority, Union issues are not embedded in the machinery of government. Recent practice has been for the Minister for the Cabinet Office to have departmental responsibility for the Union. The weight and influence of the role has depended on who holds it. For example, the Review heard of the recent positive influence of David Lidington, building on the work of his predecessor Damian Green. Their seniority and proximity to the Prime Minister made them particularly effective in the role.

More robust and systematic arrangements are required to secure the effective and consistent management of Union issues in the future. The importance of the role must

transcend the holder of the post at any one time. The position and office holder need to be of sufficient stature and influence within government to both facilitate relations with the devolved administrations and to drive effective joint working across government. The right outcome can best be secured by adopting best practice, not relying on serendipity.

The Prime Minister needs to be supported as Minister for the Union by the establishment of an operational arm, in ministerial terms, with day-to-day oversight of matters related to Scotland, Wales and Northern Ireland and the constitution. A ministerial role with that brief, and with responsibility for advising and involving the Prime Minister at the right moments, should be established. The parallel is the Prime Minister's title of First Lord of the Treasury, which does not obviate the need for a Chancellor of the Exchequer.

The Cabinet's responsibility for the development of Union strategy, led by the minister with that portfolio, has often been supported by a Cabinet committee. Under the Coalition Government this took the shape of the Devolution Committee, chaired by the Deputy Prime Minister Nick Clegg and then by the First Secretary of State William Hague. There was also a Scotland Committee chaired by the Chancellor of the Exchequer, George Osborne. The Review has received evidence that the Devolution Committee did not work as effectively as it might have done because it had insufficient clarity of purpose. By way of contrast, the Scotland Committee, with a clearer objective, is regarded as having been more successful.

As well as the importance of a ministerial portfolio for the Union, the Secretaries of State for Scotland, Wales and Northern Ireland and their separate offices are integral to the vitality of the Union. Indeed, they play a crucial role in managing the UK Government's relationship with each devolved administration. That said, their departments are some of the smallest

in Whitehall and they must try to cover the whole of the UK Government's policy agenda alongside developments in Scotland, Wales or Northern Ireland. The Review heard of the specialist local knowledge and experience the offices provide. However the small policy teams in each are stretched having to balance producing briefings and responding to parliamentary questions with driving and influencing the broader policy agenda. This means they may at times struggle to exert the right level of influence within the UK Government. This must be addressed.

An enhanced process has been introduced to support the write-round process within the UK Government to record the devolution or UK-wide implications of policy proposals being submitted for collective agreement. This seeks to ensure that all officials are conscious of the implications of their policy and helps avoid the three Secretaries of State offices or Cabinet Office having to 'catch' issues in the write-round process.

## Machinery

Several UK Government departments have responsibility for policy areas with implications for the constitutional landscape. For example, the Ministry of Housing, Communities and Local Government leads the UK Government's English devolution agenda. With its joint BEIS unit, it has brokered City and Growth Deals across England, the latest in a range of initiatives designed to support localism.

Overall responsibility for Union policy sits with the Cabinet Office, supported by the newly established Number 10 Union Unit. The UK Governance Group (UKGG) was established in June 2015 to lead the UK Government's work on the constitution and devolution. It brings together, under one Civil Service command, the Cabinet Office's Constitution Group, the Office of the Secretary of State for Scotland, the Office of the Advocate General

for Scotland and the Office of the Secretary of State for Wales. The Northern Ireland Office (NIO) remains under a separate management structure although more recently, the UKGG has created a bespoke team to complement the NIO's work and some cross-cutting policy issues are now considered in collaboration.

The UKGG was set up to reflect the changes to the structure of the centre of the UK Government that occurred during the Coalition Government (2010 to 2015). An office was created for the Deputy Prime Minister within the Cabinet Office, headed up by a Senior Civil Servant. The Deputy Prime Minister's portfolio, which included constitutional reform, necessitated bringing civil servants with the relevant expertise into the centre of government. They came largely from the Ministry of Justice, which held the constitutional brief before then. When the Coalition Government ended, a decision was taken to maintain this pool of expertise under the newly established UKGG.

The creation of UKGG has greatly enhanced the way in which the centre and three Secretary of State offices work together and given the UK Government a greater presence in Scotland, Wales and Northern Ireland. It has provided a more powerful collective voice within the upper echelons of the government for issues related to Scotland, Wales and Northern Ireland and the Union. The Review received evidence of the significant value of the role performed by Philip Rycroft, the inaugural Permanent Secretary of UKGG. He was able to represent the interests of Scotland and Wales with his senior colleagues in the UK Government and vice versa. The Review also heard that much of this flowed from his career experience working in senior positions in both the UK Government and Scottish Government. His knowledge and experience undoubtedly enhanced the influence of UKGG within Whitehall. His seniority as Second Permanent Secretary in the Cabinet Office and

later Permanent Secretary of the Department for Exiting the European Union was also a critical factor. A like-for-like replacement has not been appointed following his retirement from the Civil Service. The objective for the future is to ensure that his example is the norm and not an exception.

As part of UKGG, the HR, IT and finance functions of the offices of the Secretaries of State for Scotland and Wales are not streamlined. Their HR services, for example, are still provided by the Ministry of Justice as the successor to the Department for Constitutional Affairs.

## Recommendations

The Review makes four main recommendations to address these issues.

First, **a senior Cabinet position with specific responsibility for the constitutional integrity and operation of the United Kingdom needs to be more formally recognised within the machinery of government.** The Review finds that the standing of the previous incarnations of this role should be enhanced. It should have a status equivalent to one of the Great Offices of State (the Chancellor, Foreign Secretary, or Home Secretary).

Providing greater clarity and visibility to the role will leave no doubt as to who in Cabinet has responsibility to speak for the constitution. In this context, functional descriptions matter. It is suggested that 'Secretary of State for Intergovernmental and Constitutional Affairs' would be an appropriate title. The Prime Minister will also want to consider how the seniority of this post is recognised and guaranteed. For example, the title of First Secretary of State or one of the historic titles could also be attached to the role, although the Review felt that Chancellor of the Duchy of Lancaster is a curiously inappropriate title for a

minister with prime responsibility for managing the UK Government's interaction with the devolved administrations. The status of the role could also be recognised in the Cabinet order of precedence.

An updated Cabinet Manual should attach certain duties to the role to uphold the integrity of the constitution, including the operation of intergovernmental relations. These duties would be akin to the Lord Chancellor's responsibilities, which transcend politics, regarding the rule of law and independence of the judiciary. The Review believes that this would also be a helpful innovation in the context of strengthening the machinery of intergovernmental relations.

The purpose of this role would be to take a holistic view across the UK, arbitrating when necessary between other ministers to make sure policy decisions are taken cognisant of the broader Union implications. The post-holder will also act as the principal interlocutor for the devolved administrations, supported by the Secretaries of State for Scotland, Wales and Northern Ireland.

The role should remain within the Cabinet Office, rather than establishing a new government department. This takes advantage of that department's convening power and overall responsibility for the implementation of government policy. The portfolio should include oversight of the wider constitutional implications of English devolution. However, the Review does not make the case for extending responsibility to English local government policy delivery, which should remain with the Ministry of Housing, Communities and Local Government.

The Prime Minister will clearly wish to consider whether this post-holder also acts as chair or deputy chair of any cabinet committees. In doing so, the Review thinks the importance of the core functions of the role and the need to devote sufficient time to them should be recognised.

The holder of this senior Cabinet role, will work with the Secretaries of State for Scotland, Wales, and Northern Ireland and their separate departments to discharge their important representative role in Cabinet and on behalf of the UK Government in Scotland, Wales and Northern Ireland.

In the wake of devolution the need for these roles has been questioned.<sup>4</sup> The Review concludes that there is great value in continuing to have ministers of Cabinet rank, providing a distinct voice and collective conscience for the interests of Scotland, Wales and Northern Ireland within the UK Government. This role cannot be performed by the devolved governments, who are not part of the UK Government and whose responsibilities are in their own areas of devolved competence. The influence of the Secretaries of State for Scotland, Wales and Northern Ireland within the UK Government will be reinforced by the new Secretary of State for Intergovernmental and Constitutional Affairs. The recommendations set out in this report are aimed at strengthening their capacity and influence to the positive benefit of the UK as a whole.

To build on the enhanced process for write-rounds, a new addition should be made to the Cabinet Manual. This should assign a specific role to the new Secretary of State for Intergovernmental and Constitutional Affairs' officials to approve, earlier in the process of collective agreement, the release of policy for write-rounds, which has a Union impact.

4 <https://publications.parliament.uk/pa/cm201719/cmselect/cmsscota/1586/1586.pdf>

This is a role akin to that set out for HM Treasury (HMT) in the Cabinet Manual and is designed to have the effect of incentivising consideration earlier in the policy development process, not at the point the policy is submitted for clearance. Officials should seek to ensure the views of the Secretaries of State for Scotland, Wales and Northern Ireland are taken account of before collective agreement is sought as part of this process

The Cabinet is responsible for the development of Union strategy. To support this role and complement the enhanced Secretary of State, **a new Cabinet sub-committee should oversee the delivery and implementation of a set of strategic priorities and departments' plans to support the UK Government's Union agenda.**

This new sub-committee would avoid the pitfalls of predecessor committees by having a clear and focused remit: to agree a small list of cross-government strategic priorities that further enhance the Union and ensure their effective delivery. This committee should be supported by the Cabinet Secretariat.

It is envisaged this sub-committee will comprise standing membership of the new Secretary of State for Intergovernmental and Constitutional Affairs, the Chancellor (or, at their delegation, the Chief Secretary to the Treasury) and the Secretaries of State for Scotland, Wales and Northern Ireland. Other Cabinet ministers will be invited to attend depending on the agenda, not least to ensure effective accountability for the development and delivery of their Union plans.

Consideration should be given to using the Fusion Doctrine to support the sub-committee.<sup>5</sup> This is where a Director General is given specific responsibility for cross-

government delivery against a particular theme or project it has agreed. This ensures that different policy options can be tested against a range of different departmental interests. The National Security Council has adopted this approach to make sure security policy balances the sometimes conflicting objectives in this sphere.

As a sub-committee of Cabinet it will be a forum for collective agreement. However, it should not replace other committee structures and processes used for discussing and collectively agreeing cross-government policy. The aim is for this sub-committee to supplement these processes and ensure in parallel that Union issues are effectively considered at all times. This forum could also be used to consider a limited range of spending decisions in concert with HMT, as discussed later in this report.

While a new Cabinet sub-committee will drive a more strategic approach to the Union, the Cabinet Manual should also be updated to make clear that all Cabinet sub-committees have a responsibility in their deliberations to consider the Union priority.

The Cabinet Manual makes clear that, by exception, devolved administrations can be invited to some Cabinet sub-committees with the agreement of the relevant chair. It notes that emergency responses may be one such example of this. The Review considers there is an opportunity to build on this provision. Even when the chair determines it is not appropriate to invite the devolved administration to the Cabinet sub-committee, if matters related to devolved competence are being discussed efforts should be made to share relevant extracts of documents in advance. An addition should be made to the Cabinet Manual to make this clear.

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<sup>5</sup> UK Parliament, 'Revisiting the UK's national security strategy: The National Security Capability Review and the Modernising Defence Programme', available at: <https://publications.parliament.uk/pa/jt201719/jtselect/jtnatsec/2072/207206.htm>

As well as the changes to the structure of Cabinet and its committees, Whitehall would benefit from a similar development of its structures. The Review concludes that now is the time to fully realise the benefits of UKGG and makes two specific recommendations to achieve this.

The first is **the establishment of a single Permanent Secretary Head of UKGG to lead the three offices of the Secretaries of State for Scotland, Wales and Northern Ireland as well as the relevant Cabinet Office teams, supporting the new senior minister and three Secretaries of State.**

This will give Union strategy a coherent voice within government, for example at the weekly meeting of Permanent Secretaries chaired by the Cabinet Secretary, to which the Scottish and Welsh Government Permanent Secretaries and the Head of the Northern Ireland Civil Service are also invited.

The NIO has an important role in a number of sensitive issues in Northern Ireland, not least security and political strategy. This recommendation aims to ensure the importance of these issues is maintained and their status enhanced within the centre of government, ensuring there is a wider depth of understanding about Northern Ireland issues outside of the NIO. Although there may be advantages to the NIO having its own Permanent Secretary, which, it is argued, enhances the status of Northern Ireland issues, the Review is not persuaded these benefits outweigh the gains that would be made by bringing the NIO into the fabric of UKGG. This will better enable a more joined-up approach to devolution issues, while protecting the unique features of the individual devolution settlements. As a consequence, the risk of NIO exclusion from important conversations and decisions is minimised, and their voice is amplified by the power and capacity of the Cabinet Office.

To improve efficiency, career progression opportunities and ensure appropriate accountability, the back office functions (IT, HR, finance) of the offices of the Secretaries of State for Scotland and Wales, and the NIO should be merged into a single operating unit. In practice, this means:

- A single shared IT platform across all four units (likely adopting the Cabinet Office's system already in place in the NIO and planned for the Office of the Secretary of State for Scotland). This will allow for a more progressive and digital means of cross site collaborative working
- Moving to a single HR system with shared terms and conditions, and, where relevant, loan arrangements when staff are from other UK Government departments or devolved administrations. The result would be greater ease of movement between constituent units, more obvious career progression paths and a single 'brand' for recruitment purposes, under the Cabinet Office. It is likely within this structure a more standard HR Business Partner function could be created
- Creating a shared service model for back office and finance functions, while retaining specialist support bespoke to the different block grant transfer function for each nation

While there will be some upfront costs associated with this, it is expected that in a new shared operating structure that efficiencies could be realised in the longer term, which the Review strongly recommends are reinvested in policy functions. The Review further notes the importance of market-facing pay. It may therefore be necessary to have a degree of flexibility in current arrangements to ensure those based in geographical areas with other high public sector employment are able to compete for the highest quality candidates.

The second recommendation under this theme is that a **shared policy function for all three offices should be created in the Cabinet Office as soon as possible.**

The Review proposes the creation of a shared policy function to improve the support available to the Secretaries of State for Scotland, Wales and Northern Ireland, structured around themes like ‘infrastructure’, ‘environment’ and ‘economy’. The aim would be to enhance the provision of high-quality policy advice and improve the collective influence of the Scotland, Wales and Northern Ireland policy interests across government. This function should be created from new resources in the centre and a pooling of most policy resources from the offices of the Secretaries of State for Scotland, Wales and Northern Ireland. It is expected this move will allow greater time to invest in building cross-government and external relationships, with outward facing engagement being a core part of everyone’s role within these policy teams. This recommendation aims to achieve the best of both detailed policy expertise and local knowledge by enhancing capacity and by enabling policy teams to specialise. It is hoped this would also have a positive impact on retention by providing greater and clearer career opportunities.

This change would represent a further development of UKGG, which has already been very successful in creating this sort of function for constitutional issues. It may be helpful to pick one or two themes to pilot a proof of concept. For the NIO in particular, this proposal will enable policy focus to be better separated between managing the most immediate and high priority issues and those focusing on longer-term strategy and policy development.

Recognising that Scotland, Wales and Northern Ireland have, at times, differing policy interests, these teams should have a named lead with principal responsibility for

each nation. The Review recognises there will be times when the Secretaries of State have different priorities and will want to argue for distinct policy positions. The retention of Scotland, Wales and Northern Ireland ‘leads’ in each area will allow for this with the added benefit of avoiding duplication of policy advice on the basic factual and analytical aspects.

In London, these teams should be co-located. While the Office of the Secretary of State for Scotland will still reside in Dover House, and the Office of the Secretary of State for Wales in Gwydyr House, the shared themed policy teams will be located, in London at least, in just one of these buildings. Outside of London, the creation of UK Government Hubs will allow for this type of working arrangement and provide candidates applying to roles in this shared policy function more flexibility on location.

In practice, this means, and entirely in keeping with moves to refer to the relevant Secretary of State for Scotland, Wales and Northern Ireland as the ‘Offices’, the main teams that will continue to be exclusively organised on a nation specific basis will be: Private Office, Communications, Constitution teams (where there is a direct nation specific policy responsibility) and a small specialised project based unit to act as an intelligent customer of advice from the shared policy function. The remainder of services would then be ‘bought in’ from the shared function. In addition, it is likely the NIO will need to retain its specialist political strategy, legacy and security teams given their important expertise. The function complements recommendations considered under the capability chapter for all departments to greatly improve the effectiveness of their work in relation to Scotland, Wales and Northern Ireland.

# Chapter 2

## Civil Service capability

Successive Prime Ministers have made the Union a priority. It is vital the Civil Service has the requisite knowledge and most importantly, the skills, to support this priority. While the UK Government must respect the devolved administrations' responsibilities in devolved areas, it must ensure the Union is embedded at the heart of its policy development and decision-making. It is important to recognise that although devolution capability is vital, it is not the same as ensuring the Union priority is ingrained in policy development and decision-making. Departments need to move much more firmly and quickly to develop the confidence of their staff in discharging their UK-wide responsibilities.

This chapter of the report considers two aspects of capability:

- departmental capability to deliver policies for the whole of the UK, cognisant of where this has implications for devolved areas
- the capabilities of individual civil servants and the support (including incentives) they receive to continuously learn and develop the necessary skills to be effective in the context of the devolution settlements

### Departmental

Each UK Government department has its own 'Devolution Team'. For some departments these teams can be sizeable, for example in the Department for Business, Energy and Industrial Strategy (BEIS) and HMT. For others the team can be as little as one full-time equivalent. These teams are responsible for straddling both devolution capability and ensuring, where appropriate, that UK-wide delivery is embedded in policy development. Teams can also support interactions with the devolved administrations and engagement with stakeholders in Scotland, Wales and Northern Ireland. It is important to recognise that even when policy is wholly devolved, it is possible policy changes have a spillover effect on another nation or administration. The Review heard of the example of the Teaching Excellence and Student Outcomes Framework (TEF). The TEF was introduced by the Department for Education and is primarily an English policy. That said, the TEF has consequences for the higher education sector across the UK: although each nation has its own quality assurance mechanisms, those institutions that do not subscribe to the TEF will need to demonstrate their quality to prospective international students in some other way. Indeed, while participation in the TEF is mandatory only in England,<sup>6</sup> concerns that the TEF could be perceived as an indicator of teaching quality for the whole of the UK have led universities from all parts of the UK to participate.

<sup>6</sup> For providers with more than 500 undergraduates.

UK Government departments have various Devolution Team models. Some have specific policy responsibilities; others operate much more as a guidance service. All aim to improve the department's overall capability to engage with devolved governments across the UK and act as catalysts for change. Where Devolution Teams 'own' specific policy in departments, the Review heard this can have the effect of insulating the rest of the department from the need to develop the skills necessary to operate UK-wide. In extreme cases this has created a perception that teams absolve the wider department of responsibility for understanding the context in Scotland, Wales and Northern Ireland. To address this, some departments have created a network of 'champions' to help improve capability in different teams. However there seems to be considerable inconsistency in the effectiveness of this approach.

Every department has a Senior Civil Servant responsible for devolution who represents the department at meetings of the Devolution Leaders Network. Alongside other matters this is the Cabinet Office's principal means for discussing other government departments' Union priorities. The effectiveness of this network – in spite of attempts to test different structures and agendas – has been questioned as evidenced by the frequency with which attendance is delegated. As a result, the network has struggled to significantly support efforts to improve outcomes.

More recently, 'Union plans' have been created as a means of understanding what departments are doing to deliver UK-wide. This is a useful start. However the plans are often a brigading of existing policy. Most lack hard-edged metrics to monitor improvements and it's not always clear how they relate to the Cabinet's wider Union ambitions and strategy. There is a significant opportunity to embed a more creative consideration of the whole of the UK right at the heart of policy development.

In addition to Devolution Teams some departments have stakeholder engagement leads based outside of London. For example, BEIS and HMT do this in Scotland and their initiative has been warmly welcomed there. These roles are designed to engage with local stakeholders, representing their department and bringing back insights to inform the policy process. The Review heard that there is significant appetite for more of these sorts of roles to increase localised engagement.

One consequence of not having such a capability is that when a 'view' is required from one of the constituent parts of the UK, the first port of call is often the devolved administration, rather than interested stakeholders or UKGG or the NIO. Some departments such as the Department for Environment, Food and Rural Affairs have developed direct relationships with stakeholders across the UK, in other cases the practice has been to delegate responsibility for building relationships in Scotland, Wales and Northern Ireland to Devolution Teams or UKGG and NIO. Each UK government department needs to consider whether it has in place adequate mechanisms to engage with the full range of stakeholders across the UK. This will not always be appropriate on a nation specific basis, and departments should also consider where engagement is better considered on an economic regions basis as well.

The Review, for example, recognises a particularly strong case for the Department for International Trade (DIT) to have significant presence in Scotland, Wales and Northern Ireland, both to improve its offering to stakeholders and help facilitate joint working with the devolved administration. It is vital the whole of the UK benefits from DIT's work and global reach. There is clearly benefit from establishing close working relations not just with the devolved administrations but also with people and businesses in Scotland, Wales and Northern Ireland.

Foreign affairs are the responsibility of the UK Government, which ensures people and businesses across the UK benefit from the Foreign and Commonwealth Office (FCO)'s role to represent the whole of the UK and its global network of nearly 270 diplomatic offices. In recent years the devolved administrations have, to varying degrees, looked to expand their footprint overseas. Devolution capability is necessary not just to support joint working with the devolved administrations on matters of shared interest but also to maximise the FCO's contribution to the UK Government's Union priority. Since 2016, the FCO has developed a more systematic approach to devolution capability including under its overseas leadership programme.

## Individuals

Improving Civil Service capability is not only important for the UK Government but also for the three devolved administrations. Capability needs to exist at all levels in the Civil Service. Although significant progress has been made over recent years, the initial focus has primarily been on knowledge rather than skills-based training.

Since 2015, the 'Devolution and You' programme has looked to improve civil servants' knowledge of devolution as well as their ability to work across administrations. The programme is run in partnership with both the Scottish and Welsh Governments, working closely with the Northern Ireland Civil Service (NICS) as well.

The programme:

- designs and delivers learning and development events
- co-ordinates, delivers and advises on interchange schemes – allowing staff to experience working in another administration

- evaluates devolution learning, including through an annual survey of staff devolution capability, and advises others on best practice

The Review heard strong support for the programme, which has successfully evolved since 2015 and plays an important role in improving capability. A number of areas for further development have been identified. The programme is characterised as self-selecting, both in terms of those accessing learning opportunities and those undertaking its annual Civil Service devolution capability survey. It can also be characterised in general as providing those taking part with devolution knowledge which, although important, is not the same as having the necessary skills to work in the devolution context. Recently progress has been made to include skills aspects and there is a strong case to build on this further.

The value of Senior Civil Servants having experience of working in both the UK Government and one of the devolved administrations has been referenced elsewhere in this report. However, there appears to be few structural incentives for this sort of experience to be more widely replicated. It is entirely possible, and even the current norm, to reach the highest levels in the Civil Service without ever having operated within a devolved context.

While the 'Devolution and You' programme has offered civil servants across administrations the opportunity to take part in an interchange week, there is less proactive encouragement to move between administrations for longer periods of time. As well as developing devolution learning, it is clear that all four administrations could gain from a greater interchange of staff. This would improve the UK Government's devolution understanding and capability. It would also provide opportunities for staff working in devolved administrations to gain further understanding of how Whitehall works

and aid capability in new policy areas as they exercise additional powers. Data does not currently exist on movements between the different administrations. While NICS is a separate Civil Service, with its own Civil Service Commission, staff interchange with other administrations is still possible. However this does not seem to be frequent and is rare outside the NIO.

## Recommendations

**Each UK Government department should have a Senior Civil Servant board member with lead responsibility for the department's devolution capability and Union strategy.** All UK Government departments should ensure that Union and devolution issues are represented at the highest level within their organisations and sit at the heart of policy making and delivery. This should include having a member of the Civil Service leadership team with specific responsibility on departmental management boards for devolution capability and the Union priority. Permanent Secretaries should also show significant leadership in this area and this should be reflected in their objectives. Outcome-based metrics should be developed to manage performance and the nominated board member should work with the Permanent Secretary to improve performance.

Additionally, **all UK Government departments should have a nominated non-executive board members with specific responsibility to lead on advising and challenging the department on its Union strategy and devolution capability.**

This board member should hold the Permanent Secretary to account for these priorities. Departments should consider the relevant skills and experience such a non-executive board member needs to perform this role. This should not remove the need for all board members to be engaged with the UK Government's Union priorities. The

Cabinet Office should provide devolution and constitutional training for all sitting non-executive board members and establish a scheme to ensure all new non-executives undertake training ahead of joining a board.

**The Cabinet Office should ensure there are outcome-based metrics to continually assess departmental capability. Within departments, the responsible board member should report to the wider board, the department's ministers, and the new Secretary of State for Intergovernmental and Constitutional Affairs on the department's performance and strategy for continual improvement.** The non-executive board member may like to consider undertaking an annual audit to present to the board to ensure sufficient attention is given to this agenda.

**Each UK Government department should ensure devolution teams are suitably located within the organisation to have greater visibility and significant influence on wider departmental strategy and policy development.** Devolution Teams should therefore be suitably positioned at the centre of departmental strategy functions – close to ministers – so they have the ability and tools to have department-wide impact. It is vital Devolution Teams have the capacity to fulfil a dual role of implementing improvements in departmental capability and ensuring its plans are in line with the Government's Union priorities. Although Devolution Teams should support and enable other policy teams, the Union priority should be embedded at the centre of all policy development. Part of the success of Devolution Teams can be measured by the extent to which departments' reliance on them continues to be necessary.

**The UK Government should urgently address the case for an increased policy presence in Scotland, Wales and Northern Ireland. Permanent Secretaries of departments with substantial reserved responsibilities should be required to produce specific plans outlining how their department will move policy posts into Hubs.**

In support of this recommendation, a cross-government programme lead should be appointed with strategic responsibility for ensuring Hubs are well populated with high quality policy roles. Having policy officials based in Scotland, Wales and Northern Ireland will also support co-operation with the devolved administrations and further improve individual devolution capability. UK Government Hubs in Scotland, Wales and Northern Ireland present the greatest opportunity to implement this change quickly. The UK Government should look to further use technology to ensure officials and teams based in Scotland, Wales and Northern Ireland are able to seamlessly engage with their Whitehall colleagues and ministers. This is entirely in keeping with the UK Government's wider estates strategy to reduce its expensive Whitehall footprint.

**BEIS and DIT should urgently create more posts in Scotland, Wales and Northern Ireland. This will ensure local people and businesses have improved access to the services offered by BEIS and DIT.** These posts should also be based in the Hubs.

**The Civil Service should build on the work of the 'Devolution and You' programme by ensuring the full range of Civil Service leadership programmes include a significant devolution dimension.** This should apply to leadership programmes such as the Fast Stream, Future Leadership Scheme and Senior Leadership Scheme. The Cabinet Office should work with other departments to ensure internal departmental leadership programmes also have significant

focus on devolution and the Union. Internal communications are an additional and important means of promoting a better understanding of the devolution settlements more widely within the Civil Service.

**Senior Civil Service job and person specifications should be amended to include a requirement to demonstrate significant experience working in or with one of the devolved administrations or a Union-related issue.** In future, Civil Service leaders should not only have substantial knowledge of devolution, but also the skills to use this knowledge. Adding this to the requirements for entering the Senior Civil Service will encourage civil servants to develop these skills at an earlier stage in their careers. While working towards a more devolution-confident Civil Service of the future, it is important existing civil servants in senior roles feel fully devolution literate. Cabinet Office may like to consider a tailored learning course for existing Senior Civil Servants who wish to improve their skills.

**The FCO should further build on the devolution and Union aspects of its Head and Deputy Head of Mission overseas leadership programme.** It should also identify which other overseas roles would benefit from an expanded programme.

**In order for the UK, Scottish and Welsh Governments to best realise the benefits of being one Civil Service, the UK Government should look to work with the Scottish and Welsh Governments to take steps to encourage more staff interchange between administrations.** Expanding opportunities for staff, for example via loan and secondments, across administrations would have the additional benefits of expanding career path opportunities and providing experience within organisations of varying sizes, structures and functions. Beyond this, individuals and institutions could benefit from an expanded

set of working relationships and networks that such interchange will provide.

Although staff in the UK, Scottish and Welsh Governments benefit from extensive job opportunities as part of the same Civil Service, the Northern Ireland Executive functions with a separate Civil Service. While this might currently act as a barrier to more regular exchanges, the benefits of previous interchanges were brought to the attention of the Review. There appears to be a mutual appetite to encourage and enable greater interchange among NICS and UK, Scottish and Welsh Governments.

**While respecting that NICS is a separate service, the UK Government should look to work jointly with NICS to increase interchanges. Cross government roles in the Civil Service should be open to NICS staff, whilst NICS roles should be more routinely open to civil servants working in the other administrations.** To support this, NICS roles should be advertised on the Civil Service Jobs platform, which should be also open to NICS staff.

The UK Government and NICS should work together to explore where both could benefit more from an increase in sharing best practice and, where suitable, resources. The Review heard a promising case for NICS to benefit from the Civil Service Commission making its expertise available in a Northern Ireland context. Extending its role in this way would allow NICS to benefit from the commission's wider work, while ensuring it was accountable to Northern Ireland Executive ministers for its work in Northern Ireland. Additionally, where appropriate, Civil Service learning and development, as well as leadership programmes, should be open to civil servants from NICS.

# Chapter 3

## Spending

The Union is essentially based on solidarity. Its citizens share an expectation of standard of living, quality of infrastructure and recognition of fundamental rights and freedoms. One of the core functions of government is to collect taxes from its citizens and to redistribute those common resources in the way it considers most appropriate. UK Government funding should support communities in all parts of the UK. At the same time, UK funding in Scotland, Wales and Northern Ireland should not undermine the democratic accountability of different levels of government, or destabilise the devolution settlements. Changes which affect the Barnett Formula are out of scope for this review. However, significant evidence and commentary was received on other ways the UK Government funds public services in Scotland, Wales and Northern Ireland, which this chapter considers.

### UK departmental spending

The first type of funding in Scotland, Wales and Northern Ireland is on projects and policies in reserved areas, where UK Government departments spend money across the UK on priorities set and approved by UK Government ministers. Examples include spending on security or defence, broadband, or the work of the Research Councils. At the start of each spending period, HMT will allocate each department a budget to deliver its priorities. It will then monitor the department's spending against these priorities and against the principles set out in Managing

Public Money.<sup>7</sup> For a department to spend money, it has to obtain both the approval of Parliament for its budget, through the Finance Bill or supplementary estimates, and the ambit, or legal authority to spend, in any given area. Following devolution, UK Government departments have generally not spent in areas of devolved policy, though some limited powers remain to do so.<sup>8</sup>

### Block grant

It is for the devolved administrations to set the budget for devolved services from the block grant they receive from the UK Government (and their own tax revenues and borrowing) according to local needs and priorities. This second type of funding is calculated using the relatively mechanical Barnett Formula (devised in 1978). The calculation of how much money is allocated to the block grant is based on looking at changes from the previous year's equivalent England spending and applying the Barnett Formula, which applies a population share to these changes. So, if health spending in England goes up, the Scottish and Welsh Governments, and the Northern Ireland Executive receive a budget increase, in proportion with the size of their population.

While the devolved administrations were initially funded almost exclusively by the UK Government block grant, the devolution of further tax and borrowing powers means they now have more accountability for the size of their budget, as well as how this is allocated between devolved public services.

7 HM Treasury, 'Managing Public Money', available at: <https://www.gov.uk/government/publications/managing-public-money>

8 As set out in the Local Government Act 2003, Industrial Development Act 1982 and Infrastructure (Financial Assistance) Act 2012

## Additional spending

The third type of UK Government funding is provided to the devolved administrations to spend in specific areas or specific projects either in reserved or devolved areas. For example, if there is extreme weather in one part of the country but not nationally, it might be more appropriate to provide funding to support those areas affected rather than UK-wide. Similarly, this can work in other areas where there is agreement between the devolved administration and UK Government to work in collaboration. One of the most notable of these is the City and Growth deals programme, where funding is provided by the UK Government to the devolved administrations. The purpose is to transform major cities and areas over a ten to twenty year period according to priorities determined locally between local authorities, business and universities.

As a matter of technical practice, this UK Government funding is provided alongside the block grant and ring fenced for pre-agreed projects. The same is true for Northern Ireland funding directed towards addressing specific issues, like that agreed alongside the Stormont House Agreement. Other examples of this type of expenditure are investments of UK-wide significance which, in technical accounting terms, fall into devolved areas of competence, like UK Government additional investment in V&A Dundee, or the Lloyd George Museum, Llanystumdwy.

Actual spend on public services per head in the UK is: £11,190 in Northern Ireland, £10,881 in Scotland, £10,397 in Wales, and £9,080 in England. The UK average spend per head is £9,350.<sup>9</sup>

## Challenges

Over recent years questions have been raised as to whether the UK Government's spending levers are sufficient in Scotland, Wales and Northern Ireland and whether changes might be required to ensure better delivery of services and other initiatives for the whole of the UK. In particular, there are concerns about the inability to celebrate UK-wide cultural initiatives effectively, or to ensure UK-wide strategic priorities. As the UK leaves the European Union, there is also a debate around the delivery mechanism for the domestic replacement to EU programmes.

It may be argued that UK Government funding in relation to devolved matters, albeit with agreement, makes it unclear where different governments' responsibilities lie. In systems of devolved government, it is important the electorate understands which government to hold to account for levels of funding and how funds are spent. However, it is also important not to overstate this risk. The UK Government has no incentive to blur levels of accountability. It is in the interests of the UK Government to ensure that funding is properly targeted and does not impinge on the policy initiatives for which devolved governments will be held to account. It is, however, not clear to what extent, once additional UK Government funding in devolved areas is agreed (for example in City Deals), the UK Government has the necessary presence on the ground to support delivery. As discussed in the chapter on communications, there is a tendency to fund and forget as well as devolve and forget.

The Review has also considered whether additional UK Government funding in Scotland, Wales and Northern Ireland risks diverting resources from parts of England, which might also have a valid claim for additional funds. However, it should be

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<sup>9</sup> National Audit Office, 'Investigation into devolved funding' available at: <https://www.nao.org.uk/wp-content/uploads/2019/02/Investigation-into-devolved-funding.pdf>

noted that the sums of money used for funding projects in devolved areas – while significant for those areas – are relatively small in comparison with the budgets of larger departments. Also, the underlying rationale for the kind of funding proposed here is that it will improve life in the whole of the UK. Often consideration of spending is done in ‘nation’ terms rather than driven by the need to consider cross-border shared economic areas. Moreover, funds to enhance collaboration within the UK are modest compared to the potential costs to all parts of the UK that would be incurred by all parts of the UK should the current sense of solidarity within the country ever break down.

It is also sometimes suggested that the UK Government should be prepared to give funding directly to local authorities in Scotland, Wales and Northern Ireland as a way of ensuring that funds are used for their intended purpose. While there may be a case for, exceptionally, ringfencing some funding to direct at a specified purpose, the Review has concluded that it is not necessary or productive to bypass the devolved governments in funding arrangements and would be difficult to do without legislation. As noted elsewhere, there is a need for transparency in funding arrangements, and if such arrangements are open to public scrutiny, direct funding should not be required to achieve the intended outcome.

## Recommendations

In considering the question of spending, the Review has rigorously taken note of its terms of reference and has not considered changes to the Barnett Formula. Instead, the Review has sought to balance the concerns expressed with creating the right incentives across government to make sure the whole UK is at the centre of policy considerations. In particular, creating a greater role for the Secretaries of State for Scotland, Wales and

Northern Ireland to positively influence UK Government spending priorities, given their own modest departmental budgets. The Review seeks to build on the success of joint investment by creating greater opportunities to work with the devolved governments and encourage co-operation. However, it is also recognised that funding by the UK Government in devolved areas must not replace core funding and must be applied with the support of the devolved governments.

**It is recommended that HMT should set aside a fund for UK-wide projects.** In reserved areas this fund should be aimed at UK strategic projects. Departments developing such initiatives should be able to bid for resources from this fund in addition to the money they receive for UK-wide policy implementation from the Spending Review. The aim of this fund would be to address the challenge that when prioritised, projects in Scotland, Wales and Northern Ireland will often compete poorly with those in England. It should also allow for greater cross-border consideration in shared economic areas. It would also provide Whitehall departments with a positive incremental incentive to make the Union a central part of their policy development and delivery. This fund should be directed towards increasing reserved activity in Scotland, Wales and Northern Ireland without impacting standard ‘value for money’ assessments, which departments will use when considering the allocation of funding for projects. It is anticipated that this fund will be used to co-fund projects alongside funding from existing allocations.

As discussed earlier in this report, there should be a new sub-committee dedicated to considering Union policy. The Review concludes this sub-committee would be the most appropriate forum to consider the allocation of this funding, under the leadership of the new Secretary of State but working in tandem with the Chancellor, or delegated to

the Chief Secretary to the Treasury. Projects demonstrating a positive local impact in Scotland, Wales or Northern Ireland would be most appropriate for this type of fund. In further support of this, changes could also be considered to guidance on appraising and evaluating business cases to put the Union more central to these considerations.

**In devolved areas, there should be a second portion of the same fund, which is open to bids from UK Government departments and devolved governments working in co-operation.** That is, the funds would be applied to projects where there was agreement between a UK Government department and individually the Scottish Government, Welsh Government or Northern Ireland Executive.

The second co-operation fund would incentivise cross-border working between the different administrations and could enable different types of co-ordinated policy innovation in different parts of the UK, including England. Examples include innovative fishing or farming techniques, to efforts to tackle drug abuse, increase productivity or reduce carbon emissions. This sort of approach to common endeavours is discussed again in the section on intergovernmental relations.

It is important to recognise that where something has been devolved there are still opportunities for working together and building a common policy across the UK. In these circumstances the four governments, or combinations of them, can come together as partners in a common endeavour. UK Common Frameworks, in the process of being established for when the UK leaves the European Union, prove this point. The funding incentive would work in two ways: first, devolved governments would be presented with the opportunity to work with the rest of the UK or, where it did not wish to work jointly, to refuse funding. Second, a UK Government

department with the support of the devolved governments would be in a strong position to make a case for funding to HMT. By supporting co-operation, this recommendation complements the approach proposed for reformed intergovernmental relations – to change the mindset from simply dispute management to a more positive agenda of finding reasons to work together.

The Review does not make specific recommendations on the size of the fund, but expects that to deliver significant UK-wide strategic priorities it is likely to need to be in the hundreds of millions, akin to the scale of funding allocated to City Deals over a comparable period. As a result, it does not call into question anything related to the Barnett Formula.

**UK Government departments, when providing funding in Scotland, Wales and Northern Ireland, outside of the block grant, should monitor the application and effect of that funding at local level to ensure value for money.**

Although, as noted above, funding schemes such as City Deals can be considered a success, it is nevertheless essential that the UK Government's interest in the project does not end when funds are delivered. The impact of the funding at local level must be monitored and assessed to ensure that not only are the funds delivered to the right destination, but that they have the intended effect.

Where funds are spent in relation to reserved matters, a UK Government department clearly has an interest in ensuring that the taxpayer receives value for money. However, even where the UK Government does not have a formal accounting officer role, it should still protect the interests of the public purse by close monitoring of the schemes, which are being funded and putting in place the necessary staff resources to do so.

# Chapter 4

## Intergovernmental relations

Since the transfer of significant powers to devolved institutions in Scotland, Wales and Northern Ireland, the three devolution settlements defined in statute have set out the roles and responsibilities of UK and devolved institutions. Throughout this the UK Parliament remains the Parliament of the whole of the UK with MPs representing constituencies across England, Scotland, Wales and Northern Ireland. Alongside the statutory framework, non-statutory arrangements have supported intergovernmental relations (IGR) between the UK Government and three devolved administrations.

Since their establishment these IGR arrangements have remained broadly unchanged despite significant shifts in constitutional and political circumstances.

First, changes made over the last ten years have substantially increased the powers and responsibilities of the devolved institutions. They have also meant the settlements are more complex with many areas of shared competence and overlap.

Second, the UK's exit from the European Union has heightened the imperative for collaborative working, because UK common frameworks will need to replace EU rules and the UK Government's reserved policy responsibilities – for example negotiating trade or other international agreements – will interact with areas of devolved competence.

Third, the governments in London, Cardiff and Edinburgh were, at the outset of devolution, predominantly drawn from the same political party. Intergovernmental relations were

therefore handled on a more informal basis through well established party channels. The machinery for handling intergovernmental relations was never stress-tested from the beginning for a situation where there are governments of different political hues in the four capitals.

In the context of these significant changes there is broad consensus, with which the Review agrees, that the IGR machinery is no longer fit for purpose and is in urgent need for reform.

It is important to be realistic about what this reform can achieve. No IGR machinery, however perfect, is capable of resolving fundamentally different political objectives of the respective administrations, particularly where these involve very different visions for the UK's constitutional future, and nor should it. It is, however, realistic to expect that serviceable and resilient working relationships, based on mutual respect and far greater levels of trust, can be established between the governments across the UK. Indeed it is clear that beyond well-publicised political differences, the administrations can and do work constructively together.

Looking to the future it will be essential to put in place a more transparent, predictable and robust system for intergovernmental relations to support the day-to-day contacts between administrations. The machinery supporting IGR should act as a stimulus for more mutually beneficial working relationships rather than as a platform for public dispute or grievance. Whether this machinery is set out in statute

or political agreement is an area of debate, which the Review seeks to address through its recommendations.

An improvement in IGR should also have the positive effect of encouraging more dialogue and relationship building between the UK Parliament and the devolved legislatures. This could build on the recent welcome innovation of the Inter-parliamentary Forum on Brexit.

## Joint Ministerial Committee

Since 1999, the primary IGR machinery has been the Joint Ministerial Committee (JMC), which works to the following Terms of Reference:<sup>10</sup>

- *to consider reserved matters which impinge on devolved responsibilities, and devolved matters which impinge on reserved responsibilities;*
- *where the UK Government and the devolved administrations so agree, to consider devolved matters if it is beneficial to discuss their respective treatment in the different parts of the United Kingdom;*
- *to keep the arrangements for liaison between the UK Government and the devolved administrations under review; and*
- *to consider disputes between the administrations.*

The Prime Minister chairs JMC Plenary meetings attended by the heads of the devolved administrations and Secretaries of State for Scotland, Wales and Northern Ireland. Other UK Government and devolved administration ministers are invited to attend

when appropriate. Although the JMC Plenary is intended to meet at least once a year, it has at times gone much longer without meeting. Unlike summits of the British-Irish Council the JMC is generally restricted to the formal meeting and lacks, beyond some bilateral meetings, a wider set of surrounding engagements.

A Memorandum of Understanding (MoU) and supplementary agreements sets out that “*the JMC is a consultative body rather than an executive body, and so will reach agreements rather than decisions*”<sup>11</sup> Through this the JMC does not bind any of the administrations. Although the MoU has not been updated since 2013, a Cabinet Office led review into IGR is currently ongoing. To date, the following draft principles have been agreed (but not yet formally agreed by the JMC Plenary) to build on and sit alongside the existing MoU and inform its future development:<sup>12</sup>

- *maintaining positive and constructive relations, based on mutual respect for the responsibilities of governments across the UK and their shared role in the governance of the UK*
- *building and maintaining trust, based on effective communication*
- *sharing information and respecting confidentiality*
- *promoting understanding of, and accountability for, their intergovernmental activity*
- *resolving disputes according to a clear and agreed process*

In addition to the JMC Plenary, the JMC also meets in a number of sub-committees. Prior to the EU referendum these comprised a

10 ‘Memorandum of Understanding and Supplementary Agreements’, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/316157/MoU\\_between\\_the\\_UK\\_and\\_the\\_Devolved\\_Administrations.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/316157/MoU_between_the_UK_and_the_Devolved_Administrations.pdf)

11 Ibid

12 ‘Agreement on Joint Working’, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/814304/2019-07-03\\_Agreement\\_on\\_Joint\\_Working.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/814304/2019-07-03_Agreement_on_Joint_Working.pdf)

JMC Europe (JMC(E)) and a JMC Domestic (JMC(D)). JMC(E) was to take place in advance of European Council meetings and JMC(D) was designed to discuss a range of issues across the devolved and reserved policy space. However, JMC(D) has not met since 2013. Since the EU referendum, a new JMC EU Negotiations (JMC(EN)) has met 20 times in order to facilitate engagement and collaboration between the UK Government and devolved administrations on the UK's exit from the European Union. JMC(EN) has, with the exception of one meeting, been chaired by the UK Government although it has sometimes taken place outside of London, as has its sub-committee the Ministerial Forum (EU Negotiations).

The JMC Plenary and JMC sub-committees are supported by a joint secretariat. The Cabinet Office has lead responsibility for this and despite the secretariat supporting all four administrations, it is not regarded outside the UK Government as a truly joint secretariat to the extent the MoU would suggest.

After meetings of the JMC(P) or JMC(EN), a joint communique is produced setting out the areas discussed. However, communiqués are short, largely agreed in advance and provide little insight into the matters discussed. The void this creates is filled by media statements by attendees focused more on political messaging than providing transparency. This has resulted in these JMCs being characterised largely as a forum for airing grievances and managing disputes rather than for fostering effective collaboration. This issue has been exacerbated by limited reporting to Parliament following JMCs.

Following the EU referendum the administrations have worked closely to address the need for UK-wide Common Frameworks once the UK has left the European Union. The UK Government has committed to providing jointly agreed quarterly reports to Parliament on progress towards Common Frameworks. This

commitment has been warmly welcomed and shows the benefits increased transparency can have in shaping constructive and collaborative behaviours.

Outside of the JMC machinery, and in addition to the everyday interactions between administrations, there are multiple forums for technical discussions which highlight the benefits of the four administrations' ability to work constructively. Following the Smith Commission, the UK Government and Scottish Government have worked together via the Joint Ministerial Working Group on Welfare to implement the devolution of substantial welfare powers. The Inter-Ministerial Group for Environment, Food and Rural Affairs was established following the EU referendum to provide central co-ordination and promotion of greater collaboration in areas of shared interest between administrations. Furthermore, there are specific committees established to help manage matters of finance between HMT and the devolved administrations.

There is now a widely-held view that the JMC structure sitting above the technical level forums needs to be fundamentally reset. What has become a forum largely for airing grievances and managing disputes needs to evolve into a forum for fostering more effective collaboration. This is not easy to achieve in the current context of the UK's as yet unresolved and highly-charged withdrawal from the EU.

The JMC machinery must look and feel like a joint endeavour. In the absence of a regular programme of meetings across the full range of issues, there is a clear sense that JMC meetings take place at the request of the UK Government. Some have argued that the best way of achieving regularity is to put IGR on a statutory footing, and to use that as a means to build trust. The Review concludes this would fundamentally miss the point of what the IGR machinery is there to achieve – the management of political matters.

While the Review therefore agrees there should be a far greater role for Parliament in scrutinising discussions which take place in an IGR setting, to put their basis in statute risks dragging the courts into what fundamentally should be a political and parliamentary realm. In order to build respect and trust around IGR it is therefore important political differences are handled in a political, not legal, space. Indeed, statute could also prevent the necessary flexibility required in the system to respond to changing circumstances. Moreover, increasing the scope to involve the courts to resolve disagreements could militate against reaching timely agreement on contentious issues. Greater transparency and more robust scrutiny by the UK Parliament and the devolved legislatures is a more appropriate means of encouraging the right types of collaborative behaviours. The Review therefore concludes that this can be far better achieved by agreeing a clear statement of intent between all parties.

The Review heard that JMC(E) is often regarded more positively than other committees, largely because it has a clarity of purpose alongside a regular drumbeat of meetings to coincide with EU Council meetings. This resulted in a shared need to establish, beforehand, the UK's negotiating position. Not doing so risked undermining all parties' positions resulting in an undesirable outcome for one or more constituent parts of the UK. This created a platform for compromise, which has not been a universal feature for the wider JMC machinery.

The pace of policy development around the UK's exit from the EU has strained the trust required for effective intergovernmental relations. As policy issues have developed, little time has been afforded to discuss details and share documents between administrations. While the UK Government has at times rightfully completed internal collective agreement before sharing with

the devolved administrations, this has led to frustration from the devolved administrations around the JMC(EN) process. This has been compounded by the use of the term 'oversight' in the JMC(EN) Terms of Reference, which created a false impression from the outset about what would be possible and therefore achieved.

The differing nature of JMC(E) and JMC(EN) highlight that, although at times the UK Government is seeking to come to a joint decision for a UK-wide approach on a devolved matter, at other times it is informing on a reserved policy matter. However, the approach the UK Government takes to constructing these different types of discussions does not differ. This has led to further frustration on the part of those attending from the devolved administrations and criticism of JMC as simply a talking shop. The UK Government needs to be much clearer when it is consulting on reserved matters and when it is seeking to come to a joint decision on matters engaging a devolved competence.

The Review heard varying views on how IGR machinery should approach joint decision-making on areas of devolved or shared competence. There are different ways to address this, from co-decision by consensus through to a voting system. However, formalised voting systems dilutes the need to build trust through consensus and by design imposes decisions on administrations in their own areas of competence without their consent.

The Inter-Ministerial Group for Environment, Food and Rural Affairs provides an example of co-decision by consent. The location and dates of the meetings are agreed on an annual basis with the intention of a rotating host and chair. This helps build a sense of joint endeavour while agendas are provided by a supporting officials' board and jointly agreed. This style of group not only shows it is possible to create positive opportunities for

IGR to address areas of shared interest but has the potential to build on the approach to co-operation funding set out earlier in this Review.

The asymmetric nature of the UK's structure and that of the three devolution settlements inevitably leads to an imbalance between representations from across the UK. The Review heard of two particular issues raised by the asymmetric nature of the current devolution settlements.

The first was regarding the representation of England within intergovernmental structures and in particular the 'dual hatted' nature of the role of UK Government ministers. While the settlements differ, largely, on reserved matters the UK Government is speaking for the whole of the UK. At other points – where the issue concerned is a devolved competence – they are speaking primarily for England. On the one hand this can be seen as an over-representation of England, given the UK Government ministers are representing both England and the UK. On the other hand, some see this as deficient from an English perspective, given that UK Government ministers represent the whole of the UK on reserved matters and not just England. As discussed under capability, much of this needs to be addressed through a far better understanding in UK Government departments of spillover effects of policy.

This issue is further complicated on matters of shared competence and again highlights the need for IGR structures to be clearer when the UK Government is consulting on reserved matters and when it is seeking to come to a joint decision on devolved matters. This will become increasingly important as the UK looks to negotiate new trade agreements around the world. The UK Government is responsible for conducting trading negotiations with foreign states. However, given this will often interact with areas of devolved competence, the UK Government

will be best served by regular engagement with the devolved administrations in the build up to, process of, and conclusion of negotiating new trade agreements.

Secondly, there were also differing views of the roles of the Secretaries of State for Scotland, Wales and Northern Ireland within the JMC and IGR more generally. Although, to improve the numerical division between administrations, there is a case for reducing the number of UK Government ministers attending JMCs, a balance needs to be struck to ensure that IGR structures allow UK ministers to suitably carry out their full range of responsibilities.

## Recommendations

**Intergovernmental relations should be recalibrated and the JMC replaced by a UK Intergovernmental Council (UKIC) with a number of sub-committees.** Mutual respect and trust are central to effective intergovernmental relations and a new structure is needed to reset relationships for the future. This structure should look to provide regular and high level ministerial engagement above, and in addition to, the wider interactions taking place between administrations. As a significant departure from the current JMC, the title 'UK Intergovernmental Council' represents much more than just a change in name, and far better reflects the ambitions of this new IGR machinery. To provide regularity and suitable flexibility, the four administrations should agree a new MoU with a very public political declaration to underpin the UKIC and politically bind the administrations into a new way of working. The new arrangements should be much more open to scrutiny to further support those involved to conduct business in the spirit of collaboration.

**The Prime Minister should host a summit at least twice a year based around a meeting of the UKIC with the heads of each administration.** Summits should not be restricted to the meeting of UKIC and should provide opportunities to build trusted relationships by including wider engagements. Given the priority Prime Ministers have attached to this issue, the Review considers this level of commitment entirely appropriate within the constraints of their diary. Summits could include a press conference afterwards so all attendees can hear each others' comments on the discussion and more collegiate behaviours can be encouraged.

**The UKIC should be supported by an independent secretariat.** A standing independent secretariat should work closely with all four administrations on the schedule and agendas of meetings. This secretariat would be largely administrative and manage the logistical coordination between all parties. Although the secretariat should strive to ensure agreement on agendas, all administrations should be able to propose items. This will ensure all parties to the council feel confident their representations are being fairly heard. The recruitment of the secretariat should be a joint exercise and roles should be open to staff from all four administrations. Consideration should be given to a location outside of London for this secretariat.

**UK Government ministers should provide a statement to Parliament following each meeting.** The devolved administrations could also consider providing statements to their respective legislatures. To further enhance scrutiny, the secretariat should lead on the production of two annual UKIC reports. These should follow the UKIC heads of government summits but also report on the activity of sub-committees. This should be in addition to informative communiques following each

meeting and seek to build on the sort of reporting agreed on UK Common Frameworks already in place.

**There should be a number of sub-committees within the structure.** Given the need to adapt to changing opportunities as well as challenges, a one size fits all approach will not work. Instead, committees should be constituted and meet dependent on individual aims and objectives. Each committee should be clear from the outset whether it is consultative on a reserved area, or whether it is a decision-making forum where all three devolved institutions have competence.<sup>13</sup> Some may benefit from the support of the independent secretariat. In reserved areas it is more likely to be appropriate for the secretariat to be provided from within the UK Government, however the principles of transparency remain as relevant.

**The new UKIC should look to take on a decision making role via co-decision by consensus.** The result of an inability to proceed with a decision by consensus will differ depending on the topic under discussion, which is discussed further below. However, whenever it is not possible there should be complete transparency on why consensus was not possible and why whatever conclusion has been reached. The effect of this is to open up the process to scrutiny and create incentives to find consensus.

**The UK Government should use the new Cabinet sub-committee (recommended earlier) to agree UK Government positions in advance of meetings of the UKIC and its sub-committees.** While there is a role for the Secretaries of State for Scotland, Wales and Northern Ireland in supporting the Prime Minister at UKIC heads of administrations summits, the Cabinet sub-committee should be used as their principal means for

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<sup>13</sup> Where matters only affect one or two administrations, these should be considered outside of this JMC structure.

influencing the UK Government's position in advance of UKIC sub-committees. This should reduce the number of UK Government ministers at UKIC sub-committees, creating better atmospherics in the room, and at the same time enhancing the pivotal role the three Secretaries of State have in determining and influencing the UK Government's position. As a forum for collective agreement, this will also allow the UK Government to share more information at an earlier stage in the process.

While the Review does not make specific recommendations about how the English voice is understood, it notes that consideration could be given to establishing an English Regions Forum, to feed views in from other sub-national governments in England to relevant UK Government ministers ahead of UKIC meetings.

The exact nature of sub-committees should be determined by the Prime Minister and heads of the devolved administrations, however the Review considers that frameworks and the internal market, as well as trade and future EU negotiations are early areas appropriate for sub-committees. In addition, considerations could also be given to how UK wide issues of common interest, like efforts to address climate change could feature in this architecture.

A UKIC sub-committee focused on the internal market could provide a forum for high level strategic discussions not just regarding individual frameworks but on a whole range of issues relating to the functioning of the UK's internal market. Given discussions are likely to be primarily based on devolved areas, there is a case for this sub-committee to have a rotating chair between administrations and would be an example of a forum seeking to make co-decisions by consensus. Non-consensus could mean there is an agreement to no change or to proceed with change but not on a UK-wide basis, conscious of the impacts to the UK internal market of this action.

A sub-committee focused on the UK's future economic partnership with the EU and future international trade arrangements should be chaired by the new Secretary of State and bring together relevant Brexit and trade ministers from the UK Government and the devolved administration. The UK Government should be prepared to share its position at a developmental stage in confidence with the devolved administrations, in the full knowledge of all concerned that any breach of confidence will have adverse consequences. This would follow from extensive technical engagement expected to take place outside of the UKIC architecture.

**DIT and other UK Government departments should build on wider examples of technical engagement and explore establishing inter-ministerial groups.** The Inter-Ministerial Group for Environment, Food and Rural Affairs provides one example of this, however departments should not be restricted by a one size fits all approach. While UKIC sub-committees may meet a number of times a year inter-ministerial groups would provide a platform for more regular engagement and more detailed technical discussions. Although separate from the UKIC structure, these forums could, where suitable, feed into UKIC discussion on a regular or ad hoc basis. For example, while UKIC should focus on high level issues and strategic matters, inter-ministerial groups should consider and discuss details and technical matters. With regard to international trade, this multi-layer approach will provide devolved administrations a substantive platform to be significantly involved in the formulation of the UK Government's approach to trade negotiations, while respecting that trade negotiations are ultimately a reserved matter. For UK Government departments responsible for policy primarily in the devolved space, inter-ministerial groups would provide a new forum of sharing information and best practice while ensuring more substantive engagement around spillover of policy development and delivery.

## Handling disputes

The package of IGR reforms proposed by the Review is specifically aimed at increasing trust and reducing tensions leading to disputes. By including opportunities for far more scrutiny, there are many more opportunities to resolve areas of political disagreement earlier in the process. However, as noted at the outset, there are limitations to what IGR can achieve and it is therefore necessary to be clear on what is required should an area of political disagreement become a formal dispute.

The current MoU underpinning the JMC sets out a procedure for dispute avoidance and resolution. This process includes an attempt to settle differences at working level before reference to the secretariat and allows for, where necessary, a UK Government-chaired JMC meeting to attempt to resolve disputes. The process also provides an opportunity for independent analysis to be commissioned with the support of the secretariat. There have been only a handful of formal disputes raised through the JMC process.

While the lack of formal disputes over the past 20 years should be welcomed, it could also be an indicator of a lack of confidence in the existing resolution process. The Review heard criticism of the current JMC dispute resolution process, particularly in relation to the perceived role of the UK Government as the arbitrator of any possible dispute due to its role as the chair of JMC meetings (including where it is one of the parties involved in the dispute). Furthermore, the process is based on consensus, which means that any administration involved in a dispute has to agree that it is a dispute before it enters into the formal dispute process. This means that administrations party to a dispute could block the dispute from being escalated if they do not perceive it to be a legitimate dispute. For example, in 2017, the Welsh and Scottish Governments looked to raise a dispute relating to the funding agreed for Northern Ireland

following the general election. However, the UK Government did not agree that this case should be considered by the dispute resolution process, making clear the funding was provided in line with HMT's Statement of Funding Principles. Although the UK Government set out its reasoning, the fact it could block the process while also being one of the parties involved was considered by many to be a clear conflict of interest.

This highlights the strong case for the creation of a more robust and trusted dispute handling process. The Review heard a number of suggestions to enhance the handling of disputes including binding independent arbitration. Although this could provide a more definitive outcome from disputes, it not only risks confusing political disputes with possible legal disagreements and also fails to support wider ambitions for creating more respect and trust between administrations. Some have suggested a solution would be for one of the four administrations not directly involved in a dispute to act as a mediator. However, this risks unnecessarily drawing administrators into disputes unconnected to them and may not always be possible, for example if a dispute involved all four administrations. Therefore, **the new UKIC should have a clear dispute handling process.**

Within these reforms there should be a clear set of robust steps, including extensive informal discussions at official and ministerial level, aimed at resolving a dispute. In addition, consideration should be given to including an independent element where there is a benefit to all parties, to address concerns about one party being both judge and jury. The independent secretariat should be responsible for administratively managing the dispute process.

The independent element could include in some circumstances the use of a mediator. The mediator could facilitate further discussion between the parties if they considered

this helpful, as well as consider evidence, including independent technical evidence, before making an impartial proposal on a way forward. The Review has noted the agreement already reached between the UK Government and devolved governments for an independent report and recommendations to inform the reviews of the fiscal frameworks for Scotland and Wales.<sup>14</sup> A role for independent mediation could fulfil a similar function in the context of disputes. In keeping with the Review's other IGR recommendations, the dispute handling process should be transparent both through reporting to Parliament and the UKIC annual reporting. The history of devolution demonstrates that the vast majority of possible disputes can, despite significant political differences, be avoided at an early stage. It is important that a new dispute resolution system does not hinder earlier action to avoid formal disputes.

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14 'The agreement between the Scottish government and the United Kingdom government on the Scottish government's fiscal framework', available at: <https://www.gov.uk/government/publications/the-agreement-between-the-scottish-government-and-the-united-kingdom-government-on-the-scottish-governments-fiscal-framework>; 'The agreement between the Welsh Government and the United Kingdom Government on the Welsh Government's fiscal framework', available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/578836/Wales\\_Fiscal\\_Framework\\_Agreement\\_Dec\\_2016\\_2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/578836/Wales_Fiscal_Framework_Agreement_Dec_2016_2.pdf)

# Chapter 5

## Appointments to UK bodies

To realise the benefits of embedding the whole of the UK at the heart of government, consideration needs to extend beyond the Whitehall machine.

Each year, the UK Government makes appointments to the boards of over 550 public bodies.<sup>15</sup> In total, these organisations spend over £200 billion per annum and deliver crucial services across all aspects of public life, from running museums to regulating the nuclear deterrent. Public bodies also make a vital contribution to communities through organisations such as Network Rail, the BBC and UK Sport. As such, the majority have an important role in helping to ensure public services are run by, and delivered for, the whole of the UK.

While of course employees of public bodies have responsibilities to ensure their service or function is effective across whichever jurisdiction they cover, board members have an incredibly important role in helping shape the tone and values of the organisation as a whole. For public bodies that have a UK-wide responsibility, Union capability is an essential part of this. The Review has already commented on the importance of this for UK Government departments. To ensure the level of sensitivity is considered at all levels of government, it is therefore important to consider the same issues with public bodies.

### Existing public bodies

No two public bodies are the same and, as a corollary, the appointments process for each must be tailored. Indeed, some public appointments are regulated by the Commissioner for Public Appointments, of which some have an independent panel member, and some are subject to pre-appointment scrutiny in Parliament.<sup>16</sup> Many public bodies have been long established, well before devolution was a construct of the UK's constitution. Since devolution, the legislation underpinning some public bodies has required that the devolved administrations are consulted during the appointment process. While valuable in ensuring nation specific representation for some bodies, it is important not to conflate consulting devolved administrations on candidates with ensuring they have the skills to support their organisations deliver its business in a way which enhances the whole UK.

Where public bodies have a responsibility for the whole of the UK, appointing individuals with an understanding of nation-specific issues and how to effectively operate UK-wide should be fundamental. While some departments may actively consider this in their appointment process, the Review has found that this is not sufficiently understood nor strategically assured by the centre.

15 'Diversity Action Plan', available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/812694/20190627-CO\\_Diversity\\_Action\\_Plan\\_FINAL-6.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/812694/20190627-CO_Diversity_Action_Plan_FINAL-6.pdf)

16 A list of 'significant appointments', agreed by ministers and the Commissioner for Public Appointments, is published. These competitions must have a Senior Independent Panel Member (SIPM) on their Advisory Assessment Panels. A SIPM is an individual who is independent of the department and body concerned, and should not be politically active.

This problem is compounded by a lack of transparency: it is difficult to ascertain which public bodies require Union skills on their board. Indeed, the consideration of these issues in the public appointments process is not clear in all cases, which breeds a lack of confidence that the system works for the whole of the UK.

### Establishing new public bodies

Although Union sensitivity may arise when bodies are being created, the Review has found that the ad hoc nature of such interventions is inadequate. The establishment of UK Research and Innovation (UKRI) illustrates this well.

The Higher Education and Research Act 2017, which underpins UKRI, did not initially contain any provisions to ensure that members of the board had relevant nation-specific experience. Under political pressure, the UK Government amended the legislation to require ministers, in appointing the UKRI board, “to have regard to the desirability of the members including at least one person with relevant experience in relation to at least one of Scotland, Wales and Northern Ireland”.<sup>17</sup> In the UKRI case, the problem was resolved too late, and only after it had become politically charged. For other public bodies it may not be resolved at all. There is no mechanism for addressing Union sensitivity at an earlier stage. Although there is evidence of improvement, much like the issues discussed earlier in the report, the challenge is to make the process more resilient and ensure its efficacy is not reliant on chance.

It is crucial that these issues are addressed, particularly at this juncture, as the UK prepares to leave the European Union and considers domestic replacements for EU bodies. The functions of the 38 European agencies of which the UK is a member, may need to be

replicated by new UK-wide bodies. While the collective agreement process, already discussed, will help ensure this at the end of the process, it’s important this is embedded as a strategic factor as departments start to consider the creation of new bodies as it should be with all policy. The Review makes two specific recommendations to that end.

### **This report recommends that an audit of public bodies is undertaken.**

This should establish the extent to which an understanding of nation-specific issues is considered an important metric by which to assess candidates for public bodies with cross-border competence. The outcome of this investigation should be published in a public report which contains a list of public bodies that are strategically important to the Union. It should also determine which of these bodies require the consultation of the devolved administrations and other stakeholders in the appointments process, and which require their agreement. This should be updated at least annually, and in the process of creating new public bodies, there should be an awareness that their function might necessitate Union capability. This should be reflected in the underpinning legislation.

It is worth noting that the Review is not suggesting that every relevant public body should have members on its board who are approved by ministers from the devolved administrations. Nor is it recommending that their consultation is necessarily required. In many cases, the UKRI approach will be sufficient.

**The Secretary of State for Intergovernmental and Constitutional Affairs should oversee this aspect of the appointments process to ensure that public bodies with a UK-wide remit are representative of the UK as a whole.** The new Secretary of State should work with UK

<sup>17</sup> HC Deb 21 November 2016, Amendment 35 (now Sch 9 2(6) in the Bill agreed in the Commons, 21 November 2016).

Government department to ensure there are sufficient appointees with the relevant nation-specific expertise. To achieve this, relevant data concerning existing appointees should be captured, and a database of individuals who have the relevant depth of knowledge to be appointed in future should be generated. Additionally, checks should be put in place to ensure that the list of public bodies specified by the audit are equipped with the requisite expertise. The new Secretary of State should have oversight of this, working closely with the Secretaries of State for Scotland, Wales and Northern Ireland.

# Chapter 6

## Communications

The UK Government is the government of the whole United Kingdom. The challenge is whether this is how it appears to its citizens in all parts of the country. Arguably, in some parts of the UK, the UK Government has appeared to retreat from the public sphere since the advent of devolved government in the late 1990s.

The UK Government is in fact active in Scotland, Wales and Northern Ireland. It directly employs more than 57,000 civil servants in Scotland, Wales and Northern Ireland and is responsible for considerable investment in relation to reserved matters. It is also involved in joint funding projects with the devolved administrations, such as the City Deals funding initiatives. However, the extent to which the UK Government's role in these projects is visible and is widely understood by the general public has been questioned.

After 1998, it was important that the devolved administrations established themselves in each nation. Indeed, before devolution the UK Government would not have considered it necessary to the same extent as is now the case to publicise the extent of the continued presence of civil servants who work directly for the UK Government. UK Government departments providing services in reserved areas did not always market themselves overtly as arms of the UK Government.

There was also, in Whitehall, a sense of 'devolve and forget', which resulted in rowing back in areas where the UK retained an interest.

However, it is essential for both sound governance and the health of our democracy that citizens are able to easily understand which responsibilities fall to which levels of government serving them. This is particularly true in those parts of the UK which have two governments.

Although branding is a sensitive area, and overly nationalistic branding would be insensitive in some contexts, it is nevertheless important that the UK Government is visible in what it does and what it funds. It should not be embarrassed about promoting itself, and it should, as a matter of principle, be transparent about its activities.

As noted in the Civil Service Capability section of this report, there will be UK Government Hubs in Scotland, Wales and Northern Ireland. These new buildings constitute an opportunity for the UK Government to position itself back at the heart of public life in the capital cities. There will be increased public awareness of the UK Government's work in those cities and the UK Government must be sure its work there will stand up to scrutiny. The quality of the jobs, or the events being held there will be noticed locally.

Some UK Government departments compile, and have ready access to, data about what the department is doing in different parts of the UK. Where this data is available, it allows departments to test the effect of their policies in each part of the UK. When Government ministers visit any part of the UK they can be given data about what their department is doing there, what its effect is on the local

economy, how many people it employs and how much it spends.

However, this practice is not universal among departments which have responsibilities in Scotland, Wales or Northern Ireland. The data may not be readily available or compiled in such a way as to be useful on ministerial visits, either by the department's ministers or by ministers from other departments who might need it as background information for their own visits.

Even if a visiting minister has access to their department's data, they do not have ready access to data about other UK Government departments. The absence of specific data for Scotland, Wales and Northern Ireland also prevents the UK Government from receiving proper credit for the work of its departments.

The UK Government has aims and aspirations which apply to the whole country. For example, there is an aspiration to rebalance the economy beyond Greater London and spread the prosperity of south-eastern England. If data specific to other parts of the UK is not available, how can it test the effect of its policies in those areas?

Information and analysis of how being part of the United Kingdom impacts on each part of the UK is not readily available. Between February 2013 and August 2014, before the Scottish independence referendum, the UK Government published a series of papers with detailed research analysis on the benefits to Scotland of being part of the UK. The papers covered, in some detail, topics such as currency and monetary policy, financial services, security, energy, welfare and pensions.<sup>18</sup>

The analysis papers were carefully prepared. During a highly contested referendum campaign, they were subject to a high

degree of critical scrutiny from journalists and academics.

Since the referendum in September 2014, the papers have not been revised, updated or adapted for use beyond the particular circumstances of the 2014 referendum. Moreover, there is no equivalent analysis for Wales or Northern Ireland.

In spite of the 'write-round' collective agreement process, and a general norm to the effect that UKGG and NIO should be informed about policy announcements impacting on their areas of responsibility, it is often the case that UK Government departments make announcements without their effect throughout the UK being properly understood. The result is public statements which misfire in Scotland, Wales or Northern Ireland, or which fail to maximise their potential effect in all parts of the UK. In short, the policy and communications systems in Whitehall lack a holistic approach and can sometimes be poorly co-ordinated, particularly in relation to announcements.

UK Government communications are subject to central co-ordination via Number 10. There is an overarching communications strategy, and, in that context, Union issues are discussed in a group which meets regularly. The offices of the Secretaries of State for Scotland, Wales and Northern Ireland are each represented in this group, and the directors of communication for each office keep in touch with each other regularly.

There is, of course, a common strategy and those responsible for communications meet regularly to consider how best to make the case for the Union. What is required is a strengthening of those efforts and a strong oversight at senior Cabinet level to ensure momentum and keep the strategy at the centre of UK Government thinking.

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<sup>18</sup> The conclusions of the series of papers were published in "United Kingdom, united future: conclusions of the Scotland analysis programme" (June 2014, Cm.8869). All of the papers can be found at: [www.gov.uk/government/collections/scotland-analysis](http://www.gov.uk/government/collections/scotland-analysis)

A communications strategy aimed at promoting the cohesion of and solidarity within the UK must address public perceptions in all parts of the UK, not only in the parts with devolved legislatures. The various publics in the UK are not sealed off from each other, and share a common culture served by a common media industry (albeit with regional and national differences). When communications are prepared for one part of the UK, consideration must be given to their effect and how they sound in the other parts.

UK Government departments frequently organise visits for their ministers to Scotland, Wales and Northern Ireland as well as all parts of England. As well as listening to the views of communities and stakeholders on these visits, ministers also make regular policy announcements, many of which resonate in different ways in the various parts of the UK. In theory, UKGG or NIO should always be aware of, and supportive of, these visits and announcements. However, it is not clear if visits are co-ordinated and supported in such a way as to gain the maximum benefit from them. Similarly, there are occasions where the offices of the Secretaries of State for Scotland, Wales and Northern Ireland are not aware of forthcoming policy announcements from other departments and their potential effect in each part of the UK.

Further, ministerial visits do not always fulfil their potential effect. They may be undertaken only for one narrow policy purpose without any sense of an overarching strategy. At worst they may be undertaken out of a sense of duty but lacking in strategic purpose. As with public announcements, the issue is one of co-ordination and a common vision.

While some departments have stakeholder managers based in Scotland, Wales or Northern Ireland, this is not a universal practice. There are UK Government departments with policy interests in those nations but no stakeholder strategy involving

officials present there at all times. It is hard to see how they formulate policy without that feedback and without the means to properly assess the effect of their policies.

BEIS, for example, has a stakeholder manager for Scotland, who is the first line of contact for stakeholders and a line of communication for businesses and business organisations. It seems a large area for one person to cover, and, considering it seems to be an effective initiative, it also seems surprising that there are not stakeholder managers for all large departments in Scotland, Wales and Northern Ireland.

## Recommendations

**The UK Government's activities in Scotland, Wales and Northern Ireland should be clearly marked with UK Government branding.** The role of the UK Government should be properly acknowledged. This principle is essential for transparency and democratic accountability. It is particularly important that signage, promotional material and media communications in any project include specific recognition of UK Government funding.

The UK Government should acknowledge and respect the activities of devolved governments in their own areas of responsibility, including acknowledgement of successes. In return, the Government should expect that its work in Scotland, Wales and Northern Ireland is correctly attributed. All four governments should respect each other's communications with the public and, for example, respect embargoes placed on news announcements. It is not suggested in this report that governments should compete in terms of branding and publicity. There is no need for either government, in a nation with devolved government, to question the legitimacy of the way the other explains its activities to the public.

The creation of UK Government Hubs in Scotland, Wales and Northern Ireland, particularly those in the capital cities, are a major opportunity to improve the visibility of the UK Government and its officials. These buildings should also be venues for active events programmes, which would include trade events, HMT briefings and visits by foreign leaders and officials.

**All UK Government departments with policy responsibilities in Scotland, Wales or Northern Ireland should keep up-to-date and accurate data about their activities and spending in those countries.**

As noted above, UK Government departments are not able to test properly the effect of their policies unless they have access to data specific to all parts of the UK.

In addition, when UK Government ministers carry out their duties in Scotland, Wales or Northern Ireland, they should have information on the impacts of their own department in that nation. It would also be useful if ministers and their advisers also had access to data about other UK departments' activity and impact. Ideally, any visiting minister would have all the necessary data covering all the issues which are likely to arise during the visit in relation to the whole range of UK Government policies.

Ready access to such data would aid the cause of transparency about the work of the UK Government. It would also allow ministers and civil servants to ensure that work is properly credited.

UK Government departments should compile such data as a matter of course without a statutory requirement that they do so. Although the relevant legislation (the Statistics and Registration Service Act 2007) makes provision for the offices of the Secretaries of State for Scotland, Wales and Northern Ireland to produce official statistics, the Review understands that this has not been done.<sup>19</sup>

The kind of data to be compiled will vary from department to department. As part of their departmental plan, each department with policy responsibilities in Scotland, Wales or Northern Ireland should list the data they need to compile specific to those nations and, if that data does not exist, resources should be made available to compile it.

**The UK Government should revise, update and adapt for contemporary circumstances the Scotland analysis programme documents it published in 2014 prior to the Scottish independence referendum. There should be similar programmes for Wales and Northern Ireland.** All three analysis programmes should be updated regularly and developed into something that is more akin to a 'State of the Union' Report.

The analysis produced by the UK Government in advance of the Scottish independence referendum was a major and effective exercise in creating an authoritative body of work describing how the UK works today. Analysis of this kind should be available even where there is not an event such as a referendum in prospect.

An updated and expanded analysis programme would provide a ready source of empirical information and analysis to inform public debate and would assist both ministers and officials.

The same efforts should be applied to making a similar analysis available to the citizens in Wales and Northern Ireland. There would be some overlap between the publications (for example, the benefits of UK membership of international organisations, or the UK's network of diplomatic offices, applies equally in Scotland, Wales and Northern Ireland) but there would also be analysis specific to each nation (for example the fiscal analysis).

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<sup>19</sup> Evidence received from the Office for Statistics Regulation

To achieve their full benefits, the publications must be current and up-to-date. It is suggested that an annual update would be sufficient.

**UK Government departments should consult the Secretaries of State for Scotland, Wales, Northern Ireland, and Intergovernmental and Constitutional Affairs before making major announcements in respect of policies which apply in Scotland, Wales or Northern Ireland.**

Ideally the Secretaries of State for Scotland, Wales, Northern Ireland, and Intergovernmental and Constitutional Affairs should be aware of policy developments in reserved areas in all UK Government departments from an early stage. However, it is essential that policies in reserved areas are seen to be fit for purpose in all parts of the United Kingdom. To guard against policy announcements landing badly in Scotland, Wales and Northern Ireland, they should be tested in advance with those offices who can best assess their effect in all parts of the United Kingdom and ensure that the voices of Scotland, Wales and Northern Ireland are heard in policy development.

It is also important that opportunities are not missed to ensure that UK Government policy announcements have maximum impact in all parts of the UK. Departments should be aware that in some cases a policy which is relatively minor in UK terms could have a major impact in Scotland, Wales or Northern Ireland.

**All UK Government communications in Scotland, Wales and Northern Ireland should be subject to a strategy overseen by the Secretary of State for Intergovernmental and Constitutional Affairs with the assistance of the Secretaries of State for Scotland, Wales and Northern Ireland.** The strategy should be prepared by a communications group within Cabinet Office, which meets regularly. At least twice a year those meetings should be chaired by the Secretary of State for Intergovernmental and Constitutional Affairs.

It is essential that the UK Government develops a strategy for proactive communications aimed at achieving a clearer understanding of the work of the UK Government and the benefits of being part of the UK. Any such strategy must be backed by the authority of a senior member of the Cabinet, the Secretary of State for Intergovernmental and Constitutional Affairs, and supported by the expertise of the Secretaries of States for Scotland, Wales and Northern Ireland.

Note that this recommendation includes communications which are ostensibly aimed at an English audience but will ‘bleed’ into all parts of the United Kingdom.

This Review also notes that a communications strategy cannot be delivered properly without adequate resources. Despite the size of its overall communications spend, there may be a case for increased communications funding in Scotland, Wales or Northern Ireland. It is up to the relevant Secretary of State and their office to make the case for increased funding specific to the circumstances in Scotland, Wales and Northern Ireland.

Any strategy prepared by the communications group should be delivered across all platforms, including digital.

This report has already discussed the importance of policy officials in the new shared unit having a clear role in external engagement. To ensure the most tangible results from this role, it should be an expectation that engagement is noted in a shared record for use in support of the communications strategy and accessible by other departments. Ideally, other UK Government departments would also feed into this database.

**The Secretary of State for Intergovernmental and Constitutional Affairs should have oversight of all ministerial visits to Scotland, Wales and Northern Ireland, and all ministerial visits should be subject to an overall UK communications strategy.**

All visits to Scotland, Wales and Northern Ireland by UK Government ministers should be directly related to the overall UK Government communications strategy. The visits may be undertaken for specific policy reasons but should be subject to the overarching purpose of ensuring that the UK is governed for the benefit of all its citizens wherever they live, and is seen to be so.

The Secretary of State for Intergovernmental and Constitutional Affairs should have the capacity and resources to ensure that the maximum benefit is obtained from ministerial visits. Cabinet Office will also have the expertise to work with the devolved administrations when liaison and co-operation is necessary.

Ministerial visits should not be simply reactive to events. Public visits by UK Government ministers to Scotland, Wales and Northern Ireland should be planned with reference to, and be subject to, a proactive communications strategy.

**Every UK Government department which is active in Scotland, Wales and Northern Ireland should have a network of stakeholder managers in those nations.**

There are already stakeholder managers working effectively in different parts of the UK (see, for example, BEIS and HMT in Scotland). However, there is scope for expanding existing activities and some departments have very little stakeholder engagement in Scotland, Wales and Northern Ireland. There should be further consideration of when it is helpful for these roles to be specific to a nation or to an economic region.

Stakeholder managers can ensure that the voice of Scotland, Wales and Northern Ireland is heard properly in policy making. They can also be a point of contact for stakeholders and a visible presence for the UK Government in all parts of the UK. In the absence of such managers, stakeholders are likely to turn to the devolved governments to raise issues, unhelpfully blurring the lines of responsibility and accountability.

# Review of UK Government Union Capability:

## Terms of reference

### Context

The successful devolution of powers to legislatures and Ministers in Scotland, Wales and Northern Ireland has taken place gradually over the last twenty years via a succession of Acts of Parliament, including most recently the Scotland Act 2016 and the Wales Act 2017. Over that time the UK Government has adapted to meet this changing constitutional landscape while maintaining its primary responsibility of being a Government serving the whole United Kingdom. However, as the United Kingdom leaves the European Union, it is timely for the UK Government to consider how through its institutional arrangements it meets the challenge of strengthening and sustaining the Union in the future.

### Objective

Within this context, the UK Government has asked Lord Dunlop to undertake a short, focused independent review to ensure that, within the context of the existing devolution settlements, we are working in the most effective way possible to realise fully all the benefits of being a United Kingdom. The review is forward-looking, and will not consider past decisions. The review will not consider the powers or responsibilities of the devolved administrations and legislatures. The review will consider and make recommendations on the following question:

To consider whether UK Government structures are configured in such a way as to strengthen the working of the Union, and to recommend changes where appropriate.

In examining the above terms of reference, the reviewer should take into account the following:

- The need to respect and support the current devolution settlements, including the Scotland, Wales and Northern Ireland Acts, as well as the Belfast agreement and its successors.
- The importance of Scotland, Wales and Northern Ireland retaining their own Secretaries of State who are members of Cabinet and Territorial Offices that represent the interests of the devolved nations in Westminster; and
- That the question of the Barnett Formula and the Scottish and Welsh Governments' fiscal frameworks are out of scope for this review.

### Process

The review will be independent of government and supported by a small team of civil servants. It will report to the Prime Minister.

The review will be expected to take evidence but there will be no formal written consultation.

### Timing

The review will begin in July and conclude in the Autumn through a report to the Prime Minister.





