

## **Devolution and the central state: territorial identity and inter-governmental relations in the UK**

Background paper for the Changing Union Forum  
Intergovernmental relations in the UK: London, 25 April 2014

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### **Introduction**

This short paper explores the present state of intergovernmental relations in the UK, by which we mean the formal and informal institutions through which the UK and devolved governments structure their relationships. Taking into account current pressures – including the Scottish independence referendum and the continuing process of devolution to Cardiff – we examine how intergovernmental relations are likely to evolve over the coming years. Specific issues addressed include:

- the extent to which political pressures have strained relationships between civil servants in the different capitals;
- the role and effectiveness of the Joint Ministerial Committee and other intergovernmental forums;
- the functions and the future of the territorial offices in Whitehall;
- the potential for a “federalisation” of intergovernmental relations, for instance as part of a constitutional entrenchment of devolution;
- how intergovernmental relations are likely to work – and how they should work – in the event of Scottish independence.

These will also be the main themes of discussion at the UK's Changing Union Forum event at the Institute for Government on 25 April, for which this paper has been prepared.

### **Devolution and the central state**

How do you understand or organise territorial politics and inter-governmental relations in a state whose central institutions often seem to have so little territorial awareness? Departments in Whitehall rarely think of themselves as operating within a territorial milieu

that demands attention. While Scotland, Wales and Northern Ireland have a constant sensitivity to their relationship with the rest of the UK, this simply does not work in the other direction. The traditional view in Whitehall places the countries of the Celtic periphery as somewhere below the radar – appendices or footnotes in their account of the way the state works. On the other hand territorial identity is central to the political awareness of Scotland, Ireland and Wales, and each has distinctive approaches to their relationships with the central UK state.

Central to understanding Scotland are the consequences of the 1707 Act of Union which was accompanied by the maintenance of its own separate, domestic institutions - legal structure, education system, the Established Church of Scotland, the Scottish Office and so on. These underpin a strong sense of Scottish civic consciousness that has consistently sought to establish a relationship of equal partnership with the rest of the UK. It is no coincidence, for example, that SNP First Minister Alex Salmond seldom loses an opportunity to stress the constructiveness of this approach. For instance, responding to the Queen after she had opened the new session of the Scottish Parliament in July 2011 he said, that whatever constitutional path Scotland chose to take, “we will aspire to be, in your words, ‘firm friends and equal partners’ ”.<sup>1</sup>

The Irish were generally more oppositional in their relationship with mainland Britain. In the 19<sup>th</sup> Century their MPs acted as a blocking mechanism to the operation of the UK state. In the early 20<sup>th</sup> Century and again in the Troubles of the last quarter of the century Irish republicans expressed their identity in terms of uprisings and violence.

Reflecting both its historical distance from independent institutions and its geographical closeness to England, Wales has a much more nuanced position between these polarities of institutionalised identity on the one hand and violent rebellion on the other. What we have, therefore, are three different kinds of power relationships within the UK, in a situation where the largest participant tends to operate unconsciously in territorial terms, generally unaware of its impact on its neighbours.

So, for example, very little thought was given to the need for mechanisms to deal with inter-governmental relations during the passage of the legislation that set up the devolved institutions at the end of the 1990s. It was only at the last minute, during a late stage of the Scotland Bill debate in the House of Lords, did the Government come up with the idea for a Joint Ministerial Committee to oversee relationships between Whitehall and the devolved territories. Administered by the Westminster Cabinet Office, round the table would be leading Ministers from Scotland, Wales, and Northern Ireland together with the British Prime Minister.<sup>2</sup> As a senior Cabinet Office official put it at the time:

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<sup>1</sup> Quoted in David Torrance, *The Battle for Britain – Scotland and the independence referendum*, Biteback Publishing, 2013, page 35.

<sup>2</sup> The announcement, in the early hours of 29 July 1998, was made in response to a hostile amendment by a junior Government whip, Baroness Ramsey of Cartvale.

"Its purpose is to head off trouble before fires break out and end up in the rafters, or in constitutional terms, in the law courts. It will enable proper negotiations to take place before the UK government has to use the 'nuclear option' of overriding a decision by a devolved Assembly".

The new institution was seen as squaring the circle of a political contradiction at the heart of the devolution process. That is to say, it would enable the UK administration to engage at the highest level with the leadership of the devolved institutions in a situation where there was no shared collective responsibility. However, it was acknowledged that it could not be foreseen how the initiative would work out in practice. As the same Cabinet Office official conceded:

"The dynamics are something that London cannot dictate. They will be determined very largely by the devolved institutions. We envisage that the JMC will be particularly important in EU affairs. Of course, these are uncharted waters. So far we've been chugging along the coast in sight of land. Very shortly we'll be heading out to sea ..." <sup>3</sup>

In the event meetings of the Joint Ministerial Committee over the ensuing 15 years were irregular. Between 2002 and 2007 plenary meetings, between the UK Prime Minister and the respective First Ministers, ceased altogether, and only resuming with the election of the SNP minority government in 2007. The most regular meetings have been with JMC Europe which has operated to a regular timetable, driven by European business. There have also been fairly regular meetings of the Finance Ministers, the so-called Finance Quadrilateral, usually chaired by the Chief Secretary to the Treasury. Both sub-groups have some real issues to discuss on a systematic basis.

In general, however, what has developed in practice has been inter-governmental relations on a bilateral basis, between departments within the devolved administrations and their respective opposite numbers within the Whitehall machine, occasionally mediated by the Scotland, Wales and Northern Ireland Offices. As an official in the Scotland Office explained:

"The Scotland Office's formal role is to represent the UK Government in Scotland and the Scottish Government in London. However, the Scottish Government wouldn't accept that. Their view is that they deal directly with London and the Scotland Office is largely irrelevant." <sup>4</sup>

Asked whether it was the role of the Wales Office to act as an intermediary between the Cardiff and Whitehall a Welsh Government official at the heart of the process answered:

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<sup>3</sup> Interview with the author, September 1998. Quoted in John Osmond, 'The Joint Ministerial Committee and the British Irish Council' in John Osmond (Ed), *The National Assembly Agenda*, IWA, 1998.

<sup>4</sup> Interview, 4 February 2014.

“We wouldn’t recognise that as a proposition. We’re now moving towards bilateral negotiations between Welsh Government departments and departments in Whitehall.”<sup>5</sup>

As with inter-governmental relationships as a whole, the Northern Ireland position is semi-detached and slightly at a tangent compared with both Scotland and Wales. As a Northern Ireland Office official put it:

“The parties divide on their attitude to the role of the Northern Ireland Office. Although the Unionists mistrust it, they are not opposed to it. On the other hand, while Sinn Fein call for its abolition they are continually demand that the UK government intervenes in various ways.”<sup>6</sup>

## **Present state of inter-governmental relations**

Scotland, Wales and Northern Ireland have strikingly different experiences of interaction with Whitehall that reflect the asymmetrical character of their respective settlements and the nature of their political relationships.

When the Scottish Office ran Scotland, before the inception of the Scottish Parliament, it had six Ministers. Today its successor – the Scotland Office – has two. Before the SNP first formed a government, in 2007, the Secretary of State for Scotland was a part-time post, shared with other portfolios such as Defence. In the view of one Scotland Office official, if the SNP had not formed a minority government in 2007 it is likely that the three territorial offices would have been unified following the 2010 general election:

“However, the SNP presence in government, and especially the commitment to a referendum following its majority in 2011, meant the UK government could not be seen as acknowledging the decline in importance of the Scotland Office.”<sup>7</sup>

With the advent of the referendum campaign the Scotland Office now has a major additional role in communicating UK Government policies in Scotland. In this it has to compete with the Scottish Government, which it acknowledges is generally more successful in catching the ear of the Scottish media. An example was the Scottish Government’s record in overseas aid, particularly its support for Malawi in Africa which has a high profile in the Scottish press. Yet the Scottish budget for overseas aid of around £20 million is relatively small when compared with the £3 billion spent by the UK Government.

More generally the Scotland Office together continues to add value in being a channel for communication and, together with the office of the Advocate General, the interpretation of Scots policy and law. This is especially in cases where Whitehall ministries set UK-wide

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<sup>5</sup> Interview, 23 January 2014.

<sup>6</sup> Interview, 12 February 2014.

<sup>7</sup> Interview, 4 February 2014.

policies that may impact to the disadvantage of Scotland. Recent examples include Department for Environment, Food and Rural Affairs' implementation of CAP policies, the Department of Work and Pensions implementation of welfare reform, and the Department of Energy's renewable energy policy. As a Scotland Office official put it:

“Our role is to get the best deal for Scotland or mitigate the worst effects.”<sup>8</sup>

There is even more scope for the Wales Office to intervene, given the nature of the current Welsh conferred powers devolution model which creates much greater potential for disputes over competence. In evidence to the Silk Commission First Minister Carwyn Jones drew attention to the complexities that result:

“Legislation is a key focus of inter-governmental communication. Many UK Bills in each Queen's Speech contain provisions that require the agreement of the Assembly through Legislative Consent Motions. Around 80-90% of Welsh Government Bills require some form of engagement with the UK Government. Around half require specific UK Government consents, some of which may require a large number of separate and substantive consents from different Secretaries of State. Accordingly, there has to be early and ongoing engagement between officials for this to run smoothly and Parliamentary and Assembly timetables to be met.

“Although we start engaging early, e.g. around a year in advance in the case of the Social Services Bill, in many cases Whitehall has not engaged until we are getting close to the wire with our timetables. In some cases, we have had to make changes which undermine the effectiveness of our Bills, because of unresolved consent issues.”<sup>9</sup>

Officials in the Welsh Government acknowledge that there are occasions when the Wales Office can intervene in ways that are helpful. An example was when the Department of Health demanded certification by more than one GP on death certificates, which they said should apply to Wales as well as England. It was the Wales Office that ensured that the Department of Health should pay for this to happen. However, there are as many, if not more occasions when the Wales Office interposes itself in ways that are considered unhelpful. This has been the case, for instance, in the ongoing dispute with the Department for Environment, Food and Rural Affairs over whether the Welsh Government has the power to legislate to retain the Agricultural Wages Board that is being abolished in England. In August 2013 UK Attorney General Dominic Grieve referred the dispute to the Supreme Court where it awaits adjudication. As Carwyn Jones said, in his letter to the Silk Commission:

“UK Government communications can be a major issue for Ministers here. There are occasions when the UK Government makes announcements relating primarily to England, but having significant implications for Wales, in respect of which there has been no prior consultation. Recent examples include the publication of the

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<sup>8</sup> *Ibid.*

<sup>9</sup> Letter from Carwyn Jones to Paul Silk, Chair of the Commission on Devolution in Wales, 6 June 2013 <http://commissionondevolutioninwales.independent.gov.uk/search/doc-type/evidence/>

Government response to the Francis Report and the remit for the School Teachers' Review Body. Our bilateral Concordats with UK Government departments commit both parties to good prior communication, but it is a constant challenge to make sure this is respected in practice."<sup>10</sup>

In contrast the Northern Ireland Office has much less direct involvement with Whitehall on such matters. By its own admission it is a micro department and not fully plugged into Whitehall. Rather it sees its role as being available to mediate in internal disputes within the Province. As a Northern Ireland Office official put it:

"Leaving the Northern Ireland executive to its own devices has never been an option. We have mandatory coalition government which doesn't make for joined-up government. Welfare reform is a case in point. Although it is a devolved issue, since it entails financial expenditure Northern Ireland is obliged to go along with the changes that are happening elsewhere in the UK. Accordingly there is a Bill in the Northern Ireland Assembly to implement welfare reform along UK lines. But Sinn Fein are refusing to go along with it ..."<sup>11</sup>

Between 2000-07 government in Northern Ireland was unstable, with the parties divided over Policing and Justice Powers. When these were finally devolved in 2010 there was speculation that the Northern Ireland Office's oversight role might no longer be necessary. For a few years community relations seemed to be improving, at least at a surface level. However, in December 2012 the flags issue erupted and Northern Ireland government entered a period of paralysis, with both the First Minister and Deputy First Minister having to sign everything off together. The Northern Ireland system then became fixated on the cross-party group chaired by Richard Hass. All this gave a prominent role once more to the Northern Ireland Office.

In general the character of inter-governmental relations is determined by inter-personal relationships between civil servants that build up over time. They also depend on whether issues that arise require resolution are of a practical, relatively non-controversial kind or whether they highlight political differences between administrations. An example of the first would be charging for NHS treatments across the Welsh and Scottish borders with England. In cases of this kind the civil service culture of problem solving, shared across the administrations, is usually enough to reach an accommodation.

However, it's a different matter when it comes to political questions over the jagged edges of the devolution settlement between, for instance when there's confusion or a difference of opinion about the scope of devolved powers, or whether functions are intertwined between two governments, for example with welfare reform. It can happen that what a department in Whitehall wants to do will have a knock-on impact on a devolved administration, whether unwittingly or not. As one official put it:

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<sup>10</sup> Ibid.

<sup>11</sup> Interview, 12 February 2014.

“When you have that type of discussion you move away from the problem fixing civil service mode into politics, and exchanges which are not always designed to resolve issues. It’s not helped by the overwhelming lack of understanding of devolution across Whitehall departments. The Coalition doesn’t help either because sometimes it’s impossible to get agreement within government in Whitehall.”<sup>12</sup>

## The civil service

In his evidence to the Public Administration Select Committee’s inquiry into the Future of Civil Service the Scottish Government’s Permanent Secretary Sir Peter Housden was upbeat about the state of inter-governmental relations:

“We have good working relationships with counterparts supporting the UK Government. Working with the Cabinet Office and the Scotland Office, we seek to ensure that our counterparts are aware and take account of the distinct interests, responsibilities and accountabilities of Scottish Ministers. This can be challenging where staff turnover erodes personal relationships or when, as inevitably happens from time to time, policy positions are in tension. By working together, however, we have shown that the two administrations can achieve ‘win-win’ outcomes even in areas where their policy preferences are markedly different. The ‘Edinburgh Agreement’ on a referendum on independence, signed by the Prime Minister and the First Minister in October 2012, provides an example.”<sup>13</sup>

In practice, however, there are some signs that the civil service in Scotland and Whitehall may have been moving apart, certainly since the advent of the first SNP Government in Holyrood in 2007. Moreover, the pressures of the referendum campaign have brought accusations from both sides about overt politicisation of the civil service, in both Edinburgh and London. The decoupling of the civil service between Scotland and England has been accompanied by fewer interchanges of personnel and a growing affinity of Scottish Government officials towards independence. As a Scotland Office official put it:

“The more years you have an SNP Government in office the stronger these trends are likely to be. The next stage of the decoupling process will be when civil service jobs in Scotland fail to be advertised across the UK. That would be a big psychological change, though it would be a small step away from what already is the case, in practice.”<sup>14</sup>

In the heated political context of the referendum campaign, there have also been concerns expressed at pressures on civil service impartiality and on relationships between senior officials in Edinburgh and Whitehall. For instance, it has been noted that at the weekly meetings for Permanent Secretaries in Whitehall – the so-called Wednesday Morning

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<sup>12</sup> Interview, 23 January 2014.

<sup>13</sup> Sir Peter Housden, written evidence to the Public Administration Select Committee’s inquiry into the Future of Civil Service, House of Commons, May 2013.

<sup>14</sup> Interview, 4 February 2014.

Colleagues meetings – certain key players rarely attend. And when they do, sensitive issues are off the agenda. In February 2014 Alistair Darling drew attention to the role of Sir Peter Housden in an attack on Alex Salmond for using the Scottish Government’s budget to finance production of the White Paper *Scotland’s Future*:

“They regard the Scottish Government budget as being an extension of their campaign. They’re getting away with stuff that we’d have been stopped in our tracks by the civil service. Salmond is very fortunate in his permanent secretary: he’s incredibly accommodating.”<sup>15</sup>

Equally the Yes Campaign accused Sir Nicholas Macpherson, Permanent Secretary to the Treasury, of crossing the line of political impartiality in advising Chancellor George Osborne that sharing sterling with an independent Scotland would bring unacceptable risks.<sup>16</sup>

An alternative perspective is that in both capitals, civil servants are merely fulfilling their constitutional duty of helping ministers to achieve their differing policy objectives.

Because of the nature of Welsh devolution arrangements, and because there are no pressures for divergence equivalent to the Scottish referendum, the Welsh civil service relationship with Whitehall is closer and less fraught. They have been described by Sir Derek Jones, the Welsh Permanent Secretary, in the following terms:

“At the most senior level, I work with the Head of the Home Civil Service and attend the weekly meeting of Permanent Secretaries in London. This has been valuable in developing good and constructive relationships with my colleagues in Whitehall and the other devolved administrations. These relationships assist mutual understanding of what the devolution settlement means in practice, as well as giving us the opportunity to resolve issues and explore opportunities.”<sup>17</sup>

At a department-to-department level, however, he conceded that relationships were “variable and sometimes testing. Awareness of devolved responsibilities and the implications of those on policy-making and operational delivery is patchy...” But sustaining connections was critical because of legislative overlap. In each Queen’s Speech there will be reference to UK Bills whose provisions require the consent of the Assembly. Equally, in the Welsh Government’s legislative programme there are Bills with provisions requiring the consent of UK Government Ministers. And he continued:

“The nature of the Welsh devolution settlement adds an element of complexity to these relationships. The Government of Wales Act leaves many areas of uncertainty, so

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<sup>15</sup> ‘Darling accuses SNP of campaign of intimidation’ Guardian, 8 February 2014.

<sup>16</sup> Sir Nicholas MacPherson, *Scotland and a Currency Union*, 11 February 2014, an advice note published by the Chancellor of the Exchequer George Osborne on 13 February on the eve of a speech he made in Scotland ruling out a currency union with an independent Scotland.

<sup>17</sup> Derek Jones, written evidence to the Public Administration Select Committee’s inquiry into the Future of Civil Service, House of Commons, May 2013.

there is scope for officials in Cardiff and London to disagree about what may or may not be within our respective powers or competence. This is one of the reasons why the Welsh Government is recommending that the settlement be restructured on the 'Reserved Powers' model – to provide greater clarity and reduce the scope for disagreement.”<sup>18</sup>

Northern Ireland has its own independent civil service, but in practice it is structured very closely on the Whitehall model. When he was First Minister, 1998-2002, David Trimble was keen to fully integrate it with the Home Civil Service in Whitehall. However, there was no consensus at the time and probably less today. In general, because of Northern Ireland's exceptional circumstances its civil service tends to be focused on process rather than policy and shares few of the preoccupations with inter-governmental relations that typify the civil service in Wales or Scotland.

### **Future of the Scotland, Wales and Northern Ireland Offices**

There tend to be different outlooks on the survival of the Scotland, Wales and Northern Ireland Offices depending on location. Those at the periphery appear to entertain the prospects of some kind of amalgamation of the offices into a single Whitehall operation or department at some future date more readily than those at the centre. For instance, an official in the Cabinet Office in London remarked that when they're in opposition parties tend to think in terms of wrapping them up into a single office. However, when they're in government he said parties find that the territorial offices can be quite useful:

“Bilateral relationships between departments in the devolved administration and their equivalents in Whitehall are fine when things are going well. However, when there are problems you need someone in Whitehall who knows Wales, Scotland and Northern Ireland well enough to broker a deal. Issues around CAP and welfare reform or restructuring the armed forces require a voice in Whitehall to speak up for the interests of the devolved administrations.

“Meetings of the Joint Ministerial Committee aren't an answer to this. They are formalised process-driven events that are not really engaged with negotiations leading to decisions. In any event, they couldn't deal with day-to-day issues as they'd be overwhelmed. It's just not the right machinery. In practice the JMC is a formal court of recourse, where the principals come together to put their stamp on the evolution of relationships.

“The territorial offices are about brokering responses from other departments, often behind-the-scenes, on key policy questions that affect Wales, Scotland and Northern Ireland. If they were to disappear then these negotiations would be a lot tougher,

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<sup>18</sup> *Ibid.*

especially in conditions where you have different parties running Westminster and the devolved administrations.”<sup>19</sup>

Others involved in meetings of the Joint Ministerial Committee acknowledged that there would need to be major changes to the way it is presently constituted and run if it were to take on the role of the territorial offices. A Wales Office official said:

“We would need something along the lines of a Department for Constitutional Affairs, in which there would be people with a knowledge of Wales, Scotland and Northern Ireland. At present the JMC agenda is dominated by UK issues and set almost entirely by the Cabinet Office secretariat. It is a situation where, except in a small number of rare instances, the devolved administrations merely respond to Whitehall initiatives.”<sup>20</sup>

A former official with Cabinet Office experience said:

“What we need is a territorial office – combining the present Wales, Scotland, and Northern Ireland offices – to remind the UK government that it is operating as a territorial state. This could be a stand-alone affair, or linked with constitutional and legal affairs, or with the Cabinet Office, where it would meld with the operation of the Joint Ministerial Committee.

“The Cabinet Office might appear the logical option. However, there is a danger since its operation is run by separate administrative strands. One is the secretariat which services the UK Cabinet. This is well-staffed, confident and efficient. If territorial management were placed there, then we could be assured that it would receive focused attention. On the other hand, there are other, more peripheral strands that are run out of the Cabinet Office, looking after specific issues or projects, such as equality legislation. If it were parked within one of these then territorial management would not receive the attention it deserves.”<sup>21</sup>

Currently there are competing pressures that will determine the fate of the territorial offices in the UK, illustrated in the diagram on the following page. Taken together the relative strength of these pressures – for Scottish autonomy, for a UK-wide territorial constitution, and for an offer of greater devolution for Scotland – will determine the nature and pace of change. The diagram suggests these pressures are of equal strength. Of course, this is not the reality. The relative strength of these movements and how they intersect will determine the direction of travel for inter-governmental relations in the UK by the time of the Scottish independence referendum on 18 September 2014.

Notwithstanding these differing views, there is a distinct sense that the future of the Scotland, Wales and Northern Ireland offices is a second order matter at the present time. As the Cabinet Office official observed:

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<sup>19</sup> Interview, 12 February 2014.

<sup>20</sup> Interview, 23 January 2014.

<sup>21</sup> Interview, 4 February 2014.

“Whether you need three voices around the Cabinet table representing Wales, Scotland and Northern Ireland or whether these voices could be combined is not the biggest constitutional issue we’re facing at the moment.”<sup>22</sup>

## **The federalisation of inter-governmental relations**

In a series of speeches over the past two years the Welsh First Minister Carwyn Jones has called for a number of far-reaching changes to UK constitutional arrangements to acknowledge that the state is moving inexorably in a federal direction. These include entrenching the powers of the devolved institutions, a separate legal jurisdiction for Wales to mirror those of Scotland and Northern Ireland, and reform of the House of Lords so that it becomes, in effect, an upper chamber with equal representation for Scotland, Wales, Northern Ireland and England. As he has put it in a speech in July 2012, devolution is not about how each of Wales, Scotland and Northern Ireland are separately governed:

“Rather it is about how the UK is governed, not by one but by four administrations, and which are not in an hierarchical relationship one to another. And the consequence of that is the administrations of all four territories, including the UK Government in respect of England, have their separate responsibilities and accountabilities, which must be recognized and respected by all other partners, as part of the joint enterprise of the UK.”<sup>23</sup>

At the end of 2013 he added:

“Whatever happens after the referendum in Scotland there will need to be change because the UK’s constitution has come to the end of its ability to deal with devolution, to embed devolution and clarify what each level of Government does. I think it’s simply a question of putting in place a constitution where it is understood what the different levels of government do. Does that mean the end of Parliamentary sovereignty? Well I’m afraid it does.”<sup>24</sup>

In March 2014 former Prime Minister Gordon Brown echoed these sentiments when he called for a constitutional guarantee of the permanence of the Scottish Parliament, more powers for Holyrood in employment, health, transport and economic regeneration, and a new UK constitutional law to set out the purpose of the UK as pooling resources for the defence, security and well-being of the citizens of all four nations:

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<sup>22</sup> Interview, 12 February 2014.

<sup>23</sup> Carwyn Jones, ‘A Constitutional Convention for the UK?’, Lecture to Unlock Democracy, London 12 July 2012.

<sup>24</sup> Interviewed in the Independent, 25 December 2013.

“We propose a ‘new union for fairness’ whose watchwords are power-sharing, diversity, and constitutional partnership, replacing the old union of centralisation, uniformity and Westminster’s undivided sovereignty.”<sup>25</sup>

Many might disagree with some of these suggestions for constitutional change. In particular, wholesale reform of the House of Lords so that it becomes a territorial chamber may be unlikely. Nonetheless, it is difficult to dispute the underlying argument that the UK is moving progressively towards a hardening of quasi-federal relationships, nor that this direction of travel will impact on the nature and mechanisms of inter-government relationships.

Two recent examples illustrate changes. The first was the Edinburgh Agreement signed in October 2012 between the British and Scottish Governments on how the Scottish referendum should be managed. The second was recommendations in the Silk Commission report on powers for the National Assembly on the need to establish new institutions to handle relationships between the British and Welsh Governments.

The negotiations leading up to the signing of the Edinburgh Agreement had more of the feel of diplomacy between two sovereign entities than the resolution of a difficulty between levels of administration within a single state. A year of political shadow boxing preceded the agreement, with the British and Scottish governments haggling over the number and wording of questions that might be asked, the timing, and the conduct of the campaign. In the event the formal negotiations were led by the leading constitutional civil servants of the two administrations: Ciaran Martin, Constitution Director at the Cabinet Office working to the Deputy Prime Minister, and Ken Thomson, the Scottish Government’s Director General for Strategy and External Affairs and senior lead on constitutional policy since 2005. They signed the agreement on 15 October 2012, along with the UK Prime Minister David Cameron, the then Secretary of State for Scotland Michael Moore, the Scottish First Minister Alex Salmond, and his deputy Nicola Sturgeon. In it the governments agreed that the referendum should:

- have a clear legal base;
- be legislated for by the Scottish Parliament;
- be conducted so as to command the confidence of parliaments, governments and people; and
- deliver a fair test and a decisive expression of the views of people in Scotland and a result that everyone will respect.

The Agreement’s final sentence, on which the Nationalists placed great emphasis, certainly had the tone of international diplomacy:

“The two governments are committed to continue to work together constructively in the light of the outcome, whatever it is, in the best interests of the people of Scotland

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<sup>25</sup> Gordon Brown, speech to ‘United with Labour’, Glasgow, 10 March 2014.

and of the rest of the United Kingdom.”<sup>26</sup>

While the UK government regarded the sentence innocuous, in Scotland it was imbued with greater significance. Scottish Ministers were convinced it meant Westminster could neither ‘scaremonger’ against independence nor obstruct its progress should there be a ‘yes’ vote.<sup>27</sup> For them the wording also resonated with the tone of the Dublin Agreement on relations between Ireland and the UK that David Cameron had signed earlier in the year, in March, with the Irish Taoiseach Enda Kenny. As they put it:

“We intend that this Joint Statement will be the starting point for realising the potential over the next decade of even stronger relations for current and future generations living on these islands.”<sup>28</sup>

Scottish Government Ministers have been heavily influenced by the warming of relations between Ireland and the UK. They see them as offering a template for future relationships between an independent Scotland and the rest of the UK. While the UK government argues that independence would leave Scotland standing alone, isolated from the rest of the UK and lacking influence in the world, the Scottish government says it would mark the start of a new relationship between the nations of these islands, with continued and extensive co-operation in a partnership of equals.<sup>29</sup>

Aside from Scotland and the outcome of the independence referendum, inter-governmental relations look set to become more formalised within the rest of UK. Certainly this was the view of the Silk Commission established by the UK Government to examine the funding and powers of the National Assembly. Its second report, published in February 2014 noted that it had received evidence of “a lack of consideration for Wales” in relation to UK legislation and policy development:

“Whilst we acknowledge that informal engagement between the two Governments is invaluable, there is also a need to ensure that adherence to the current mechanisms is strengthened. We believe that, with a move to a reserved powers model, a new Government of Wales Act should provide for a Statutory Code of Practice in relation to intergovernmental relations. This would embed intergovernmental relations within the devolution settlement and leave both Governments open to judicial review if either were thought to have failed to uphold the code. The Code should be reviewed, and

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<sup>26</sup> <http://www.scotland.gov.uk/Resource/0040/00404789.pdf>

<sup>27</sup> See David Torrance, *The Battle for Britain – Scotland and the Independence Referendum*, Biteback, 2013. The opening chapter has a full account of the negotiations that led up to the signing of the Edinburgh Agreement.

<sup>28</sup> Joint Statement by the Prime Minister, David Cameron and the Taoiseach, Enda Kenny, ‘British Irish relations: the next decade’, 12 March 2012.

<sup>29</sup> See Nicola McEwen, *A Partnership of Equals? Insights from Ireland for Scottish-UK relations after independence*

[http://www.futureukandscotland.ac.uk/sites/default/files/papers/Ireland\\_briefingpaper\\_NMcE.pdf](http://www.futureukandscotland.ac.uk/sites/default/files/papers/Ireland_briefingpaper_NMcE.pdf)

renegotiated if necessary, within twelve months of an incoming Welsh or UK Government.”<sup>30</sup>

The Commission said it had been impressed by the North-South Ministerial Council which brings together the Northern Ireland Executive and Irish Government Ministers:

“During our visit to Northern Ireland, we visited to the Council. We were impressed with its focus on the needs of the citizen and on using intergovernmental processes to produce outcomes benefitting people on both sides of the border by encouraging cross-border cooperation in areas such as health, transport and civil contingencies.”<sup>31</sup>

Accordingly the Commission recommended that the creation of a similar Welsh Intergovernmental Committee, to be chaired jointly by the Welsh First Minister and the UK Prime Minister. It also suggested that the Committee should be serviced by a small secretariat of civil servants, that it should meet regularly throughout the year, and that its agenda and minutes be published. One can imagine that if, at some stage in the future the Scotland, Wales and Northern Ireland Offices were merged, this could be a function of the resulting new territorial arrangements in Whitehall, perhaps in relation to the three devolved administrations.

There is little doubt that, under the pressure of the Scottish referendum inter-governmental relations in the UK are entering a new phase. As an official close to the process in the Cabinet Office put it:

“The Scottish referendum is hollowing out the relationship between Scotland and UK government departments. The world has changed simply because we’re having a referendum. We’ve opened up the question of the long-term relations of Scotland with the rest of the union and you can’t simply put that back in its box.”<sup>32</sup>

Yet, it remains unclear how inter-governmental relations can evolve in a more formalised, federal direction when the system is so used to muddling through with pragmatic, ad hoc solutions to problems as they arise. It is a tantalising question whether we are now reaching a point where the realities of territorial management in the UK will tip the system towards another approach, where the politics line up with the logic of constitutional theory.

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<sup>30</sup> Commission on Devolution in Wales, *Empowerment and Responsibility: Legislative Powers to Strengthen Wales*, March 2014, para 5.2.13.

<sup>31</sup> *Ibid.*, para 5.3.3.

<sup>32</sup> Interview, 12 February 2014.