



## Leaving the European Union: Stability of the United Kingdom's Union Debate on 17 January 2019

### Summary

This House of Lords Library Briefing has been prepared in advance of the debate due to take place on 17 January 2019 in the House of Lords on the motion moved by Lord Lisvane (Crossbench) on the “possible effects of Brexit on the stability of the union between the parts of the United Kingdom”.

Concerns have been raised about the stability of the union since the 2014 Scottish independence referendum and the 2016 referendum on continued membership of the EU. In particular, the UK's decision to leave the EU has given rise to constitutional questions about the future of relations between the UK's devolved nations and the centre. These include how powers that currently reside at EU level will be exercised domestically after the UK's withdrawal, and what mechanisms may be in place for inter-governmental communication and cooperation in the future. In addition, the asymmetric nature of the Northern Ireland backstop provisions in the UK-EU withdrawal agreement has potential implications for the union. Northern Irish unionists have argued that it threatens Northern Ireland's place in the UK's union. The Scottish Government has expressed dissatisfaction that the UK Government has not provided for Scotland to maintain a close relationship with the EU's single market and customs union following the UK's withdrawal from the EU, despite particular arrangements for Northern Ireland being contemplated under the backstop. Meanwhile, others have expressed concern that different arrangements for Northern Ireland could fuel support for Scottish independence.

Mechanisms proposed to address issues in the UK's constitutional arrangements have included holding a constitutional convention to help build a consensus on a way forward, and a new Act of Union that could stabilise the framework in which the UK's constituent parts could pool sovereignty.

This briefing provides background information on the union, before briefly examining issues that have arisen in debates on unionism since the 2016 EU referendum. It then provides an overview of recent proposals to stabilise the union, including a private member's bill introduced by Lord Lisvane in October 2018 that is currently awaiting second reading. The briefing concludes with a selection of recommended further reading on the complex and multi-faceted issue of the future of the union in the context of the UK's forthcoming withdrawal from the EU.

### Table of Contents

1. Introduction
2. Background
3. Issues Arising from Brexit
4. Proposals for Stabilising the Union
5. Further Information

## Table of Contents

1. Introduction	1
2. Background	2
2.1 Nature of the Union.....	2
2.2 Referendum on EU Membership.....	3
3. Issues Arising from Brexit	5
3.1 European Union (Withdrawal) Act 2018 and Repatriation of Powers.....	6
3.2 Intergovernmental Relations .....	10
3.3 Devolution and the ‘English Question’ .....	13
3.4 Withdrawal Agreement and the Northern Ireland Backstop .....	13
4. Proposals for Stabilising the Union	16
4.1 Constitutional Convention .....	17
4.2 New Act of Union .....	18
5. Further Information	21

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## I. Introduction

There have been profound changes within the UK's uncodified constitution over the past 20 years. These include—but are not limited to—high profile changes to the territorial constitution, including the introduction of devolution settlements in Scotland, Wales and Northern Ireland and changes to governance arrangements within England.<sup>1</sup>

In May 2016, the House of Lords Constitution Committee published a report in which it observed that continued constitutional changes, including to the extent of the devolution settlements in place across the UK, meant that the territorial constitution was in a “state of flux”.<sup>2</sup> Furthermore, it argued that there was “growing concern over the stability of the union”, particularly following the 2014 referendum on Scottish independence, continued political fragility in Northern Ireland and discontent within England regarding the extent to which the UK's largest and most populous component part was administered directly by the UK Government at Westminster.

In June 2016, a month after the publication of this report, the UK as a whole voted to leave the European Union. However, this UK-wide result masked differences between the UK's four constituent nations: a majority of voters in England and Wales elected to leave but a majority in Scotland and Northern Ireland voted to remain. In addition to the political implications of these differences, the UK's decision to leave the EU has raised significant constitutional questions about the future of relations between the UK's devolved nations and the centre—in particular in relation to how powers that currently reside at EU level will be exercised domestically after the UK's withdrawal and what mechanisms may be in place for inter-governmental communication and cooperation.

In a report published in July 2017, the House of Lords European Union Committee stated that the EU had, against a backdrop of incremental and asymmetric devolution across the UK since the late 1990s, been “in effect, part of the glue holding the United Kingdom together”.<sup>3</sup> It added:

The supremacy of EU law, and the interpretation of that law by the Court of Justice of the EU, have in many areas ensured consistency of legal and regulatory standards across the UK, including in devolved policy areas, such as environment, agriculture and fisheries. In practice, the UK internal market has been upheld by the rules of the EU internal

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<sup>1</sup> For a summary of recent constitutional changes, see: House of Lords Library, [Constitutional Issues and the Case for a UK-wide Constitutional Convention](#), 6 December 2018, pp 1–2.

<sup>2</sup> House of Lords Constitution Committee, [The Union and Devolution](#), 25 May 2016, HL Paper 149 of session 2015–16, p 7.

<sup>3</sup> House of Lords European Union Committee, [Brexit: Devolution](#), 19 July 2017, HL Paper 9 of session 2017–19, p 12.

market.

Brexit therefore presents a risk that the complex overlapping competences within the UK could become increasingly unstable. It is not for the European Union Committee to recommend answers to these essentially domestic constitutional questions. We note, however, that the UK Government, in its pre-election published statements on Brexit and on the Repeal Bill, did not address the fundamental constitutional challenges now facing the whole United Kingdom. The new Government must now do so, working in a spirit of partnership and cooperation with the devolved legislatures and governments.<sup>4</sup>

More generally, commentators such as Professor Vernon Bogdanor have argued that Brexit “might prove to be a constitutional moment for Britain, since it may strengthen the case for Britain following nearly every other democracy in developing a codified constitution which provides for the judicial protection of human rights”.<sup>5</sup> Professor Bogdanor has stated that, “far from returning us to the status quo ante”, Brexit could transform the British constitution “even more”.

It is in this context that debates on the stability of the union have continued. This briefing considers some of the issues that have arisen in discourse on unionism since the EU referendum. However, it should not be read as a comprehensive overview of the possible effects of Brexit on the stability of the union. Rather, it aims to provide an introduction to this complex issue. A selection of further reading is included in section 5 for further information on some of the issues considered below.

## 2. Background

### 2.1 Nature of the Union

In its present form, the United Kingdom of Great Britain and Northern Ireland dates from the partition of Ireland and the secession of the Irish Free State (later the Republic of Ireland) in the 1920s.<sup>6</sup> But what defines the union today, other than the various historical events and statutes that have led to the UK as currently constituted?

The House of Lords Constitution Committee has considered this question. In a report published in May 2016, it observed that there is “no single definition of what constitutes the union between the four nations of the

<sup>4</sup> House of Lords European Union Committee, [Brexit: Devolution](#), 19 July 2017, HL Paper 9 of session 2017–19, p 12.

<sup>5</sup> Vernon Bogdanor, [Brexit and Our Unprotected Constitution](#), Constitution Society, 21 February 2018, p 8.

<sup>6</sup> House of Lords Constitution Committee, [The Union and Devolution](#), 25 May 2016, HL Paper 149 of session 2015–16, p 9.

United Kingdom”.<sup>7</sup> Instead, the committee noted that the UK’s constitution relies on “custom, practice and a plethora of different statutes in place of a written constitution”. It also commented that conceptions of “what the union is and what it is for” vary, but that essentially the concepts of unity and diversity are “central to the United Kingdom’s territorial constitution and to understanding how the citizens of the UK identify with the union”.<sup>8</sup>

In its report, the committee concluded that the union appeared to consist of five ‘key’ elements:

- an economic union, comprising a single market, currency and fiscal and macroeconomic framework;
- a social union, in which resources are pooled and shared according to need;
- a political union, in which each part of the union is represented in the UK Parliament;
- a cultural union, represented in the connections between people across the UK and in a common language and institutions; and
- a security and defence union, represented by the British Armed Forces—the Army, the Royal Navy and the Royal Air Force—and the UK security services, in addition to a single borders and immigration policy.<sup>9</sup>

These five elements, the committee argued, “combine to allow the nations of the union to work together as a single state”, allowing for the “expression of discrete national identities within the union, while providing a structure within which all the constituent parts of the United Kingdom can support each other and work towards common objectives and ideals”. It added that each of these elements was fundamental to the stability of the union, contending that “ending or substantially weakening the union in any of these respects would cause grave damage to the union as a whole”.<sup>10</sup>

## 2.2 Referendum on EU Membership

### Results

On 23 June 2016, the UK held a referendum on continued membership of the European Union. Overall, 17,410,742 individuals voted to leave (51.9%) against 16,141,241 who voted to remain (48.1%) on a turnout of 72.2%.<sup>11</sup>

<sup>7</sup> House of Lords Constitution Committee, [The Union and Devolution](#), 25 May 2016, HL Paper 149 of session 2015–16, p 9.

<sup>8</sup> *ibid*, p 15.

<sup>9</sup> *ibid*, pp 17–25.

<sup>10</sup> *ibid*, p 25.

<sup>11</sup> Electoral Commission, [‘EU Referendum Results’](#), accessed 19 December 2018.

The winning margin for leave across the UK as a whole was 1,269,501 votes (3.8%).<sup>12</sup> However, this top-level result masked differences between the UK's constituent parts:

- in England, 15,188,406 voted to leave (53.4%), against 13,266,996 who voted to remain (46.6%);
- in Scotland, 1,018,322 voted to leave (38.0%), against 1,661,191 who voted to remain (62.0%);
- in Wales, 854,572 voted to leave (52.5%), against 772,347 who voted to remain (47.5%); and
- in Northern Ireland, 349,442 voted to leave (44.2%), against 440,707 who voted to remain (55.8%).<sup>13</sup>

In total, of the twelve European electoral regions across the UK, three—London, Scotland and Northern Ireland—voted to remain, whilst nine—comprising the remaining areas in England, together with Wales—voted to leave.<sup>14</sup>

### **Immediate Reaction**

In a statement delivered in Downing Street the following day, Prime Minister David Cameron (Conservative) stated that the forthcoming negotiations with the EU would “need to involve the full engagement of the Scottish, Welsh and Northern Ireland governments to ensure that the interests of all parts of our United Kingdom are protected and advanced”.<sup>15</sup> However, some signs of the political and constitutional tensions that would be a fixture of inter-governmental political discourse over the next two and a half years were evident in statements made on the same day by leaders of the UK's devolved nations and regions.

Commenting on the result from Edinburgh, Scottish First Minister Nicola Sturgeon (Scottish National Party) contended that the results were a “sign of divergence between Scotland and large parts of the rest of the UK in how we see our place in the world”.<sup>16</sup> Ms Sturgeon argued that, in her view, it was “democratically unacceptable” that Scotland faced the “prospect of

<sup>12</sup> House of Commons Library, [Analysis of the EU Referendum Results 2016](#), 29 June 2016, p 5. Includes Gibraltar.

<sup>13</sup> BBC News, [‘EU Referendum: Results’](#), accessed 19 December 2018. In addition, Gibraltar voted to remain by 19,322 votes (95.9%) to 823 (4.1%). The figures mask significant differences within each nation. For example, the London region of England voted to remain whereas other regions of England voted to leave (House of Commons Library, [Analysis of the EU Referendum Results 2016](#), 29 June 2016, p 9).

<sup>14</sup> Electoral Commission, [‘EU Referendum Results’](#), accessed 19 December 2018. Leave voting areas were as follows: East, East Midlands, North East, North West, South East, South West, Wales, West Midlands and Yorkshire and the Humber.

<sup>15</sup> BBC News, [‘Brexit: David Cameron’s Resignation Statement in Full’](#), 24 June 2016.

<sup>16</sup> BBC News, [‘Brexit Vote: Nicola Sturgeon Statement in Full’](#), 24 June 2016.

being taken out of the EU against [its] will". She added that, as a "significant and a material change of the circumstances in which Scotland voted against independence in 2014", the UK-wide result meant the "option of a second referendum [on Scottish independence] must be on the table. And it is on the table".<sup>17</sup>

Speaking from Cardiff, Welsh First Minister Carwyn Jones (Labour) stated that the result should be respected.<sup>18</sup> However, he added that his administration would be holding the UK Government to Mr Cameron's undertaking that the Welsh Government should be fully involved in negotiations on the terms of the UK's withdrawal from the EU and on the future relationship between the two entities. Mr Jones observed that withdrawal from the EU would be a "massive constitutional shift for the UK", with "equally far-reaching implications" for the devolution settlements. He argued that this meant the relationship between the UK's devolved administrations and the UK Government "must now be placed onto an entirely different footing".<sup>19</sup>

In Belfast, Northern Ireland First Minister Arlene Foster (Democratic Unionist Party) welcomed the result as a "good result for the United Kingdom".<sup>20</sup> However, Deputy First Minister Martin McGuinness (Sinn Féin) contended that the result in Northern Ireland meant the UK Government had "no democratic mandate to represent the views of [Northern Ireland] in any future negotiations with the European Union". He added that, in his view, there was now a "democratic imperative" for a border poll to be held on the question of Irish reunification.<sup>21</sup>

In a statement delivered the same day, London Mayor Sadiq Khan (Labour) argued that the electorate's decision to leave should be fulfilled, but added it was "crucial" that London had a "voice at the table [...] alongside Scotland and Northern Ireland" during withdrawal negotiations.<sup>22</sup>

### 3. Issues Arising from Brexit

Since the EU referendum result was announced in June 2016, and since the UK Government notified the European Council of its decision to withdraw from the EU in accordance with Article 50 of the Treaty on European Union on 29 March 2017, a number of issues have arisen relating to both the UK's withdrawal from the EU and the stability of the union. A selection of these is

<sup>17</sup> BBC News, ['Brexit Vote: Nicola Sturgeon Statement in Full'](#), 24 June 2016.

<sup>18</sup> Welsh Government, ['Statement by the First Minister: EU Referendum Result'](#), 24 June 2016.

<sup>19</sup> *ibid.*

<sup>20</sup> BBC News, ['EU referendum: NI Reaction to Referendum Result'](#), 24 June 2016.

<sup>21</sup> *ibid.*

<sup>22</sup> Christopher Hooton, ['Sadiq Khan's Brexit EU Referendum Response in Full: "There is No Need to Panic"'](#), *Independent*, 24 June 2016.

covered below.

### 3.1 European Union (Withdrawal) Act 2018 and Repatriation of Powers

The European Union (Withdrawal) Act 2018 received royal assent on 26 June 2018. Among other elements, it contains provision for the creation of regulation-making powers for both the UK Government and devolved administrations to make ‘corrections’ to retained EU law (the body of EU law and EU-derived law that will be preserved in domestic law upon exit) to ensure that it functions correctly following the UK’s withdrawal from the EU.<sup>23</sup> In addition, the Act includes provision for the removal of existing restrictions on devolved competence in relation to acting incompatibly with EU law so that decision making powers in areas currently governed by EU law will pass to the devolved institutions, except where specified in secondary legislation under the Act, once the UK leaves the EU.<sup>24</sup>

The UK Government’s approach to the provisions on devolved powers caused tensions with the devolved administrations.<sup>25</sup> The House of Commons Public Administration and Constitutional Affairs Committee summarised the situation as follows:

It soon became clear [...] that there was a difference of opinion over where the legislative authority over certain areas of policy previously held at EU level (‘retained EU law’) would lie within the existing UK constitutional arrangement, for example, who would have the authority to change laws and regulations in relation to areas of devolved competence such as fisheries. In brief, the UK Government position, shown through the drafting of the original Clause 11 of the [European Union (Withdrawal)] Bill, was to return legislative authority to Westminster by default, while the position of the Scottish and Welsh governments was for legislative authority on non-reserved matters to return to Holyrood and Cardiff Bay.<sup>26</sup>

As this suggests, the Scottish and Welsh governments expressed opposition to the bill’s provisions on devolution as originally drafted and had recommended that their respective legislatures withhold legislative consent for the bill. The then Welsh First Minister, Carwyn Jones, and the Scottish First Minister, Nicola Sturgeon, released a joint statement after the publication of the bill on 13 July 2017, describing it as a “naked power grab,

<sup>23</sup> House of Lords Library, [Brexit Preparations and Negotiations](#), 18 July 2018, pp 2–3.

<sup>24</sup> *ibid*, p 3.

<sup>25</sup> *ibid*. Background information on Brexit and the devolved administrations can be found in: House of Lords Library, [Leaving the EU: Role of the Devolved Administrations and Implications for the Union](#), 22 January 2018.

<sup>26</sup> House of Commons Public Administration and Constitutional Affairs Committee, [Devolution and Exiting the EU: Reconciling Differences and Building Strong Relationships](#), 31 July 2018, HC 1485 of session 2017–19, p 15.



an attack on the founding principles of devolution [that] could destabilise our economies”.<sup>27</sup>

The Government argued that once the UK was no longer bound by common EU policy frameworks, it might still be necessary to operate UK-wide frameworks across some areas of devolved competence.<sup>28</sup> Nicola Sturgeon and Carwyn Jones accepted the need for common frameworks, but objected to the UK Government’s original approach in the bill that the devolved authorities could not modify retained EU law in areas of devolved competence until or unless the policy area had been ‘released’ by Westminster.<sup>29</sup>

At the same time that the European Union (Withdrawal) Bill was being considered in Westminster, the Scottish Parliament and the National Assembly for Wales both passed ‘continuity bills’ which sought to incorporate elements of EU law that operate in devolved areas into Scottish and Welsh domestic law, to give powers to devolved ministers to make provision corresponding to EU law after exit day and to impose a consent requirement on UK Government ministers making regulations that would modify or otherwise affect the operation of retained EU law in devolved areas.<sup>30</sup> In the case of the Scottish continuity bill, the Scottish Parliament’s Presiding Officer had argued that the proposed legislation was outside the competence of the Scottish Parliament.<sup>31</sup> This in part paved the way for the UK Government to refer the continuity bills to the Supreme Court, arguing that they were not within the devolved competence of their respective legislatures.<sup>32</sup> Jeremy Wright, the then Attorney General, described this as a “protective measure”:

This legislation risks creating serious legal uncertainty for individuals and businesses as we leave the EU. This reference is a protective measure which we are taking in the public interest. The Government very much hopes this issue will be resolved without the need to

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<sup>27</sup> Welsh Government, [‘Joint Statement from First Ministers of Wales and Scotland in Reaction to the EU \(Withdrawal\) Bill’](#), 13 July 2017.

<sup>28</sup> Department for Exiting the European Union, [Legislating for the United Kingdom’s Withdrawal from the European Union](#), March 2017, Cm 9446, p 27.

<sup>29</sup> Welsh Government, [‘Joint Statement from First Ministers of Wales and Scotland in Reaction to the EU \(Withdrawal\) Bill’](#), 13 July 2017.

<sup>30</sup> Further details on legislative consent, the Joint Ministerial Committee on EU Negotiations and the Scottish and Welsh continuity bills can be found in: House of Commons Library, [Legislative Consent and the European Union \(Withdrawal\) Bill \(2017–19\)](#), 24 May 2018; and [Brexite: Devolution and Legislative Consent](#), 29 March 2018.

<sup>31</sup> BBC News, [‘Scottish and UK Governments Clash over Brexit Court Ruling’](#), 13 December 2018.

<sup>32</sup> Attorney General’s Office and Office of the Secretary of State for Scotland, [‘Devolved Brexit Legislation Referred to the Supreme Court’](#), 17 April 2018. Writing in August 2018, Akash Paun, Senior Fellow at the Institute for Government, suggested that the case could herald the start of a “new phase of constitutional conflict” (Akash Paun, [‘Is the UK-Scotland Supreme Court Case the Start of a New Phase of Constitutional Conflict?’](#), UCL Constitution Unit Blog, 7 August 2018).

continue with this litigation.<sup>33</sup>

Following continued discussions between the UK and devolved governments, on 24 April 2018 the UK and Welsh governments reached agreement on amendments to the bill's devolution provisions and on an intergovernmental agreement with a related memorandum (which included additional commitments on the functioning of the arrangements).<sup>34</sup> Government amendments to the devolution provisions of the European Union (Withdrawal) Bill were made at report stage in the Lords.<sup>35</sup> The effect of these amendments is that all devolved powers currently within the competence of the EU would return to the devolved administrations by default, with the exception of any areas ringfenced by the UK Government in regulations.<sup>36</sup> As part of the agreement the UK Government withdrew its reference of the Welsh continuity bill to the Supreme Court<sup>37</sup> and the Welsh Government agreed to take steps to repeal its continuity bill.<sup>38</sup> However, the Scottish Government had stated that it was unable to support the amendments.<sup>39</sup>

The UK Government's reference of the Scottish continuity bill was heard by the Supreme Court on 24 and 25 July 2018.<sup>40</sup> The UK Government argued that the bill in its entirety was outside Scotland's competence because it relates to relations with the EU, which is a reserved matter.

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<sup>33</sup> Attorney General's Office and Office of the Secretary of State for Scotland, '[Devolved Brexit Legislation Referred to the Supreme Court](#)', 17 April 2018.

<sup>34</sup> Cabinet Office, '[European Union \(Withdrawal\) Bill: Agreement between the UK and Welsh Governments](#)', 25 April 2018.

<sup>35</sup> For a detailed account, see: House of Lords Library, '[European Union \(Withdrawal\) Bill: Lords Report Stage](#)', 14 May 2018.

<sup>36</sup> The policy areas the Government expected would be subject to such ringfencing regulations were set out in Annex A of Cabinet Office, '[Intergovernmental Agreement on the European Union \(Withdrawal\) Bill and the Establishment of Common Frameworks](#)' (24 April 2018). The Government published a report in November 2018 on progress towards agreeing common frameworks: '[European Union \(Withdrawal\) Act 2018 and Common Frameworks, 26 June 2018 to 25 September 2018](#)', November 2018.

<sup>37</sup> House of Commons, '[Written Statement: European Union \(Withdrawal\) Bill and Devolution: Update on Clause 11](#)', 25 April 2018, HCWS646.

<sup>38</sup> Cabinet Office, '[Intergovernmental Agreement on the European Union \(Withdrawal\) Bill and the Establishment of Common Frameworks](#)', 24 April 2018, para 10.

<sup>39</sup> Scottish Government, '[Withdrawal Bill Amendments "Undermine Devolution", Says Minister](#)', 25 April 2018.

<sup>40</sup> Supreme Court, '[UK Withdrawal from the European Union \(Legal Continuity\) \(Scotland\) Bill: A Reference by the Attorney General and the Advocate General for Scotland](#)', accessed 19 December 2018. The Counsel General to the Welsh Government and the Attorney General for Northern Ireland appeared as interveners in the case (Supreme Court, '[Judgment: UK Withdrawal from the European Union \(Legal Continuity\) \(Scotland\) Bill: A Reference by the Attorney General and the Advocate General for Scotland](#)', 13 December 2018, [2018] UKSC 64).

On 13 December 2018, the Supreme Court issued its judgment.<sup>41</sup> In it, the court held that the whole of the Scottish bill “would not be outside the legislative competence of the Scottish Parliament”.<sup>42</sup> However, the court also found that section 17 of the bill would be outside the legislative competence of the Scottish Parliament because it would modify the Scotland Act 1998. In addition, the court found that, at least in part, a number of other sections would be outside the competence of the Scottish Parliament because they would modify provisions of the European Union (Withdrawal) Act 2018 that had been passed by the UK Parliament in June 2018.<sup>43</sup>

Responding to the Supreme Court judgment on behalf of the UK Government, David Mundell, Secretary of State for Scotland, stated that he was “grateful to the Supreme Court for examining the issues here and for providing greater clarity”. He continued:

The Court’s judgment that significant parts of the bill are outside the competence of the Scottish Parliament shows that the UK Government was right to refer the bill to the Supreme Court. We will now carefully review the Court’s judgment.

We want to continue to work with the Scottish Government to provide much needed clarity for businesses and individuals in Scotland. This has been our aim throughout this process.<sup>44</sup>

In contrast, Michael Russell, Constitutional Relations Secretary in the Scottish Government, contended that the judgment “vindicated” the Scottish Government. However, he added:

Worryingly, parts of the bill have been thwarted as a result of steps taken by the UK Government. For the first time ever, UK Law Officers delayed an Act of the Scottish Parliament from becoming law by referring it to the Supreme Court.

Then the UK Government, for the first time ever, invited the UK Parliament to pass [the European Union (Withdrawal) Bill] which they knew would cut the powers of the Scottish Parliament without its consent. The UK Government changed the rules of the game midway through the match.

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<sup>41</sup> Supreme Court, [Judgment: UK Withdrawal from the European Union \(Legal Continuity\) \(Scotland\) Bill: A Reference by the Attorney General and the Advocate General for Scotland](#), 13 December 2018, [2018] UKSC 64.

<sup>42</sup> *ibid.*

<sup>43</sup> Supreme Court, [Press Summary: UK Withdrawal from the European Union \(Legal Continuity\) \(Scotland\) Bill: A Reference by the Attorney General and the Advocate General for Scotland](#), 13 December 2018, p 1.

<sup>44</sup> House of Commons, [‘Written Statement: Supreme Court Judgment on the UK Withdrawal from the European Union \(Legal Continuity\) \(Scotland\) Bill’](#), 13 December 2018, HCWS1180.

This is an act of constitutional vandalism but that does not take away from the fact this judgment makes clear MSPs were perfectly entitled to prepare Scotland's laws for Brexit at the time this bill was passed. The UK Government's arguments have been clearly rejected.<sup>45</sup>

This series of events has constitutional implications because, under the Sewel Convention, placed in law in relation to Scotland and Wales by the Scotland Act 2016 and the Wales Act 2017 respectively, the UK Government does not normally legislate with regard to devolved matters without the consent of the devolved legislatures.<sup>46</sup> The European Union (Withdrawal) Act 2018 receiving royal assent marked the first time that the UK Parliament had legislated on an issue relating to Scottish devolved competence without the consent of the Scottish Parliament.<sup>47</sup> The only previous occasion in which the Scottish Parliament had withheld legislative consent was in relation to aspects of the Welfare Reform Bill in 2011 that modified the powers of Scottish ministers concerning universal credit and personal independence payments.<sup>48</sup> On this occasion, the Welfare Reform Act 2012 received royal assent without the provisions from which the Scottish Parliament had withheld consent. Instead, the Scottish Parliament passed an act conferring powers on Scottish ministers.

Regarding other Brexit legislation to be passed by the UK Parliament, in June 2018 Michael Russell, Scottish Constitutional Relations Secretary, said he "couldn't conceive of circumstances" in which the Scottish Parliament would grant consent for further UK legislation related to Brexit, such as trade, agriculture and fisheries.<sup>49</sup>

### 3.2 Intergovernmental Relations

The UK's decision to leave the European Union has also raised related issues concerning how the UK Government takes account of the views of devolved administrations in its formulation of a post-Brexit trade policy and in other

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<sup>45</sup> Scottish Government, '[Supreme Court Judgment](#)', 13 December 2018.

<sup>46</sup> Institute for Government, '[Brexit and the Sewel \(Legislative Consent\) Convention](#)', 17 May 2018.

<sup>47</sup> Chris McCorkindale and Aileen McHarg, '[Continuity and Confusion: Towards Clarity? The Supreme Court and the Scottish Continuity Bill](#)', UK Constitutional Law Association, 20 December 2018. In addition, the Scottish continuity bill marked the first time that a Scottish government bill had been introduced with a negative statement of competence by the Presiding Officer of the Scottish Parliament, and the first time that a Scottish bill had been referred to the Supreme Court by UK Government law officers.

<sup>48</sup> Institute for Government, '[Brexit and the Sewel \(Legislative Consent\) Convention](#)', 17 May 2018; and House of Commons Library, '[Brexit: Devolution and Legislative Consent](#)', 29 March 2018, p 45.

<sup>49</sup> BBC News, '[Holyrood "Won't Approve Any Brexit Bills"](#)', 22 June 2018; and House of Commons Library, '["The Settled Will"? Devolution in Scotland, 1998–2018](#)', 19 November 2018, p 39.

policy areas with an external dimension.<sup>50</sup> This debate has been taking place in a context that the House of Commons Public Administration and Constitutional Affairs Committee has characterised as a “growing consensus that the current UK intergovernmental relations mechanisms are not fit for purpose”.<sup>51</sup>

In a report published in July 2018, the committee recommended that the Government “take the opportunity provided by Brexit to seek to develop, in conjunction with the devolved administrations, a new system of intergovernmental machinery and ensure it is given a statutory footing”.<sup>52</sup> The committee contended that an “absence of formal and effective inter-governmental relations mechanisms has been the missing part of the devolution settlement ever since devolution was established in 1998”, and concluded that the “present lack of intergovernmental institutions for the underpinning of trusting relationships and consent will no longer be sustainable” once the UK has left the EU. The committee suggested that any new intergovernmental apparatus that emerged “should ideally have an independent secretariat to schedule and organise intergovernmental meetings” and “provide an independent conduit for discussions among administrations at official and ministerial level in between formal intergovernmental meetings”.<sup>53</sup>

In September 2018, the Government responded to the committee’s recommendations. It stated that the UK’s exit from the EU marked a “new phase in relations between the four administrations of the UK” and as such the Government recognised the need to review intergovernmental structures to ensure they remained “fit for purpose”.<sup>54</sup> The response noted that a review was in progress. However, the Government disagreed with the committee’s view that such structures should be put on a statutory footing, instead arguing for flexibility. It contended that establishing a statutory framework would “require the UK Parliament to agree any changes that the four administrations wish to make to the agreements underpinning our relationship”. This, in turn, would “limit the participating administrations’ ability to adapt its function in what is a rapidly changing political landscape”.<sup>55</sup>

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<sup>50</sup> See, for example: Richard Whitman, [Devolved External Affairs: The Impact of Brexit](#), Chatham House, February 2017.

<sup>51</sup> House of Commons Public Administration and Constitutional Affairs Committee, [Devolution and Exiting the EU: Reconciling Differences and Building Strong Relationships](#), 31 July 2018, HC 1485 of session 2017–19, p 38.

<sup>52</sup> *ibid*, p 41.

<sup>53</sup> *ibid*.

<sup>54</sup> House of Commons Public Administration and Constitutional Affairs Committee, [Government Response to the Committee’s Eighth Report: Devolution and Exiting the EU—Reconciling Differences and Building Strong Relationships](#), 18 September 2018, HC 1574 of session 2017–19, pp 1 and 15.

<sup>55</sup> *ibid*, p 15.

The Joint Ministerial Committee (JMC), which comprises ministers from the UK and devolved governments, has operated since 1999.<sup>56</sup> A Europe sub-committee of the JMC, in which discussion on EU policy matters that affect devolved policy areas takes place, has operated since the same date. A separate European Negotiations sub-committee was established in 2016 to facilitate discussion between UK and devolved government ministers over the UK's approach to, and overall objectives for, withdrawal negotiations.<sup>57</sup> However, the Scottish and Welsh governments have expressed frustration with meetings of this sub-committee. In June 2017, Michael Russell and Mark Drakeford, then Scottish Minister for UK Negotiations on Scotland's Place in Europe and Welsh Cabinet Secretary for Finance respectively, wrote a letter to the then Secretary of State for Exiting the European Union, David Davis, arguing that the European Negotiations sub-committee should be "reset" as a forum so that ministers could have "meaningful discussions on key issues, aimed at reaching agreement rather than an opportunity to rehearse well-established public positions".<sup>58</sup>

On 2 July 2018, Mr Russell and Mr Drakeford wrote a further letter, this time to David Lidington, Minister for the Cabinet Office and Chancellor of the Duchy of Lancaster, to express dissatisfaction with the level of access provided to information on the Government's white paper on the future relationship between the UK and EU. They wrote:

We were not permitted to see a single word of the draft white paper in advance of [a Ministerial Forum on European Negotiations meeting] and could only make our contributions on the basis of a brief, oral summary of the relevant chapters. It is particularly bizarre that at least one chapter was sent to our Permanent Secretaries—who are not members of the [Ministerial Forum]—while the meeting was underway.

This in no sense lives up to the assurance that we would have a meaningful opportunity to shape negotiating positions as they are developed.<sup>59</sup>

Later that month, Mr Lidington contended that the UK Government was "committed to strong and effective relations with the devolved administrations of the United Kingdom". He had added that a new 'Ministerial Forum on EU Negotiations' had been set up to "enhance engagement with the devolved administrations on the UK's negotiating

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<sup>56</sup> Institute for Government, ['Devolution and the Joint Ministerial Committee'](#), 23 February 2018.

<sup>57</sup> *ibid.*

<sup>58</sup> Scottish Government, ['Scottish and Welsh Governments Write to Brexit Secretary David Davis'](#), 15 June 2017.

<sup>59</sup> Scottish Government, ['EU Negotiations'](#), 5 July 2018.

position”.<sup>60</sup> The most recent meeting of this forum, including ministers from the UK, Scottish and Welsh governments and a representative from the Northern Ireland Civil Service in the absence of a functioning executive in that part of the UK, was held on 3 December 2018.<sup>61</sup>

### 3.3 Devolution and the ‘English Question’

The issues discussed above about the legislative powers of the devolved administrations and mechanisms for the UK Government to take account of their views highlight the lack of corresponding devolved arrangements for England—part of the so-called ‘English Question’. The House of Commons Public Administration and Constitutional Affairs Committee has argued that, in the context of Brexit, “England’s place in the constitution needs urgently to be addressed”.<sup>62</sup> In addition, it has noted that “problems” can be caused by the dual role of the UK Government as the Government of both the UK and England, such as UK Government ministers conflating the interests of England and the UK or overlooking the interests of England in favour of those of the UK.<sup>63</sup> The committee has argued that such issues could be “eased by including separate English representation in inter-governmental mechanisms such as the joint ministerial committee structures”.<sup>64</sup>

### 3.4 Withdrawal Agreement and the Northern Ireland Backstop

Issues relating to the border between Ireland and Northern Ireland have been one of the main areas of difficulty in the withdrawal negotiations—in particular ensuring that no hard borders arise across the Ireland/Northern Ireland land border or down the Irish Sea between Northern Ireland and Great Britain. In July 2018, Prime Minister Theresa May reiterated the UK Government’s ambition to reach an agreement with the EU that prevented either from emerging:

I have said consistently that there can never be a hard border between Northern Ireland and Ireland.

I said it in my letter triggering Article 50, in my speech at Mansion House and many times besides [...]

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<sup>60</sup> House of Commons, ‘[Written Statement: Engaging the Devolved Administrations](#)’, 23 July 2018, HCWS905.

<sup>61</sup> Cabinet Office, ‘[Ministerial Forum \(EU Negotiations\) Communiqué: 3 December 2018](#)’, 3 December 2018.

<sup>62</sup> House of Commons Public Administration and Constitutional Affairs Committee, [Devolution and Exiting the EU: Reconciling Differences and Building Strong Relationships](#), 31 July 2018, HC 1485 of session 2017–19, p 30.

<sup>63</sup> *ibid*, p 28.

<sup>64</sup> *ibid*, p 30.

Equally clear is that as a United Kingdom Government we could never accept that the way to prevent a hard border with Ireland is to create a new border within the United Kingdom.<sup>65</sup>

Following negotiations, the withdrawal agreement reached between the UK and EU on 25 November 2018 contains a protocol on Ireland/Northern Ireland that includes a ‘backstop’ solution to prevent a hard border on the island of Ireland and/or down the Irish Sea.<sup>66</sup> This has been summarised as follows:

The backstop is a guarantee that whatever happens during the negotiations between the EU and UK on the future relationship, the open border between Ireland and Northern Ireland will be maintained, and the Good Friday Agreement respected. It is often described as an ‘all weather insurance policy’.<sup>67</sup>

The EU and the UK have made clear that their preferred outcome is for the future relationship to solve the Irish border question, and for the backstop to never be used.<sup>68</sup> In his legal advice to the Cabinet about the effect of the Northern Ireland Protocol, Geoffrey Cox, the Attorney General, noted that if the backstop did come into operation, “the UK as a whole (ie GB [Great Britain] and NI [Northern Ireland]) will form a single customs territory with the EU” but “the arrangements as a whole apply differently in GB and NI”.<sup>69</sup> He explained that Northern Ireland would remain in the EU’s single market for goods and the EU’s customs regime, and would be required to apply and to comply with the relevant rules and standards, but Great Britain would no longer be a member of the EU’s single market for goods or the EU’s customs arrangements. Mr Cox explained the practical effect of this would be that:

[...] for regulatory purposes GB is essentially treated as a third country by NI for goods passing from GB into NI. This means regulatory checks would have to take place between NI and GB, normally at airports or ports, although the EU now accepts many of these could be conducted away from the border.

Political opinion on the acceptability of this solution has been mixed. In Northern Ireland, the Democratic Unionist Party (DUP) and Ulster Unionist Party have rejected the backstop, arguing that separate arrangements for

<sup>65</sup> Prime Minister’s Office, ‘[PM Belfast Speech](#)’, 20 July 2018.

<sup>66</sup> The Attorney General’s legal advice on the Ireland/Northern Ireland Protocol was published on 5 December 2018: Department for Exiting the European Union, ‘[Exiting the EU: Publication of Legal Advice](#)’, 5 December 2018 (legal advice dated 13 November 2018).

<sup>67</sup> House of Commons Library, ‘[The Backstop Explained](#)’, 12 December 2018.

<sup>68</sup> *ibid.*

<sup>69</sup> Department for Exiting the European Union, ‘[Exiting the EU: Publication of Legal Advice](#)’, 5 December 2018 (legal advice dated 13 November 2018).



Northern Ireland threaten Northern Ireland's place in the UK's union.<sup>70</sup> The DUP has said that Mr Cox's legal advice demonstrated that the Prime Minister "had failed to abide by the commitment she gave that the United Kingdom as a whole would leave the European Union and that she would ensure there would be no customs or regulatory divergence within the United Kingdom".<sup>71</sup> Meanwhile, other political parties in Northern Ireland (such as Sinn Féin, the SDLP, Alliance and the Greens) have welcomed the backstop proposal, contending that it is a necessary insurance policy that would protect the Good Friday Agreement and prevent a hard border with Ireland if needed.<sup>72</sup>

Scottish First Minister Nicola Sturgeon has argued that Scotland should, at the very least, remain in the EU's single market and customs union after the UK's withdrawal from the EU.<sup>73</sup> As a result, the Scottish Government has expressed dissatisfaction that a close relationship for Scotland with the EU's single market and customs union was not included in the withdrawal agreement, while this arrangement was being put forward for Northern Ireland:

- The UK Government's approach to withdrawal from the EU has profound implications for the constitutional arrangements of the UK, and the devolution settlements [...]
- In the draft withdrawal agreement, it has now ignored the views of the people of Scotland by rejecting any possibility of a closer and different relationship for Scotland with the EU, while seeking—rightly and properly—such a relationship for Northern Ireland. The views of the people, Parliament and Government of Scotland have not been reflected or respected in the objectives or approach of the UK Government to the negotiations, calling into question any claim that the UK is a partnership of nations, or any claim for respect for Scotland within the union.<sup>74</sup>

Ms Sturgeon has contended that, if used, the backstop in the withdrawal agreement would give Northern Ireland a competitive advantage over Scotland by permitting it a closer relationship with the EU's single market than other parts of the UK.<sup>75</sup> Commenting on this concern, Derek Mackay, Finance and Economy Secretary in the Scottish Government, has stated that companies could have "more reason" to locate to Northern Ireland than

<sup>70</sup> House of Commons Library, '[The Backstop Explained](#)', 12 December 2018.

<sup>71</sup> Democratic Unionist Party, '[Dodds—"AG Advice Vindicates DUP Opposition to Backstop"](#)', 5 December 2018.

<sup>72</sup> House of Commons Library, '[The Backstop Explained](#)', 12 December 2018.

<sup>73</sup> BBC News, '[Nicola Sturgeon says Brexit Deal Bad for Scotland](#)', 14 November 2018.

<sup>74</sup> Scottish Government, '[Scotland's Place in Europe: Assessment of UK Government's Proposed Future Relationship with the EU](#)', 27 November 2018, p 2. See also: Ian Blackford, '[If Northern Ireland Can Get a Special Brexit Deal, So Must Scotland](#)', Scottish National Party, 19 November 2018.

<sup>75</sup> *ibid.*

they would to other parts of the United Kingdom if Northern Ireland had more access to the single market.<sup>76</sup>

It has been reported that Scottish Conservatives have also raised concerns about potential differences in the relationship between Northern Ireland and the EU when compared with other parts of the UK, because this could be used politically in support of a second Scottish independence referendum.<sup>77</sup>

#### 4. Proposals for Stabilising the Union

In its March 2016 report on the union, the House of Lords Constitution Committee recommended that the Government commission a “thorough evaluation of the impact on the union and its constituent nations of the cumulative effect of the devolution settlements and its plans for decentralisation within England”.<sup>78</sup> However, in a response issued in March 2017 the Government stated that it did not believe there was a need to conduct an evaluation.<sup>79</sup> Instead, the Government contended that its approach to devolution helped to ensure a “coherent and functioning union” that allowed decisions to be “taken at the most appropriate level”. In respect of its approach to the union, the Government added:

Strengthening and sustaining the union is a priority for this Government [...] Our constitutional arrangements provide the different nations of the United Kingdom with the space to pursue different policies in devolved areas should they choose to, while protecting and preserving the benefits of being part of the union. For that reason, the UK Government and Parliament continue to be responsible for matters where people in the United Kingdom benefit from a common approach. This includes defence, foreign policy and the constitution.<sup>80</sup>

However, since this report and response, calls for a mechanism to stabilise the union have continued. Such mechanisms include a constitutional convention to examine current arrangements holistically, and a new Act of Union to recast the UK uncodified constitution in the context of devolution.

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<sup>76</sup> Mure Dickie, ‘[Brexit Backstop Dispute Reopens Scotland Question](#)’, *Financial Times* (£), 7 December 2018.

<sup>77</sup> John Campbell and Stuart Nicolson, ‘[Why the Irish Border is a Big Deal in Scotland](#)’, 16 November 2018; and Mure Dickie, ‘[Brexit Backstop Dispute Reopens Scotland Question](#)’, *Financial Times* (£), 7 December 2018.

<sup>78</sup> House of Lords Constitution Committee, [The Union and Devolution](#), 25 May 2016, HL Paper 149 of session 2015–16, p 30.

<sup>79</sup> Cabinet Office, [The Union and Devolution: Government Response](#), 7 March 2017, p 2.

<sup>80</sup> *ibid.*

## 4.1 Constitutional Convention

Since the 2014 referendum on Scottish independence, a number of political parties and commentators have supported calls for a constitutional convention to consider constitutional issues, either individually or in the round, in large part as a means to strengthen the union.<sup>81</sup> This has been in the context of the significant constitutional developments over the past 20 years, and general agreement that these constitutional changes have been enacted on a ‘piecemeal’ basis, rather than as part of a comprehensive or fully coherent plan of constitutional reform.<sup>82</sup>

However, as noted by Dr Alan Renwick, Deputy Director of the Constitution Unit at University College London, a constitutional convention could take a number of forms, including an expert commission; negotiation among political leaders; an indirectly-elected assembly; a civil society convention; a directly-elected constituent assembly; a citizens’ assembly; or an assembly comprised of a mix of these forms.<sup>83</sup>

In addition, Dr Renwick, together with Professor Robert Hazell, has written about the issues that should be considered to ensure such an endeavour would be effective. These include giving advance consideration to the purposes of the convention should one be held; the convention’s scope and terms of reference; its membership; the process for selecting citizens to take part if applicable; its structure, operating methods, duration and schedule, staffing and budget; the support provided for members; the extent of its external engagement; and its role in decision-making.<sup>84</sup>

In a recent debate in the House of Lords on the case for a constitutional convention to consider the UK’s current constitutional arrangements, Lord Kennedy of Southwark (Labour) and Lord Bruce of Bennachie (Liberal Democrat), speaking on behalf of their respective parties, supported calls for a convention to consider current constitutional issues holistically.<sup>85</sup> However, Lord Young of Cookham (Conservative), speaking on behalf of the Government, commented that the wide-ranging nature of constitutional issues raised during the debate indicated that “any convention looking into them would take years to do them justice”.<sup>86</sup> For this reason, he argued that

<sup>81</sup> For further information on this issue, see: House of Lords Library, [Constitutional Issues and the Case for a UK-wide Constitutional Convention](#), 6 December 2018; and [HL Hansard, 13 December 2018, cols 1405–52](#).

<sup>82</sup> House of Lords Library, [Constitutional Issues and the Case for a UK-wide Constitutional Convention](#), 6 December 2018, p 2.

<sup>83</sup> Alan Renwick, [After the Referendum: Options for a Constitutional Convention](#), 2014, pp 8–9; and House of Lords Library, [Constitutional Conventions: Possible Options in the New Parliament](#), 20 March 2015, pp 5–13.

<sup>84</sup> Alan Renwick and Robert Hazell, [‘Blueprint for a Constitutional Convention’](#), UCL Constitution Unit, 5 June 2017; and House of Lords Library, [Constitutional Issues and the Case for a UK-wide Constitutional Convention](#), 6 December 2018, pp 10–12.

<sup>85</sup> [HL Hansard, 13 December 2018, cols 1440–6](#).

<sup>86</sup> *ibid*, col 1447.

it would be “worth considering how such a large topic could be disaggregated and prioritised, with the key issues being more clearly defined”. Lord Young added that he was concerned, having looked at examples from other countries in which constitutional conventions have been held, that they appeared to “often fail to deliver the intended result” of having any recommendations or proposals later implemented.<sup>87</sup>

## 4.2 New Act of Union

On 9 October 2018, Lord Lisvane (Crossbench) introduced a private member’s bill—the Act of Union Bill—that seeks:

[...] to provide a renewed constitutional form for the peoples of England, Scotland, Wales and Northern Ireland, to continue to join together to form the United Kingdom, to affirm that the peoples of those nations and parts have chosen, subject to and in accordance with the provisions of this Act, to continue to pool their sovereignty for specified purposes, and to protect social and economic rights for citizens.<sup>88</sup>

### Background

The Act of Union Bill has been developed by the Constitution Reform Group (CRG). Lord Lisvane is a member of its steering committee, together with Lord Hain (Labour), Lord Campbell of Pittenweem (Liberal Democrat) and the Marquess of Salisbury, a retired former Conservative Leader of the House of Lords.<sup>89</sup> The group counts amongst its supporters members of both Houses of Parliament, academics, retired public officials and other citizens.<sup>90</sup>

Introduced following a process of consultation beginning in 2015, the bill’s objective as stated by the CRG is to stimulate discussion on the UK’s constitutional arrangements:

The bill is the result of wide consultation over the last three years and it is the group objective to stimulate further debate. All of the members of the [CRG] steering committee and the group’s wide circle of correspondents agree that, in spite of piecemeal constitutional changes over recent decades, our present constitutional arrangements

<sup>87</sup> [HL Hansard, 13 December 2018, col 1449](#).

<sup>88</sup> UK Parliament website, ‘[Act of Union Bill \[HL\] 2017–19](#)’, accessed 19 December 2018; and [HL Hansard, 9 October 2018, col 14](#).

<sup>89</sup> Constitution Reform Group, ‘[About the Constitution Reform Group](#)’, December 2016; and ‘[Steering Committee](#)’, accessed 19 December 2018. The Marquess of Salisbury retired from the House of Lords on 8 June 2017 (UK Parliament website, ‘[Marquess of Salisbury](#)’, accessed 19 December 2018).

<sup>90</sup> Constitution Reform Group, ‘[Patrons and Correspondents](#)’, accessed 19 December 2018.

are unsatisfactory and trigger questions which undermine the stability of the UK.

The group believes that the case is a very urgent one, and the bill as it has been drafted reflects the view that the UK needs a new constitutional settlement if the union is to be preserved and strengthened. This is particularly important as the UK embarks on a new chapter of its history as it departs the EU in March 2019.<sup>91</sup>

The CRG has stated that work on the bill has been undertaken because, in its view, the “union of Northern Ireland, Wales, Scotland and England no longer seems secure” in the context of the 2014 referendum on Scottish independence and the 2016 referendum on EU membership.<sup>92</sup> The group has argued that the UK “need[s] a national debate which aims to build a consensus for a new Act of Union”, which “must be clear enough in its principles and provisions to command the understanding and support of the British public in all corners of the kingdom”. It has contended that the proposed bill fulfils this purpose.<sup>93</sup>

### **Provisions**

Part I of the bill sets out nine proposed ‘principal purposes’ of the United Kingdom. These are as follows:

- The rule of law and equality before the law.
- The protection of fundamental rights and freedoms.
- Defence of the realm and the conduct of foreign relations.
- The promotion of tolerance and respect.
- Equality of opportunity.
- Provision of a safe and secure society.
- Provision of a strong economy.
- Protection of social and economic rights, including provision of access to education and health and other social services (including the National Health Service).
- Benefiting from shared history and culture.<sup>94</sup>

The bill would also provide for a new framework within which the UK’s constituent parts could pool sovereignty. It sets out a list of central policy areas, or reserved competencies, and a series of options for arrangements in respect of different issues, including devolution in England and in relation to

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<sup>91</sup> Constitution Reform Group, ‘[Act of Union Bill to be Introduced in the House of Lords by Lord Lisvane on 9 October 2018](#)’, accessed 19 December 2018.

<sup>92</sup> Constitution Reform Group, ‘[About the Constitution Reform Group](#)’, December 2016.

<sup>93</sup> *ibid.*

<sup>94</sup> UK Parliament website, [Act of Union Bill \[HL\]](#), 9 October 2018, p 2.

the House of Lords. The provisions in the bill would be subject to approval in referendums to be held across the UK.<sup>95</sup>

### **Reaction**

During a debate in the House on 13 December 2018, Lord Hain (Labour) spoke in support of the bill. Concluding his remarks, he summarised its aims as follows:

The Act of Union Bill introduced by the noble Lord, Lord Lisvane, addresses the main issues at stake, from finance to security. Crucially, it proposes a bottom-up rather than the top-down arrangement that we have had until now. It turns the devolution settlement on its head by creating a new federal structure in which the constituent parts or nations voluntarily vest the sovereignty they choose at the centre—for example, for foreign, defence and security, taxation and pensions matters. Otherwise, every policy area remains with them.<sup>96</sup>

Commenting that the Bill was a “welcome addition to the debate on the future of unionism”, Professor Michael Keating of the University of Aberdeen has observed that it would provide for a “type of asymmetrical federal union”.<sup>97</sup> However, he added that other provisions appeared to be in tension with this:

There is to be a single civil service, which seems intended to be a strong force for cohesion, as though the bureaucracy should provide a centripetal balance to the centrifugal tendencies of politics. Most strikingly of all, there is a clause that provides that nothing in the [bill] will affect the sovereignty of the UK Parliament, which even retains the power to amend or repeal the Act of Union itself. Such a clause has featured in every devolution bill since 1886, with the exception of one Scotland Bill in the 1920s. It is the essential difference between devolution and the federal or confederal alternatives. It is also in glaring contradiction with the commitment to the sovereignty of the nations on which the earlier part of the proposal is based.<sup>98</sup>

He concluded that the bill was a “valuable contribution to the debate”. However, he added that “unionism has a long way to go to come up with a shared vision of the union itself”.<sup>99</sup>

<sup>95</sup> UK Parliament website, [Act of Union Bill \[HL\]](#), 9 October 2018.

<sup>96</sup> [HL Hansard, 13 December 2018, col 1424](#).

<sup>97</sup> Michael Keating, ‘[Building the Union Again: The New Act of Union](#)’, Centre on Constitutional Change, 24 October 2018.

<sup>98</sup> *ibid.*

<sup>99</sup> *ibid.*

## 5. Further Information

### Library Briefings

- House of Lords Library, [Constitutional Issues and the Case for a UK-wide Constitutional Convention](#), 6 December 2018
- House of Commons Library, [UK's EU Withdrawal Agreement](#), 7 December 2018
- House of Commons Library, ["The Settled Will"? Devolution in Scotland, 1998–2018](#), 19 November 2018
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- House of Commons Library, [Intergovernmental Relations in the United Kingdom](#), 24 July 2018
- House of Lords Library, [Brexit Preparations and Negotiations](#), 18 July 2018
- House of Commons Library, ["A Process, Not an Event": Devolution in Wales, 1998–2018](#), 11 July 2018
- House of Commons Library, [Devolution to Local Government in England](#), 9 May 2018
- House of Commons Library, [Brexit: Devolution and Legislative Consent](#), 29 March 2018
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### Committee Reports

- House of Lords Constitution Committee, [English Votes for English Laws](#), 2 November 2016, HL Paper 61 of session 2016–17; and [Government Response](#), 27 March 2017
- House of Lords Constitution Committee, [The Union and Devolution](#), 25 May 2016, HL Paper 149 of session 2015–16; and [Government Response](#), 7 March 2017
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- House of Commons Public Administration and Constitutional Affairs Committee, [The Future of the Union, Part Two: Inter-institutional Relations in the UK](#), 8 December 2016, HC 839 of session 2016–17; and [Government Response](#), 20 October 2017
- House of Commons Public Administration and Constitutional Affairs Committee, [The Future of the Union, Part One: English Votes for English Laws](#), 11 February 2016, HC 523 of session 2015–16; and [Government Response](#), 27 April 2016

### **Act of Union Bill**

- UK Parliament website, '[Act of Union Bill \[HL\] 2017–19](#)', accessed 19 December 2018
- Lord Campbell of Pittenweem, Lord Hain and the Marquess of Salisbury, '[Only a New Act of Union Can Save the UK from Break-up](#)', Constitution Reform Group, 20 September 2015