Revised transcript of evidence taken before

The Select Committee on the Constitution

Inquiry on

INTER-GOVERNMENTAL RELATIONS IN THE UK

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WEDNESDAY 21 JANUARY 2015

10.30 am

Witnesses: David TC Davies MP and David Melding AM

Rt Hon Carwyn Jones AM and Dr Hugh Rawlings
Members present

Lord Lang of Monkton (Chairman)
Lord Brennan
Lord Crickhowell
Lord Cullen of Whitekirk
Baroness Dean of Thornton-le-Fylde
Baroness Falkner of Margravine
Lord Lexden
Lord Powell of Bayswater
Baroness Taylor of Bolton

Examination of Witnesses

David Davies MP, Chairman of the House of Commons Welsh Affairs Committee, and
David Melding AM, Chairman of Welsh Assembly Constitutional and Legislative Affairs Committee and of the Committee for the Scrutiny of the First Minister

Q32 The Chairman: I would like to welcome our two witnesses today from Wales. We have a Member of Parliament, David Davies, and a Member of the Welsh Assembly, David Melding, both with substantial experience in the breadth of government administration and constitutional matters. We are most grateful to you for coming and giving of your time. We have 45 minutes. I would like to go straight into the questions that we are keen to explore with you. The first one I would like to ask you, by way of a broad, general question, is how effective you think the current system of intergovernmental relations is. Do you see certain obvious areas where there is a need for improvement? Do you have any thoughts on what those improvements might be? We shall get into more detail later on, but that would be an opening opportunity for you. David Davies, would you like to start?

David Davies MP: Thank you, Lord Chairman. I would say overall there is room for improvement and I am not quite certain how that would happen. Things work all right at an official level, but sometimes not so well at the personal level, and sometimes personal relationships are important. For example, there are some Ministers who, as the chair of the Welsh Affairs Select Committee, we can go and talk to about issues that might be partially devolved. There are others who will have absolutely nothing to do with us at all and, in fact, will routinely refuse to appear before Select Committees, which is, as you know, something that potentially we could cause a great deal of fuss over but choose not to.

Having said that, because it is important to be fair here, the overall situation between Wales and London is far better, I understand, than between London and Scotland, where I believe
the Scottish Affairs Select Committee are not even able to visit the Scottish Parliament. We find it perfectly easy enough to go and visit the Welsh Assembly and do so on a regular basis. I am not sure I am giving a very clear answer on is it good or bad. It is a mixture. We muddle along. There may be ways of improving things but overall it is not too bad.

**The Chairman:** Thank you. You have certainly opened up a topic because other witnesses have told us that the machinery is not terribly good but personal relations are compensation for that. It is interesting what you have said. We will no doubt return to it. Mr Melding?

**David Melding AM:** I think it is a very fair description that you have just shared. Often it is surprisingly good, I think for cultural reasons, because people get on. It is in the interests of different Governments to solve problems. I would not say that there is a great crisis, but in terms of the machinery there is evidence that as we move to a more formal situation in Britain of the constitution using more federal mechanisms, there are potential difficulties in the future if we do not strengthen some of those mechanisms. Certainly, the success seems to be on a bilateral level rather than the multi-governmental level. It is the variability, I think, which is perhaps disturbing to those who look at the process and how the legislatures have some sense of oversight and hold the various Executives accountable. I think there are some weaknesses in the process there, particularly.

Q33 **Lord Crickhowell:** It seems to me that, in a sense, you are discussing two separate issues there. There is the relationship with the Select Committee, which you chair, Mr Davies, and the difficulties that you have had because certain people did not want that Committee to interfere, and Mr Melding, I think, was discussing more the relationships organisationally between the two. In one evidence session, I think it was acknowledged that the relationship between the Secretary of State for Wales and the Welsh Government had greatly improved with the appointment of the new Ministers in the Welsh Office and was now working pretty well. There is a distinction. I think you are satisfied, on the whole, with the way the government relationships are working, but I think you were only addressing, Mr Davies, the relationship with your Committee.

**David Davies MP:** Thank you, Lord Crickhowell. It is nice to see you again. I think there is a bit of a malaise there at times. It is not just my Committee. There are some Ministers in Parliament who seem unable to meet their opposite numbers in the Welsh Assembly, and I am not trying to suggest where the fault lies for that. There is supposed to be a Minister in every department who is responsible for devolution, but officials tell me that they are not certain that a great deal of attention is always paid to the new constitutional landscape that we have. I know this from the work that we have done on the Select Committee—and I had better give
an example to back this up. We discovered during a recent inquiry that the Minister responsible for Visit Wales I do not think has ever spoken or hardly ever speaks to the Minister responsible for VisitBritain. Even the officials do not tend to meet each other. It is a similar problem with UKTI, which is of course responsible for getting investment into the UK, and the equivalent body within the National Assembly. This is not a Committee problem; this is a problem that rests somewhere at ministerial and senior official level.

Q34 Lord Lexden: Could I ask you both to comment on the Silk commission’s proposal that a Welsh intergovernmental committee be established to, “Oversee the operation of the Welsh devolution settlement”?

David Melding AM: Shall I begin? I think there is a whole argument to be had about how formal you want the mechanisms. In a functional sense, I think the evidence is quite clear that it is the bilateral links that work best, with some exceptions: the JMC (Europe) is a very effective body and I think shows you what can be done when all the Administrations want to achieve a common goal or, sometimes, to deal with slight differences of emphasis in terms of how European policy impinges on devolved issues.

At the minute, we have had the situation in Wales where three pieces of legislation have been referred to the Supreme Court. Two have received judgments, and they were pretty crushing judgments, against the UK Government. I am not sure that is a terribly elegant way of dealing with disputes and I am sure the Supreme Court will get very irritated at some point if that is used, though I think Lord Crickhowell was very apposite earlier in suggesting that relations are now better between the Wales Office and the Welsh Government.

The choice is how formal you want it, and if it is formal then you are probably going to get judicial review occasionally when there are disputes. Some people feel that that is a reasonable thing to have in the process. Most fully federal systems would have that. It is clearer and it allows, perhaps, both David’s Committee and the National Assembly for Wales to hold our Executives more accountable. They would report perhaps more frequently than they do at the moment on the JMC about those procedures. I can see advantages there. I do not think they are so overwhelming that you would say you have to go down a very formal route. I think you can achieve these things with softer mechanisms, but they have to be effective and there is just too much variability at the moment. That is the big thing I would point out to you.

I think it is very interesting the Foreign Office really gets it, which is why JMC (Europe) works, presumably because the culture of dealing with different Governments and people of different views is somewhat easier there than in the old unitary, strongly centralised
departments. We want to reduce that element of random variability as much as possible, I would say.

**Q35 Lord Powell of Bayswater:** As a former member of the Foreign Office many, many years ago, I am glad to hear that it occasionally gets something right. You are the first person I have heard say that for a long time. Can we just come on to the parliamentary scrutiny of intergovernmental relations? How much of it do you do, both in the Welsh Affairs Committee and in the Welsh National Assembly? How do you do it? How effective is it? I do not know which of you would like to speak first.

**David Davies MP:** Perhaps I had better go first on that, as it is in the standing orders of the Welsh Affairs Select Committee that that is one of our roles. I think it is fair to say that Committee Members see themselves as having a much broader role than that. In reality, while we will try to scrutinise how well the relationships are working, it is something that often tends to come out in the course of other inquiries that we are doing. I mentioned two just now with Visit Wales and UKTI business investment. I think it would be quite difficult to frame an inquiry based solely on that because of, frankly, the difficulty of getting some Ministers from the Welsh Assembly to come and give evidence to us and to recognise that we have a role in scrutiny of Welsh Government.

**Lord Powell of Bayswater:** Well, the scrutiny in this case would be of the relations between the two Governments, would it not?

**David Davies MP:** That is true, but I am just thinking through how an inquiry would work. In order to follow that through, we would have to talk to Ministers from the UK Government, which is fine, but also Ministers from the Welsh Assembly Government to ask them about the interactions that they are having, and they may not be willing to turn up. Some of them will not turn up at all.

**Lord Powell of Bayswater:** If there is no parliamentary scrutiny, or no effective parliamentary scrutiny, is Parliament not falling down on the job?

**David Davies MP:** I worry about that. We have Welsh Grand Committees from time to time where we can raise pretty well any subject that affects Wales, but obviously within Parliament itself I am absolutely unable to raise issues about the health service or education or anything that is devolved. I feel that that sometimes lets down my constituents, but any attempt to do that would be ruled out of order unless it is rather imaginatively done, which it is.

**David Melding AM:** I think it is a perfectly fair point: should we not just improve our own game? It is not mission impossible even if the system is fairly murky. It is easier at the JMC level, I think, and our Ministers make written statements, usually, after each meeting. They
are not very frequent, so this is not exactly a huge burden. They could trigger evidence sessions in a relevant Committee or, indeed, full debate in plenary in the Assembly, so that is certainly possible. The problem is that JMC tends to deal with really big, capital letter stuff like the Barnett formula and these sorts of issues and they are well rehearsed anyway, frankly. Where further scrutiny would be useful and sometimes is lacking—as I say, we do not have this guarantee that the significant matters are necessarily followed up—is on the bilateral stuff, which is quite close to being in private, really, until a Minister reveals what has happened or is being quizzed very specifically. Some things can go through the system without people quite realising how much has been discussed between the Administrations and that, I think, is where the problem is. There should be some indication. We need to ensure that our mechanisms are such that we pick up the signals as well. We should not be too passive. Big stuff tends to be fairly noteworthy anyway. I would not want to give you the impression that we are completely feeble in all this. It can be improved. There is a level of scrutiny but I think it should be fuller.

**Lord Powell of Bayswater:** Surely it should be wider than just the JMC. We are conducting scrutiny of intergovernmental relations. Does the Welsh Assembly not try to look at the whole picture, including the bilateral relations between departments and so on, to make sure that it is being conducted properly?

**David Melding AM:** I do not think it does it at that systematic level. If there is an issue that comes up that is then a problem, like CAP reform, that negotiation was quite a different outcome in terms of what we have ended up with in Wales and the details there. In general, it would be difficult for, say, members of the public or people who want to bring issues to our attention—which is part of what our legislature is about as a forum for national debate—to follow the process. Certainly, Members of the Assembly, if they want to track some of these things, have ways of doing that, but I think it is harder than in the routine scrutiny we apply to the departments of the Welsh Government, for instance.

**The Chairman:** I think Mr Davies wanted to come back in.

**David Davies MP:** Yes. I am instinctively against setting up extra Committees or bodies. I suppose that is probably a political instinct that I have. None the less, there may be an argument for something that can, in a more formal way, allow Members of Parliament and Members of the Welsh Assembly to look into roles and to raise questions. There may be Assembly Members who want to raise questions on non-devolved issues, just as there are bound to be MPs who want to ask about the health service and so on, so there might be an
argument for some kind of body that could do that. I am certainly not going to try to think up exactly how that should be done here and now.

**Lord Powell of Bayswater:** If you do not scrutinise the system of intergovernmental relations, the assumption will be that you are happy with it.

**David Melding AM:** There is no real formal system to scrutinise, is there? The JMC is there, but bilaterally we could get a very dusty answer from our Ministers saying, “These are private discussions at the moment and when we have an announcement to make, we will make that announcement”. If the legislature is trying to mould some sort of policy options earlier in the process, it would find that difficult. A lot of this is out of sight, and I am not saying that that makes it impossible to track if you are inquisitive and apply powers very skilfully, but it should not be that difficult. We value more transparent mechanisms, do we not? That is part of accountable, responsible and effective scrutiny in government.

**The Chairman:** That leads us into a question Lord Lexden wanted to ask.

**Q36 Lord Lexden:** Yes. My question follows naturally from the last. Could you summarise for us the essential steps that you think need to be taken, both in the House of Commons and in the Welsh Assembly, to make scrutiny more effective and more transparent than it is at the moment?

**David Davies MP:** Again, I would be reluctant to suggest putting in place some kind of new body, something like a Council of Europe but for the United Kingdom, that would allow various people to get together and scrutinise and conduct their own inquiries. There would be an immense cost and a lot of time involved in doing that. I think the current system would work well if people on all sides recognised the responsibility to co-operate with each other at government level. I will try not to name names and shame anyone in particular with that comment, but there are some who are much better than others. I might as well be kind and say that the former Labour—and I am a Conservative MP—Agriculture Minister in the Welsh Assembly was very good at appearing before Select Committees in Parliament and talking about agricultural matters, so there was a lot of good stuff going on there.

I think I would probably be inclined to let the system muddle along as it is rather than put in place something else, because even if you put something else in, if people are not willing to co-operate it is still not going to work very well and we have just spent a whole load of money and put a big time commitment on to people. The Welsh Grand Committee has a reasonably useful role in raising Welsh matters and perhaps there is room for a Welsh debate once a year in Parliament. It used to happen and it now seems to have gone off to the Backbench Business Committee to decide what we are going to have. It is not a huge priority for them.
**David Melding AM:** First of all, it seems to me, looking at the British constitution as a whole, that the House of Lords would be well placed to take on responsibilities for, if I can say grandly, the health of the union. I certainly think that if a constitution develops so that your House reflects something of a territorial dimension in its membership—I do not mean a simple system like the Senate has or complete reform so that it suddenly becomes similar to, say, the German system—there is flexibility in the House of Lords to have clear Welsh, Scottish, English and Northern Irish interests expressed. I do not see why we could not have mechanisms where the Government make something like a State of the Union report or address and then that is debated fully. Speaking as a passionate unionist, I want to see the United Kingdom flourish as a multinational entity. Clearly, devolution is getting much more focused. It is not a system that is different from federalism; it is probably one of the more volatile variations. I just think we need to recognise where our constitution is going and we need some mechanisms, what would loosely be called federal mechanisms in other places. It seems to me the upper Chamber of Parliament would be in a very good position to discuss some of these issues, to look at the strategic picture and to do it in a fairly dispassionate way. The problem with the JMC is it does not meet very often. The Domestic Committee hardly ever meets. When it meets at the moment, often for an hour or two, it has a lot of grandstanding politics in it. We know what the First Minister is going to be demanding going there, and it does not seem to be very much about, really, the integrity and health of the British constitution and our parts in it, which the public, presumably, or most of them—overwhelming majorities in Wales, Northern Ireland, Scotland and—

**The Chairman:** We will come on to the JMC in a later question, if we may.

**David Melding AM:** They would want to see, anyway, that these things work effectively. Under that, I think then it is for the legislatures to say, “The Welsh Government should, perhaps once a year, give a clear expression of what it is trying to do in its negotiations. What are the big strategic issues? We said they should do this in terms of Europe”. I think then that would allow the Welsh Assembly, perhaps, through its various Committees to effectively scrutinise. I am not one for revolution, but I think we need to improve some of these mechanisms that have developed since 1999. They need enhancement, some of them quite significantly.

**Q37 Lord Crickhowell:** Mr Melding has begun to take us into the world that we are now in. We have been talking about Wales and the Welsh Assembly, but as a result of events in Scotland and their fallout we are moving to, if not to a federal system, a very substantial change in relationships, which is a subject for considerable debate. One of the suggestions is
that instead of having essentially separate bodies, we should have one government organisation covering all the devolved bodies. It is interesting that as long ago as 2010, your Committee, Mr Davies, addressed this issue and said that you recognise that there are arguments for a single department of the nations and regions but went on, quite reasonably, to say that Wales would still need a strong voice in Whitehall. Indeed, the government guidance on the role of the Secretary of State says that the Secretary of State for Wales acts to ensure that the interests of Wales are fully taken into account by the UK Government in making decisions that will have effect in Wales and to represent the UK Government in Wales. I think two issues arise here. One is: if we were to move to a committee for the regions, how easy would it be for a Welsh component, a Welsh Minister, in such a body to fulfil those duties? Following on from it is the question that you have been given notice of: would it make it easier or harder for Parliament to scrutinise intergovernmental relations? I would like you to take the two matters, the actual idea of a body covering the whole lot, all the devolved bodies, and how you see that, and then the parliamentary scrutiny of such a body.

David Davies MP: Lord Crickhowell, are you suggesting removing the Welsh, Scottish and Northern Irish Offices and rolling them all into one kind of—

Lord Crickhowell: It has been suggested and is being suggested in some of the evidence given to us.

David Davies MP: I would strongly oppose that suggestion. To throw it back at you, of course, you were an esteemed and much loved Secretary of State for many years and I know during that time you fought very hard for various projects within Wales. No matter who is in Parliament, I would very much want somebody around the Cabinet table to be fighting for Welsh interests, and somebody else for Scottish and Northern Irish ones, of course, and perhaps even English in time to come. I would be very concerned that if we had, effectively, one Cabinet Minister for the regions, there would bound to be conflicts of interest arising because what is wanted in Wales, Scotland and Northern Ireland at different times is going to be quite different and sometimes they may be asked to prioritise. I would certainly be very opposed to that idea. I think the extra cost of that Cabinet Minister’s salary is worth its weight in gold to the people of Wales, so we would certainly want your successors to continue in that role.

Lord Crickhowell: And the supervision of such a body?

David Davies MP: One body overseeing the whole thing? It is one of these ideas that is easy to argue in theory but I would wonder who else would be a part of it. The Cabinet Ministers, yes; the First Minister; some of the other Ministers in the Welsh Assembly; the Chairman of
the Welsh Affairs Select Committee, I would not mind. There would probably be quite a lot of people all wanting to get involved in it, and my worry is that the practicalities might become quite difficult.

**David Melding AM:** I am not sure what happens to the territorial departments is a primary question. Your equivalent today is Carwyn Jones, the Secretary of State for Wales. His office has no comparison to the office that you held with such distinction. That is not to demean the current Secretary of State; it is just that the role is very different. It seems to me if you had one department for the union or whatever, I could see that working, and I could see, perhaps—to follow on from my earlier remarks about the role that the House of Lords would have—that the Secretary of State for the union would be a Member of the House of Lords. I could see that working.

I suspect if that model were to eventually emerge, you would then have Ministers of State for each of the nations. I think that is how it would work, which would be quite similar, functionally, to what happens now. I would focus on what you really want those people to do—oiling the bilateral arrangements, ensuring that the multilateral arrangements are working well, just having that sort of oversight. In all this devolution, speaking I think for most people, we do not want to lose sight of the effectiveness of the British state. The way the British state works has a big impact on all our electorates. I think it is that big picture we have lost sight of a bit. “What is Britain for?” does not seem to be asked very often now. I think that is where we need to get to, and I am very optimistic that if we do reform with confidence we will find that we have a very British version of a quasi-federalism, I suppose, which would be very functional. That is where we need to get to.

**Lord Crickhowell:** One final question: if our Prime Minister was to take the bold step of moving in this direction, would there not be a strong political reaction in Wales, and indeed elsewhere in the United Kingdom, of saying, “There is no longer a proper Secretary of State. Clearly, the Government is downgrading the role”, and so on? There would be a political difficulty as well, would there not?

**David Davies MP:** I think there would, yes, a very strong one.

**David Melding AM:** The answer to that is that we need cross-party consensus on how to strengthen the British constitution. If we believe in Britain, then we need to get our act together and put these things first.

**Q38 Lord Cullen of Whitekirk:** I appreciate all that you have said about the voice for Wales and Welsh interests. I think the proposition that was put to us was very much along the lines that this grand Secretary of State for the regions would be a facilitator and would also
help to deal with what is perceived at the moment to be a patchy understanding of a devolution settlement as between different departments. It is moving into a different type of role from the current role. I appreciate all you say about losing the identity of a Secretary of State for each of the regions, but there is something to be said for and some argument in favour of a greater overall understanding within the UK Parliament and the UK Government of how the regions and the devolution settlements ought to work.

**David Davies MP:** If that were the case, then this hypothetical new Cabinet Minister would also have to be a Secretary of State for England. We, as you say, have a very disjointed constitutional settlement with different powers all over the place, and now it looks as though something is going to be given to England—we know not yet what, but something before the election, so we are all reliably informed. That person is going to have to be looking out for England as well. I just worry that perhaps from a parochial point of view we will in Wales have lost out on the one person around the Cabinet table who is fighting for our interests and fighting to keep Wales in the union, which for me is vitally important.

**Lord Cullen of Whitekirk:** It is an important point you make.

**Q39 Baroness Taylor of Bolton:** I am tempted to go down the last line of questioning and say might it not be an acknowledgement that devolution has taken place, but that is a separate issue. Can I start by thanking you, Mr Melding, for acknowledging the potential role for the House of Lords and the people here when you talked about a debate in terms of the state of the union? Mr Davies, earlier you were talking about your frustration at not being able to raise certain issues on the Floor of the House because, quite rightly I think, a devolution settlement said that if issues are devolved then it is in the Assembly that discussions of those should take place. There have been suggestions that Parliament should have annual debates—not just the House of Lords but the House of Commons—about the state of the union, the state of Scotland and perhaps the state of Wales. That is quite difficult to do without breaching that principle that you do not talk about things that are devolved, and people like yourself, Mr Davies, would have to be quite restrained, if possible, in what you were talking about. We are talking about intergovernmental relations and surely there is scope for discussion, be it annually or be it in any other context, of how that relationship is working. That is what we are trying to assess and yet you are implying that Parliament at the moment, or at least the Commons at the moment, does not have any mechanism for debating properly that full relationship and how it is working.

**David Davies MP:** I think what you are saying is correct in that it would be positive if that were discussed once a year. A debate around the mechanisms and around the relationships
would be a good thing. I suppose Parliament has the mechanism to discuss it if it wants to. Parliament can discuss whatever it wants. Previously, we used to have a Wales day in Parliament. I am not sure if it was formally there or whether it just happened around about 1 March. Anyway, it used to happen, certainly when I first started, and now it has gone because of the new reforms. Everyone has to appear before the Backbench Business Committee and make their case. I think there is an argument for perhaps having one session per year for Wales, Scotland and Northern Ireland, perhaps even for England as well, or one session just to discuss relationships overall, or all four regions together. I am absolutely open to that, and I am sure imaginative Members of Parliament will no doubt find ways to bring into that debate issues that might be concerning them that might be within the purview of the Welsh Assembly.

**Baroness Taylor of Bolton:** That is part of the problem, is it not? If you are going to get talking about the details or the minutiae or constituency cases that are really for the Assembly Member, then there is going to be a reaction and people will say that is not what such a debate is about. It would require restraint—

**David Davies MP:** Yes. That would be up to the Speaker because, in reality, I do not think people would do that. I do not think people would be that au fait with the rules of the House. For me it would be remarkable if anyone wrote to me to say, “You should not have mentioned that. It was slightly out of order in a debate”.

**Baroness Taylor of Bolton:** No, I was meaning the House itself or how the Government or the Executive would react if you used such a debate for constituency casework, which is actually an Assembly responsibility.

**David Davies MP:** May I digress slightly? You make a good point, but something else that frustrates me is that it is hard even to get information via the House of Commons Library about things in Wales that would be very easy to get in England. For example, although the Library has come out with a report on health statistics recently, I have put questions to the Library about Welsh matters and they have come back saying that it has been hard for them to get the information. Unfortunately, I cannot think of an example, but I know it has happened. I think it would certainly be helpful to MPs who are dealing with constituency matters if they had as much ability to get from the House of Commons Library information about Welsh matters as they have about English matters.

**David Melding AM:** Could I just make a short remark on that?

**The Chairman:** Yes, please.
\textit{David Melding AM:} I do not think there would be a lack of material for either House or both Houses of Parliament to discuss in terms of the health of the union. You would not want to drill into the application and development of policy or specific cases of constituents raising issues of access to public services, because they are scrutinised by the Scottish Parliament and the National Assembly, but through talking about the distribution of resources in terms of the taxation needs formula, perhaps to replace Barnett eventually, these things need to be discussed very explicitly. Defence policy, in terms of the distribution of armed forces around the UK, research and development, where that is conducted—all these things are massive. A typical complaint in Wales would be, “We send a lot of soldiers, a lot of recruits into the Army, but we do not have much of the higher spending and higher-value stuff in terms of the Ministry of Defence”. I am not saying that is fair, necessarily. It is an area that probably needs some scrutiny.

There are lots of subjects that are intensely of interest at a Welsh, Scottish, English and Northern Irish level but are at that strategic all-union level. There would be a lot of material to debate. I think at Westminster you need to take control again of where the UK constitution is going. We have just had the people of Scotland vote, in effect, on whether Britain continues by referendum on secession. I absolutely agree that we had to have that referendum, but most other states around the world were looking at us thinking, “This is Britain and they are having a referendum on secession. It does not get bigger than that”. We need a vision for a reformed, decentralised UK constitution for a multinational union. We have always been that, but it has now become political as well as cultural.

\textbf{The Chairman:} I am going to interrupt you there, Mr Melding.

\textit{David Melding AM:} Anyway, I am talking too much.

\textbf{The Chairman:} Not because I would not like to go down that avenue; I would love to if we had all day. Sadly, we only have about eight minutes left and three questions to address. I would ask colleagues and both of you to try to focus your answers as concisely as you can. I would be grateful.

\textbf{Q40 Lord Brennan:} Gentlemen, the word “relations” is neutral constitutionally. For the public, that phrase would mean co-operation between Governments. No matter how formally or informally we devise these arrangements, there has to be some kind of results-based analysis. Is it working? The Silk commission proposed an audit—a national audit, a Welsh audit, and you can do it across the four areas—so that the public, both devolved and overall, would better understand what is going on in their country. These would be reported to Parliament and, through Parliament and through the media, to the public. What do you think?
**David Davies MP:** The possibility of having joint Select Committees, effectively, is certainly a positive idea. We have conducted a joint Select Committee meeting before, and I have explored the possibility of doing that in the future, obviously if I am back here and still able to do the job. There is a willingness between Select Committee Chairs in Parliament and the Assembly to work together on certain issues, but I think what you are suggesting is a lot more formalised and has a permanency.

**Lord Brennan:** Joint Committees, yes, but considering audit reports and material as to what is going on.

**David Davies MP:** I think it is a good idea and I see no reason why we could not do that.

**David Melding AM:** It would have the advantage of involving the public as well. They could read these reports and civic society could look and comment. Some sort of process would be helpful of getting information that does not necessarily come from one of the Governments. At the minute, nearly all the information comes from one of the Governments, and it is not in their interest to present things that shed light on some things that have not perhaps been satisfactorily dealt with. I can see an advantage of it. How you achieve it, whether it needs to be as formal as the Audit Commission doing it, I do not know.

**Q41 Baroness Dean of Thornton-le-Fylde:** Good morning. Mine is a straightforward question but I would first like to say thank you very much, both of you, for the reference to the union. I think it is something that we need reminding of, which you saw from the reaction of the Committee. We have been talking about “bilateral” as between, if you like, the UK Parliament and the Welsh. What about the relationship between your two Committees? Is there scope for greater co-operation between the two Committees that you are here representing as Chairmen this morning in scrutinising the intergovernmental effectiveness and, perhaps, other areas of common interest? Related to that, is there any exchange at all of expertise, perhaps of staff who support each of your individual Committees? Is there any exchange of experience or time among those people to bring that dimension into the individual workings of your Committees?

**David Melding AM:** I think there is potential. Standing orders sometimes are not flexible enough for a very formal approach, but we can work together. I think there are, at official level, quite a lot of exchanges; the clerks of my Committee will quite often discuss issues with David’s secretariat. I think we need to be imaginative and do more of this joint working ourselves. We are asking others to improve their systems, so we need to do it as well. I should say that on European issues my Committee is part of the UK network of oversight or scrutiny of European directives, so there is a network that meets twice a year. It is Lord Boswell in
your House and the equivalent Committees around. That is very effective, but the Chairs meet, so it is not full Committees. Perhaps networks like that would be quite useful as well.

**David Davies MP:** Absolutely, it is correct that our staff talk to each other a lot. I do not think they formally are placed in each other’s working environments, but there would be no issues around that.

**David Melding AM:** It is possible to do.

**David Davies MP:** It would be possible. We go back quite a long way, having both been elected to the Welsh Assembly in 1999. There is no “bromance” here, but we could certainly work together on Select Committees. I think I have appeared before your Select Committee.

**David Melding AM:** You have.

**David Davies MP:** We know each other well, so that would not be an issue. I think that there could be an issue with different personalities. A lot of this comes down to working relationships rather than any mechanism, because there is nothing at all to stop us from doing this. Perhaps we should do it. I might even take this as a slight suggestion or even a telling off that we have not done more of it officially and look to do it in the future.

**David Melding AM:** Or you might suggest we should do more of it.

**The Chairman:** Thank you very much. On that note we will move on.

**Q42 Baroness Falkner of Margravine:** Mr Davies, with your Select Committee anyway, standing orders allow for it to take evidence from any of the Welsh Committees if you so choose, but I seem to think from what you said in response to other questions that on the whole you would tend to be opposed to setting up a new institution of some form. My question is specifically to do with the scrutiny of JMC, of which we have heard several witnesses say that it is less effective than it might be. You seem to be sympathetic to doing more together in terms of joint liaison, but what would be your views of having a specific scrutiny-related devolution committee? The McKay commission recommended that to improve scrutiny of the other intergovernmental relations.

**David Davies MP:** I am not wholly opposed to it. Usually, we are meant to have a clear view of something being good or bad and argue the case in politics. All of us are guilty of that. I do not think there is a clear argument for or against it. I come down slightly on the side of being against it, because there are obvious pros in putting in place a more formal mechanism for scrutiny. The cons, as I see it, are arguments about who goes on it, how often it meets, the cost, and the rest of it. I am slightly going to come down against it, but if it were set up I have no doubt that I would be first in the queue to try to get involved and take part in it. It could have some advantages, I will say that.
Baroness Falkner of Margravine: Particularly in light of what you said about the difficulty of obtaining information when you need information. Mr Melding?

David Melding AM: I think it could be very productive. It would probably relate to the other reforms you want to see and what the overall purpose is. If you move to one territorial office or an office for the union, I would prefer that to regions because it is the constitution as a whole we need to look at here. If that system came in, then presumably the Select Committees would change anyway and you would more or less have to create a Committee that gave oversight or scrutiny to that new department. I think it would be very useful. Things are so fragmented at the moment and that is the problem. We do not see these interconnections so easily because there is not a mechanism to allow it at the moment, or an effective one.

Baroness Falkner of Margravine: Potentially, the nature of the asymmetry is what creates the problems. Just one final quick question: in the absence of a department for the devolved Administrations, do you only see that kind of devolution committee as being the scrutiny function of that department or do you imagine in the absence of that overarching department that you could still improve scrutiny by having a parliamentary devolution committee?

David Davies MP: I think you could. The pros are, even without an overarching Cabinet Minister, a mechanism like that could definitely work. I still want to draw attention to the possible disadvantages over who is there, how often it meets, what it actually does, what it costs, and all the rest of it, but I do not see that you have to have an overarching Cabinet Minister in order to make something work. I am sure there are parallel organisations within the UK and Europe already.

The Chairman: Thank you very much. I think we will draw things to a conclusion there. Thank you both very much indeed. At one level you have been a marvellous warm-up act because we are about to interview the First Minister in a few minutes. More seriously, you have given us a lot of food for thought. You have offered us a slightly different perspective on some of the issues on which we have already had quite a lot of advice, and that is extremely helpful. I am most grateful to you both for coming. Thank you very much.

David Melding AM: You are most welcome.

David Davies MP: Thank you, sir.

Examination of Witnesses

Rt Hon Carwyn Jones AM, First Minister of Wales, and Dr Hugh Rawlings, Director, Constitutional Affairs (via video conference)
Q43 The Chairman: Good morning, First Minister. Can you hear us?

Carwyn Jones: Good morning. I can hear you, yes, fine.

The Chairman: You may be an old hand at this process with cameras, but it is a novel experience for us in this Committee. Can I say how grateful we are to you for being available to talk to us? We appreciate how busy you are and we do very much appreciate it. We have just had a meeting with David Melding AM and with David Davies MP, which has been very helpful, and we look forward to asking you various questions. Can I start straight away, because I know time is always against us on these occasions?

Carwyn Jones: Yes.

The Chairman: One of the things that emerged from the discussion with the AM and the MP was that relations between the Assembly Members and the House of Commons Members are not terribly good at a personal level. It is really against that background that I would like to ask you what you see as the purpose of intergovernmental relations in the United Kingdom and how you feel that that situation can be addressed.

Carwyn Jones: First of all, of course, I can offer evidence from the government side of relationships rather than the parliamentary side. The purpose of intergovernmental relations is, in an ideal world, to work together on common issues and see whether there can be common conclusions as a result of that work. That is not what we have now, though, in terms of the structure that is in place. For example, we have had occasions where we have had to adapt our policies as a result of a sudden announcement that is made in England. Education is one example of that, with qualifications, and it has happened with higher education—just to give two examples. Ideally, because we are talking about a system that affects not just England, the proposals would come before a JMC or its equivalent and the consequences worked through. What tends to happen is that there is an announcement, there is an effect on the devolved Administrations, there is often no notice, and we have to go from there, whereas it would be better for these things to be worked through in a more logical manner.

Q44 The Chairman: Thank you. Do you see the mechanism of intergovernmental relations as something that helps relationships or gets in the way of them, or is it insufficiently developed to do either?

Carwyn Jones: I think the effect is neutral. If we look at the system we work under, we have memoranda of understanding with government departments. They are pretty much kept to. If we look at the JMC process, we have to divide it into three: JMC (Europe), which functions reasonably well; JMC (Plenary), which meets every year, which again functions, although it tends to be a meeting where grievances are aired rather than constructive proposals taken
forward; and JMC (Domestic), which has no real purpose as far as I can see at the moment, and thought would have to be given to how that is replaced. The principle is a good one, obviously, but the mechanism and the structure that are in place at the moment do not deliver what I think the original intention was meant to be.

Q45 Baroness Taylor of Bolton: First Minister, my colleagues will come shortly to ask more details about the JMC, and what you have said so far about it working on Europe is interesting, because that echoes something that we heard earlier. I wanted to ask you about your personal relationships and any structural relationships with the other devolved Administrations outside the JMC, in particular the scope for policy development. You just indicated that you feel sometimes bounced by the Westminster Government into policy decisions. We were told that the devolved Administrations do not gang up on Westminster, but I wonder to what extent you have had discussions with Northern Ireland or with Scotland, particularly on policy issues, perhaps with a view to trying to impact policy development rather than just having to be responsive to things that you get from Westminster.

Carwyn Jones: We do work closely with Northern Ireland and Scotland. I think it is fair to say that the relationship with Scotland was affected by the referendum. The Scottish Government took the view that independence was the solution to any issues that surrounded devolution. We do meet regularly, both at the British-Irish Council and, of course, at bilaterals. I last met the First Minister and Deputy First Minister of Northern Ireland shortly after the Scottish referendum. I met the Scottish First Minister in November. Where we can share common ground we will work together to promote that common ground, although clearly there will be some differences, for example on the Welsh Government's position on Barnett and the Scottish Government's position on Barnett. As you would expect, we work together where there is common ground and we would then look to promote that common ground.

Baroness Taylor of Bolton: Do you think that that is likely to increase in the future? We are in a period of some turmoil, given the fact that although the referendum went for Scotland staying within the union, a lot of changes are still very much centre stage and very much on the agenda. Do you think there will be a forward-looking approach to the devolved Administrations trying to influence UK policy development? Is that possible?

Carwyn Jones: Yes, in non-devolved areas with varying degrees of success. Our difficulty is really that we should not be talking about three devolved Administrations trying to influence another Administration, but simply that the four Administrations should be able to sit down together. The difficulty we have had over the years is that constitutional conversations have
taken place in different rooms: Whitehall with Scotland on the one hand, Wales in another room, Northern Ireland in another room. Much more thought needs to be given to all four Administrations being part of a process that leads to greater constitutional stability than we have at the moment and, I have to say, will continue in the future.

**Q46  Lord Brennan:** First Minister, do you think that the strengthening of the constitutional process in intergovernmental relations is going to be better achieved by giving it a statutory framework, bearing in mind, to the extent that you as a lawyer think appropriate, how such a framework could or should take the position of England into account?

**Carwyn Jones:** It has been so many years since I was a lawyer and I am not insured to give legal advice, but I will do my best.

There are fundamental issues here that need to be addressed. The JMC in its present form is basically a Westminster creation that is designed to allow Westminster to discuss issues with the devolved Administrations. It is not jointly owned in that sense; the meetings always take place in London and it is not a proper forum of four Administrations coming together to discuss issues of mutual interest in that way.

I think it is important for intergovernmental machinery to be put on a statutory basis. That certainly adds teeth to the system, but it is the system itself that needs to be examined very, very carefully as well. My view of how that is done would be that one of the things that the JMC could be doing now is to start the work that is needed for what I believe is a constitutional convention process that is needed for the UK. The JMC could certainly be a catalyst or a place where that work could be catalysed in order to put in place what in my view would be the right constitution for the UK in the 21st century.

**Q47  Lord Powell of Bayswater:** First Minister, you have already spoken a bit about the JMC and we have had different evidence about this. We had one witness who told us that it was an institution for political grandstanding. We have had people who said that the devolved Administrations could not put items on the agenda. I think your own introductory comments about the JMC might be described as modified rapture, and you have now also given us some ideas as to what might replace it. Do you have hope for it even in its present form or would you prefer it to be removed as soon as possible and some other institution put in its place?

**Carwyn Jones:** It needs to be replaced. The difficulty with JMC (Domestic), for example, is that, because the Prime Minister never attends, it became the practice of the Scottish First Minister not to attend, and then, of course, you get that decline in attendance of Heads of Government at what should be an important meeting. Consideration needs to be given to what needs to replace that element of the JMC.
The JMC (Plenary), I think it is right to say, has become more of a meeting place where grievances are aired. There tends to be more—how shall I put it—full and frank discussion in the JMC (Plenary) than constructive discussion. That is the nature of things: in some ways, of course, there are four different Administrations with four different parties or combinations of parties running them. It certainly is not the case that the current machinery has enabled joint working and joint consideration of policy that affects the whole of the UK to be taken forward. It is the replacement for the JMC that is the important consideration.

**Lord Powell of Bayswater:** Surely there has to be somewhere where differences can be discussed and resolved. I thought that one of the main purposes of the JMC was that it was like a court of appeal. If differences are not resolved anywhere else in the structure, at least it is there and they can be resolved. Has that been your experience?

**Carwyn Jones:** The issues are aired in JMC, and they are often resolved outside the JMC after they have been aired. There is a dispute resolution process in place that has not been tested to its fullest extent because whenever disputes have arisen they have been resolved. The difficulty is that the dispute resolution process that is in place leads back inevitably to the Treasury, which will then take the final decision. Again, it comes back to the point that it gives the impression of being a UK Government committee that is there to meet on occasion with the devolved Administrations rather than a committee of all four Administrations. That is part of the difficulty with the current structure.

**Lord Powell of Bayswater:** If it was not there, there would need to be something?

**Carwyn Jones:** Yes, there would. Coming back to the point I made earlier, too many conversations have taken place in different rooms and there has to be an effective forum where all four Administrations can discuss constitutional and other issues. The JMC as a principle can fulfil that aspiration, but its current structure does not really allow it.

**Q48 Lord Cullen of Whitekirk:** Does the asymmetry of devolution cause any problem in regard to what can usefully be discussed at a single meeting of the JMC? In other words, can some points be of interest to some Administrations but not to others, so it may affect what can be discussed?

**Carwyn Jones:** Let us take welfare, for example, which is not devolved to Scotland and Wales, and executive devolution, if I remember rightly, to Northern Ireland. On the face of it, the argument might be that this is not an issue for the JMC because welfare per se is not devolved, but there are issues, such as those that we have had to deal with with the DWP. Where programmes are put in place, they do have an effect on programmes that are devolved. Even where an issue is not on the face of it devolved, it has an effect on devolved areas, and
that is just one example of where that has happened. Even where we do discuss issues that may not be devolved or may be devolved to different extents in different parts of the UK, there will still be a knock-on effect in the same way—I do not want to get into an argument on this—with English courts and English laws. That knock-on effect is always the difficult effect to measure.

**Q49 Baroness Dean of Thornton-le-Fylde:** Good morning, First Minister. I would like to take the questions about the JMC a bit further. The Smith Commission looking at Scotland says that the JMC must be reformed as a matter of urgency and scaled up significantly. On the other hand, Professor Keating, a Scottish academic, says that if you make it over-elaborate, no one will use it. You are on record as saying that if there is a dispute, the Treasury, and the UK itself, decides, and this has to change. Could I ask you what you think is needed practically either to be changed—I think you just said it needs to be reformed—or perhaps replaced? As First Minister for Wales, practically for Wales in the event of further devolution, what would you need from the JMC by way of change?

**Carwyn Jones:** Two things. First of all, the JMC needs to be put on a statutory basis—or the intergovernmental machinery, if I can put it that way, needs to be put on a statutory basis so that it has a greater sense of underpinning.

Secondly, with the JMC (Domestic), instead of having one meeting that deals or tries to deal with all issues, I think there is merit in having different work streams represented by different meetings. It is a model that is used, for example, in the British-Irish Council. Take welfare; I think it would be more productive if there were to be meetings with the relevant Ministers dealing with the issue of welfare to work out what the decisions of the UK Government might be and what effect there might then be on devolved employment programmes, for example, so that those issues can be resolved. They are not issues of political dispute in that sense, but they could be resolved with proper consideration at the beginning of the process rather than difficulties appearing once an announcement has been made. There are two examples there of how the machinery could be improved.

**Q50 Baroness Falkner of Margravine:** First Minister, in light of what you have said, I would like to turn to transparency in the JMC. Some of our witnesses have told us that the reports, the communiqués, were extremely bland, very brief. Nobody could work out what items were on the agenda, what had been resolved and how it got resolved. In light of that sense of frustration about accountability and transparency, would you have a view, such as regular reports perhaps being published after a JMC that went into far more detail and that
were capable of being used for parliamentary scrutiny at Westminster and within the devolved
Assemblies?

Carwyn Jones: I think there is merit in that suggestion. It is quite right to say that the
communiqués are bland. The reality is, of course, that once all of us leave JMC (Plenary) we
tell people what was discussed in there anyway. People are curious to know what is
happening. There are some details that cannot be gone into—when we have security briefings,
of course, there are issues that cannot be made public for obvious reasons—but, for example,
where we raise issues as a Government with the UK Government I will say that when I leave
the meeting. I think a balance can be struck. For example, it has been the case for many, many
years in Wales that Cabinet minutes are published publicly. We have had no difficulty with
that. Yes, we have the opportunity to redact certain parts of the minutes where there are good
reasons for doing so, but I think that transparency would be helpful certainly not just for the
legislatures but for the public understanding of what happens in JMC.

Baroness Falkner of Margravine: Do you think that parliamentary input into what should
appear on the agenda would be useful?

Carwyn Jones: It is difficult to know what the mechanism would be for that to happen, given,
of course, that the JMC is an intergovernmental event rather than an interparliamentary event.
I would expect, of course, the different Administrations to bring issues to the table as
influenced by the members of the respective legislatures.

The Chairman: Perhaps I could pursue this a little further, First Minister. It seems to me
there is a lack of follow-through from the meetings of the JMC, possibly because the minutes
are so vague and brief. Is there a follow-through that you are conscious of, and if not, should
there be? I am thinking, for example, of whether we injected into the IGRs such provision as
an annual audit of intergovernmental relations and possibly even a debate at Westminster on
the state of the union generally in which all the different components would take part. Do you
feel those are the sort of mechanisms that might improve IGR?

Carwyn Jones: First of all, the state of the union debate would be a matter for the future
legislature to consider. As I said earlier, I think there is merit in greater transparency in what
the JMC does along the lines of what we already do here with Cabinet meetings in Wales. It
does enable the public, and indeed Members, to understand not everything but most of what is
discussed in those Cabinet meetings. The same can apply to the JMC.

The Chairman: You do not feel there is a danger that everything just disappears into the
undergrowth and nothing seems to have happened by way of follow-through?
Carwyn Jones: I think it is fair to say that the communiqué does not always reflect to the greatest accuracy what was discussed in those meetings, because there are some robust discussions. The minutes themselves will reflect those discussions. I think a compromise can be found, as we have here in Wales, between a communiqué that says very little and a set of minutes that will be too detailed and would involve revealing areas of sensitive information, such as with regards to security.

Baroness Taylor of Bolton: I was just going to say that Cabinet minutes only reveal decisions made; they do not actually reveal much of the discussion that took place and they certainly do not reveal the extent of any dissent, which is one of the great weaknesses of Cabinet minutes. Therefore, I think there is a problem in relying on anything that is considered an official document in that way. I think you do need to find other ways and other mechanisms of getting issues raised.

I did want to open up the suggestion that we are talking about structures, but a lot of this is dependent on personalities and the way in which people work together. A lot of the evidence that we have heard suggests that it is the personalities and how people are willing to co-operate that make a difference.

The Chairman: Do you want to comment on that, First Minister?

Carwyn Jones: Yes. Coming back to the point I made earlier where we have four Administrations run by different parties or combinations of parties, on that basis it is important that politicians of different beliefs can work together in a business-like way and certainly that is what we try to do. There will be occasions when there will be disputes; that is the nature of democracy. Certainly, from my point of view, I would always go into a JMC with a view to finding ways forward rather than with a view to trying to spend the entire time involved in argument. That is necessary for the survival of the UK. I think that we, as Heads of Government, do take seriously the need to have that business-like relationship, despite the party differences.

Q51 Lord Lexden: First Minister, could I lead you into the final section of our session this morning, which goes under the heading “Dealing with Whitehall”? Could you very kindly sum up for us the experience of your Administration in dealing with Whitehall departments?

Carwyn Jones: It is variable. With some departments the relationship is very good and we are able to have open communications without difficulty. With others, we are not. The Department of Health is the biggest problem from our point of view. We have been the subject of leaks from that department on more than one occasion. I think it is fair to say that there is no level of trust at all with it at the moment. It would not be fair to say that about
other Whitehall departments at all. They take an entirely different and professional view on this.

Much depends on the experience of a particular department in dealing with devolved Administrations. Some departments are well used to the model of devolution, and they understand the differences and what they need to do to consult us in order to move policy forward. With others—the Home Office is an example of this—it is more difficult, not because of a deliberate malevolence on their part but because of a lack of understanding, quite often of the political structures in Wales. This is particularly true with the issue of civil contingencies and with issues such as policing, where there are jagged edges where the Home Office has proposed certain ways forward but has based that policy on the structure—for example, the health structure—that exists in England rather than what happens in Wales. It is mixed. In the main, I think it is fair to say that the relationship is as it should be, but there are some exceptions where that does not happen.

**Lord Lexden:** A brief supplementary if I may. Could I ask you to comment on one of the observations that have been made by one of our expert witnesses, who said that there is a quite striking lack of expertise at a senior level in Whitehall with the devolved territories? Could you comment on that?

**Carwyn Jones:** I think that is correct. I do not think the situation is as bad as it once was, but it is still far from perfect. There is also a difference in the perception of devolution in Scotland and in Northern Ireland as compared to Wales. It is not always the case—and the Home Office again is an example of this—that there are different devolved structures in Wales. Again, it is not a Whitehall failing collectively; it is an issue with some departments, not so much with others. Their awareness of Scottish devolution and its structures tends to be far better than their awareness of Wales.

**Lord Powell of Bayswater:** First Minister, another quick supplementary to that. Do you think the extent of knowledge in Whitehall about Wales particularly, but all the Administrations, could be improved by more exchanges of officials between Whitehall and the devolved Administration? You would always have people who had experienced both sides in practical ways. Would that not help quite a bit to improve the relationship and make it more effective?

**Carwyn Jones:** I think it would, yes. From our point of view, we have never been of the view that we should create a separate Welsh civil service that exists independently of the civil service in England or Scotland. We do not think that is in anyone’s interests, and there are certainly advantages to be gained where we can second people. We have done this to
Whitehall departments and vice versa. I think that is a very healthy exchange and one that we would be keen to promote further.

**Q52 The Chairman:** Thank you. I was very gratified to hear that answer, First Minister, because I, as you can understand, take a fairly close interest in Scotland. Do you think your answer would still hold water if a Welsh Nationalist Government were elected in the Assembly in Wales?

**Carwyn Jones:** I could not comment on the electoral prospects of a party I am not a member of.

**The Chairman:** I will not draw you any further on it, but I think you get the drift of what I am implying. Can I bring in Lord Crickhowell?

**Q53 Lord Crickhowell:** Good morning, First Minister. I want to take you to two related questions. The first is on the role of the Secretary of State for Wales. The guidance given in government is that the Secretary of State for Wales acts to ensure that the interests of Wales are fully taken into account by the UK Government in making decisions that have affected Wales and to represent the UK Government in Wales. I am going to ask you—but I would like to put it in the context of the second question—what you think the role of the Secretary of State for Wales should be. You have already indicated that we are in a changing world and there is a need for four Administrations to work together, particularly after the Scottish referendum and the likely developments, indeed the developments in the Wales Act and future scheduled developments. What is your view about the advantages and disadvantages of having a single UK Government department dealing with intergovernmental relations with a single Secretary of State? Do you think that is a good idea or a bad idea? How would the Secretary of State for Wales and his role fit into such a structure if we did go down that road?

**Carwyn Jones:** I think the first thing to emphasise is that the interests of the different devolved Administrations are not all the same, so to have one Secretary of State trying to represent all three devolved nations around the Cabinet table would be difficult. Barnett is one glaring example of where we would take a very different view from the Scottish Government. At the moment, I would say the case is not made for the removal of the position of Secretary of State for Wales. It is important to have somebody around the Cabinet table who has an understanding of Wales and its constitutional structure. It is also important at this time of constitutional change to make sure that Wales's voice is heard. It is certainly the case with all that has happened in Scotland that devolution has been viewed through a blue and white prism, that everything about devolution has been seen in terms of the effect on Scotland and not in terms of the effect on Wales. I would be very, very wary of losing that Cabinet voice in
Westminster that puts Wales's case at a time when it is difficult enough to get Wales’s constitutional position noticed compared to the situation in Scotland. My fear would be that if you had a Secretary of State who was responsible for the three devolved Administrations, the emphasis would be very strongly on Scotland and issues that arise now and again on Northern Ireland, and Wales would just go off the agenda.

**Lord Crickhowell:** I am sympathetic to what you say. Nonetheless, we are in a sense getting devolution in an ad hoc way, bit by bit. Something happens in Scotland and that triggers something, say, in Wales, and we are not really having a collective look at the whole constitutional effect of the changes that are taking place. Do you not think there is a case for some kind of co-ordination of the whole arrangement so that we protect the constitution of the United Kingdom as a whole?

**Carwyn Jones:** I entirely agree. I have been saying now for some years that we need a constitutional convention in the UK. It is absolutely right to say that devolution of powers has been done in a piecemeal fashion, and I do not think that will do in the future. For example, the Smith Commission's recommendations for Scotland, which I have no quibble with, has an effect on Wales. I know that the view that is taken by some in the UK Government is that that is a wholly separate process with no effect at all on the other devolved Administrations. That is naive. There is inevitably an effect; people in Wales will see what is proposed for Scotland and say, “If Scotland is having, for example, air passenger duty, why is Wales not?” The effect will be there, but I do not think with the Smith Commission process that thought was given to what the effect would be on the rest of the UK. It was purely seen through a Scottish prism.

How can that be taken forward? I would like to see the four Administrations, perhaps using the JMC, to put a process in place that will begin the constitutional convention, to lay down the process, to lay down the timetable for the convention, and then, of course, to do the job that it would be asked to do: to come forward with a constitution for the UK for the 21st century, to ensure, as I would want to see, that the UK survives and prospers. Then, of course, there will be joint agreement on that constitution with the four Administrations. I think that provides us with a robust model for the UK in the future. I do not see signs of that happening at the moment, and that troubles me. I think we are in a situation where, first, there is piecemeal devolution—that is absolutely correct; but, secondly, a complete lack of understanding that where a particular power is devolved in one part of the UK, it is bound to have an effect on other parts of the UK.
Lord Crickhowell: Thank you. That is a very helpful answer. There is only one drawback and difficulty I see about the convention way forward. That is the time it is likely to take and the other priorities that are already given to the timetable, and it is going to be quite difficult to reconcile the two.

Carwyn Jones: I think there are two issues here: the issue of structure and the issue of powers. The constitutional convention for me would look at the structure of the UK, not at the powers devolved to the different Administrations. That is a parallel process. I would not expect the constitutional convention to say, “We are going to look now at where powers should rest for air passenger duty”. That would not be the level of detail I would expect. What the convention should do, to my mind, is to say, “Okay, this is what the UK will look like. This is where the devolved Administrations fit. This is what the UK Parliament and UK Government do. This is their constitutional position”, and maybe looking at the mechanism as to how powers are devolved but not which powers are devolved. I think those two processes can run in parallel. It is absolutely correct to say, of course, that this will take some time. It cannot be done overnight. All the better for the process to start, to my mind, as quickly as possible.

Q54 The Chairman: First Minister, we are in a slight purdah at the moment because of the tail end of the Parliament. We as a Committee have contemplated all kinds of things that we might wish to pursue as major lines of inquiry after the next election, but there is not a lot of point in us starting on another inquiry for which we would not have time to develop the themes that you have touched on. What you have said is of considerable interest to us, of course, and I am most grateful. I see that you have Dr Hugh Rawlings beside you, who has a very distinguished constitutional history and a long period of commitment to the Welsh office. I should have asked you at the outset whether you wish to involve him in any of the answers. He has been sitting there with appropriate inscrutability on his face. If you wish to invite him to say anything now, we would be very happy to hear if he has anything to add.

Carwyn Jones: He has not nudged me or kicked me under the table, so I take that as a sign of encouragement, but I will ask you, Hugh, if there is anything you wish to add to what I said.

Dr Rawlings: Thank you very much, Chair. Perhaps I could just mention again the point that the First Minister has made about statutory underpinning for the JMC. This question perhaps needs to be seen in the wider context as well that as a result of the Smith Commission we seem to be moving towards greater legalisation of the UK constitution. Tomorrow, we expect to see the new Scotland Bill in which, for example, the Sewel convention is supposed to be being written or given statutory underpinning, that being something that hitherto has
proceeded on a non-statutory basis, on the basis of informal understandings between the Government and the Parliament.

I think that this question of underpinning intergovernmental relations with statute needs to be seen in that context, and perhaps we need to pause and think about how far we are going to take this. Are we, in fact, moving towards a written constitution for the United Kingdom, perhaps as a result of a convention process, or are we, as appears to be at the moment, perhaps looking at legalisation of particular aspects of the constitution without regard for wider issues? Those would be issues that I think the Committee might want to think about.

**The Chairman:** Thank you again. You have raised some very interesting thoughts, which we might well wish to pursue at a later date. First Minister, I do not know if there is anything else you would like to add to your answers on a topic that we have not covered. Do you think we have covered everything to your satisfaction?

**Carwyn Jones:** Yes, I think we have. We could spend a lot of time talking about the constitution, but that is for another day, I suspect. Certainly, I am grateful for the opportunity to share my views with regard to intergovernmental relations and, no doubt, the events of the next few months will have an effect on those.

**The Chairman:** Thank you very much. Your replies have been illuminating. They have also been concise. We have covered a lot of ground very quickly. We are most grateful to you, and we shall study very carefully the answers you have given us and think a lot about them. Thank you so much.

**Carwyn Jones:** Thank you.