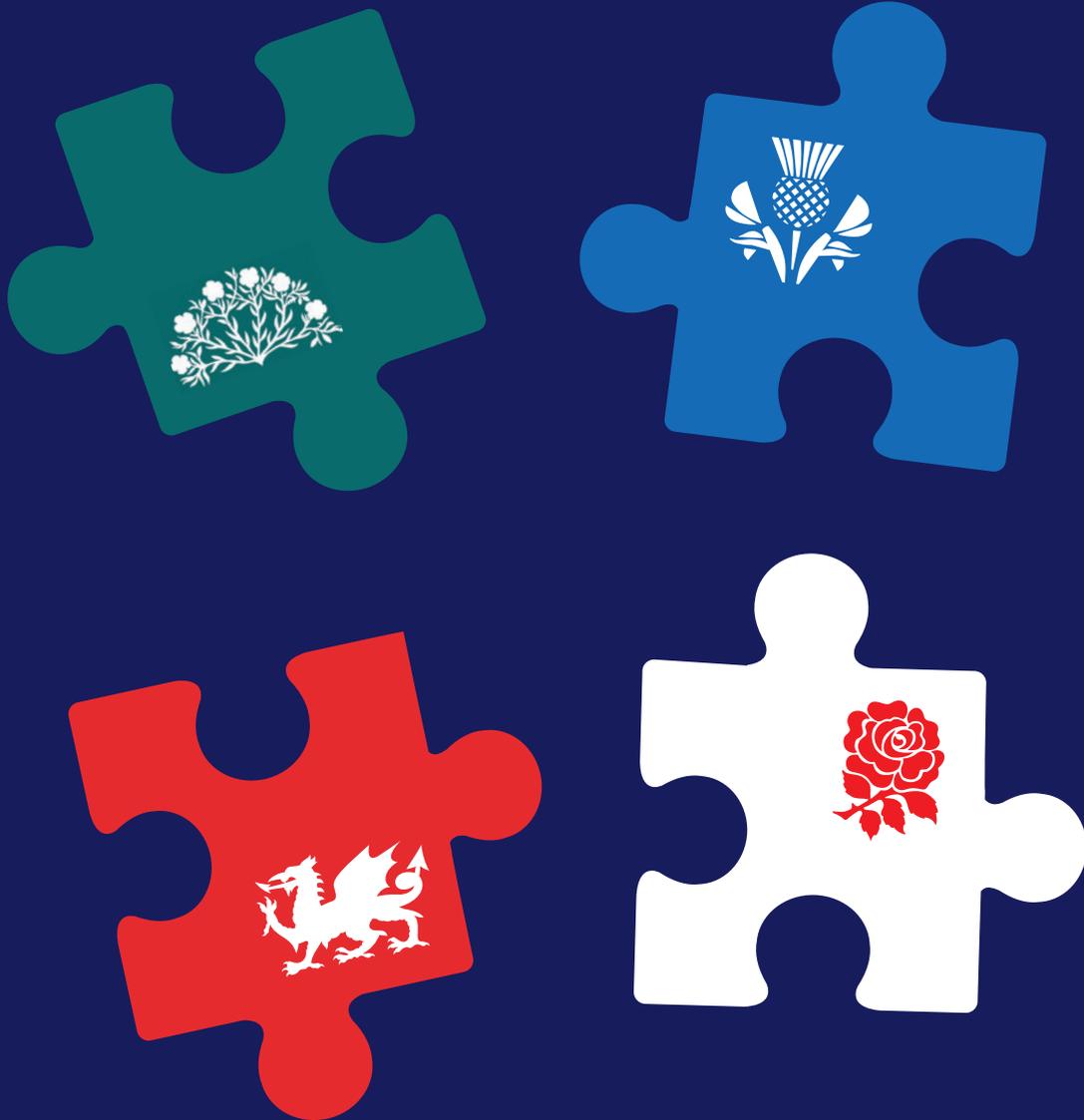


# Devolution at 20



## About this report

Devolution at 20 is a new Institute for Government report taking a data-driven look at the devolved governments and legislatures in Scotland, Wales and Northern Ireland. It examines how these institutions have operated in their 20 years of existence, and how the constitutional and financial relationship between the United Kingdom's four nations has evolved.

Find out more at:

**[www.instituteforgovernment.org.uk/  
devolution-uk-nations](http://www.instituteforgovernment.org.uk/devolution-uk-nations)**

The methodology for this report is available at:

**[www.instituteforgovernment.org.uk/publication/  
devolution-at-20/methodology](http://www.instituteforgovernment.org.uk/publication/devolution-at-20/methodology)**

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## Foreword

The devolution that began 20 years ago is one of the biggest experiments that the UK has chosen to perform on itself. The scale and speed of the change in its internal government confound its international reputation as a country bound by tradition.

Tony Blair, one of its architects, instigated the changes because he feared that Scottish independence put the union of the UK's different nations in jeopardy. But the question of how to unite different regions and people with different histories and identities is one common to many modern governments.

In this report, we have brought together and analysed the size, cost and political and legislative record of devolution to shed light on its successes and failures – and on the new pressures from Brexit. The picture shows a journey towards maturity of the new institutions and towards different models of government from Westminster – primarily coalitions and minority governments, produced by different electoral systems.

Devolution has had the most surefooted development in Scotland where, from the start, there was strong public support and the Scottish Parliament had extensive powers. In Wales, public support took time to build; so did the powers of the National Assembly. In Northern Ireland, the devolved government's ability to function has been dogged by splits between rival parties which the devolution settlement itself was designed to try to heal.

Public opinion will be the real test of whether the devolved governments deliver what people want better than a government in Westminster can do. We hope that the data and analysis in this report inform that judgement.



Bronwen Maddox  
Director, Institute for Government

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# Overview

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Twenty years ago, devolution transformed the governance of Scotland, Wales and Northern Ireland. Wide-ranging powers to make law, manage public services and set public spending priorities were transferred to new institutions in Edinburgh, Cardiff and Belfast. Devolution is now a permanent part of the UK constitution, but the devolution settlements have been anything but settled. Since 1999, devolution has evolved continuously. Extensive further powers have been transferred from Westminster, and the UK Parliament and Government have had to adapt in various ways. Since 2016, Brexit has created new tensions in the relationship between the UK and devolved governments.

On 6 May 1999, the first elections to the Scottish Parliament and National Assembly for Wales were held. Later that year, devolution in Northern Ireland began, when unionist and nationalist parties agreed to govern jointly in coalition. Since then, the devolved institutions in Scotland, Wales and Northern Ireland have exercised considerable power over the lives of people in those nations.

In this report, we explore how devolution has worked and how it has changed over its first two decades.

1. We look at the **election and party systems**, showing how different parties now dominate in each of the UK's four nations, and how coalitions and minority governments are the norm in the devolved nations.
2. We examine how the **devolved parliaments and assemblies** have worked in practice, and whether they have lived up to the expectations that they would practise more consensual politics than Westminster.
3. We look at how the **devolved administrations** operate, including how they are organised, the size of their workforces, and how this has changed.
4. We analyse devolved **public spending and taxation**, showing the divergence in spending priorities and tax policies across the UK.
5. Finally, we show how **Westminster and Whitehall** have been affected by devolution, and how Brexit has put the relationship between central and devolved governments under strain.

## The initial devolution settlements varied greatly between the four UK nations

The story of devolution is different in each part of the UK. Scotland benefited from more than a decade of deliberation about which powers should be devolved and how the new institutions should work. By 1997, there was a detailed blueprint, which was backed by almost three-quarters of Scottish voters in a referendum. Support for devolution was far weaker in Wales, with only 50.3% of voters supporting the change in 1997. Less consideration had also been given to the form devolution should take, and the initial Assembly had no ability to pass its own primary legislation. In Northern Ireland, devolution was the result of the peace process that had concluded with the signing of the Good Friday Agreement. The deal was overwhelmingly endorsed in referendums in both parts of Ireland, and elections to the new Northern Ireland Assembly were held in June 1998. Forming a government took longer, but by December 1999 the new Assembly and Government were ready to start operation.

England was left largely untouched by devolution, except for London where the Government created a Mayor and Assembly. Whitehall and Westminster were also barely affected, at least initially, and the UK and devolved governments created few formal mechanisms for joint working between them.

## Devolution has evolved in response to growing political and fiscal pressures

Devolution happened during a period of political alignment across Great Britain, as the Labour Party governed in Westminster, Edinburgh and Cardiff. This changed in 2007 when the Scottish National Party (SNP) took office in Scotland, and after 2010 as the Conservative Party came to power in Westminster. In Northern Ireland, meanwhile, the more hard-line Democratic Unionist Party (DUP) and Sinn Féin replaced their more moderate counterparts as the largest unionist and nationalist parties. By early 2017, when devolution collapsed in Belfast, the UK was governed by four administrations led by five different parties with distinct and often conflicting agendas.

From 1999 to 2010, public spending increased across all parts of the UK. Since then, however, and the start of a severe squeeze on public spending, all four UK governments have had to take difficult decisions about spending priorities. This created new tensions between the governments and fuelled calls for the devolved administrations to be given greater financial autonomy.

This has resulted in changes to the devolution settlements. Additional powers were transferred to the Scottish Parliament in 2012 and 2016, including over taxation and social security. Welsh devolution has also been transformed since 1999, with the Assembly gaining partial powers to pass primary legislation in 2007, and full legislative powers in 2011. The Wales Acts of 2014 and 2017 also extended the range of policy areas over which the Welsh Assembly has control. Devolution in Northern Ireland has been disrupted by several breakdowns in power-sharing between unionist and nationalist parties. When it has operated, further powers have been transferred, notably over policing and justice.

Most recently, Brexit has had a huge and disruptive impact on devolution. It has created great tensions between the different parts of the UK about the future relationships between the UK and the European Union (EU), and between central and devolved governments.

## Devolution has been a qualified success in its first two decades

The devolved institutions in Scotland, Wales and Northern Ireland are now established as permanent features of the UK constitution. There is no serious appetite for devolution to be abolished. This was not always guaranteed, particularly in Wales, but by 2011 almost two-thirds of voters voted in favour of full legislative powers for the Welsh Assembly. In Northern Ireland, despite the repeated collapse of power-sharing, devolved government remains far the most popular constitutional option.<sup>1</sup>

Devolution has allowed greater democratic expression in all three nations. Each can design policies and take public spending decisions that more closely align with local needs and preferences. Devolution has created space for greater policy experimentation, creating opportunities for the different governments to learn from each other. The devolved legislatures also tend to be more representative and politically balanced, as was the intention.

In terms of public service performance, however, it is less clear that devolution has had a positive effect. In Wales, in particular, there are signs that some health and education outcomes have fallen behind those in England.<sup>2</sup> The devolved institutions have also added another layer of government, creating additional costs, although this is a small proportion of overall public spending.

## There are big challenges for devolution in its third decade

Our analysis suggests that devolution faces unresolved challenges as it enters its third decade.

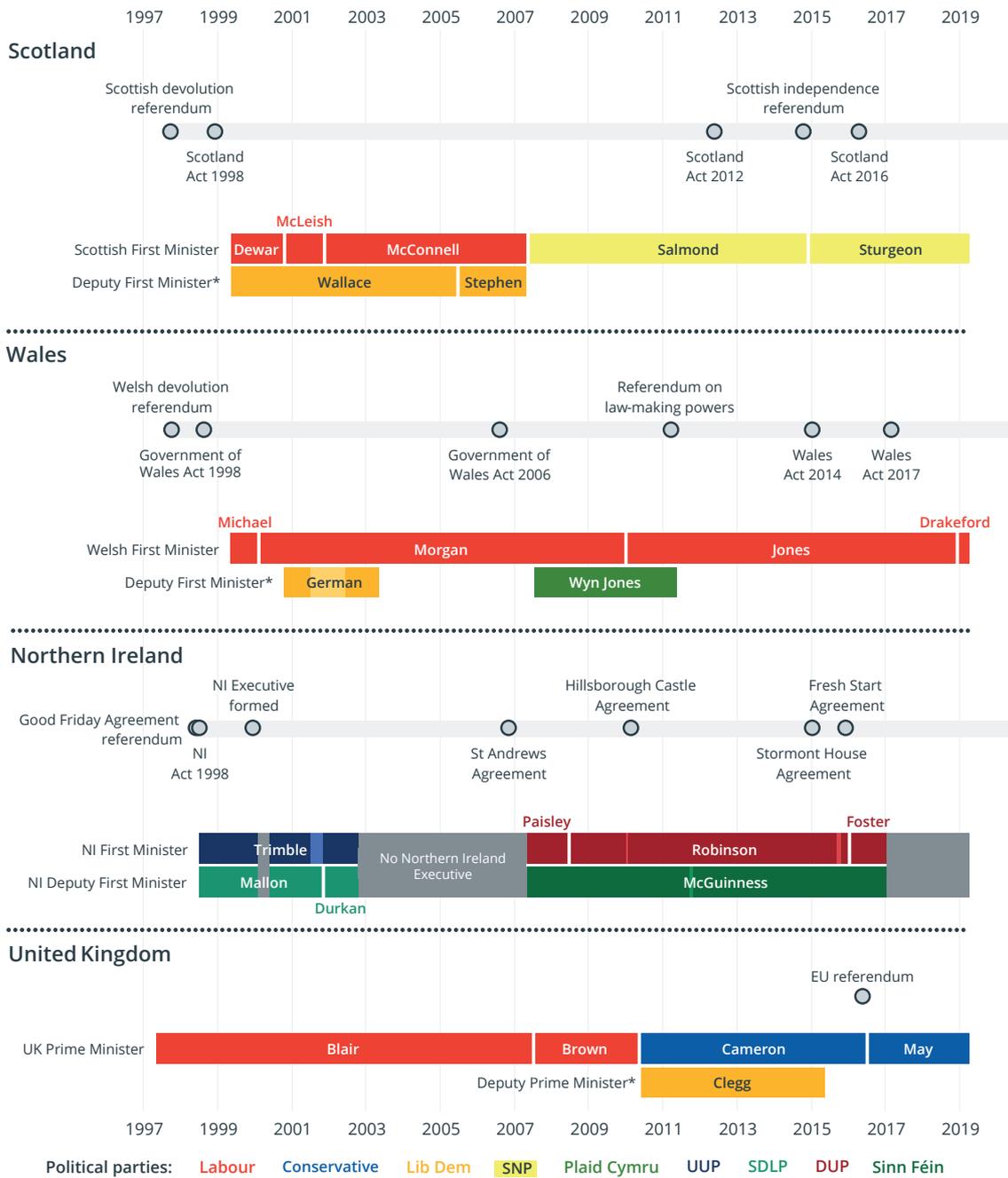
1. Brexit requires the UK Government and devolved administrations to agree on how to manage the powers repatriated from Brussels. The governments have agreed that this should include a significant expansion of devolved autonomy, but that they will need to work together in some areas where EU law has until now provided consistency across the UK.<sup>3</sup> They disagree, however, on which areas should be covered by UK-wide frameworks, and how these should operate. Reaching agreement will be hard, and require all sides to engage in discussions in good faith if there is to be a stable post-Brexit settlement.
2. UK and devolved governments will increasingly have to work together and make joint decisions, including in many areas currently governed by the EU, and in areas such as social security and taxation where more power is in any case being devolved. This will require the four governments to establish better, more transparent systems for working together and resolving disputes. The review of intergovernmental relations announced by the UK and devolved governments in 2018 provides an opportunity to make progress towards achieving this.<sup>4</sup>

3. The UK and devolved governments do not agree on the rules governing their relationship, as demonstrated by the passage of the European Union (Withdrawal) Act 2018 without the consent of the Scottish Parliament. The Scottish and Welsh Governments regarded this as a breach of the Sewel Convention, while the UK Government saw this as a legitimate exercise of parliamentary sovereignty. This has contributed to the breakdown of trust between the UK Government and devolved institutions. To avoid a repetition, the UK nations need to reach agreement on the principles of the post-devolution constitution, including whether Westminster should be able to legislate in devolved areas without consent.
4. Funding arrangements of the devolved nations have grown increasingly complex since 1999. Different tax powers are now devolved in each nation, while funding for Wales has been adjusted so that it is more based on needs. There have been good reasons for these changes, and demand for further devolution has differed in each nation, but the financial relationship between the UK's four nations increasingly lacks coherence or any guiding principles. This approach seems unsustainable in the long run, and the complexity of the system could undermine rather than enhance accountability.
5. The collapse of power-sharing in Stormont in 2017 has created a void of accountability while few new policies are being made. The absence of a devolved government also means Northern Ireland as a whole lacks a democratic voice in the Brexit process. The renewed effort announced in April 2019 to restore power-sharing is welcome.<sup>5</sup> Otherwise a resumption of formal direct rule by the UK Government may become the only option, which could undermine the legitimacy of decisions taken about Northern Ireland's future.
6. The Welsh Assembly has too few members to manage effectively the expanded legislative and scrutiny functions it has taken on since 1999. There is a strong argument, as outlined in the report of the Expert Panel on Assembly Electoral Reform in 2017, that the Assembly should be bigger, with an electoral system that delivers at least the same level of electoral proportionality as the present one.<sup>6</sup>
7. England has largely been ignored in the devolution process. This can lead to resentment, for instance at higher levels of public spending in the other nations, and the lack of a distinctly English voice in the Brexit process. Meanwhile, the process of devolution to cities and regions within England has lost momentum. There is a need for serious consideration and debate about how England should be governed and represented within the Union state.

The overarching problem is that there has been too little consideration of the future of the UK as a whole. Instead, there have been separate devolution processes in each part of the country. This approach has its advantages. The UK constitution has shown an impressive ability to adapt to pressures in each nation as they have arisen. But the downside is the absence of guiding principles, which has led to disagreement about the nature of the post-devolution constitution. The 2016 referendum and its aftermath have made it more urgent that these big questions be considered by the governments, by political parties and potentially through a deliberative exercise involving citizens from across the UK.

If these challenges are not addressed, relations between the governments and the nations of the UK could deteriorate, putting the stability of the Union at risk. Addressing them successfully would help to strengthen ties between the UK nations, stabilise the constitution and enable each nation to move on from constant constitutional uncertainty to focus on other issues that are important to voters, such as public services and the economy.

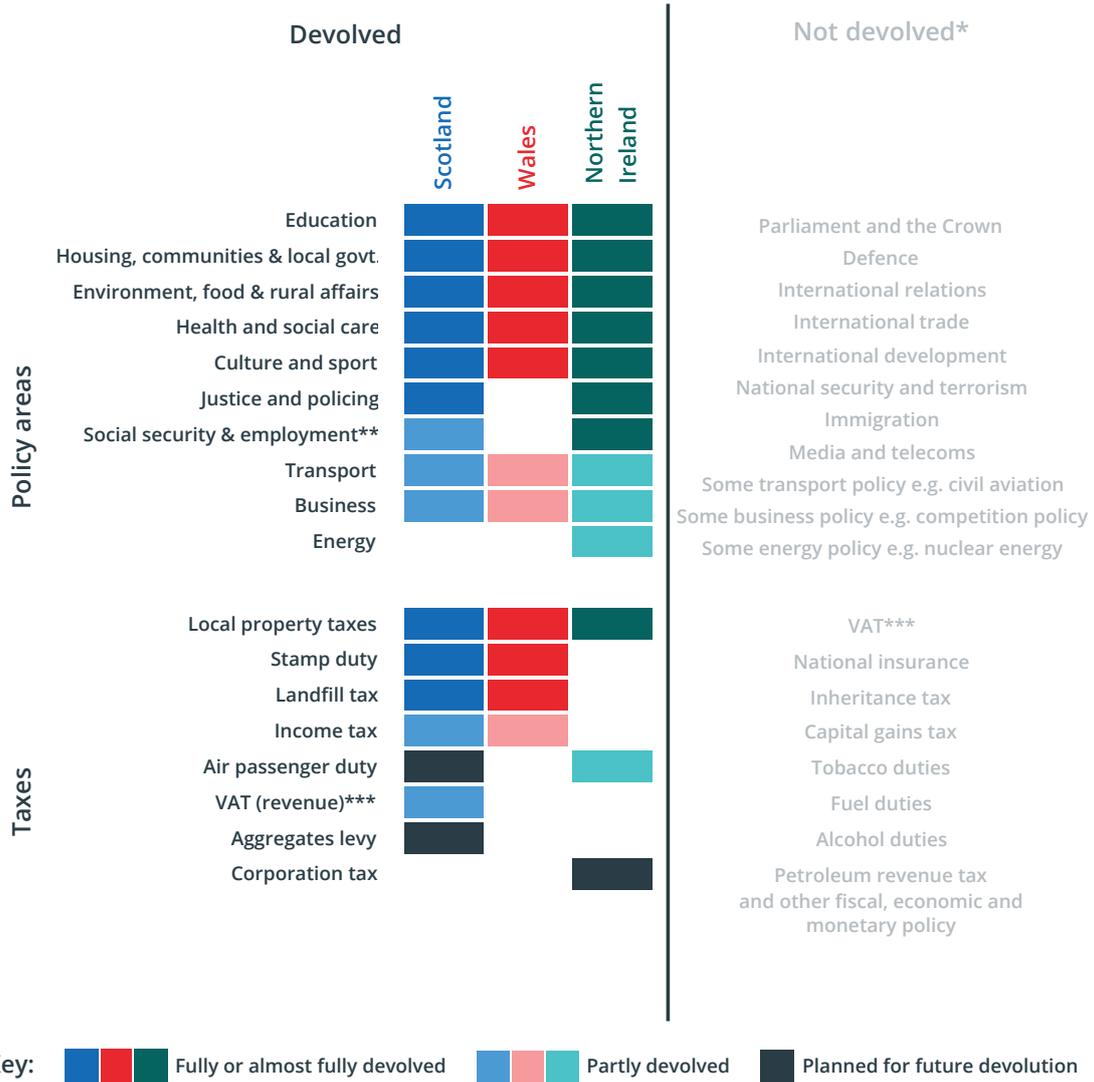
Figure 0.1 **Devolution at a glance: timeline 1997 to 2019**



Note: SNP = Scottish National Party, UUP = Ulster Unionist Party, SDLP = Social Democratic and Labour Party and DUP = Democratic Unionist Party.

Source: Institute for Government analysis of sources including GOV.UK.

Figure 0.2 **Devolution at a glance: key areas of devolved responsibility in 2019**



\* The Scottish Parliament and Welsh Assembly may not legislate on matters that are not devolved. These are known as reserved matters. The Northern Ireland Assembly may not legislate on 'excepted' matters, but may legislate on some, 'reserved', matters with UK Government consent.

\*\* Some benefits are devolved in Scotland. The Northern Ireland Executive administers most benefits in Northern Ireland, but maintains parity with UK welfare policy.

\*\*\* The UK Government sets UK-wide VAT policy and is responsible for collecting revenue across the UK. Fifty per cent of the revenue raised in Scotland is then assigned to the Scottish Government.

Source: Institute for Government analysis of sources including [GOV.UK](https://www.gov.uk).

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# 1 Elections and parties

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After two decades of devolution, the four nations of the UK have increasingly distinct political systems. Different parties dominate in each legislature, and the more proportional voting systems used in the devolved nations mean that coalitions and minority governments are the norm in Edinburgh, Cardiff and Belfast. Voter turnout has generally been lower in devolved elections than in UK general elections, but it increased at the most recent elections. The percentage of women in the Scottish and Welsh legislatures has consistently been higher than in the House of Commons, although the high point in both cases came in 2003. Meanwhile, the gender balance in the Northern Ireland Assembly has improved in recent years.

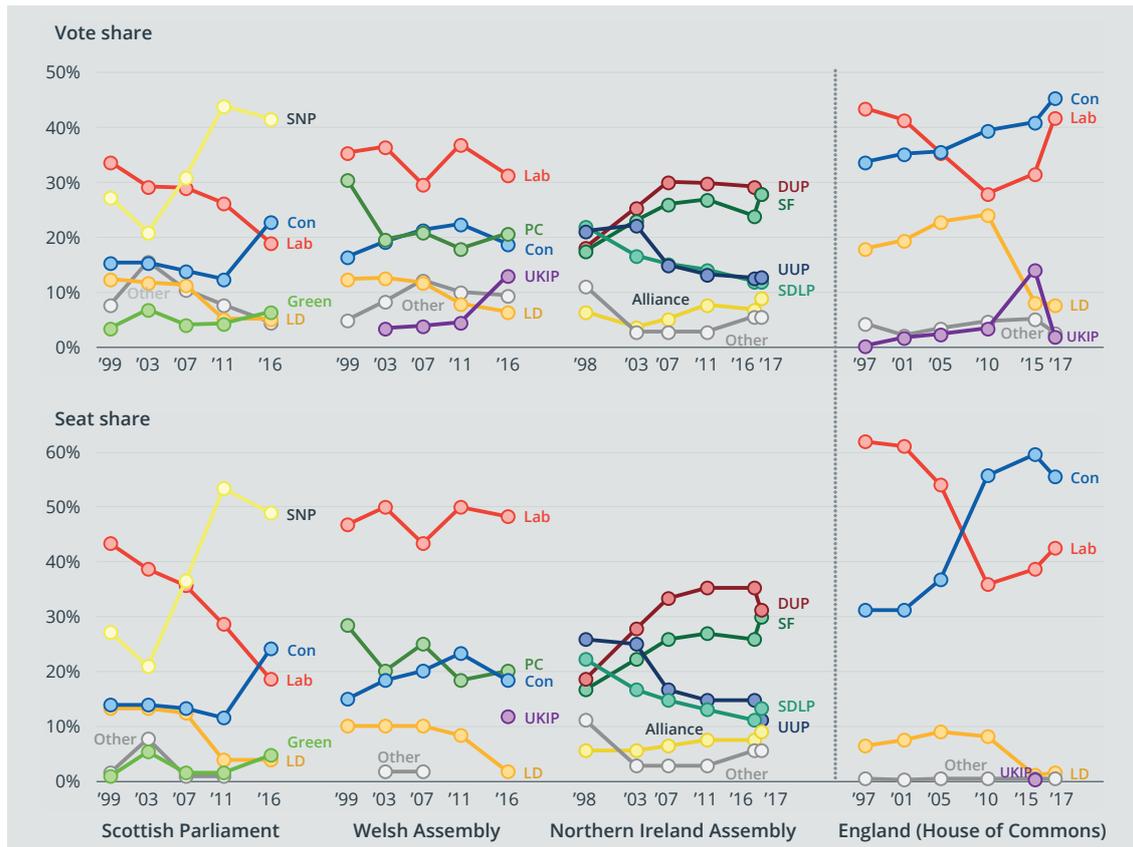
Devolution to Scotland, Wales and Northern Ireland in 1999 was intended to create new political systems that would be qualitatively different from Westminster, and that would reflect the specific political culture of each nation. There was an expectation that, in comparison with Westminster, devolved politics would be less dominated by single-party governments and less adversarial, and would create space for a wider range of voices to be heard in the political process. By creating political institutions closer to citizens and communities than Westminster, devolution also created new opportunities for democratic engagement.

These aspirations were reflected, for instance, in the Scottish Parliament's commitment to 'power-sharing', 'accountability', 'equal opportunities' and 'openness and participation' as its four guiding principles.<sup>1</sup> In Wales, there was a similar aspiration to create a 'new politics' based on consensus and cross-party working.<sup>2</sup> In Northern Ireland, the whole devolution settlement was founded on the principle of cross-community power-sharing. And all three new legislatures would be elected by proportional electoral systems, to make cross-party co-operation the norm rather than the exception. In light of these ambitions for the kinds of political system that devolution could create, this chapter discusses how the electoral and party systems of each of the nations have operated since 1999.

## There has been growing political divergence between the four nations of the UK

The four nations of the UK already had different political party landscapes at the outset of devolution due to the existence of the nationalist Scottish National Party (SNP) in Scotland and Plaid Cymru in Wales, and the wholly different party system in Northern Ireland. But the differences between the four nations in terms of election results have widened significantly over the past two decades.

Figure 1.1 **Percentage of votes and seats won by each party at devolved elections, compared with English constituencies in UK general elections, 1997 to 2017**



Note: Alliance = Alliance Party of Northern Ireland, Con = Conservative Party, DUP = Democratic Unionist Party, Green = Scottish Greens, Lab = Labour Party, LD = Liberal Democrats, PC = Plaid Cymru, SDLP = Social Democratic and Labour Party, SF = Sinn Féin, SNP = Scottish National Party, UKIP = United Kingdom Independence Party and UUP = Ulster Unionist Party.

Source: Institute for Government analysis of Audickas L and Cracknell R, *UK Election Statistics: 1918–2018*, House of Commons Library, 2018.

For the first eight years of devolution, Labour was the largest party in the Scottish Parliament and Welsh Assembly, while also holding a majority of English seats in the House of Commons. Since 2007, this has changed, and elections in each of the four nations now consistently deliver different parties into power.

In both Scotland and Wales, elections are held using versions of the 'additional member system', in which people vote both for a candidate in an individual constituency and for a party list at the regional level, with the regional votes used to ensure a greater degree of proportionality in the overall results.\*

\* By proportionality, we mean the degree to which the share of seats won by each political party is correlated with their vote share.

Labour won the greatest share of votes in the first two Scottish Parliament elections of 1999 and 2003, winning a large majority of constituencies but falling short of an overall majority due to the proportional element of the electoral system. In 2007, there was a near tie between Labour and the SNP, with the nationalist party edging ahead by one seat and 2% of the vote (on the regional list). The SNP has dominated since, winning a majority of seats and 44% of the votes in 2011, then falling back slightly in 2016, losing its majority but remaining comfortably the largest party in the Scottish Parliament. Meanwhile, Labour has continued to decline, losing votes and seats at every single devolved election, falling to third place behind the Scottish Conservatives in 2016 for the first time.

In Wales, by contrast, Labour has remained the largest party in the Welsh Assembly throughout the first 20 years of devolution. The party has won between 26 and 30 of the 60 Assembly seats at each of the five elections held to date, with regional vote shares between 30% and 37%. Plaid Cymru performed unexpectedly well in 1999, winning 31% of the regional vote (only 5% less than Labour) and 17 (28%) of the seats. Since then, Plaid Cymru has traded second and third places with the Conservatives.

The Liberal Democrats have declined dramatically in Wales and Scotland, losing over two thirds of their seats between 2007 and 2016, after entering government at Westminster in coalition with the Conservatives. In Wales, the party won just one seat in 2016. But the proportional element of the electoral system has also enabled various smaller parties to secure representation at various points. The Scottish Greens have won seats at every election, without ever winning in any individual constituency, while in Wales, the UK Independence Party (UKIP) won seven (12%) of the 60 seats in 2016, although most of its elected representatives now sit as independents after a series of splits and defections.<sup>3</sup>

In Northern Ireland, the main trend over the first two decades of devolution has been the growing dominance of the Democratic Unionist Party (DUP) and Sinn Féin, primarily at the expense of the more moderate unionist and nationalist parties that won the first Northern Ireland Assembly elections, the Ulster Unionist Party (UUP) and the Social Democratic and Labour Party (SDLP). In four consecutive elections, the DUP has won a consistent 28% to 30% of first-preference votes, delivering the party a share of between 31% and 35% of seats. On the nationalist side of the aisle, Sinn Féin has won between 24% and 28% of the vote, securing a record 30% of seats at the 2017 election. Meanwhile the UUP and SDLP have both lost more than 40% of their voters over the first two decades of devolution. But Northern Ireland also has the most balanced multi-party system of any of the four UK nations, and the two smaller 'sectarian' parties (UUP and SDLP) still won around a quarter of the seats in the 2017 election.

In England, two-party politics currently reigns supreme, at least when looking at the results of UK general elections in terms of English seats. The two large parties combined – the Conservatives and Labour – have won over 90% of English seats in every general election since 1945, rising to 98% in the past two general elections. The first-past-the-post system makes it very difficult for smaller parties to win representation, and the Conservatives or Labour have won a clear majority of English

seats at every election even when (in 2010 and 2017) they fell short of a majority in the House of Commons as a whole. In 2005, Labour won 54% of English seats despite winning fewer votes than the Conservatives. In 2017, the two parties combined also won 87% of votes in England – the highest since 1970 – following the collapse of, first, the Liberal Democrats and then UKIP.

The divergent trends in electoral results mean that, for most of the second decade of devolution, the UK's four governments have been led by parties with conflicting agendas – the SNP in Scotland, Labour in Wales, the DUP and Sinn Féin in Northern Ireland, and the Conservatives in Westminster.

## Devolved election results have been more proportional than results in Westminster

Figure 1.2 **Proportionality of election results for devolved elections and UK general elections (based on the Gallagher index), 1997 to 2017**



Sources: Institute for Government analysis of data from [www.parliament.uk](http://www.parliament.uk) and Gallagher L, 'Election indices dataset', 2019, retrieved 4 April 2019, [www.tcd.ie/Political\\_Science/people/michael\\_gallagher/ElSystems/index.php](http://www.tcd.ie/Political_Science/people/michael_gallagher/ElSystems/index.php).

Three different electoral systems are used across the UK's four legislatures, producing varying degrees of proportionality in terms of translating votes into seats. The commonly cited Gallagher index of electoral disproportionality, which measures the gap between votes received and seats won (so a higher score indicates more disproportionality), shows that devolved elections have generally produced more proportional results, meaning a closer correlation between vote share and seats won.\*

The 'single transferable vote' voting system used for Northern Ireland Assembly elections has consistently been the most proportional system in the UK, with an average disproportionality score of 3.8. The Scottish Parliament and, especially, the Welsh Assembly are less proportional, with average scores of 7 and 10.5 respectively.† This reflects the fact that under the 'additional member system' used in both cases,

\* The Gallagher index, also known as the least squares index, is a measurement of the overall disproportionality of election results. The methodology is set out in Gallagher M, 'Proportionality, disproportionality and electoral systems', *Electoral Studies*, 1991, vol. 10, no. 1, pp. 33–51.

† These calculations are based on the vote share in the regional list section of the vote (see Gallagher M, 'Election indices dataset', 2019, [www.tcd.ie/Political\\_Science/people/michael\\_gallagher/ElSystems/Docts/ElectionIndices.pdf](http://www.tcd.ie/Political_Science/people/michael_gallagher/ElSystems/Docts/ElectionIndices.pdf)).

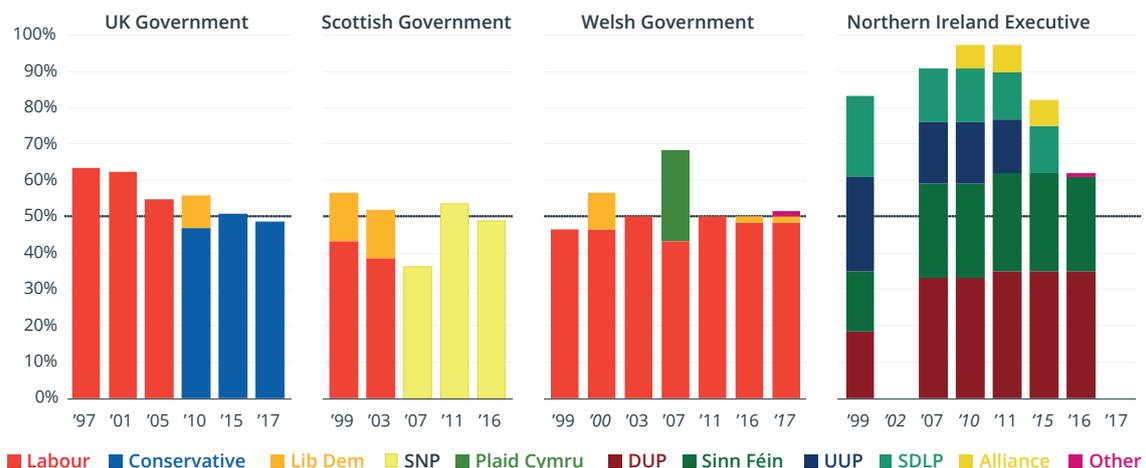
most seats are won in individual constituencies. The regional list element of the electoral system provides for a more proportional overall result. However, seats awarded at the regional level represent only 43% of seats in Scotland and just 33% in Wales, which is too few to fully compensate for the fact that large parties (the SNP and Welsh Labour, in recent elections) often win the lion's share of constituencies. Wales has in fact grown somewhat less proportional over time, as smaller parties such as UKIP, the Green Party and the Abolish the Assembly Party have won a greater share of the vote without (except for UKIP in 2017) winning any seats.

Elections to the House of Commons have been the least proportional, with an average disproportionality score of 16.2 between 1997 and 2015. In all these elections, the first-past-the-post system ensured that the largest party received a significant boost in terms of seats won, compared with its vote share, as noted above. For English seats, the disproportionality index hit a peak of 18.5 in 2015, when the Conservatives secured 60% of the seats for just 40% of the vote, while UKIP was rewarded with a single seat in return for 14% of English votes.

In 2017, however, the House of Commons suddenly became a fairly proportional parliament.\* The collapse of Liberal Democrat and UKIP support meant that there were fewer 'wasted votes' than in previous elections, and neither Labour nor the Conservatives won a majority of seats for a minority of votes. The UK-wide election result was more proportional than any Welsh Assembly election, as well as any Scottish Parliament election before 2016.

## Coalition and minority governments are the norm at the devolved level

Figure 1.3 Percentage of seats held by governing parties in the devolved legislatures and in the House of Commons, 1997 to 2017



Note: Years shown in italics indicate mid-term changes in governing parties.

Source: Institute for Government analysis of Audickas L and Cracknell R, *UK Election Statistics: 1918–2018*, House of Commons Library, 2018.

\* The 2017 general election result was the least disproportional since 1955 (see Renwick A, 'The performance of the electoral system: strengthening or weakening the case for reform?', blog, The Constitution Unit, 14 June 2017, retrieved 14 April 2019, <https://constitution-unit.com/2017/06/14/the-performance-of-the-electoral-system-strengthening-or-weakening-the-case-for-reform/>).

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The proportional electoral systems in Scotland, Wales and Northern Ireland were designed to produce more politically pluralistic legislatures. This aspiration has, broadly, been achieved and single-party majorities are very rare. Only once – in 2011 in Scotland – did any party win an outright majority by itself. In both 2003 and 2011, Labour won exactly half the seats in the Welsh Assembly.

In Scotland, a Labour–Liberal Democrat coalition governed from 1999 to 2007. The SNP has since governed alone – first in minority, then as a majority, and since 2016 in minority again. In Wales, Labour has been the main party of government throughout the first two decades of devolution. Labour spent three years in coalition with the Liberal Democrats, and four years in coalition with Plaid Cymru. It has otherwise governed alone, although since 2016 the Cabinet has included a Liberal Democrat and (since 2017) one independent member, in an arrangement that can be regarded as an informal coalition.

In both Scotland and Wales, coalition and minority governments have usually survived intact until the next scheduled election. None of the four coalitions formed in the two nations came close to splitting, despite the inevitable policy and personal differences that afflict all governments. The various minority governments formed have suffered many defeats on motions and legislation, but only once – in Wales in 2000 – have the opposition parties combined to bring down a government in a confidence motion. This led to the formation of the Labour–Liberal Democrat coalition in the Welsh Assembly.

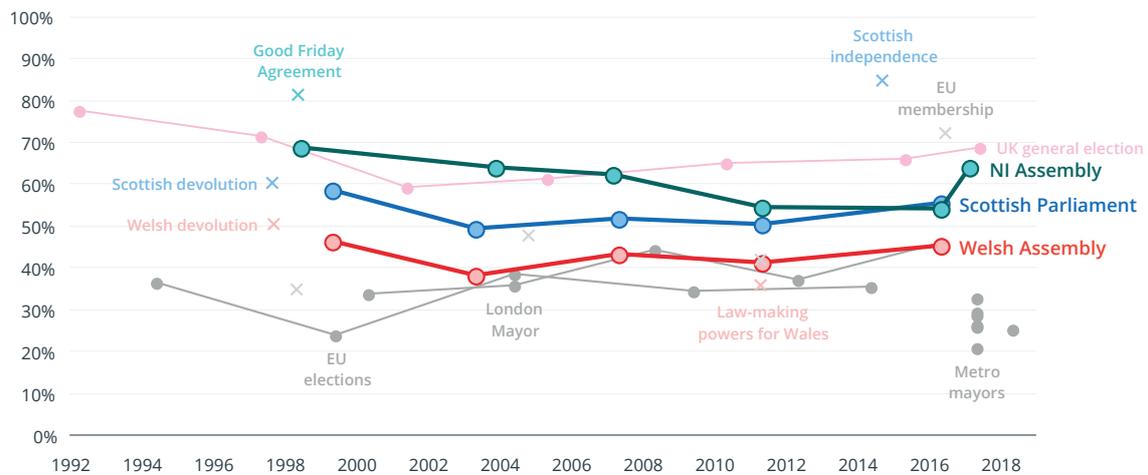
There have been other close shaves – such as when the Welsh and Scottish minority governments lost key votes on their budgets in 2005 and 2009 respectively<sup>4</sup> – but both times the governments ultimately got their way after making necessary compromises. As recent Institute for Government research concluded: “[M]inority governments can survive longer and accomplish more than expected. But to do this, ministers must be realistic about what they can achieve; make tactical concessions while keeping a focus on strategic objectives; and deal separately with other parties to keep the Opposition divided.”<sup>5</sup>

In Northern Ireland, the whole structure of devolution rests on a legal requirement that the main unionist and nationalist parties form a power-sharing coalition for devolution to function at all.<sup>6</sup> This has proven far more difficult to sustain. The first election to the Northern Ireland Assembly took place in June 1998, but it took until December 1999 before a power-sharing executive was ready to take office. That government – led by the UUP and SDLP, but also including DUP and Sinn Féin ministers – suffered from numerous internal conflicts and a lack of trust between the parties. The UK Government had to step in and suspend devolution four times in three years. The fourth suspension led to a five-year absence of devolved government. In 2007, the parties finally agreed to share power once more, with the DUP and Sinn Féin now the dominant players. This unlikely coalition, also including various smaller parties in different combinations at different times, survived until January 2017 before collapsing again. There has been no devolved government since then.

At Westminster, meanwhile, the expectation that the first-past-the-post system would deliver stable majority government has been shaken in the past decade by the hung parliament results of 2010 and 2017. The Conservative–Liberal Democrat coalition formed in 2010 held together without serious crises, and survived for the full five-year term. Theresa May’s minority government, supported by the DUP, has found it rather more difficult to deliver strong and stable government.

## Turnout in devolved elections has usually been lower than in UK general elections

Figure 1.4 Turnout at devolved elections compared with other UK elections and referendums, 1992 to 2018



Source: Institute for Government analysis of Audickas L and Cracknell R, *UK Election Statistics: 1918–2018*, House of Commons Library, 2018.

Devolution was supposed to bring politics closer to citizens.<sup>7</sup> One test of whether this has been achieved is electoral turnout, which is typically regarded as a key indicator of citizen engagement with the political process. Low or declining turnout is often regarded as a cause for concern, indicating “a sense that the parties are all the same, the politicians are all the same, they are not like us, it does not make any difference”.<sup>8</sup>

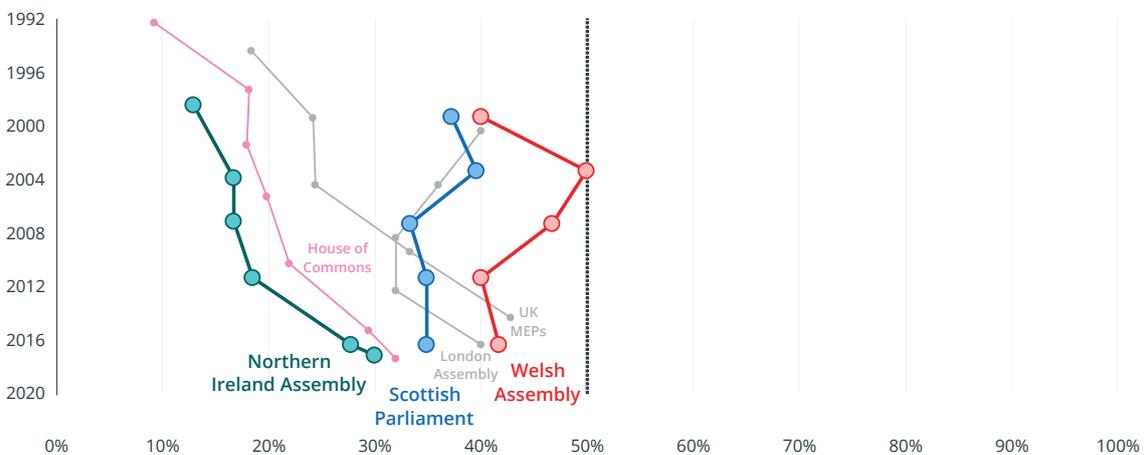
In all three devolved nations, turnout has been lower on average than for UK general elections. Since 1999, the average turnout in elections to the three legislatures has been 61% in Northern Ireland, 53% in Scotland and 43% in Wales, compared with 64% for Westminster since 2001. In all three nations, turnout was highest in the 1997 and 1998 referendums that established the new institutions, and next highest in the very first elections, held in 1998 in Northern Ireland and 1999 in Scotland and Wales. This suggests an initial enthusiasm for devolution that faded subsequently. If voter turnout is used as an indicator, devolution has not been entirely successful in improving citizen engagement with politics. However, devolution has taken place in an era of declining turnout generally. Between 1945 and 1997, turnout in UK general elections averaged 76% and never fell below 71%. In the five elections held in the 21st century, turnout never rose above 69% (in 2017).

In all three devolved nations, turnout rose by between 5 and 10 percentage points in the most recent devolved elections. The two electoral events with the highest turnout in at least the past 30 years were related to the governance of the devolved nations – the referendum to ratify the 1998 Good Friday Agreement (officially known as the Belfast Agreement) where 81% of voters turned out, and the 2014 Scottish independence referendum where 85% of voters turned out.

Turnout at the devolved level has been consistently higher than turnout at elections either to local councils or the European Parliament.

## More women are elected to the Welsh Assembly and Scottish Parliament than to the House of Commons

Figure 1.5 **Percentage of seats won by women at devolved elections, UK general elections, European Parliament elections and London Assembly elections, 1992 to 2017**



Note: MEPs = Members of the European Parliament.

Source: Institute for Government analysis of Audickas L and Cracknell R, *UK Election Statistics: 1918–2018*, House of Commons Library, 2018.

The establishment of the new devolved legislatures in Scotland, Wales and Northern Ireland in 1999 presented an opportunity to create a new political class in each nation, which might in principle have been more representative of the population at large than the political class in Westminster. In Scotland and Wales, parties such as Labour and the SNP made a deliberate effort to increase the number of female candidates standing in the first elections in 1999.<sup>9</sup>

This effort was reflected in the results of the first devolved elections: women made up 37% of the new Scottish Parliament and 40% of the Welsh Assembly. This was around twice the proportion of female Members of Parliament (MPs) at that time. The Northern Ireland Assembly was at that time far more dominated by men: women comprised just 13% of the members elected in 1998.

The second devolved elections in 2003 were the high-water mark for female representation in Scotland and Wales: 50% of Welsh Assembly members and 40% of Members of the Scottish Parliament (MSPs) were women. Since then, the figures have fallen somewhat, while the House of Commons and Northern Ireland Assembly have narrowed the gap between male and female representation. In 2017, 32% of MPs

and 30% of Northern Ireland Assembly members were women. Over the first two decades of devolution, there has therefore been convergence between the four legislatures in terms of gender representation, with the Welsh Assembly consistently the most balanced.

**Figure 1.6 Percentage of minority ethnic members in the devolved legislatures and House of Commons (based on 2016 devolved election results and the 2017 general election)**



Source: Institute for Government analysis of Audickas L and Apostolova V, *Ethnic Minorities in Politics and Public Life*, House of Commons Library, 2018; and Cracknell R, *Northern Ireland Assembly Elections: 2016*, House of Commons Library, 2016.

People from minority ethnic groups are also under-represented in the UK's legislatures by comparison with the general population. Since 1999, only four minority ethnic candidates have been elected to the Scottish Parliament, three to the Welsh Assembly and one to the Northern Ireland Assembly. Currently, there are two minority ethnic members in each of the Scottish Parliament and Welsh Assembly, respectively representing 1.6% and 3.3% of the legislatures overall, and there were none in the Northern Ireland Assembly elected in 2016. This compares with 4.5% of the population in Scotland being from a minority ethnic group, 4.4% in Wales and 2.0% in Northern Ireland.<sup>10</sup>

The House of Commons has a higher proportion of minority ethnic members at 8%, although this still falls short of representation of the UK population overall, of whom 13.6% are from a minority ethnic group. At the 2017 election, all 52 minority ethnic MPs elected represented English constituencies, representing 9.8% of English MPs, compared with the 15.3% of the entire English population with a minority ethnic background.<sup>11</sup> Consequently, none of the parliaments or assemblies of the UK fully reflect the population they represent, in terms of either gender or ethnicity.

Devolution is not revolution. The creation of elected institutions in Edinburgh, Cardiff and Belfast did not create a completely new way of doing politics. But it has enabled significant differences to emerge between the parts of the UK. Electoral turnout in the devolved nations has tended to fall below that for UK general elections, particularly in Wales, suggesting that the devolved institutions have further to go in terms of voter engagement. However, turnout rose at the most recent elections, and as further powers continue to be transferred to Scotland and Wales (from both Westminster and Brussels), the perceived importance of devolved elections could rise further.

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The results of devolved elections are almost always more proportional than UK general elections, which means that smaller parties are better represented in devolved legislatures and single-party majorities are rare. Consequently, devolved governments must work across party lines to a greater extent than in Westminster to achieve their objectives, and – in Scotland and Wales, though not Northern Ireland – they have done this with greater success. The next chapter considers in greater depth how the legislatures in Edinburgh, Cardiff and Belfast have operated in practice, and whether they have lived up to initial expectations of a less government-dominated system than at Westminster.

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## 2 Parliaments and assemblies

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The creation of new legislatures in Edinburgh, Cardiff and Belfast marked the beginning of the new era of devolution. They were designed to give expression to the distinct identities of the devolved nations and to foster a more collaborative, consensus-based politics than at Westminster. Since then, the three legislatures have used their powers to shape the statute book in their respective nations. While the Scottish Parliament and the Northern Ireland Assembly gained full legislative powers in 1999, the National Assembly for Wales initially held executive power only, taking on full legislative powers in 2011.

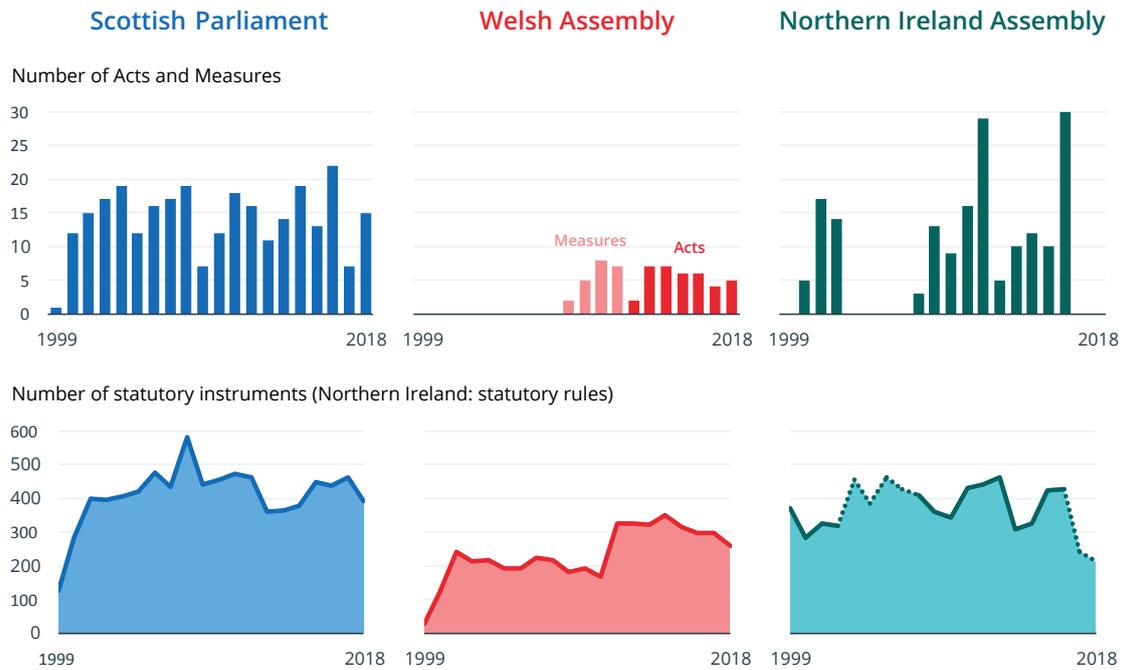
The Scottish Parliament and the Welsh Assembly were designed to limit executive dominance. Proportional electoral systems were established, in the expectation that single parties would rarely be able to form a majority government. Instead, minority and coalition governments have had to work across party lines. In addition, procedures were set up to make it easier for backbenchers and committees to introduce and advance legislation. But in practice the Scottish and Welsh executives have introduced a larger share of legislation than the UK Government has at Westminster. This may indicate that ambitions to promote more backbench and committee participation have not fully been realised.

The Northern Ireland Assembly was designed to “ensure that all sections of the community can participate and work together successfully”,<sup>1</sup> to facilitate power-sharing between unionists and nationalists. However, power-sharing has collapsed several times, including between 2002 and 2007, and since January 2017. And even before the most recent collapse of power-sharing, there were signs of escalating tension between unionist and nationalist parties, with growing use of the ‘petition of concern’ process that enables either side to exercise a veto.

## The devolved parliaments and assemblies have created new bodies of legislation for their respective nations

Until 1999, the UK Parliament was the source of all legislation across the whole of the UK. Since devolution, the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly have taken on the task of passing laws for their respective nations and have developed distinctive new bodies of law in areas of devolved responsibility.

Figure 2.1 **Volume of primary and secondary legislation passed by the devolved legislatures, 1999 to 2018**



Note: Secondary legislation made by Northern Ireland departments in the years that the Assembly did not sit is shown with a dotted line. Includes private Acts of the Scottish Parliament.

Source: Institute for Government analysis of [www.legislation.gov.uk](http://www.legislation.gov.uk).

The Scottish Parliament and the Northern Ireland Assembly have had the power to pass primary legislation since 1999. Between 1999 and the end of 2018, there were 282 Acts of the Scottish Parliament (including 19 private Acts\*) and 173 Acts of the Northern Ireland Assembly.† The volume of Northern Ireland Assembly legislation is lower due to the extended collapses of power-sharing. In the periods that it has been active, the Assembly has passed 14 pieces of primary legislation a year, nearly as many as the Scottish Parliament (15). The Scottish Parliament and the Northern Ireland Assembly have each passed almost 40% as many Acts as Westminster: the UK Parliament passed 825 Acts (including 77 private Acts) between the May 1997 general election and the end of 2018, or 38 Acts a year. In Northern Ireland, there have been spikes in legislation in the final years before scheduled elections (in 2011 and 2016).

\* A private Act is legislation that only applies to a certain group of people or organisations. For example, the University of Manchester Act 2004 merged two universities in Manchester. The Welsh Assembly and the Northern Ireland Assembly have procedures to pass private legislation, but have not done so in practice.

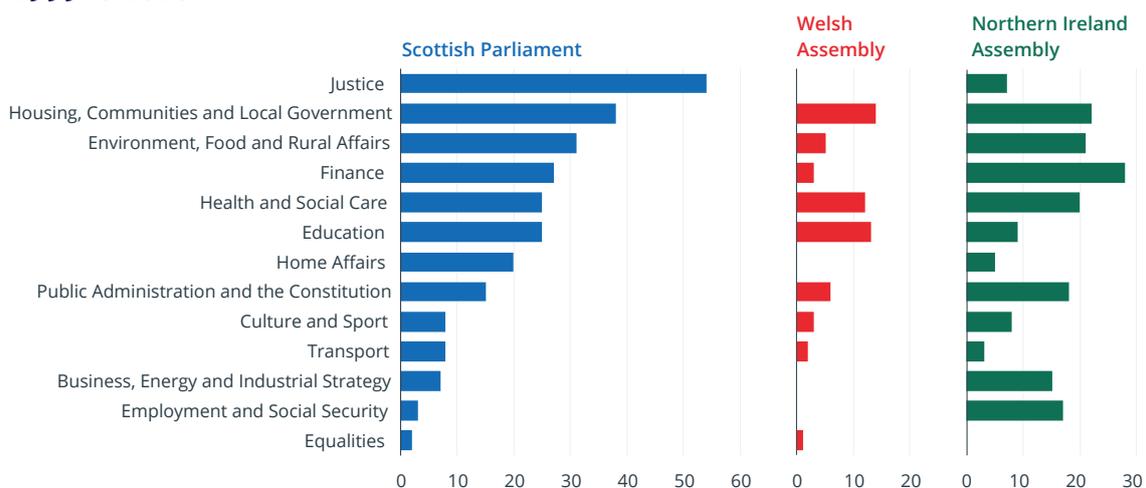
† Unless otherwise stated, all figures are as of 31 December 2018.

The Welsh Assembly had no power to pass primary legislation when it was first established. But from 2007, it was empowered to pass pieces of primary legislation known as Measures. This power was dependent on a mechanism called the Legislative Competence Order, by which Westminster granted the Assembly legislative powers over specific policy areas on a case-by-case basis.<sup>2</sup> Between 2007 and 2011, the Assembly secured 15 Legislative Competence Orders and passed 22 Measures. In 2011, it gained the power to pass Acts within all devolved policy areas, without first needing approval from Westminster. It has since passed 37 Acts, or 4.8 Acts a year. The Welsh Assembly has powers in fewer policy areas than the Scottish Parliament or the Northern Ireland Assembly, so passes less legislation overall.

## The legislatures have made new laws across the range of devolved policy areas

The devolved parliaments and assemblies can legislate on any matter that is not 'reserved' to the UK Parliament.\* The balance between reserved and devolved matters varies between the three devolved nations. For example, Wales has no powers over justice and home affairs (such as policing, crime and fire services), while Northern Ireland has powers over transport and energy that are not devolved elsewhere.

Figure 2.2 **Number of Acts and Measures of the devolved legislatures by policy area, 1999 to 2018**



Note: Private legislation in the Scottish Parliament is excluded.

Source: Institute for Government analysis of data from the Scottish Parliament, Welsh Assembly and Northern Ireland Assembly.

Since devolution, about 40% of all Scottish Parliament and Northern Ireland Assembly legislation has been on health, education, communities and the environment.<sup>†</sup> In the Welsh Assembly this is closer to 75%.

\* Before the Wales Act 2017, the Welsh Assembly could only pass legislation relating to explicitly devolved matters (see Jones E, Richards M and Thomas A, *The Wales Bill: Reserved matters and their effect on the Assembly's legislative competence*, National Assembly for Wales Research Service, 2016, pp. 1–2, [www.assembly.wales/research%20documents/16-051/16-051-web-english.pdf](http://www.assembly.wales/research%20documents/16-051/16-051-web-english.pdf)).

† Excluding finance bills, as the Scottish Parliament passes only one budget a year and the Northern Ireland Assembly passes two. The Welsh Assembly passes one budget a year, but this is not enacted in primary legislation in the same way.

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When the Scottish Parliament was established, it took on powers over crime, policing and justice. More than a quarter of Scottish Parliament legislation relates to these policy areas. Crime, policing and justice were also devolved to Northern Ireland in 2010,<sup>3</sup> which was hailed as a significant step forward in the peace process: before this, the UK Government had to give consent to Northern Ireland Assembly legislation in these policy areas.<sup>4</sup> Since 2010, eight bills relating to justice have been passed. The Welsh Government has now commissioned a panel to look at whether aspects of justice policy should be devolved to Wales.<sup>5</sup>

The devolved legislatures have taken the opportunity of devolution to do things differently from Westminster, leading to growing legislative divergence across the UK. For example, the Labour–Liberal Democrat coalition in Scotland brought in legislation to introduce free personal care for older people in 2002, and in 2018 the Scottish National Party (SNP) Government amended the law to extend it to the under-65s too.<sup>6</sup>

In several cases, temporary divergence has been followed by re-convergence as the legislatures have made changes to the law that have gone on to be adopted in other parts of the UK:

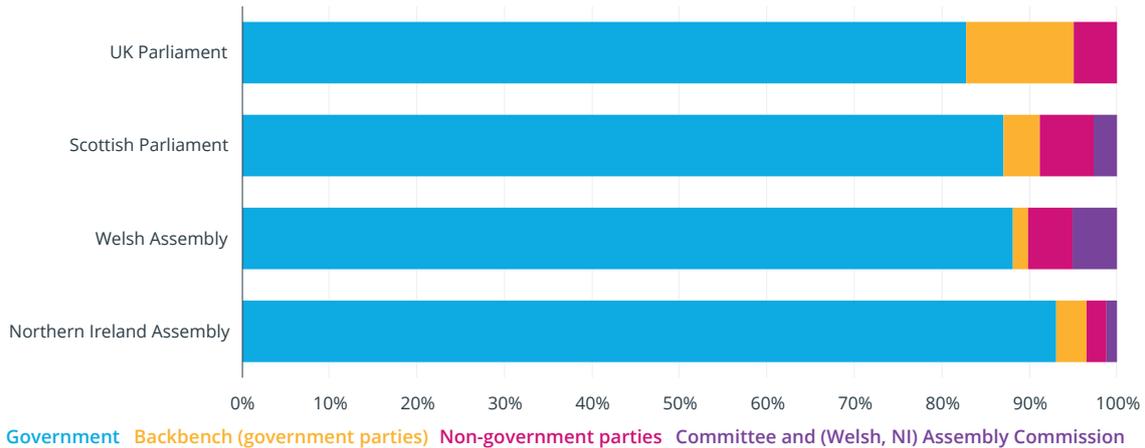
- The Scottish Government brought in legislation to ban smoking in enclosed public places from 2006. The UK Parliament and the Welsh and Northern Ireland Assemblies subsequently passed similar legislation.<sup>7</sup>
- The Labour–Plaid Cymru coalition in Wales introduced a levy on plastic carrier bags in 2011 and the other governments followed suit.<sup>8</sup>
- The minority Labour Government in Wales introduced a soft opt-out system for organ donation in 2015. Similar legislation will come into effect in England in 2020.<sup>9</sup>
- The Scottish Government introduced proportional representation for local elections in 2004,<sup>10</sup> which was already in place in Northern Ireland. Scotland also introduced votes for 16- and 17-year-olds in 2015.<sup>11</sup> The Welsh Assembly is now considering legislation to lower the voting age to 16 for Assembly and local elections.<sup>12</sup>

Devolution has thus enabled the new parliaments and assemblies to experiment with different policies. The Institute for Government has called this, in principle, an important benefit of devolution.<sup>13</sup>

## **Government bills dominate the devolved legislatures**

The devolved legislatures were designed to be more inclusive than Westminster, and to enable members from all parties to contribute to the legislative process. The architects of the Scottish Parliament in particular wanted the new parliament to be less dominated by the Executive than Westminster. Their vision was of a parliament that embodied the sharing of power between the Executive, the legislature and the people.<sup>14</sup> In all the legislatures, procedures were established to enable members and committees to introduce legislation of their own.

Figure 2.3 **Government and non-government bills that became law in the devolved legislatures (1999 to 2018) and the UK Parliament (1997 to 2018)**



Note: Includes Measures of the Welsh Assembly and excludes Scottish Parliament private legislation. UK bills initiated by crossbench peers are included under 'non-government parties'.

Source: Institute for Government analysis of UK Parliament sessional returns and data from the Scottish Parliament, Welsh Assembly and Northern Ireland Assembly.

In practice, the Scottish and Welsh Governments have introduced a slightly higher share of the bills that became law (87% and 88% respectively) than the UK Government (84%). Even during periods of minority government, the government in question has sponsored the bulk of the legislation. For instance, the minority SNP Government of 2007 to 2011, which held just 47 of 129 seats (36%), introduced 82% of the bills that became law.\* This suggests that ambitions to reduce executive dominance have not fully been realised. In 2011, a major study of the Scottish Parliament similarly found that both majority and minority governments have been able to dominate the Parliament.<sup>15</sup> Our findings indicate that this is still true for Scotland and has also been true for Wales since the devolution of primary legislative power.

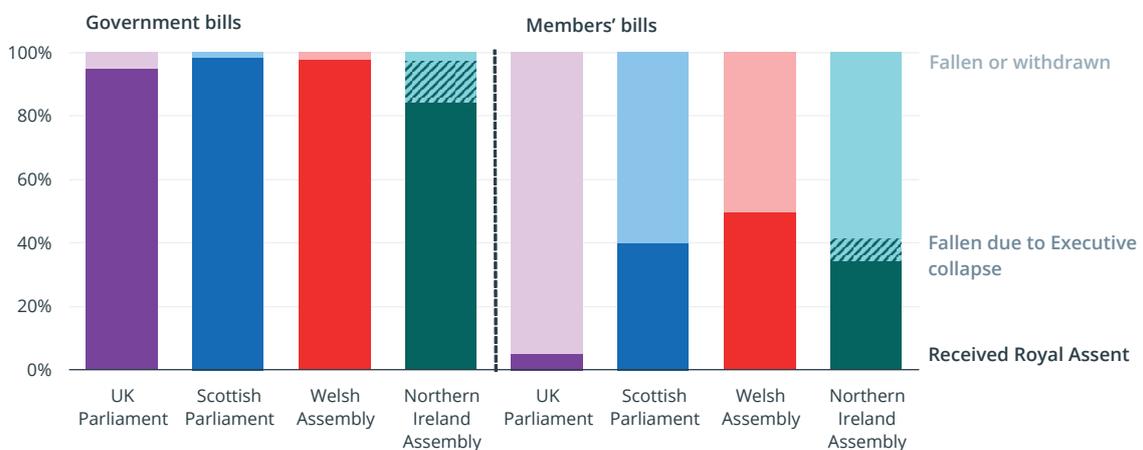
Members' bills make up just 10% of Scottish and 7% of Welsh primary legislation, compared with 16% of UK legislation. Unlike in Westminster, committees in the devolved legislatures can also introduce legislation. Committees have introduced seven successful bills in Scotland and one successful bill in Wales. In Wales, the Assembly Commission – a cross-party body responsible for the administration of the Welsh Assembly – has also introduced two bills that have become law. In February 2019, the Commission also introduced the Senedd and Elections (Wales) Bill, which aims to reduce the voting age for elections to the Assembly to 16 and to rename the Assembly the Senedd (or Welsh Parliament in English).<sup>16</sup> However, concerns have been raised that the volume of non-government legislation has been lower than initially expected. In 2017, a commission set up to review the performance of the Scottish Parliament warned that it had "heard concerns that overall the members' bills process has not been as widely used as was originally envisaged", partly because the Scottish Government is able to stop members' bills from progressing if it or the UK Government wants to introduce legislation to give effect to the same proposal.<sup>17</sup> The fact that members' bills make up a low proportion of all Scottish and Welsh legislation may indicate that ambitions to promote backbench and committee participation in the legislative process have not fully been realised.

\* Excluding private legislation (Scottish Parliament and UK Parliament only).

In the Northern Ireland Assembly, the larger parties form a mandatory coalition together. Backbenchers and committees may also introduce bills. Over this period, the Northern Ireland Executive passed 92% of public legislation. Fewer members' bills and committee bills have passed the Northern Ireland Assembly than the Scottish Parliament or Welsh Assembly, perhaps because members from most parties are represented in the Executive. However, before the collapse of the Northern Ireland Assembly in 2017, an unprecedented number of members' bills were proposed: members proposed 19 bills between May and October 2016, compared with 25 in the period between 2011 and 2016.<sup>18</sup>

## Government bills are more likely to pass in the devolved legislatures – and so are members' bills

Figure 2.4 Bills that became law and that fell in the UK Parliament (1997 to 2017), Scottish Parliament and Welsh Assembly (1999 to 2016) and Northern Ireland Assembly (1999 to 2017)



Note: Includes Measures of the Welsh Assembly.

Source: Institute for Government analysis of UK Parliament sessional returns and data from the Scottish Parliament, Welsh Assembly and Northern Ireland Assembly.

In all four UK legislatures, the vast majority of government bills introduced into the legislature reach the statute book. But government bills in the devolved legislatures are less likely to fall than those in Westminster. A total of 31 government bills (5%) introduced into the UK Parliament between 1997 and 2017 failed to become law, often because time ran out for the bill at the end of the parliamentary session, which is normally just a year long. In the devolved legislatures, sessions run for the four or five years between scheduled elections, giving governments more time to get their legislative programmes through. Very few government bills in Scotland and Wales have failed to become law. This has happened four times (1.9% of all government bills) in Scotland between 1997 and 2016 and just once in Wales (2.3% of all government bills). In Northern Ireland, 30 government bills have failed to become law (16% of all government bills). However, in all but five cases this was because the bills were lost when power-sharing collapsed.

All the government bills that have fallen in Scotland and Wales were lost during periods of minority government. In Wales, the minority Labour Government failed to get a Public Health Bill through the legislative process in 2015 after Plaid Cymru unexpectedly voted it down.<sup>19</sup> In Scotland, the minority SNP Government between

2007 and 2011 failed to get three bills through, including the 2009 budget.<sup>20</sup> After the 2009 budget was defeated, the Scottish Government negotiated with other parties, reached agreement and succeeded in passing a new bill a week later.<sup>21</sup> However, minority governments in Scotland and Wales have succeeded in passing all the other legislation they introduced. Generally they have been successful in avoiding embarrassing defeats of the sort that the minority government formed at Westminster after the 2017 general election has suffered.\*

Members' bills introduced in the devolved legislatures are also more likely to be passed than private members' bills at Westminster. This is because the devolved legislatures set a higher bar for the initial introduction of members' bills. At Westminster, any Member of Parliament (MP) can choose to introduce a bill, but few get very far: just 5% of bills introduced between 1997 and 2017 became law. In the Scottish Parliament and the Welsh Assembly, a member must be able to show that their proposed bill has cross-party support before it is introduced. In Scotland, the member must gain support for their bill from at least 18 other members from at least a half of the other parties for it to be introduced.<sup>22</sup> In Wales, the member must first enter their proposed bill into a ballot. When the bill is selected, the Welsh Assembly votes on whether it should be introduced.<sup>23</sup> Unlike at Westminster, staff services are routinely made available to help members formulate proposals for and draft their bills: the Non-Government Bills Unit in the Scottish Parliament is available to help members who want to develop a bill proposal, while in Wales a team of officials is assigned to help draft a bill once the Assembly votes that it can be introduced. In Scotland, 24 members' bills (40% of the 60 introduced) became law, and in Wales four out of eight (50%) became law.<sup>24</sup> Members of the Northern Ireland Assembly do not have to gain cross-party support to introduce bills, and are offered access to the drafting service on a first-come, first-served basis.<sup>25</sup> Of the 29 Northern Ireland members' bills introduced, 10 (34%) have become law.

The devolved legislatures can only pass legislation on matters that are not reserved to Westminster and that are compatible with European Union (EU) law and the European Convention on Human Rights.<sup>26</sup> When a bill is introduced, the presiding officer must certify that they believe it is within devolved competence. After a bill is passed, there is a four-week period in which the legislature's competence to pass it can be challenged in the courts before the bill receives Royal Assent.<sup>27</sup>

The UK Government has referred three Welsh Assembly bills and one Scottish Parliament bill to the Supreme Court to assess whether they are within devolved competence. It referred the Local Government Byelaws (Wales) Bill 2012 and the Agricultural Sector (Wales) Bill 2014 to the court. Both were found to be within competence and became law.<sup>28</sup> In 2015, the Welsh Government referred a members' bill – the Recovery of Medical Costs for Asbestos Diseases (Wales) Bill 2015 – to the Supreme Court: on this occasion the bill was struck down.<sup>29</sup> Private actors can also challenge the legality of devolved legislation. For instance, in 2016, part of the Scottish Children and Young People Act 2014 was judged to be outside devolved competence, after a case brought by the Christian Institute and others.<sup>30</sup>

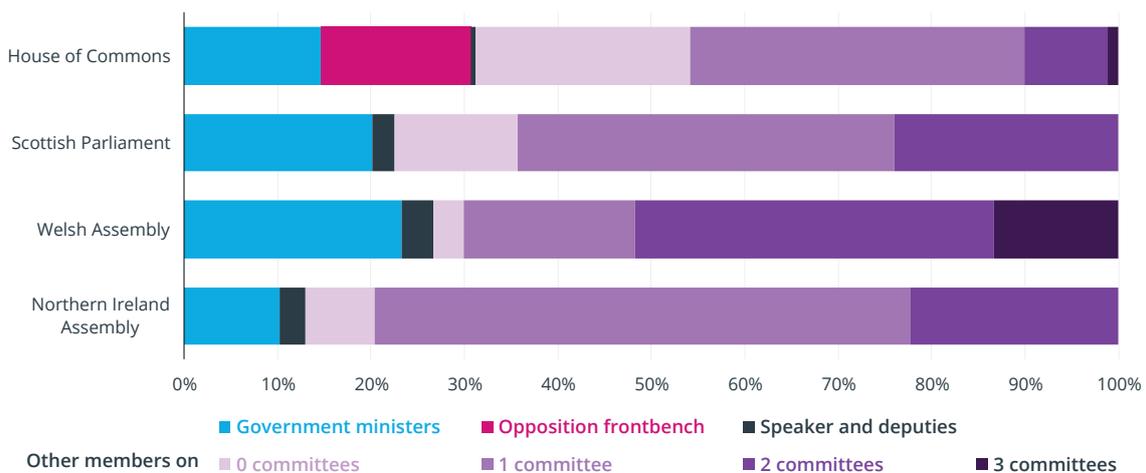
\* Between the start of the 2017 Parliament and the end of March 2019, the UK Government was defeated 14 times in the House of Commons (excluding Opposition Days). Not all of these defeats were on legislation.

Most recently, the UK Government referred the Scottish and Welsh Governments' bills to incorporate EU law into devolved law after Brexit to the Supreme Court. The Welsh Government withdrew its bill – the Law Derived from the European Union (Wales) Bill 2018 – after reaching agreement with the UK Government, but the Scottish Government did not. In December 2018, the Supreme Court found that large parts of the Scottish Government's bill – the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill 2018 – were outside devolved competence due to the passage of the UK's European Union (Withdrawal) Act 2018.<sup>31</sup> In April 2019, the Scottish Government confirmed that it would not be bringing back the bill to be amended in line with the court's ruling, but would bring back the bill's provisions on keeping pace with EU law in new legislation.<sup>32</sup>

## There are fewer members to scrutinise the government in the devolved legislatures

The devolved legislatures are much smaller than the UK Parliament, and have no second chamber. This means there are fewer members to fill government posts, and fewer members to scrutinise the Government in the chamber and committees. This may contribute to the greater ability of the devolved governments to pass legislation.

Figure 2.5 **Composition of the House of Commons and devolved legislatures by government roles and membership of scrutiny committees**



Source: Institute for Government analysis of data from the UK Parliament (2018), Scottish Parliament and Welsh Assembly (March 2019) and Northern Ireland Assembly (January 2017).

A larger proportion of members of the devolved legislatures are in the government in Scotland and Wales than at Westminster. In the House of Commons, 15% of MPs are members of the government, while 20% of the 129 members of the Scottish Parliament and 23% of the 60 members of the Welsh Assembly are also ministers. This reflects the smaller size of the devolved bodies. Governments should be able to rely on ministers to support them in votes.<sup>33</sup> The large size of the governments, in proportional terms, in both Scotland and Wales may make it easier for the governing parties to maintain party discipline and to keep control even when they do not have a majority.

In the Northern Ireland Assembly, the number of ministers is fixed in legislation, rather than being left to the discretion of the governing parties. Just 10% of members were in the Northern Ireland Executive when it collapsed in January 2017. This was because there were only two junior ministers, compared with 16 now in Scotland and five in Wales. But for ministers in Northern Ireland, the bigger challenge is usually reaching agreement with their coalition partners, rather than maintaining party discipline.

In all the UK's legislatures, non-government members have two main ways to scrutinise the government: in the chamber and in committees. At Westminster, the UK Government usually decides what the House of Commons will debate and determines the scheduling of time set aside for opposition and backbench business. The architects of the devolved legislatures established business committees for representatives from different parties to set the agenda for debates and to agree on the time to be spent on non-government business. The intention, in the Scottish case at least, was "that the arrangements for the programming of business in the Scottish Parliament should be inclusive and transparent".<sup>34</sup> In 2010, the House of Commons Reform Committee called for a similar business committee to be introduced at Westminster.<sup>35</sup>

It is not clear whether the existence of business committees changes the proportion of time spent on government business. While full data on the use of time is not available for the Northern Ireland and Welsh Assemblies, we estimate that in 2017/18 the Scottish Parliament spent a little less time on government business (35% compared with 38%) and a little more time on backbench business (26% compared with 23%) than the House of Commons.<sup>36\*</sup>

Members of the devolved legislatures also conduct scrutiny through scrutiny committees. Scrutiny committees carry out a wider range of functions in the devolved legislatures than in the UK Parliament. Like Westminster select committees, they conduct inquiries and produce reports. Unlike select committees, they also play a formal role in the process of scrutinising legislation. The rationale for creating subject-specific committees rather than ad-hoc bill committees to consider legislation is that this should lead to better scrutiny.<sup>37</sup> However, this model may pose some risks to committee independence. In 2017, the Commission on Parliamentary Reform, set up to consider the functioning of the Scottish Parliament, heard reports that party whips had co-ordinated committee votes not just on legislation but also on non-legislative inquiries, making it harder for committees to reach cross-party consensus.<sup>38</sup> In 2019, former First Minister Lord McConnell warned that scrutiny had not been as effective as had been hoped because of strong party discipline.<sup>39</sup>

Moreover, committees that have a large number of bills to consider may not have enough time to devote to conducting inquiries. Between 1999 and 2007, the Scottish Parliament Justice Committee was split into two separate committees to deal with its heavy legislative workload. Concerns remain that in some cases committees are not as effective as they could be because they have too much legislation to consider. The 2017 Commission on Parliamentary Reform also reported concerns that "some committees have seen so much legislation they have been unable to develop their own agenda with fewer opportunities to hold inquiries or focus on long-term or cross-cutting issues".<sup>40</sup>

\* One reason why the UK Parliament spent less time on backbench business was that the UK Government did not double the amount of backbench time available to reflect the double length of the session (see Lilly A, White A and Haigh J, *Parliamentary Monitor 2018*, Institute for Government, 2018, [www.instituteforgovernment.org.uk/sites/default/files/publications/IFG16416-Parliamentary-Monitor-Report-2018-1808-WEB-FINAL.pdf](http://www.instituteforgovernment.org.uk/sites/default/files/publications/IFG16416-Parliamentary-Monitor-Report-2018-1808-WEB-FINAL.pdf)).

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The small size of the devolved legislatures means that almost all members who are not in the government sit on committees. In the House of Commons, we estimate that 45% of members sit on scrutiny committees. By contrast, 64% of members of the Scottish Parliament, 70% of Welsh Assembly members and 80% of Northern Ireland Assembly members sit on committees. To ensure that all committee seats are filled, members of the devolved legislatures often have to sit on more than one committee. This raises questions about committee effectiveness, since members who sit on more than one committee have less time to develop subject expertise or to contribute to any particular committee's work.<sup>41</sup> In the House of Commons, only 9% of MPs sit on two or more scrutiny committees. In the Scottish Parliament, 24% of members sit on two or more scrutiny committees, and 22% of members of the Northern Ireland Assembly were on two committees when power-sharing collapsed in January 2017. The Northern Ireland Assembly was reduced in size from 108 to 90 from the March 2017 election, although it has not operated since then. If devolution is restored, the proportion of members who sit on multiple committees is likely to increase.

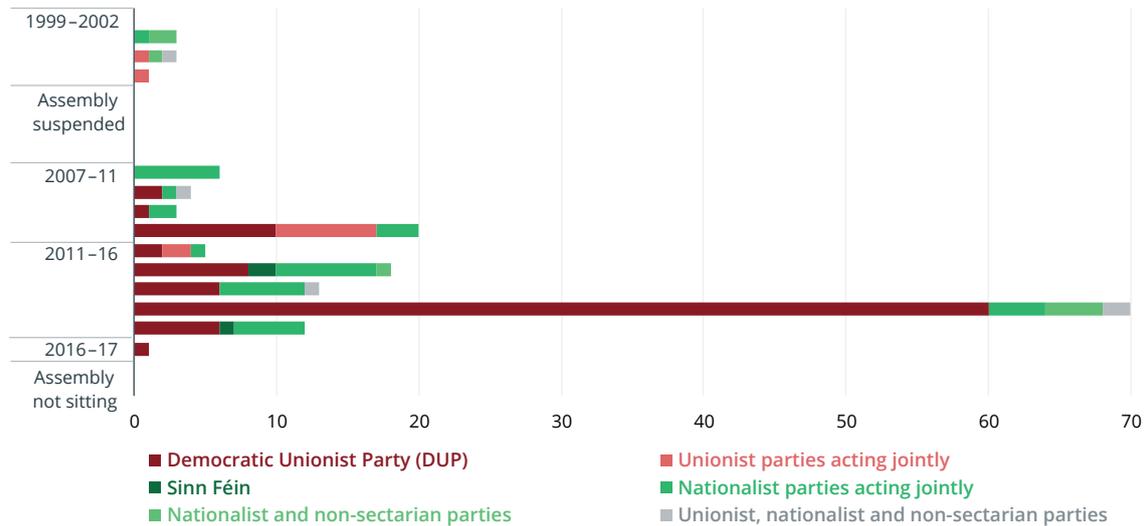
The burden of committee membership is heaviest in the Welsh Assembly. In 1999, the Assembly was set up as a 'body corporate', with no distinction between government ministers and other Assembly members. This meant that members of the Welsh Government could initially sit on scrutiny committees, alongside backbenchers from both governing and opposition parties. However, Assembly members soon came to the conclusion that having ministers on committees made accountability too unclear and scrutiny too difficult. As former Deputy First Minister Lord German put it: "you could be investigating a policy which you as the Government had to put in place".<sup>42</sup> The Welsh Government and Assembly split informally in 2002, and formally in 2006.<sup>43</sup> One consequence of removing ministers from committees, however, was to increase the burden on other members. Under the current system, 52% of the 60 Assembly members sit on two or more scrutiny committees, including nine out of eleven committee chairs. There are other indications that the Welsh Assembly may be struggling with its current volume of work. Our analysis shows that the House of Commons and Scottish Parliament have considered between 2.9 and 3.3 statutory instruments per member per year since 1999. Before the Welsh Assembly took on primary legislative power, it considered 3.0 statutory instruments per member per year; since 2011, that has risen to 5.2. In 2017, the Expert Panel on Assembly Electoral Reform conducted an independent review and concluded that the Assembly is now too small for the scale of scrutiny functions it must fulfil, now that it has primary legislative power. It recommended that the size of the Assembly should be increased to around 90 members.<sup>44</sup>

## **The veto designed to protect community interests in Northern Ireland has proven controversial**

The Northern Ireland Assembly was designed to facilitate power-sharing between unionist and nationalist parties: the largest parties from each community are legally required to form a coalition. If they fail to reach agreement, the Northern Ireland Executive collapses. To ensure that the interests of both communities are protected, the 1998 Good Friday Agreement established a requirement that cross-community support is needed for key votes in the Assembly, including for the election of the First Minister and Deputy First Minister.<sup>45</sup> Cross-community support is defined as either the

support of 60% of the Assembly's 108 (until 2017) members, including 40% of unionists and 40% of nationalists, or the support of an overall majority and majorities of both nationalists and unionists.<sup>46</sup> Any 30 members can also create a requirement for a vote to be taken on a cross-community basis by tabling a 'petition of concern'.<sup>47</sup> Thirty members is more than 40% of either the unionist or nationalist groups in the Assembly, so the 30 signatories to a petition of concern are effectively able to exercise a veto.

Figure 2.6 **Number of petitions of concern tabled in the Northern Ireland Assembly by party, 1999 to 2017**



Source: Institute for Government analysis of data from the Northern Ireland Assembly.

Northern Ireland Assembly members have tabled 159 petitions of concern in total since 1999, on motions, clauses of and amendments to bills, and whole bills.<sup>48</sup> In almost every case where a petition has been tabled, the 30 required members have been found to support it. Fourteen bills have been affected by a petition of concern, and four bills have fallen outright because of one.\*

The petition of concern process has been used on a range of different issues, including votes on issues of symbolic importance to one community or the other. For example, in 2001, members used a petition of concern to block a Democratic Unionist Party (DUP) motion that Easter lilies, a nationalist symbol, should not be displayed at Stormont.<sup>49</sup> In other cases, members have used a petition of concern on contested policy questions. In November 2015, a majority of Northern Ireland Assembly members voted in favour of same-sex marriage, but the DUP used a petition of concern to stop the proposal from being approved.<sup>50</sup>

The use of the petition of concern has changed over time, increasing sharply in the 2011–16 mandate. At the 2007 election, the DUP won 30 seats – enough to table a petition of concern successfully without the support of other parties. In 2011, the DUP's representation rose to 36 seats, and between 2011 and 2016 the DUP alone tabled 82 of 115 petitions of concern (71%). Other parties had to work together to table successful petitions of concern.

\* The Local Government (Disqualification) Bill and the Victims and Survivors (Disqualification) Bill in 2010, and the Welfare Reform Bill and the Rates (Relief for Community Amateur Sports Clubs) Bill in 2015.

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In 2012, the Northern Ireland Executive introduced a Welfare Reform Bill replicating new UK welfare policy. In 2014, Sinn Féin raised objections to the bill and tabled a number of amendments. The DUP used a petition of concern 47 times to block these amendments. When the bill reached the final vote, the Social Democratic and Labour Party (SDLP) decided to join Sinn Féin in a petition of concern. Together, they brought down the whole bill on a cross-community vote. The UK Treasury fined the Executive for failing to comply with budgetary rules and the Executive and Assembly eventually agreed that the legislation should be taken through Westminster instead.<sup>51</sup>

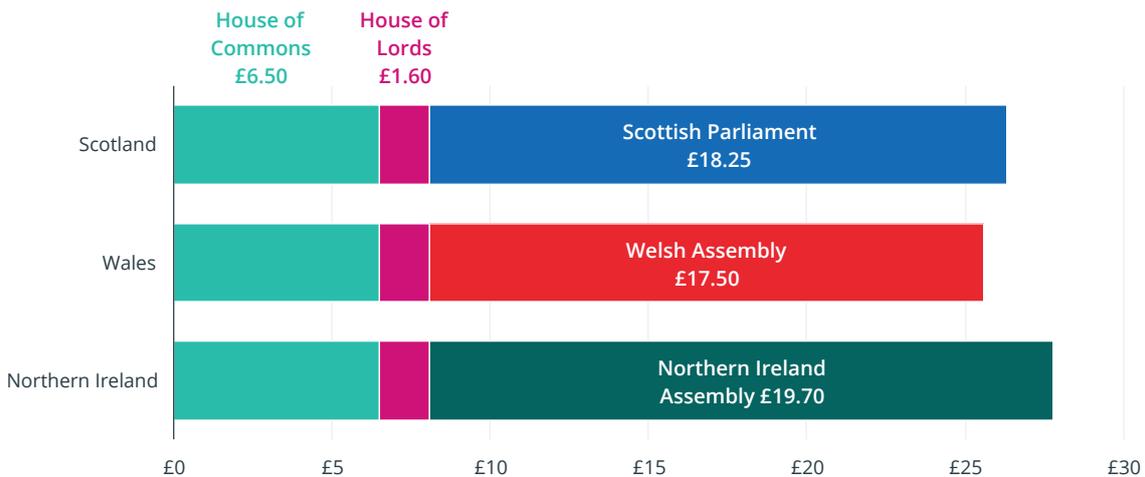
The major parties represented in the Northern Ireland Assembly have all expressed dissatisfaction with how the petition of concern process works. In November 2015, the two main parties signed the Fresh Start Agreement.<sup>52</sup> This included a proposed protocol on the use of the petition of concern. Under this protocol, members would agree only to table petitions of concern in exceptional circumstances and would provide a written explanation of why they believed it would be detrimental to hold a simple majority vote. However, the Fresh Start Agreement has not been fully implemented. At the 2017 election, the size of the Assembly was reduced from 108 to 90 members. The reduction in Assembly numbers makes it harder for any single party to get the 30 signatures needed for a petition of concern on its own. This reduces the risk of the petition of concern being used for party-political ends. But the parties are still divided on what should be done about the process.

Sinn Féin and the Alliance Party of Northern Ireland have each put forward proposals on restricting the use of the petition of concern to issues of community relations and constitutional arrangements, while the DUP has argued for the system of cross-community voting to be scrapped altogether.<sup>53</sup> To restore a sustainable power-sharing Executive, the parties will need to reach consensus on whether the petition of concern is fit for purpose and on whether and how it should be reformed.

## **The devolved legislatures cost more per person than the UK Parliament**

The legislatures created in 1999 have enabled elected representatives in Scotland, Wales and Northern Ireland to pass distinct legislation for each nation, and offered citizens greater opportunities for democratic expression. This comes at an additional financial cost to the public, on top of the cost of the UK Parliament. The creation and operation of the devolved legislatures are an entirely new cost from devolution, unlike the devolved administrations, which primarily inherited functions and spending programmes that had previously been part of the Scottish, Welsh and Northern Ireland Offices.

Figure 2.7 **Costs of the UK and devolved legislatures per head of population of each nation**



Source: Institute for Government analysis of statements of comprehensive net expenditure from the House of Commons, House of Lords, Scottish Parliament, Welsh Assembly and Northern Ireland Assembly.

In 2017/18, the total operating expenditure of the Scottish Parliament was £99 million (m), while the Welsh Assembly cost £55m to run and the Northern Ireland Assembly £37m (although the Northern Ireland Assembly did not sit in this period).\*

The costs of the devolved legislatures are considerably less than the £533m spent on running the UK Parliament. However, the cost per citizen represented is higher for the devolved legislatures. The cost of the UK Parliament per citizen represented is £8.10 a year, compared with £18.25 for the Scottish Parliament, £17.50 for the Welsh Assembly and £19.70 for the Northern Ireland Assembly.

However, the costs of the devolved legislatures represent a very small proportion of the total devolved budgets. Spending on each of the devolved legislatures makes up between 0.3% and 0.4% of the devolved budgets.<sup>54</sup>

Members of the devolved legislatures are paid less than MPs. The basic salary for an MP is £79,468 a year.<sup>55</sup> Members of the Scottish Parliament are paid £63,579 a year and members of the Welsh Assembly are paid slightly more, at £67,649 a year.<sup>56</sup> However, the total bill for members' salaries is lower in Wales because the Welsh Assembly has fewer members. Members of the Northern Ireland Assembly are still paid a salary even though the Assembly is not currently sitting.<sup>57</sup> This is because members still carry out constituency and other duties. When power-sharing collapsed in January 2017, the basic members' salary was £49,000,<sup>58</sup> but in September 2018 the UK Government passed legislation to reduce this to £35,888 from January 2019.<sup>59</sup>

As the roles of the devolved legislatures have changed, debate has arisen over whether they have the right capacity to fulfil all their functions effectively and efficiently. The 2017 reduction in the size of the Northern Ireland Assembly was part of an effort to reduce administrative costs under the 2014 Stormont House Agreement.<sup>60</sup> Meanwhile, the Expert Panel on Assembly Electoral Reform has called for the Welsh Assembly to be increased in size from 60 to around 90 members to

\* The total operating expenditure of the Northern Ireland Assembly was 10% lower in 2017/18 than in 2016/17, in part because of the collapse of power-sharing and in part because of the reduction in Assembly numbers after the 2017 election.

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reflect its increased legislative powers.<sup>61</sup> If this happens, the panel estimates that it would cost £3.3m in one-off costs and a further £9.6m annually.<sup>62</sup>

It is important both for efficiency and for public trust in the political process that the legislatures face robust scrutiny on whether they are using public money as effectively as they can. However, the running costs of the legislatures are a relatively small public expenditure, especially given the potential benefits of better scrutiny and democratic accountability: the expert panel that recommended that the size of the Welsh Assembly should be increased concluded that “even marginal improvements in the scrutiny of Welsh Government spending and policy decisions will reap significant dividends to the taxpayer.”<sup>63</sup> Most of the devolved budgets are spent on public services by the devolved governments. In the next chapter, we consider how the governments in Edinburgh, Cardiff and Belfast are organised and how they have changed since 1999.

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## 3 Devolved administrations

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Until devolution in 1999, civil servants in all parts of the UK reported to UK Government ministers. Today, around one in ten civil servants is accountable to ministers in the three devolved administrations. Northern Ireland has the largest civil service, partly because it runs its own social security system. The Scottish and Welsh administrations expanded substantially after 1999, to meet the demands of the new era of devolution. But most civil servants employed in Scotland and Wales are still part of UK Government departments. Since 2010, all three administrations have faced budget pressures but Scotland now has a larger devolved workforce than at the start of austerity. Numbers are down slightly in Wales and substantially in Northern Ireland.

Devolved ministers in Scotland, Wales and Northern Ireland are supported by a civil service workforce of several thousand people in each nation. These workforces were inherited from the UK Government in 1999, but have since had to expand and evolve to serve the needs of ministers that have policy priorities that are different from those set in Westminster, and as further functions have been devolved.

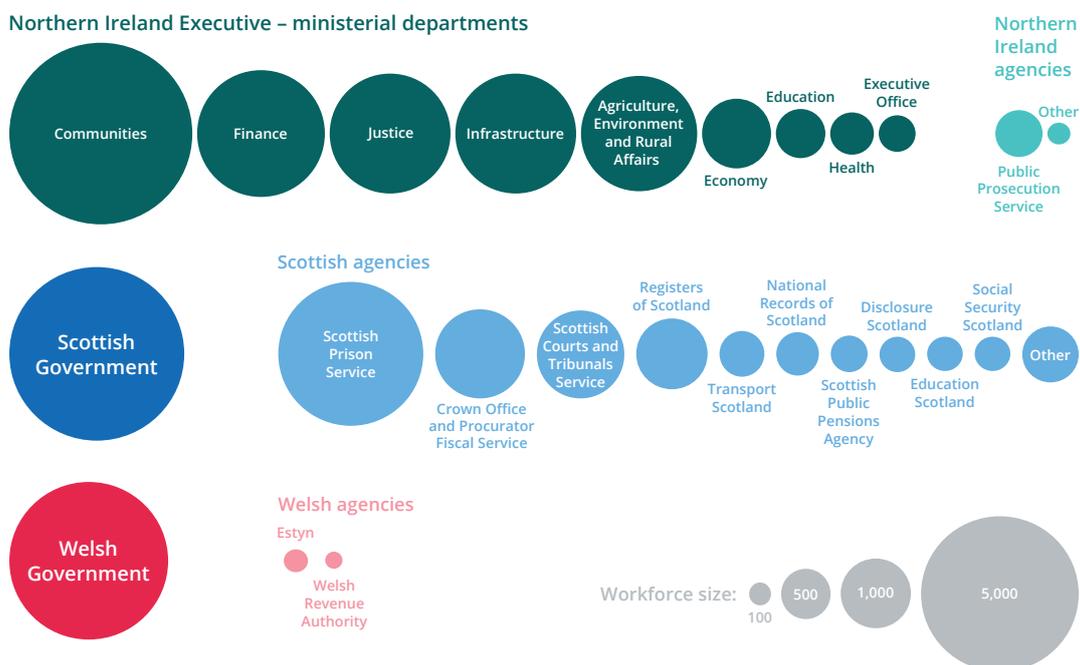
The structure of the civil service is different in each nation. In Scotland and Wales, the devolved administrations operate as a single organisation, which is designed to encourage cross-government working, while Northern Ireland has a more rigid departmental structure similar to Whitehall. The Welsh Government has a smaller and more senior workforce than the Scottish Government and the Northern Ireland Executive – which has the largest and most junior workforce. This reflects differences in what is devolved in each nation, with Wales responsible for fewer large operational functions, which have a greater proportion of junior staff.

## One in ten UK civil servants works for a devolved administration

In 1999, thousands of civil servants who had previously been accountable to UK Government ministers began working for newly formed administrations in Edinburgh, Cardiff and Belfast.

The devolved administrations in Scotland and Wales inherited their workforces from the old Scottish and Welsh Offices, which had employed 3,700 and 2,000 civil servants respectively in 1999.<sup>1</sup> Around 98% of these civil servants transferred to the new Scottish and Welsh administrations, along with almost 10,000 civil servants working for agencies in Scotland and around 250 in Wales.\* However, while officials in the Scottish and Welsh Governments are now accountable to different political administrations, they remain formally part of the same organisation as those working for the UK Government (known together as the 'home civil service') and the management of the civil service remains a reserved matter, overseen by the UK Government. The Northern Ireland Civil Service (NICS), meanwhile, is a separate organisation that has existed in some form for almost a century. From 1972 until the Northern Ireland Executive was established in 1999, it was accountable to the Secretary of State for Northern Ireland.<sup>†</sup> Since then, when there is a functioning executive, officials have reported to ministers in Stormont.

Figure 3.1 **Size of the civil service workforce in the devolved administrations (full-time equivalent), December 2018**



Source: Institute for Government analysis of Office for National Statistics, Public Sector Employment Data, Q4 2018 (31 December); and Northern Ireland Statistics and Research Agency, Employment in the Northern Ireland Civil Service, Q1 2019 (1 January).

\* Figures are based on the full-time equivalent workforce. See Cabinet Office, 'Civil Service Statistics 2004', last updated 13 March 2009, table C, <https://webarchive.nationalarchives.gov.uk/20110405163542/http://www.civilservice.gov.uk/about/resources/stats-archive/2004/2004-Annual-Report.aspx>

† The Northern Ireland Civil Service was accountable to the Stormont Government from 1921 to 1972. Following the Sunningdale Agreement in 1973, a power-sharing government briefly held office in 1974 before collapsing.

At the end of 2018, the Northern Ireland Civil Service employed around 21,300 people. This workforce is divided into nine main departments, each led by a Cabinet minister (when there is a power-sharing devolved government) and a Permanent Secretary. The Scottish and Welsh Governments, meanwhile, operate as a single organisation, and the portfolios of Cabinet ministers do not directly match the structure of the civil service workforce. At the end of 2018, the Scottish Government employed 6,170 civil servants directly and a further 11,000 through its agencies, while the Welsh Government employed 5,100 civil servants directly and a further 170 through its agencies. In both cases, the overall workforce has grown substantially since devolution in 1999. This is partly because the devolved administrations found themselves needing workforces with different skills from the ones they inherited. Ieuan Wyn Jones, former Deputy First Minister of Wales, explains that "in the days of the old Welsh Office, you didn't need policy staff... policy was Westminster policy and they just delivered it in Wales".<sup>2</sup> After 1999, the Welsh Government had to expand its policy capacity so that it could develop policy distinct from that designed in Westminster for England. It is also because additional civil service capacity has been needed as further powers have been transferred from Westminster since 1999, including the capacity to make primary legislation in Wales, and powers over transport and taxation in both Scotland and Wales. In addition, restructures also mean that staff who previously worked for non-civil service agencies now work for the devolved administrations.\*

Overall, around 10% of the UK's 430,000 civil servants work for a devolved administration. The UK Government also employs considerable numbers of civil servants in the devolved nations. Around 80% of the civil servants employed in Wales work for UK Government departments, with the Department for Transport and the Department for Work and Pensions employing more people in Wales than the Welsh Government. In Scotland, 60% of civil servants work for the UK Government, although the Scottish Government is a larger employer than any single UK department. In Northern Ireland, only about 15% of civil servants are employed by UK Government departments.<sup>3</sup>

The relative size of the devolved civil service in each nation partly reflects the different responsibilities of each devolved administration. The Northern Ireland Executive controls social security in the region, and the Department for Communities – which administers the system – employs around 6,800 people. Across Great Britain, welfare is largely the responsibility of the Department for Work and Pensions, which employs around 9,500 people in Scotland and 5,400 people in Wales. The devolved administrations in Scotland and Northern Ireland are also responsible for justice, with prison and court staff counted as part of the civil service workforce. In Scotland, 4,500 people work for the prison service and 1,700 for the courts system, while there are 1,200 prison-grade staff in Northern Ireland. In Wales, however, justice is not devolved so the 3,300 Wales-based civil servants working for either HM Prisons and Probation Service or HM Courts and Tribunals Service are not part of the Welsh Government's workforce.

\* For example, the Welsh Development Agency was not included in the Cabinet Office's civil service workforce statistics (see Cabinet Office, 'Civil Service Statistics 2004', last updated 13 March 2009, table C, <https://webarchive.nationalarchives.gov.uk/20110405163542/http://www.civilservice.gov.uk/about/resources/stats-archive/2004/2004-Annual-Report.aspx>). This agency was merged into the Welsh Government in 2006.

# Scotland and Wales have reformed the structures of their governments

In Scotland in 2007, the incoming Scottish National Party (SNP) Government reformed the structure of the civil service in Scotland. The existing departmental structure, which the devolved Scottish Government had inherited from the Scottish Office in 1999, was replaced by a new, more flexible structure designed to focus the activity of government on collective rather than departmental objectives.

The Scottish civil service is now structured around 39 directorates, which are the core building blocks of the Scottish Government. Some of these directorates cover quite broad areas, such as the Justice Directorate, which has responsibilities comparable to those of the Ministry of Justice in Whitehall. Others have a narrower focus, for example there are nine directorates relating to health in some way, including the Health and Social Care Integration Directorate and the Population Health Directorate.

Each directorate is overseen by one of six directors general, who each have a specific area of responsibility (for example, the economy or health and social care). These directors general are comparable in seniority to the previous heads of departments in Scotland, and are collectively responsible for delivering the Scottish Government’s strategic objectives: making Scotland “wealthier and fairer, healthier, safer and stronger, smarter and greener”.<sup>4</sup>

Figure 3.2 **Structure of directorates and Cabinet posts in the Scottish Government, April 2019**

Health & Social Care	Education, Communities & Justice	Economy	Scottish Exchequer	Organisational Development & Ops.	Constitution & External Affairs
<b>Health &amp; Sport</b>	<b>Education &amp; Skills</b>	<b>Finance, Economy &amp; Fair Work</b>			<b>Lord Advocate</b>
Chief Medical Officer Chief Nursing Officer Health Finance, Corporate Governance & Value Health Performance & Delivery Health Workforce, Leadership & Service Transformation Health & Social Care Integration Healthcare Quality & Improvement Population Health	Advanced Learning & Science Children & Families Learning <b>Justice</b> Justice Safer Communities <b>Communities &amp; Local Government</b> Housing & Social Justice Local Government & Communities	<i>Energy &amp; Climate Change</i> Chief Economist Economic Development Fair Work, Employability & Skills Scottish National Investment Bank <b>Rural Economy</b> <i>Agriculture &amp; Rural Economy</i> <i>Environment &amp; Forestry</i> <i>Marine Scotland</i> <b>Environment, Climate Change &amp; Land Reform</b> <i>Agriculture &amp; Rural Economy</i> <i>Environment &amp; Forestry</i> <i>Marine Scotland</i> <i>Energy &amp; Climate Change</i> <b>Transport, Infrastructure &amp; Connectivity</b> <i>Energy &amp; Climate Change</i> <b>Culture, Tourism &amp; External Affairs</b> Culture, Tourism & Major Events <b>No lead Cabinet minister</b> International Trade and Investment	Budget & Sustainability <b>Government Business &amp; Constitutional Relations</b> Financial Strategy <b>No lead Cabinet minister</b> Internal Audit	Scottish Procurement & Commercial <b>Government Business &amp; Constitutional Relations</b> Communications, Ministerial Support & Facilities Financial Management People <b>Social Security &amp; Older People</b> Social Security <b>No lead Cabinet minister</b> Digital	Legal Services <b>Government Business &amp; Constitutional Relations</b> Parliamentary Counsel Office Constitution & Cabinet <b>Culture, Tourism &amp; External Affairs</b> External Affairs
<b>No lead Cabinet minister</b> Office of the Chief Executive of NHS Scotland					

Legend:

- Directorate general
- Cabinet minister
- Directorate

*Italics indicate that a directorate is managed by multiple ministers*

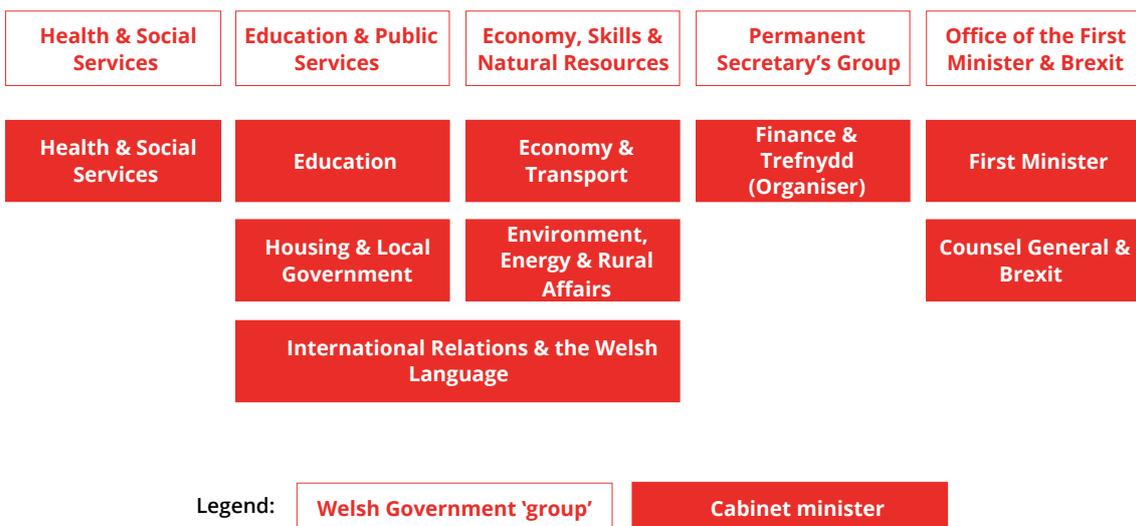
Source: Institute for Government analysis of Scottish Government directorate pages as at 18 April 2019, [www.gov.scot/about/how-government-is-run/directorates](http://www.gov.scot/about/how-government-is-run/directorates).

The reorganisation of the civil service in Scotland has also changed the relationship between ministers and the civil service. Cabinet ministers no longer lead a government department, and ministerial portfolios no longer directly mirror the organisation of the civil service. Instead, most Cabinet ministers have portfolios spanning several different directorates, sometimes intersecting with several directors general. For example, the Cabinet Minister for Culture, Tourism and External Affairs is the lead Cabinet minister for two directorates. One of these – the Culture, Tourism and Major Events Directorate – is overseen by the Director General for Economy, while the other – the External Affairs Directorate – is overseen by the Director General for Constitution and External Affairs.

Sir John Elvidge, the Scottish Government’s Permanent Secretary at the time, has said that the purpose of the reforms was to “create a stronger sense of a single coherent organisation”,<sup>5</sup> better able to tackle cross-cutting issues. He has also noted that the “relatively compact governing structure”<sup>6</sup> of the devolved administration in Scotland offered an opportunity to do things differently. The restructure was accompanied by a single statement of purpose for the Government and a number of measurable national outcomes, and Elvidge has commented that by 2011 the model had “proved strong enough to produce... demonstrable progress on the majority of outcomes”.<sup>7</sup>

Former SNP Cabinet minister Shona Robison has also praised the reforms, saying that “significant progress has been made in trying to get government out of its silos”.<sup>8</sup> However, her former colleague Alex Neil has expressed doubts about whether the model had changed the way government operated, at least from his perspective as Health Minister, recalling that: “Quite frankly, I didn’t have time to worry about what the rest of the Government was doing, I was too focused on what the health targets were.”<sup>9</sup> Former Justice Minister Kenny MacAskill also told us that “a lot of these management-speak things just drifted over my head” but accepted that the structural reforms might be more helpful for civil servants themselves.<sup>10</sup>

**Figure 3.3 Cabinet ministers and ‘groups’ within the Welsh Government (indicative), March 2019**



Note: Links between Cabinet posts and 'groups' are indicative and deduced from various sources.

Source: Institute for Government analysis of Welsh Government ministerial responsibilities as at March, 2019 <https://gov.wales/cabinet-members-and-ministers>; and Welsh Government consolidated annual accounts 2017 to 2018.

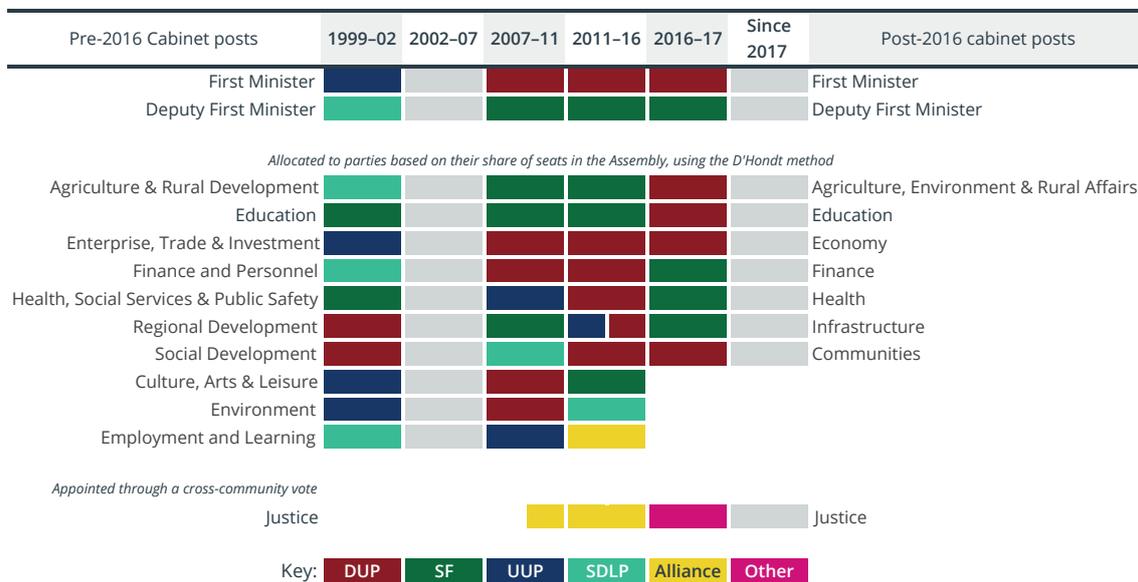
The structure of the Welsh Government is broadly similar to that of the Scottish Government. There are no formal departmental divisions and the Welsh Government instead operates as a single organisation. As former First Minister Carwyn Jones told the Institute for Government, “we’re in effect almost a one-department government, because most of the civil servants are all in one building”.<sup>11</sup> Within this there are five ‘groups’, led by four directors general and the Permanent Secretary of the Welsh Government. These groups are further sub-divided into individual directorates.<sup>12</sup>

The Welsh Government has also abolished several of the public bodies it inherited. For example, in 2006, the Welsh Development Agency, the Wales Tourist Board and Education and Learning Wales (which was responsible for post-16 education) were absorbed into the Welsh Government. Andrew Davies, the Labour minister who oversaw the abolition of the Welsh Development Agency, has said that working closely with these agencies in government led him to the conclusion that they were “just a big bloated bureaucracy... pursuing strategies which were out of date”, adding that a “big argument for devolution in the [1997] referendum was addressing the democratic deficit” in Wales.<sup>13</sup>

## Devolved government in Northern Ireland is structured around power-sharing between parties

The structure of government in Northern Ireland is based on the more traditional departmental model. During periods when there is a functioning executive in Stormont, these departments are led by Cabinet ministers, with the First Minister and Deputy First Minister sharing the Executive Office.

Figure 3.4 Cabinet posts in the Northern Ireland Executive by party, 1999 to 2017



Source: Institute for Government analysis of Northern Ireland Executive Cabinet posts.

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However, the departmental system in Northern Ireland has several distinct features compared with Whitehall. First, the number of departments in Northern Ireland is enshrined in legislation. In December 2014, when the political parties in Northern Ireland and the UK Government agreed to reduce the number of departments in Northern Ireland from 12 to 9, legislation had to be passed in the Northern Ireland Assembly to implement this. In contrast, when the UK Prime Minister chooses to restructure departments, primary legislation is not needed.<sup>14</sup>

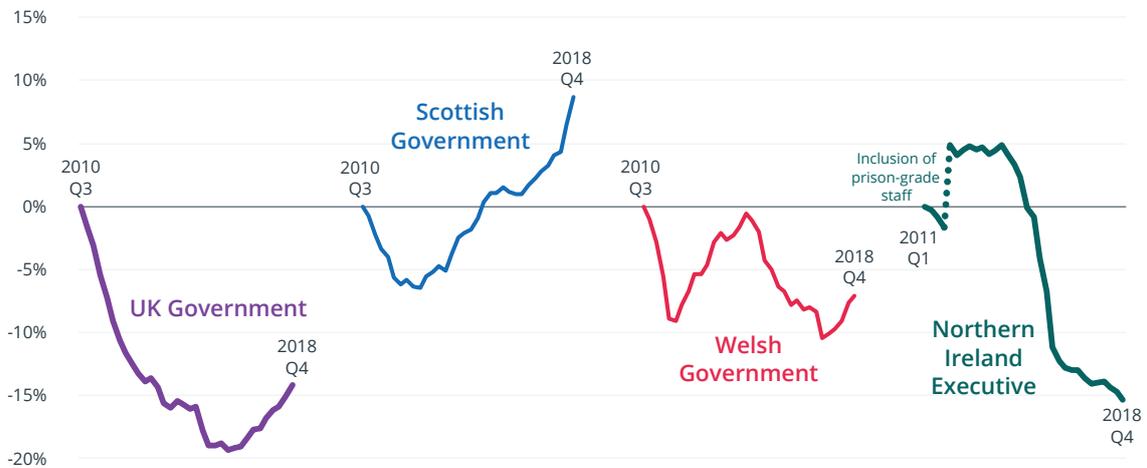
Second, the allocation of Cabinet posts in Northern Ireland is determined by the power-sharing arrangements outlined in the Good Friday Agreement.<sup>15</sup> The offices of First Minister and Deputy First Minister (which are equal in stature) are reserved for the largest unionist and nationalist parties, and most of the remaining Cabinet posts are allocated to parties based on the share of seats they have in the Northern Ireland Assembly. The exception is the post of Justice Minister, where the appointment is based on a cross-community vote. This means that a majority of both unionist and nationalist members in the Northern Ireland Assembly, or 60% of all members and 40% of both unionist and nationalist members, must support the appointment. Since the post was created in 2010, there have been two occupants: David Ford, then leader of the non-sectarian Alliance Party of Northern Ireland, and Claire Sugden, an independent liberal unionist.<sup>16</sup>

During periods of direct rule, for instance between 2002 and 2007 when UK ministers took direct responsibility for government in Northern Ireland, civil servants working for Northern Ireland departments have been accountable to the Secretary of State for Northern Ireland (a member of the UK Government). However, since the most recent collapse in power-sharing in January 2017, the UK Government has been reluctant to implement direct rule. This means that the Northern Ireland Civil Service currently operates without direct political oversight.

In late 2018, the UK Government legislated to grant Northern Ireland officials greater flexibility, with the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018 stating that the “absence of Northern Ireland Ministers does not prevent a senior officer of a Northern Ireland department from exercising a function of the department” if the officer believes this to be in the public interest.<sup>17</sup> The Secretary of State for Northern Ireland also provided further guidance on how civil servants should exercise their functions, stating that “major policy decisions” and “major public expenditure commitments” should be avoided, and where possible “the priorities and commitments of the former Executive and Minister(s) should be followed”.<sup>18</sup>

## Scotland's civil service has grown since 2010, but the other administrations have shrunk

Figure 3.5 Percentage change in civil service staff numbers (full-time equivalent) for the UK and devolved governments, 2010 to 2018



Note: All figures include civil service agencies.

Source: Institute for Government analysis of Office for National Statistics, Public Sector Employment Data, 2010 to 2018; and Northern Ireland Statistics and Research Agency, Employment in the Northern Ireland Civil Service, 2011 to 2019.

The overall size of the devolved administrations' budgets is largely determined by the UK Treasury's decisions. This means that when the UK Government sought to reduce public spending after the 2010 Spending Review, budgets were cut throughout the UK. The devolved administrations did not have to make savings in the same areas as the UK Government, which chose to reduce the number of civil servants it employed. Initially, however, the devolved administrations also chose to reduce the size of their workforce.

From September 2010 up to December 2011, staff reductions for the Scottish, Welsh and UK Governments were roughly comparable. The Scottish Government and its agencies' workforce fell by 6% (or 950 people), while staff numbers for the Welsh and UK Governments fell by 9% (or 510 and 41,700 people respectively). In Northern Ireland, staff reductions were initially more modest. In fact, the total size of the workforce increased by 1,700 at the end of 2011, when the devolution of justice policy resulted in prison-grade staff being reclassified as part of the Northern Ireland Civil Service. If the effect of this reclassification is discounted, the size of the workforce fell by 2.4% (or 680 people) between March 2011 and June 2012.

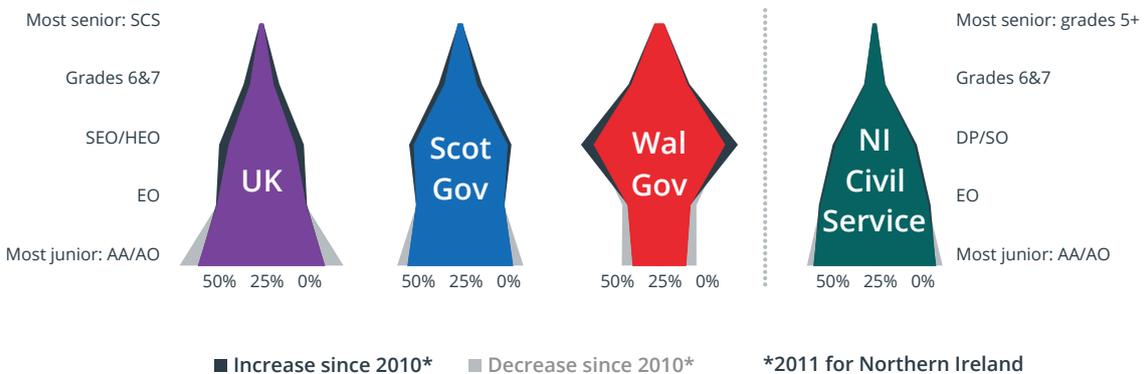
Since then, staff numbers have changed in different ways for each government. The UK Government's workforce continued to fall until June 2016, by which point it was 19% smaller than in 2010. Numbers have risen in every quarter since then, largely because of extra recruitment to deal with Brexit; yet this has replaced only around a quarter of the job cuts made since 2010. The Scottish Government's workforce began growing much earlier, in March 2013, and by the end of 2018 staff numbers were 9% higher

than in 2010.\* The Welsh Government also began to reverse its staff cuts in March 2012, and by September 2014 the workforce was almost the same size as it had been in 2010. But since then, the Welsh civil service has experienced another round of reductions and the workforce is now around 7% smaller than it was in 2010.

While staff cuts were slower to take place in Northern Ireland, the size of the civil service fell sharply between 2014 and 2016, and the workforce is now 15% smaller than it was in 2011. This reduction coincided with the Stormont House Agreement in 2014, where – under pressure from the UK Government to reduce spending – the major parties in Northern Ireland committed to “improve the efficiency of the civil service and wider public sector and reduce administrative costs”.<sup>19</sup>

## Wales’s civil service is more senior

Figure 3.6 **Percentage of civil servants at each grade in the UK and devolved civil service, 2018 (headcount)**



Note: AA/AO = administrative assistant/administrative officer, EO = executive officer, DP/SO = deputy principal/staff officer, SCS = senior civil servant and SEO/HEO = senior executive officer/higher executive officer.

Source: Institute for Government analysis of Office for National Statistics, Annual Civil Service Employment Survey, 2010 to 2018; and Northern Ireland Statistics and Research Agency, Employment in the Northern Ireland Civil Service, 2011 to 2019.

The civil service staff cuts since 2010 have taken place mostly at junior grades. The Scottish and Welsh Governments, as well as the UK Government, now have a smaller percentage of their staff in junior grades than they did in 2010. While grades in the Northern Ireland Civil Service are different from those in the rest of the UK, so not directly comparable, the percentage of staff employed at the most junior Northern Ireland grades has also fallen since 2011.

Overall, the Welsh Government employs the highest percentage of its civil servants in senior grades. Senior civil servants and civil servants just below them, at grade 6 or 7, made up 21% of the Welsh Government’s workforce in 2018, compared with 14% for the Scottish Government, 12% for the UK Government and 7% for similar grades in the Northern Ireland Civil Service. Meanwhile, 37% of civil servants working for UK Government departments were at the most junior administrative grades (administrative assistants and administrative officers), compared with 36% in Northern Ireland, 31% in Scotland and 15% in Wales.

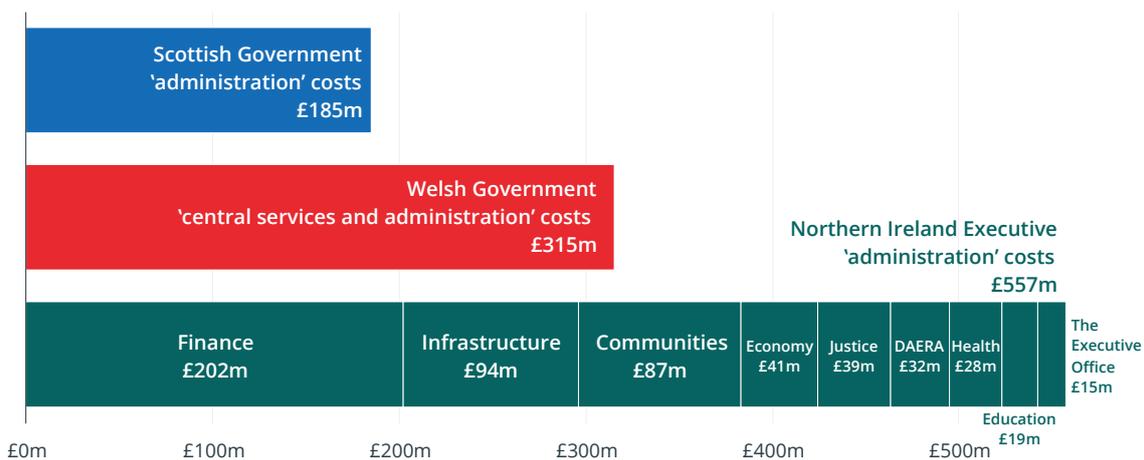
\* We have excluded the effect of transfers and reclassifications from our analysis of changes to staff numbers in the devolved administrations (except for the transfer of prison-grade staff in Northern Ireland in late 2011, which is shown in Figure 3.5). The largest of these transfers was when 1,100 staff working for Historic Scotland stopped being counted within the civil service in quarter 4 of 2015.

This difference is largely because fewer large operational functions are devolved in Wales compared with Scotland and Northern Ireland. The five largest UK Government departments, with the most staff at junior grades, operate across the UK (the Ministry of Defence and HM Revenue and Customs), Great Britain (the Department for Work and Pensions) or England and Wales (the Ministry of Justice and the Home Office). The lack of large operational functions in the Welsh Government means that relatively senior staff, who provide policy support for ministers, make up a larger proportion of the workforce. The big services that are devolved to Wales – schools, the NHS and local government – are staffed mainly by non-civil servants.

## The devolved governments spend around £1bn a year on running costs

Government spending in the UK can be divided into programme costs – which cover spending on public services – and administration costs – which cover the running costs of central government. Administration costs give an indication of how much the bureaucracy of government costs.

Figure 3.7 **Devolved government spending on 'administration' or similar functions, 2017/18**



Note: DAERA = Department of Agriculture, Environment and Rural Affairs.

Source: Institute for Government analysis of the Scottish Government, Welsh Government and Northern Ireland Executive Departments' annual reports and accounts for 2017/18.

The latest Scottish Government annual report showed that £185m was spent on administration in 2017/18. The Welsh Government, meanwhile, spent £315m on 'central services and administration' in the same year, while the Northern Ireland Executive spent £557m on administration. This compares to a total of £9.4bn that the UK Government spent on administration. However, caution should be taken when comparing these figures. First, the Welsh Government offers no breakdown between 'central services' and 'administration' in its accounts for 2017/18. This suggests that the £315m it spent covers a wider range of functions than, for example, the £185m the Scottish Government spent on administration. In addition, while we could expect the four Governments of the UK to count some similar functions within 'administration' (for example, the cost of ministers' private offices), it is also possible that there are differences in how they distinguish between programme and administration spending.

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Nonetheless, these figures offer a broad indication of how much devolved governments spend on their own running costs as opposed to how much they spend on delivering policies and public services.

Unlike for the devolved parliaments and assemblies, the running costs of the devolved administrations were not entirely new costs in 1999. This is because the devolved administrations inherited civil service workforces that had previously reported to the Secretaries of State for Scotland, Wales and Northern Ireland. But the running costs will have increased somewhat since then, as the devolved administrations increased their capacity to meet the demands placed on them in a new era. The devolved governments had to expand their administrative capacity to develop distinctive policy rather than simply replicating policy designed in Westminster, which was the common approach prior to 1999. Former First Minister of Wales Carwyn Jones has described how, eventually, the Welsh Government became a more attractive option for ambitious (and likely higher-paid) civil servants.<sup>20</sup>

In addition, as further powers have been transferred since 1999, the devolved administrations have had to build further capacity to effectively manage the new functions – for instance when railways policy was devolved to Wales in 2006, and when the Scottish Government took on taxation and social security powers in 2012 and 2016. These changes have meant that over the period since 1999 all three devolved governments have gained greater control of both public spending and taxation in their territories, which we examine in greater depth in Chapter 4.<sup>21</sup>

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## 4 Public spending and taxation

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The financial relationship between the four nations of the UK is growing more complex. While devolution in 1999 created governments with responsibility for large budgets, almost all taxes continued to be set in Westminster, with funding allocated to the devolved nations through an annual grant. But the old, centralised fiscal union is changing, with Westminster granting powers to set certain taxes to Scotland, Wales and Northern Ireland.

Devolution in 1999 left the existing mechanisms for funding the UK nations largely intact. While the governments in Edinburgh, Cardiff and Belfast gained oversight of large budgets, covering key public services such as health and education, most taxes continued to be set by the UK Government, and devolved budgets continued to be calculated based on a formula first used in 1979.

This system worked relatively well for the first 10 years, while public spending was increasing in all four nations. However, since the squeeze on public spending that began in 2010, the devolved administrations have been forced to make difficult decisions under budget pressure from Westminster. This has coincided with political divergence and different parties governing in each nation, fuelling demand for the devolved administrations to be given greater autonomy over their finances. In the past few years, the devolved administrations have gained greater powers to set taxes and retain tax revenue collected within their territory. This means they will benefit financially if growth in their tax revenue outpaces growth in other parts of the UK, but will lose out if their economies fall behind.

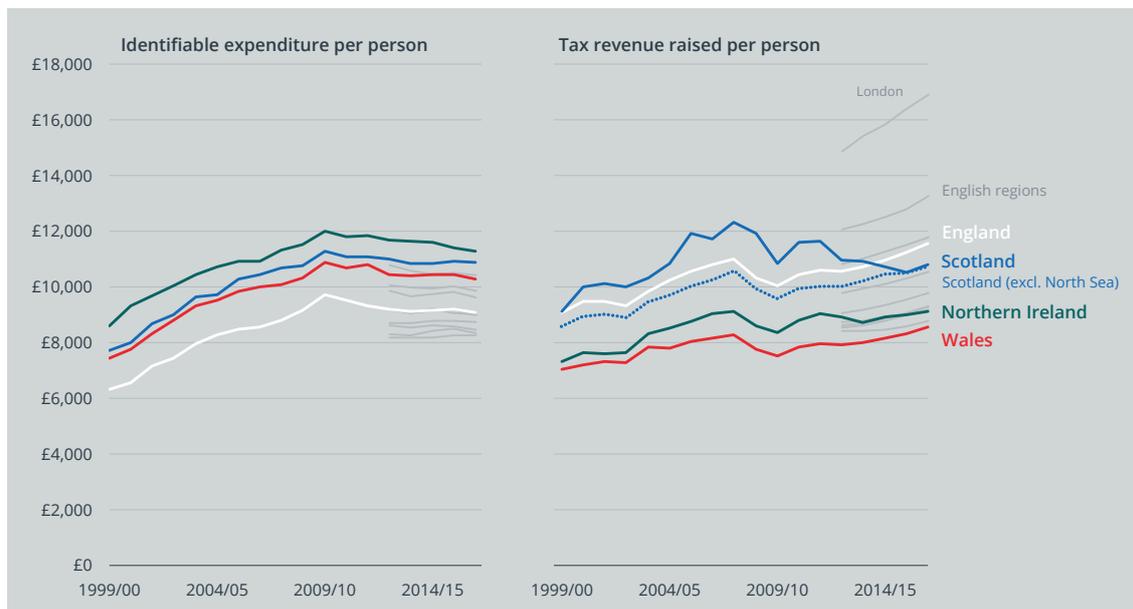
The devolved nations have also benefited disproportionately from European Union (EU) funding schemes. Britain's planned exit from the EU, therefore, means that the financial relationship between the devolved nations and the UK Government could change once again.

## The UK is a redistributive union of four nations

The UK's approach to public finances is geographically redistributive. Most tax revenue is pooled centrally, with funding allocations for each nation or region not generally based on where revenue was raised. This results in redistribution from England to the devolved nations.

In 1999, devolution incorporated, rather than challenged, this approach. While the governments in Edinburgh, Cardiff and Belfast took on responsibility for large budgets, the UK Government continued to set and collect taxes, allocating some of the revenue to the devolved administrations using the same formula that it had used since 1979.

Figure 4.1 **Identifiable expenditure and tax revenue per person by UK nation and English region, 1999/2000 to 2014/15**



Note: Identifiable expenditure covers public spending that benefits a particular nation or region (for example, hospitals and schools) but does not cover 'UK-wide' spending on areas like central government debt interest or defence.

Source: Institute for Government analysis of Office for National Statistics, Country and regional public sector finances, 1 August 2018; HM Treasury, Public Expenditure Statistical Analyses 2018, 19 July 2018; and Office for National Statistics, Mid-year population estimates, 1999 to 2016.

Since 1999, public spending per person has been consistently higher in the devolved nations than in England. In 2016/17, an average resident in Northern Ireland enjoyed £2,190 (24%) more in public spending than a typical English resident, while spending per person in Scotland was £1,790 (20%) higher and spending in Wales was £1,200 (13%) higher.\* This difference is partly because the formula that sets devolved budgets preserves historically higher levels of spending in Scotland, Wales and Northern Ireland. But UK Government spending on benefits, which is determined by needs in each nation, is also higher per person in the devolved nations.<sup>1</sup>

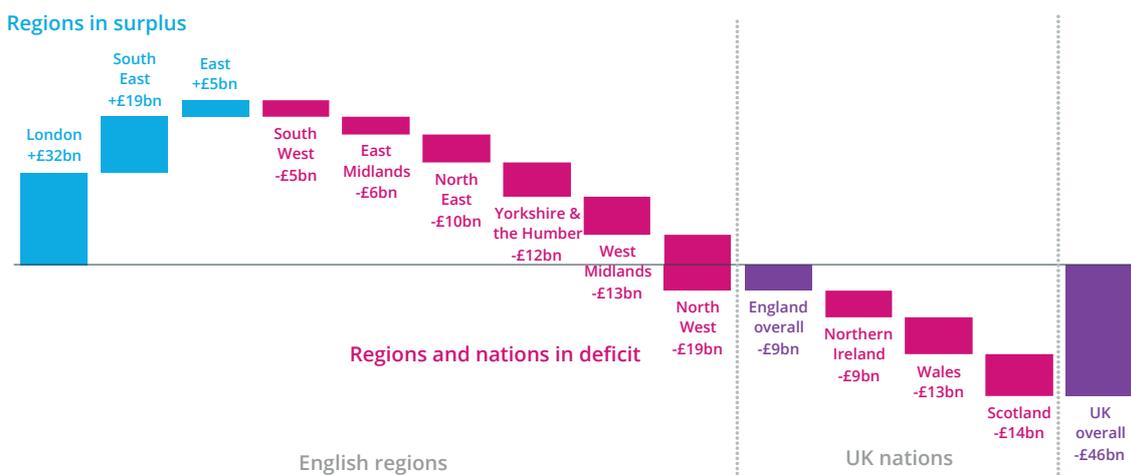
\* These figures are based on 'identifiable expenditure' only, meaning spending where residents of a specific nation or region can be identified as the main beneficiaries. This covered 88% of UK public spending in 2016/17, and included spending on hospitals, schools and benefits, and some infrastructure spending. The remaining 12% of 'non-identifiable expenditure' covered areas such as defence and debt interest, where costs are incurred on behalf of the UK as a whole.

For the first decade or so of devolution, spending consistently increased in all four UK nations. Since then, public spending in each nation has fallen as the UK Government has sought to reduce public spending in the aftermath of the 2008 financial crash. But while the overall pattern of spending has been similar across the UK over the past 20 years of devolution, the gap between spending in England and the devolved nations has narrowed – from 36% in 1999/00 to 24% in 2016/17 in Northern Ireland, from 23% to 20% in Scotland and from 18% to 13% in Wales.

While public spending per person is higher in the devolved nations, tax revenue per person is higher in England. In 2016/17, an average person in England contributed £11,650 in tax revenue. In Scotland, this was about 6% lower, at £10,800, while Northern Ireland and Wales raised £9,130 and £8,550 per person – 21% and 26% less than England – respectively.\* Across English regions, however, there are also large differences in tax revenue raised per person. In particular, London generated almost twice as much tax revenue per person as the north-east of England in 2016/17. These differences in tax revenue across the UK are largely due to stronger economies and larger tax bases in the south-east of England and Scotland compared with Northern Ireland and Wales, and parts of England. The largest differences in revenue raised per person are in income tax, national insurance and corporation tax, which are closely linked to employment, pay and business activity.†

Until 2014/15, tax revenue per person was higher in Scotland than in England. This was due to tax revenue from oil production in the North Sea. However, a fall in the price of oil in 2014 and the growing costs of decommissioning old oil rigs (which the UK Government subsidises in the form of tax rebates) meant that net tax revenue from the North Sea fell by more than 99% in real terms between 2011/12 and 2015/16, from £8.74 billion (bn) to £55.3 million (m). A partial recovery in the price of oil since it hit a low point in January 2016 has meant that revenue from the North Sea has increased again, to around £1.2bn in 2017/18.<sup>2</sup>

Figure 4.2 **Breakdown of fiscal deficits and surpluses for English regions and UK nations, 2016/17**



Source: Institute for Government analysis of Office for National Statistics, Country and regional public sector finances, 1 August 2018.

\* Quoted figures for tax revenue per person are in 2017/18 prices.

† In cash terms rather than percentage terms (see Institute for Government, 'Tax and devolution', Institute for Government, no date, retrieved 11 April 2019, [www.instituteforgovernment.org.uk/explainers/tax-and-devolution](http://www.instituteforgovernment.org.uk/explainers/tax-and-devolution)).

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The overall effect of the UK's redistributive system is that resources are reallocated from England to the devolved nations.\* Specifically, resources are reallocated from London, the South East and the East of England – the only three regions to have raised more in taxes than they received in public spending in 2016/17 – to the rest of the UK.

In 1999, the Labour Government implementing devolution did not set out to reimagine the 'pooling and sharing' financial relationship between the four nations. Instead, devolution transferred the existing budgets of the Scottish, Welsh and Northern Ireland Offices to the new democratically elected governments. But devolution has changed the political context of the financial relationship between England and the devolved nations. Governments in the devolved nations have the power to set their own spending priorities, for budgets that they – initially at least – had very little responsibility for raising. In addition, particularly since 2007, the governments of the four nations of the UK have been led by parties with conflicting objectives, making it more difficult to reconcile competing interests through political goodwill.

## The devolved governments have mostly been funded by grants from Westminster

The devolved governments are funded primarily through an annual block grant from Westminster. These grants are set using the Barnett formula, a formula first used in 1979, when it was regarded as a temporary fix for determining funding allocations for the nations.<sup>3</sup> In 2016/17, the size of the block grants for Scotland, Wales and Northern Ireland amounted to £23.8bn, £14.5bn and £10.9bn respectively.<sup>4</sup>

The formula applies to slightly different areas of spending in each devolved nation. In all three, it covers spending on health, education, housing, local government, the environment, local transport, culture and sport. In Scotland and Northern Ireland, spending on policing, courts and prisons is also devolved, and the cost of administering the welfare system and running employment schemes is also subject to the Barnett formula in Northern Ireland (benefit payments also make up a significant component of the Northern Ireland Executive's budget but funding for this is not subject to the Barnett formula).<sup>†</sup>

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\* Regional fiscal balance figures in this section are based on comparing total tax revenue with combined identifiable and non-identifiable expenditure for each region (see the Office for National Statistics, 'Country and regional public sector finances net fiscal balance revisions tables', Office for National Statistics, 1 August 2018, [www.ons.gov.uk/economy/governmentpublicsectorandtaxes/publicsectorfinance/datasets/countryandregionalpublicsectorfinancesnetfiscalbalancerevisionstables](https://www.ons.gov.uk/economy/governmentpublicsectorandtaxes/publicsectorfinance/datasets/countryandregionalpublicsectorfinancesnetfiscalbalancerevisionstables)).

† For further explanation of how benefits spending in Northern Ireland is set, see HM Treasury, *Statement of Funding Policy: Funding the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly*, HM Treasury, 2015, p. 70, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/479717/statement\\_of\\_funding\\_2015\\_print.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/479717/statement_of_funding_2015_print.pdf)

Figure 4.3 **Percentage of departmental spending responsibility that is devolved to Scotland, Wales and Northern Ireland**

Department	Scotland	Wales	Northern Ireland
DfE	100%	100%	100%
MHCLG	100%	100%	100%
Defra	100%	99%	100%
DHSC	99%	99%	99%
DfT	91%	81%	91%
DCMS	79%	79%	80%
MoJ	100%	0%	100%
HO	92%	0%	92%
DWP	1.4%	1.4%	100%
BEIS	11%	10%	15%
CO	0.5%	0.5%	4.5%
HMRC and HMT	0.4%	0.03%	0.3%
DfID	0%	0%	0%
DIT	0%	0%	0%
FCO	0%	0%	0%
MoD	0%	0%	0%
DExEU	0%	0%	0%

Note: The percentages in this chart are indicative only, covering Departmental Expenditure Limits only. BEIS = Department for Business, Energy and Industrial Strategy, CO = Cabinet Office, DCMS = Department for Digital, Culture, Media and Sport, Defra = Department for Environment, Food and Rural Affairs, DExEU = Department for Exiting the European Union, DfE = Department for Education, DfID = Department for International Development, DfT = Department for Transport, DIT = Department for International Trade, DHSC = Department of Health and Social Care, DWP = Department for Work and Pensions, FCO = Foreign and Commonwealth Office, HMRC = Her Majesty's Revenue and Customs, HMT = Her Majesty's Treasury, HO = Home Office, MHCLG = Ministry of Housing, Communities and Local Government, MoD = Ministry of Defence and MoJ = Ministry of Justice.

Source: Institute for Government analysis of *Statement of Funding Policy*, HM Treasury, 2015; and Cabinet Office, notes for machinery of government changes, 2016.

The Barnett formula operates by using the previous year's devolved budgets as a starting point, and then increasing or decreasing them based on how the UK Government's spending on devolved functions in England has changed. For instance, if the UK Government increased spending on the National Health Service (NHS) in England by £100m, the Scottish Government's block grant would be increased by £9.8m, since Scotland's population is 9.8% that of England. However, the Scottish Government would not be required to spend this extra money on health.\*

The Barnett formula has some advantages. By using the previous year's devolved budgets as a starting point, it ensures a degree of stability and predictability for these budgets. The simple, mechanistic approach also means that annual negotiations about budgets between the four nations can be largely avoided.

\* For further details on the Barnett formula, see Keep M, *The Barnett Formula*, House of Commons Library, 2018, <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7386>

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However, the formula has proved controversial. In England, there has been some dissatisfaction about the formula resulting in higher spending per person in the devolved nations. Polling by the British Social Attitudes survey found that the percentage of English respondents who felt that Scotland received more than its fair share of funding increased from 22% in 2003 to 32% in 2007 and to 41% in 2008.\*

The formula's failure to account for needs in each nation has been a source of grievance in Wales. While Wales receives more funding per person than England, the independent Holtham Commission found in 2010 that funding per person would be even higher in Wales if it were based on applying the same needs-based formulas the UK Government uses in England.<sup>5</sup> This led to calls, including by the Welsh Labour Party, for "reform of the Barnett Formula to ensure fairer funding for Wales".<sup>6</sup> In December 2017, the Welsh and UK Governments agreed on bespoke adjustments to the Barnett formula's application in Wales to address these concerns. When spending in England (for instance on the NHS) rises by £100 per person, spending in Wales now rises by £105 per person and, over time, spending on devolved functions in Wales will converge towards 115% of spending on comparable functions in England. This is based on the Holtham Commission's estimate that relative needs in Wales are between 114% and 117% of relative needs in England.<sup>7</sup>

Another feature of the Barnett formula is that, during periods of spending growth, it causes spending in the devolved nations to grow slightly more slowly in percentage terms than in England – resulting in an effect called 'Barnett convergence', where spending on devolved functions per person in the devolved nations converges towards spending in England over time.<sup>8</sup> However, this convergence has not occurred as quickly as might have been expected. This is partly because, as already noted, the formula uses the previous year's devolved budgets as baselines, thereby preserving historic differences in spending per person. The baselines are also not adjusted in line with population change, disadvantaging England, which has experienced faster population growth than the devolved nations. In addition, the convergence is reversed during periods of austerity, with budget reductions for the devolved administrations slightly lower in percentage terms than comparable spending reductions in England.

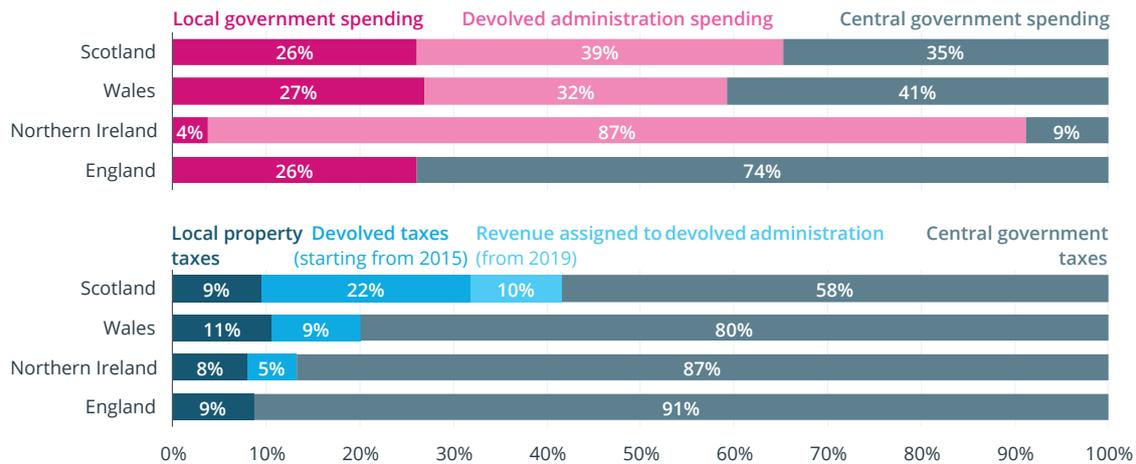
## Some tax powers have now been devolved

Large block grants to the devolved administrations have been necessary largely because of the imbalance between devolved spending responsibilities and tax-raising powers.

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\* The question was not asked in 2004, 2005 or 2006. See <http://natcen.ac.uk/our-research/research/british-social-attitudes>

Figure 4.4 **Indicative breakdown of identifiable expenditure and tax revenue by level of government**



Note: The percentage of tax revenue considered devolved includes revenue for taxes that will be devolved in the future (that is, where legislation is already in place but the measures have not yet been enacted).

Source: Institute for Government analysis of HM Treasury, Public Expenditure Statistical Analyses 2018, 19 July 2018; Office for National Statistics, Country and regional public sector finances, 1 August 2018; Scottish Government, Government Expenditure and Revenue Scotland: 2017-2018, 22 August 2018; and Wales Governance Centre, Government Expenditure and Revenue Wales 2016, April 2016.

In 2016/17, spending managed or overseen by the devolved administrations amounted to 65% of all identifiable government spending in Scotland, 61% in Wales and 93% in Northern Ireland.\* This includes the devolved block grants, as well as money raised by local authorities (which are overseen by the devolved administrations). In Northern Ireland, this also includes spending on benefits, which is administered by the Northern Ireland Executive.

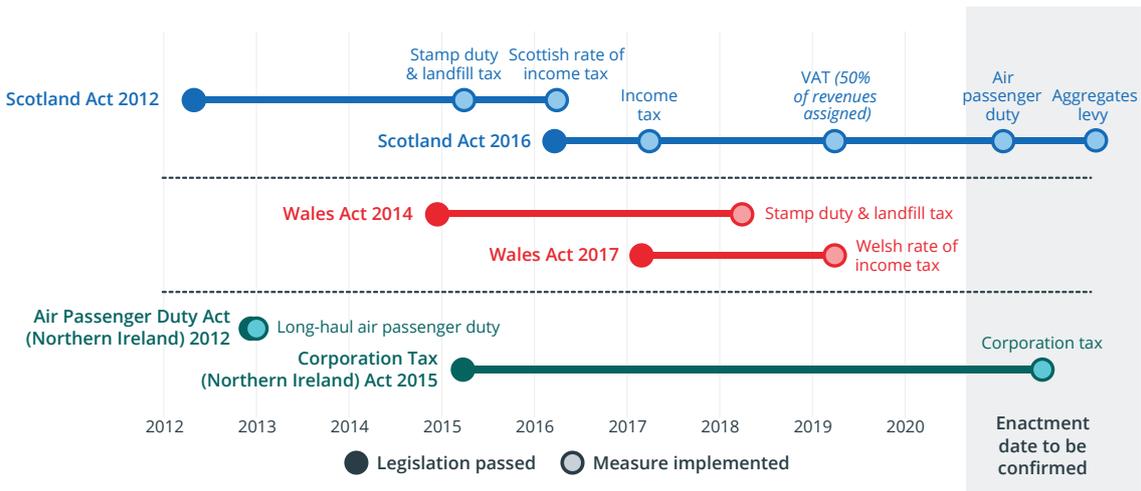
The tax powers granted to the devolved administrations in 1999 were, on the other hand, very limited. Around 90% of the tax revenue raised in the devolved nations remained under the control of Westminster, while around 10% related to local property taxes (business rates and council tax in Scotland and Wales, domestic rates and non-domestic rates in Northern Ireland).†

This asymmetric settlement meant that the devolved administrations, while having significant freedom to choose their spending priorities, were not able to set their overall level of spending. This system – based on making minimal changes to the pre-1999 financial arrangements – worked relatively well to begin with. However, as party politics diverged, and spending began to fall, the system came under increasing criticism from across the political spectrum. The rise of the Scottish National Party (SNP) and the 2014 referendum on Scottish independence forced the big Westminster parties to agree to devolve further powers, including over taxation, in the 2012 and 2016 Scotland Acts. The Conservatives have also made the case that devolving taxes would improve the financial responsibility and democratic accountability of the devolved governments.<sup>9</sup>

\* Identifiable expenditure means spending where residents of a specific nation or region can be identified as the main beneficiaries.

† The Scottish Parliament was also given the power to vary the rates of income tax set by Westminster by up to 3% (although this power was never used).

Figure 4.5 Tax devolution (legislation and implementation dates) since 2012



Source: Institute for Government analysis of [www.legislation.gov.uk](http://www.legislation.gov.uk), the fiscal frameworks for Scotland and Wales, and House of Commons Library briefings.

In Scotland, the power to set all rates and bands of income tax above the tax-free personal allowance has been fully devolved since 2017. In 2015, the Scottish Parliament also took complete control of its stamp duty land tax and landfill tax (which have been renamed the land and buildings transaction tax and the Scottish landfill tax respectively), with air passenger duty and the aggregates levy – a tax relating to sand, gravel and rock extraction – planned for future devolution. Since April 2019, the Scottish Government also receives 50% of all VAT (value-added tax) revenue generated in Scotland, although rates are still set in Westminster and the system will continue to be run on a UK-wide basis. This means that 31% of tax revenue raised in Scotland will be overseen by the Scottish Government, and a further 10% of revenue will be assigned to the Scottish Government.

In Wales, 20% of tax revenue is now overseen by the Welsh Government. This includes partial powers to set income tax. UK income tax rates in Wales have been reduced by 10p in all bands since April 2019, and the Welsh Government now sets an additional Welsh rate of income tax (where rates of 10p in each band would mean no overall change for Welsh taxpayers). Stamp duty land tax and landfill tax have also been devolved in Wales (and renamed the land transaction tax and the landfill disposals tax respectively). A similar system for partially devolved income tax was included in the Scotland Act 2012. However, this was replaced by full devolution in the Scotland Act 2016, to fulfil promises made by UK parties during the 2014 independence referendum campaign to devolve substantial revenue-raising powers to the Scottish Parliament.

The choice of which taxes to devolve to Scotland and Wales reflects several constraints. The easiest taxes to devolve are those relating to land or property, given that revenue is very easy to attribute geographically, and these fixed assets cannot easily be moved in search of jurisdictions with lower tax. Of the larger taxes, income tax was judged to be the best option for devolution, partly because of its high visibility to taxpayers, but also because of difficulties that would have arisen from devolving other taxes. The UK-wide system for national insurance would have been particularly complicated to break up due to the link between the National Insurance

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Fund and benefit payments (which are not devolved in Scotland and Wales). Meanwhile, devolving control of VAT rates would not have been compatible with EU law, and would also have created new costs for businesses operating across the UK's four nations, and corporation tax was ruled out as an option for devolution in Scotland and Wales as it could have resulted in unwelcome tax competition within Great Britain.<sup>10</sup>

Tax devolution has also required the UK and devolved governments to reach an agreement on how the devolved block grants should be reduced to account for the Scottish and Welsh Governments' new tax revenue. While the UK and devolved governments agreed in principle that tax devolution should not make the devolved governments worse off – that is, that the redistribution already embedded into the system should be preserved – they differed in their interpretations of this. The agreements eventually reached, after months of fraught negotiations, retain the Barnett formula as the foundation for calculating devolved budgets, but add new (and slightly different) complexities to its application in both nations.<sup>11</sup> The devolved administrations will now receive smaller block grants, but retain the revenue from the taxes under their control. This means that they stand to benefit if they are able to stimulate growth in their economies that makes their tax base grow more quickly than in England. However, if economic growth in Scotland or Wales falls behind growth in the other nations of the UK, then they will have less money available to spend on public services.

In Northern Ireland, tax devolution has taken place for different reasons, mainly relating to competition with low taxes in the Republic of Ireland. Air passenger duty for long-haul flights was devolved and abolished in 2013, to make Northern Ireland more attractive as a destination for transatlantic flights.<sup>12</sup> In 2015, Westminster also legislated to devolve corporation tax to Northern Ireland, but this measure has not yet been enacted due to the suspension of the Northern Ireland Assembly since January 2017.

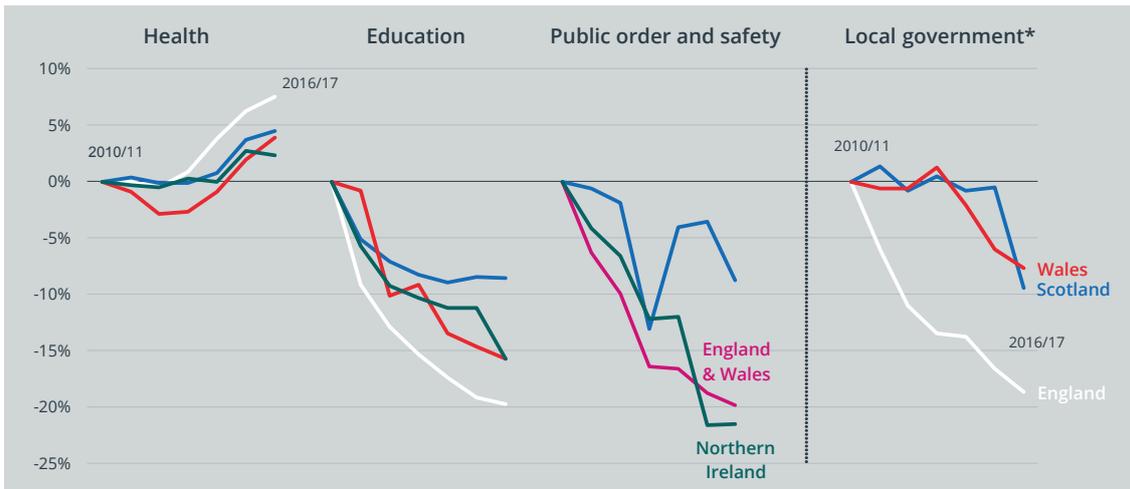
## The devolved governments have prioritised spending in different areas

In 2010, the Coalition Government set out to reduce public spending in order to reduce the fiscal deficit, which was almost 10% of GDP in 2009/10. The operation of the Barnett formula meant that cuts in government spending on public services and investments in England were replicated in the devolved budgets.\* The devolved block grants, however, are not ringfenced, so the devolved administrations were not required to make cuts in the same areas as the UK Government.

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\* Reductions in UK Government spending on benefits since 2010 have not had the same effect on devolved budgets as reductions in spending on public services and investments, which are subject to the Barnett formula. The UK Government controls the welfare system in Great Britain, and while decisions it has taken will have affected residents in the devolved nations, this will not have had a direct effect on the budgets of the devolved administrations.

Figure 4.6 **Changes in resource spending on public services by UK nation (real-terms, per person), 2010/11 to 2016/17**



Note: Public order and safety, which includes police and justice, is not devolved in Wales and therefore England and Wales are shown together. Education includes further and higher education spending. Local government spending excludes any spending on health, education, public order and safety to avoid counting this twice. Funding that local government receives from the Department for Work and Pensions (DWP) for Housing Benefit is also excluded. The functions of local government in Northern Ireland are significantly more limited than in Great Britain and Northern Ireland is therefore not shown.

Source: Institute for Government analysis of HM Treasury, Public Expenditure Statistical Analyses, 2015 to 2018; and Office for National Statistics, Country and regional public sector finances expenditure tables, 1 August 2018.

Our analysis indicates that, since 2010/11, the devolved administrations and the UK Government have made different choices on which services to prioritise. In England, health budgets have been prioritised, and spending per head is now around 8% higher in real terms compared with 2010/11. This compares to an increase of 4% in Scotland and Wales and 2% in Northern Ireland (although spending per head is still higher in the devolved nations). While the UK, Scottish and Northern Ireland Governments chose to protect health spending in real terms during the initial period of austerity, the Welsh Government did not and spending fell by 3% in real terms between 2010/11 and 2012/13, before recovering in recent years.

Compared with England, the devolved administrations, particularly Scotland, have prioritised spending on education. Overall spending on education – including higher education – has fallen in real terms, by 9% in Scotland, 16% in Wales and Northern Ireland, and 20% in England between 2010/11 and 2016/17. This is partly because the devolved governments have chosen to continue to provide a higher level of financial support for university students compared with the UK Government. Cuts to public order and safety – covering the police, courts and prisons – have also been less severe in Scotland compared with England and Wales (these policy areas are not devolved in Wales so spending is set in Westminster), while local government spending also appears to have fallen by less in Wales and Scotland compared with England.\*

As well as making different choices about spending, the devolved administrations have diverged from Westminster in the way they deliver public services. In many cases, this has happened because they have opted not to replicate reforms in Westminster to introduce more market forces and competition into public service

\* Based on figures in HM Treasury, Public Expenditure Statistical Analyses, 2015 to 2018, [www.gov.uk/government/collections/public-expenditure-statistical-analyses-pesa](http://www.gov.uk/government/collections/public-expenditure-statistical-analyses-pesa). We have excluded local government spending on education, public order and safety, health and Housing Benefit.

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delivery. While the UK Government introduced foundation trusts (which have greater autonomy from central government control) to the NHS in England in 2004, the Scottish and Welsh Governments have opted instead to remove the purchaser/provider split in their health systems.<sup>13</sup> The Coalition Government's reforms to schools – including the introduction of free schools and the expansion of academies – have also not been replicated in the devolved nations. While directly elected police and crime commissioners have been introduced in England and Wales, the Scottish Government has instead merged its eight former regional police forces into one.

Recently, there has been growing controversy about diverging outcomes for public services in the devolved nations compared with England, particularly for the NHS in Wales. During Prime Minister's Questions, Theresa May has frequently compared NHS performance in Wales unfavourably with performance in England, highlighting how, in 2016/17, 3.4% of patients in Wales waited more than 12 hours at Accident & Emergency (A&E) compared with 1.3% in England.<sup>14</sup> In 2015, England also scored higher than the devolved nations in international rankings of educational attainment, which are based on tests taken by 15-year-olds every three years. England outperformed the other three nations of the UK on reading and science, while for maths, Northern Ireland and England were the joint highest. Scotland, which had the highest scores for maths and reading in 2006, 2009 and 2012, fell below England and Northern Ireland, and Wales scored the lowest on all three subjects.<sup>15</sup> There are also cases where devolved public services appear to be performing better than those run by the UK Government. For example, prison violence in Scotland is significantly lower than in England and Wales.<sup>16</sup>

It is difficult to isolate specific causes for differences in performance, due to the variety of factors that can affect outcomes for public services. Demographic differences between the four nations of the UK, which affect demand for public services, could be having an impact. For example, in Wales, 25% of the adult population are over the age of 65, compared with 22% in England, but this is not captured by the Barnett formula, which does not account for needs.<sup>17</sup> However, devolved administrations have also made different choices about how they spend their block grants, for example in Wales on health spending or in Scotland on justice spending. Outcomes could also differ due to the way services are being run – either because different delivery models are used (for example, local authority-run schools versus academies and free schools) or simply because services are being administered more effectively in some places compared with others.

## **Tax policies are diverging across the four nations of the UK**

The Scottish and Welsh Governments have started to use their new tax powers, leading to growing differences between the tax systems across the UK.

**Figure 4.7 Policy divergence for income tax and property transaction tax (stamp duty) in the UK, 2018/19**



Source: Institute for Government analysis of tax policy announcements by the UK, Scottish and Welsh Governments.

Scotland's income tax system has gradually diverged from that of the rest of the UK since April 2017, when the Scottish Government's current income tax powers were devolved.\* Low earners pay a little less income tax in Scotland, due to Scotland's 'starter rate' of 19% on the first £2,049 of annual earnings above the personal allowance threshold (set in Westminster). But anyone earning over around £27,000 a year pays more tax in Scotland, and the differential widens for anyone earning over £43,430 a year, where a higher rate of 41% kicks in. In the rest of the UK, the higher rate of 40% only applies to earnings above £50,000 a year, meaning that someone earning exactly £50,000 would pay around £1,500 more in Scotland.

Although the Welsh Government gained partial powers over income tax in April 2019, it has initially decided not to diverge from the policy set in Westminster. In January 2019, shortly after leaving office, the former First Minister of Wales Carwyn Jones explained that "the scope for using income tax as an economic tool [by varying rates] was going to be very limited", adding that "the reason why income tax was important to us was we wanted to borrow", which requires having a revenue stream.<sup>18</sup>

\* This marks the time when powers were devolved in full, rather than in part beforehand.

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There has been more divergence in Scotland and Wales for stamp duty land tax, which was fully devolved to Scotland in 2015 and to Wales in 2018. Scotland and Wales have both introduced higher tax-free thresholds, at £145,000 and £180,000 respectively, compared with £125,000 in England and Northern Ireland (where stamp duty is not devolved, so rates set in Westminster continue to apply). Scotland and Wales also charge higher rates on more expensive properties. The overall effect is a more progressive system in Scotland and Wales; however, England has a more generous discount for first-time buyers than Scotland, while there is no discount at all in Wales. Average house prices are also significantly lower in Scotland (£149,000 in January 2019) and Wales (£160,000) compared with England (£245,000), so a greater proportion of transactions falls under the tax-free threshold.<sup>19</sup>

Tax policy divergence in Northern Ireland has so far been limited to the abolition of air passenger duty for long-haul flights. However, before the recent collapse of power-sharing in Stormont, members of the Northern Ireland Executive had indicated that it planned to cut corporation tax below the rates set in Westminster.<sup>20</sup>

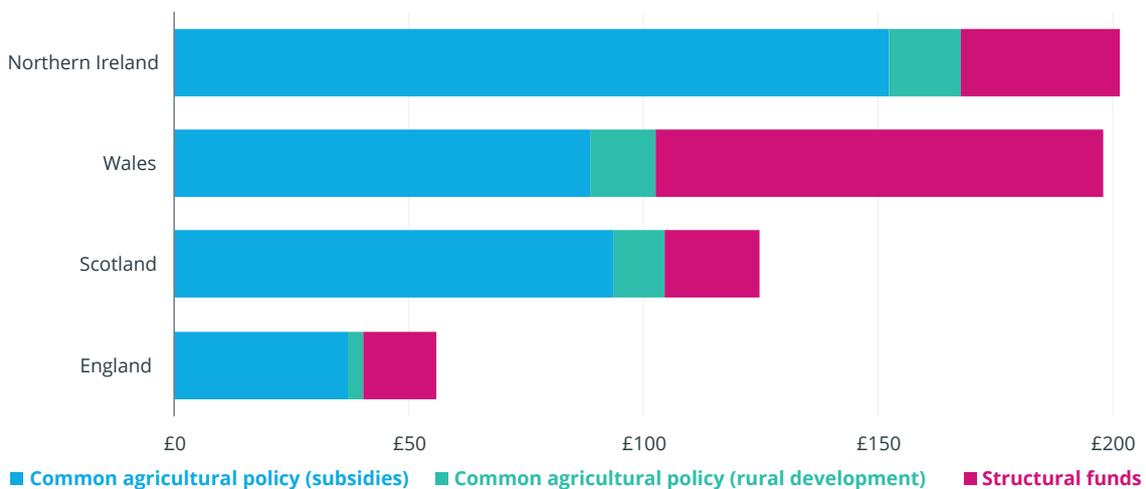
Fiscal devolution is beginning to enable interesting examples of policy innovation and divergence across the four nations of the UK. The process is in its early stages, but as further powers are devolved and the new devolved tax systems bed in, we can expect to see greater variation and experimentation, as well as complexity, in the UK's tax systems.

## **New arrangements will be needed to replace EU funding schemes**

The devolved nations have benefited disproportionately from existing EU funding schemes. In total, UK farmers receive around £3bn a year in agricultural subsidies from the EU, as part of the common agricultural policy (CAP). The UK also receives around £300m a year for rural development, as part of the same scheme. While most of this funding goes to England, the benefit per person is much higher in the devolved nations, at £167 per person per year in Northern Ireland, £104 in Scotland and £103 in Wales, compared with £40 in England.

The EU's structural funds, worth about £1.3bn a year in the UK, are designed to support economic development and are targeted at economically disadvantaged regions. Again, this results in the devolved nations, particularly Wales, receiving more per person than England. Every year, Wales receives around £95 per person in structural funds, compared with £34 in Northern Ireland, £20 in Scotland and £16 in England. Northern Ireland, along with the Republic of Ireland, also benefits from special funding programmes to support the peace process, which the EU has promised will continue after Brexit.<sup>21</sup>

Figure 4.8 EU agricultural (common agricultural policy) and structural funds per person per year by UK nation, 2014 to 2020



Note: Sterling–Euro exchange as at 27 March 2019 (1 GBP = 1.17 EUR).

Source: Institute for Government analysis of Department for Environment, Food and Rural Affairs, UK common agricultural policy (CAP) allocations, 8 November 2013; Department for Business, Innovation and Skills, European Regional Development Fund and European Social Fund: UK allocations 2014 to 2020, 17 April 2014; and Office for National Statistics, Mid-year population estimates for 2014.

Britain’s planned exit from the EU means that the future of funding schemes, including the common agricultural policy and structural funds, is uncertain. In the short term, the UK Government has offered some guarantees, promising to maintain current agricultural funding (regardless of Brexit outcomes) until the end of the current Parliament.<sup>22</sup> It has also committed to continue supporting ongoing projects that are currently funded by EU structural funds, as long as they provide good value for money and align with domestic priorities.<sup>23</sup>

The UK Government has also made vaguer commitments to replace these funding schemes in the long term. However, details on how these schemes will be replaced, including on what role the devolved administrations will be, are sparse. While the 2018 White Paper for the Agriculture Bill offers some insight on how future agricultural funding could work in England, and notes that “each devolved administration [will design] a new agriculture policy” subject to some constraints, it does not outline how much money will be spent in total in the future.<sup>24</sup> The 2017 Conservative manifesto also promised to set up a Shared Prosperity Fund to replace EU structural funds, but the Government has not provided details on how this will operate, saying only that there will be a consultation.<sup>25</sup> The Scottish Government has said that this fund “must respect devolution” and be administered by the devolved governments; however, Scottish Conservatives have suggested that the funding should flow directly from the UK Government to local authorities – including those in the devolved nations – to improve the visibility of UK Government funding in the devolved nations.<sup>26</sup>

Deciding how to replace EU funding will ultimately involve revisiting familiar questions regarding financial arrangements for the devolved nations. How much autonomy should devolved administrations have? How much redistribution should be embedded into the system? What is the best way of accounting for differing needs? And how much value should be placed on having a system that is administratively

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simple to operate? Over the past 20 years of devolution, successive governments have failed to apply a consistent set of guiding principles when it comes to answering such questions. For example, redistribution within the system has been protected, but this often fails to account for differences in needs. The imperfect yet administratively simple Barnett formula has also been retained, but bespoke adjustments to the formula and different approaches to tax devolution in each nation make the overall system more complex. This lack of a coherent set of principles could make it more difficult for the UK and devolved governments to reach a consensus on how EU funding should be replaced after Brexit. In the next chapter, we consider how Westminster and Whitehall engage with the devolved institutions, and the strain Brexit has placed on their relationship.

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## 5 Westminster and Whitehall

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The UK Parliament has the power to pass law in all policy areas for the whole UK. Since devolution, however, it normally legislates in devolved areas only with the agreement of the devolved institutions. This has happened on more than 200 occasions since 1999. But Brexit has created new tensions in the UK–devolved relationship. The European Union (Withdrawal) Act 2018 was the first bill ever passed after the Scottish Parliament voted to deny consent and there are now disagreements over agriculture, fisheries and trade bills. UK and devolved ministers have met more frequently than ever to try to resolve their differences, but there are big challenges to overcome.

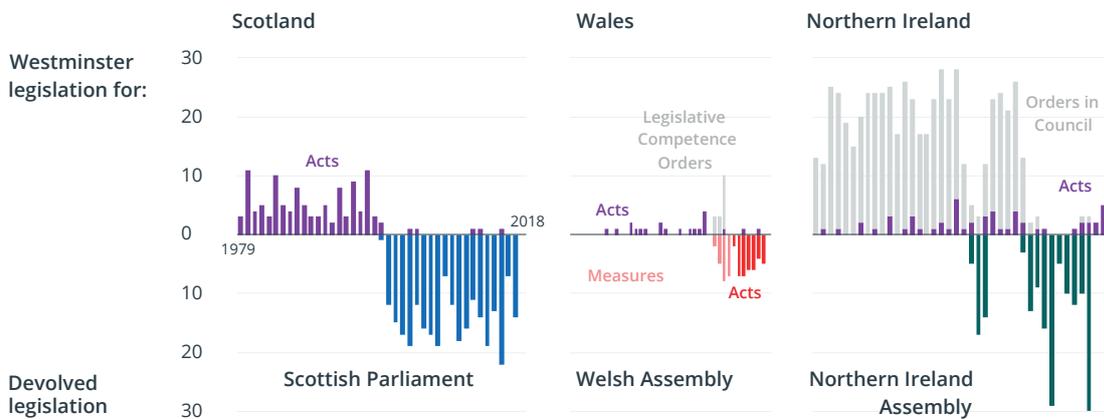
Devolution to Scotland, Wales and Northern Ireland was implemented in the late 1990s without much consideration of how such a radical reform would affect the UK Parliament and Government. Devolution marked a major change in the governance of the devolved nations, but Westminster and Whitehall did not initially need to adapt very much to the new context.

First, devolution did not change the constitutional principle of parliamentary sovereignty. Westminster transferred certain powers to Edinburgh, Cardiff and Belfast, but retained the ability to legislate in all areas, devolved or not. Second, devolution retained the Barnett formula for distributing money to the three nations. Third, the guiding approach to devolution has been to draw a clear division between what is devolved and what is 'reserved' to Westminster. Few functions are formally shared between central and devolved governments. As a result, the UK Government did not create systems or processes for joint working with the devolved administrations.

In practice, however, devolution has had several significant effects on Westminster and Whitehall. As discussed in the preceding chapter, the arrangements for funding devolution have evolved significantly since 1999. The UK Parliament has also had to develop new mechanisms for dealing with legislation for the different nations of the UK, and the UK Government has had to manage tensions and disputes with the devolved administrations, not least over Brexit. In this chapter, we explore some of the ways in which Westminster and Whitehall have had to adapt to devolution, and consider the state of the relationship between central and devolved governments three years after the European Union (EU) referendum.

## Westminster now very rarely passes legislation solely for the devolved nations

Figure 5.1 Primary legislation solely for Scotland, Wales and Northern Ireland, 1979 to 2018



Source: Institute for Government analysis of [www.legislation.gov.uk](http://www.legislation.gov.uk) and [www.assembly.wales](http://www.assembly.wales).

Before devolution, the UK Parliament was the UK's sole law-making body, but in certain areas law and policy differed across the UK. Westminster therefore quite often passed bills applying to just one part of the UK, including in policy areas that are now the responsibility of the devolved institutions. Since the establishment of the Scottish Parliament, Welsh Assembly and Northern Ireland Assembly, the UK Parliament has passed legislation that is specifically for the devolved nations far less often. When Westminster has legislated for the other nations, this has mainly been in reserved (that is, non-devolved) areas, for instance to transfer additional powers to the devolved bodies. But the pattern is different for each of the nations, reflecting institutional differences between Scotland, Wales and Northern Ireland.

Scotland has always had its own legal system, and other public services such as schools, universities, the NHS and the police were managed separately from their English equivalents long before 1999. Reforms to Scottish law and public policy before devolution were often enacted through Scotland-specific legislation at Westminster. However, the former chair of the Scottish Law Commission, the Hon. Lord Pentland, has recalled that "legislation to reform Scots law did not have a high political priority and sometimes struggled to find parliamentary time at Westminster".<sup>1</sup> This was a practical argument made in favour of devolution in the first place: that the establishment of the Scottish Parliament would enable necessary reforms to Scottish law to be made with more urgency (as well as better scrutiny).

The data bears out this idea that there was greater pent-up demand for Scottish legislation than the UK Parliament had been able to supply. In the 20 years before devolution, Westminster passed an average of five Acts of Parliament a year specifically for Scotland. By contrast, in the 20 years since devolution, the Scottish Parliament has passed an average of 15 Acts a year. Meanwhile, just seven Scotland-only Acts in total have been passed at Westminster, all in reserved areas, and including two that further expanded the powers of the Scottish Parliament.

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Wales does not have its own justice system and it has been part of a unified England-and-Wales legal jurisdiction since the time of Henry VIII. As a result, Westminster passed separate laws just for Wales far more rarely than for Scotland in the era before devolution. This happened just 10 times between 1979 and 1999, including the legislation that established the Welsh Assembly in Cardiff. Initially, however, the new Welsh Assembly could not pass its own primary legislation, and instead had to negotiate with the UK Government to pass laws on its behalf. Consequently, the number of Wales-only Acts passed at Westminster actually increased slightly after 1999, with eight passed in the first eight years of devolution.

In 2007, the UK Parliament granted the Welsh Assembly the power to make law in narrowly defined areas, by means of a device called the 'Legislative Competence Order', of which Westminster passed 15 in four years. Since 2011, the Assembly has been able to pass its own Acts across the full range of devolved functions, without Westminster authorisation, and it has done so 37 times. The only Wales-specific laws passed at Westminster since then have been two further Acts extending the powers of the Assembly in Cardiff – constitutional statutes that only the UK Parliament can pass.

Northern Ireland, like Scotland, has its own legal system, and many public services and the social security system were administered separately long before 1999. Northern Ireland had its own Parliament and Government from 1922 until 1972, until the UK Government imposed direct rule in response to the start of the Troubles. The main way in which Westminster legislated for Northern Ireland after 1972 was through 'Orders in Council' – legislative devices that can be passed more easily and quickly than bills. Academic research has found that, on average, each Order in Council took just 90 minutes to get through the House of Commons, creating "a huge democratic deficit".<sup>2</sup> From 1979 to 1999, a total of 415 Orders were passed across a wide range of areas of law and domestic policy. The UK Parliament also passed 24 Acts for Northern Ireland, many about the peace process and security concerns.

Since the Northern Ireland Assembly was created, the UK Parliament has continued to legislate specifically for Northern Ireland, occasionally while devolution has been in operation, and more frequently when it has not. During the period of direct rule by UK ministers from 2002 to 2007, which was imposed when power-sharing between unionists and nationalists collapsed after allegations of IRA spies operating within the Northern Ireland Assembly,<sup>3</sup> Parliament passed 15 Acts and 104 Orders in Council for Northern Ireland. Power-sharing then functioned for nearly a decade. During this period, Westminster passed a further six Acts for Northern Ireland. All but one related to non-devolved matters, such as electoral administration, or transferred further powers (including over justice, policing and corporation tax) to Belfast. The exception was in 2015, when Westminster legislated in the devolved area of welfare reform in Northern Ireland. This bill was passed with the agreement of the parties in Belfast, who had been unable to agree on legislation of their own, as discussed in Chapter 2 of this report.

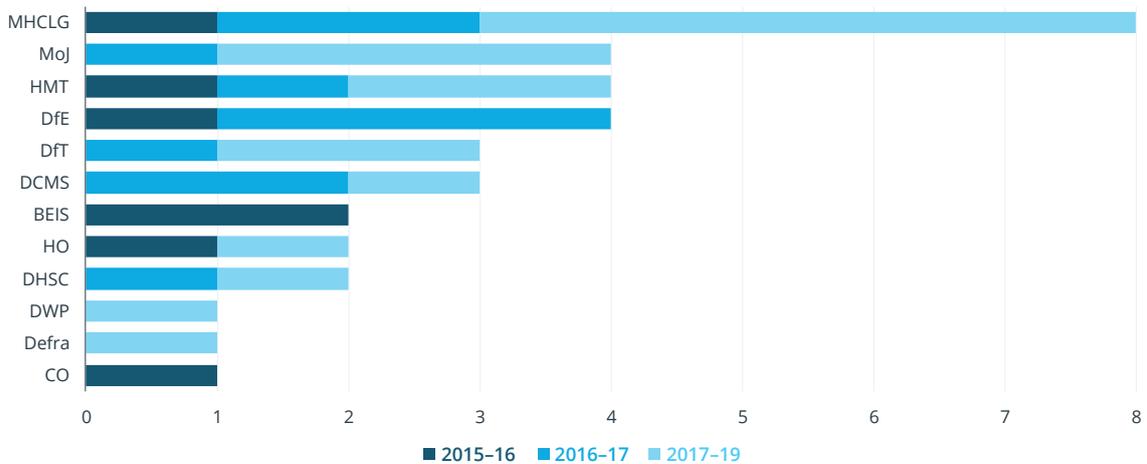
Devolution again collapsed in early 2017, and nine Acts have been passed for Northern Ireland, including to authorise budgets for Northern Ireland and to set local taxation rates. However, despite the two-year hiatus in devolved government, the UK Government has not imposed formal direct rule from Westminster. Consequently, there has not been a resumption of the use of the Order in Council process to pass domestic public policy reforms. Instead, via the passage of the Northern Ireland

(Executive Formation and Exercise of Functions) Act 2018, senior civil servants in Belfast have been authorised to exercise powers that would normally require ministerial approval so long as they are “satisfied that it is in the public interest to exercise the function”.<sup>4</sup> This unusual reform has been described as “of a highly questionable nature, from the perspective both of high constitutional principle and practical efficacy”.<sup>5</sup> Like all recent Northern Ireland legislation, this Act was rushed through Parliament under fast-track procedures, leading to criticism from the House of Lords Constitution Committee and others about the insufficient time for scrutiny.<sup>6</sup>

Overall, devolution appears to have lightened the legislative load on the UK Parliament, while probably increasing the quantity of legislation overall. On the rare occasions that specific Acts have been passed at Westminster for one of the devolved nations, these have almost always been on constitutional or other reserved matters. But as the sovereign parliament, Westminster still has the power to legislate for all parts of the UK, even in devolved policy areas. This normally happens with the consent of the devolved administrations. On other matters, where there is no need for or no agreement on UK-wide legislation, the UK Parliament often legislates solely for England.

## English MPs can now veto England-only laws – but the impact has been minimal

Figure 5.2 **Bills subject to the English Votes for English Laws process by sponsoring department, 2015 to 2019**



Note: BEIS incorporates predecessors the Department of Energy and Climate Change (DECC) and the Department for Business, Innovation and Skills (BIS) – each sponsored one bill.

Source: Institute for Government analysis of data collected and kindly shared by Daniel Gover and Michael Kenny for Project EVEL ([www.evel.uk](http://www.evel.uk)), and further analysis of [www.parliament.uk](http://www.parliament.uk), 2015 to 2019.

The establishment of the three devolved legislatures in 1999 did not change the powers of the UK Parliament. But in policy areas that had been devolved, such as health and education, Westminster found itself legislating for England only. This gave rise to the infamous ‘West Lothian question’, which asks why non-English Members of Parliament (MPs) can vote on English legislation on issues where English MPs can no longer vote on legislation for the other parts of the UK. During the Blair Government, the UK Parliament controversially passed legislation to introduce foundation hospitals in the English National Health Service (NHS) and to introduce top-up fees for English university students, in 2003 and 2004 respectively, despite the opposition of a majority of English MPs.<sup>7</sup>

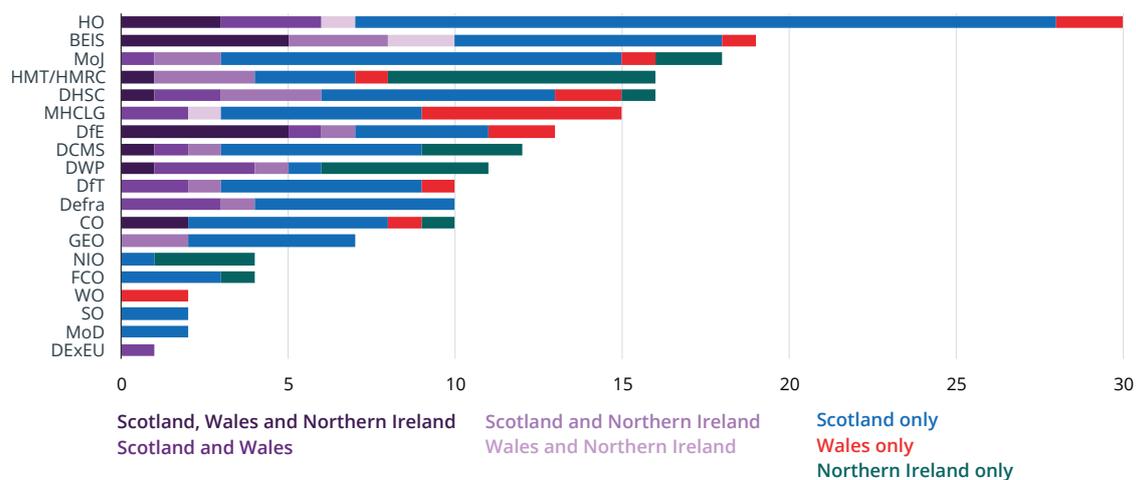
In 2015, the Cameron Government reformed the legislative process to give English MPs a veto over any laws (or parts of laws) that apply only in England. In areas such as policing and justice, where laws apply to England and Wales, English and Welsh MPs together were granted this veto power. These procedures – known as ‘English Votes for English Laws’ (EVEL) – have been used during the legislative process for 35 bills since 2015. The greatest share has been bills sponsored by the Ministry of Housing, Communities and Local Government, as the responsibilities of this department are almost wholly devolved to Scotland, Wales and Northern Ireland. Four bills each on education and justice have also passed through the EVEL process, as have clauses of four Treasury-sponsored bills, including votes on income tax rates that no longer apply in Scotland.

The EVEL process is a rare example of a procedural change that the UK Parliament has made as a result of devolution. It was controversial at the time of its introduction, with all non-Conservative MPs either abstaining or voting against it. But EVEL has not made a significant difference in practice. There have been no cases of English MPs voting against a law that the House of Commons as a whole has voted for, and the process – for now – is a barely noticed technicality. An academic study found that proceedings on English parts of bills, which take place a new English ‘Legislative Grand Committee’, lasted an average of around two minutes.<sup>8</sup> Consequently, the authors concluded that EVEL has “failed to provide meaningful English representation at Westminster—particularly in relation to supplying England, and its MPs, with an enhanced ‘voice’”.<sup>9</sup>

However, if the parliamentary arithmetic were different, for instance if a future Labour-led government had a UK-wide majority but no majority in England, then the EVEL process could become more significant, since English opposition MPs would hold a veto power over legislation in important areas of domestic public policy.

## Westminster still legislates in devolved areas – normally with consent

Figure 5.3 Number of Acts of the UK Parliament subject to legislative consent motions at the devolved level, 1999 to March 2019



Note: GEO = Government Equalities Office, NIO = Northern Ireland Office, SO = Scotland Office and WO = Wales Office. The data indicates what would be the lead department for each Act as of 2019, rather than at the time the Act was passed.

Source: Institute for Government analysis of [www.legislation.gov.uk](http://www.legislation.gov.uk) and data from the UK Parliament, Scottish Parliament, Welsh Assembly and Northern Ireland Assembly.

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Another adaptation the UK Parliament and Government have made in response to devolution is to commit to the Sewel Convention. This non-binding political agreement (also known as the Legislative Consent Convention) has become a core pillar of the relationship between Westminster and the devolved administrations over the first two decades of devolution. It was first expressed by Scottish Office minister Lord Sewel during the passage of the legislation creating the Scottish Parliament in 1998. His precise formulation was that “we would expect a convention to be established that Westminster would not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish parliament”.<sup>10</sup> The same convention was taken to extend to the Northern Ireland Assembly and to the Welsh Assembly after it acquired primary legislative powers in 2007. The convention has also been taken to apply when Westminster legislates to amend the terms of devolution.

The normal process followed in cases where legislation at Westminster falls within the scope of the convention is that there is consultation between the UK and devolved administrations before publication of the legislation. When the bill is introduced, devolved ministers set out their view of whether and why consent should be given in a ‘legislative consent memorandum’. In some cases, this leads to amendments being made in the UK Parliament to deal with devolved concerns. The devolved legislature then votes on a ‘legislative consent motion’, which can either grant or decline to grant consent to the bill. The UK Parliament has the power to ignore the denial of devolved consent and to legislate regardless, but has very rarely taken this option.

The Sewel Convention has been used frequently across a wide range of areas. In our analysis we found that 202 Acts of Parliament (including 17 private members' bills) over the first two decades of devolution (until the end of March 2019) had been subject to consent motions in at least one of the three devolved legislatures. This includes 155 bills in the case of Scotland, 61 for Wales and 65 for Northern Ireland (a figure that would have been significantly higher had it not been for the regular collapses of devolution in Northern Ireland). In 60 cases, consent had been voted on in more than one of the devolved legislatures, including 19 where consent had been granted in all three nations.

Bills subject to consent motions have most frequently fallen within the remit of the Home Office (especially for Scotland, where policing has been fully devolved since 1999), the Department for Business, Enterprise and Industrial Strategy (and its various predecessors) and the Ministry of Justice. Several bills sponsored by the Treasury and the Department for Work and Pensions have required consent from Northern Ireland alone, reflecting the fact that the administration of social security and pensions is devolved. In Wales, consent has often been required for local government bills that do not apply in Scotland and Northern Ireland.

This analysis shows that Whitehall departments have to navigate a complex set of territorial relations to ensure that their legislation functions effectively across different parts of the UK. Mostly this process has worked well and without controversy.

# The devolved legislatures have voted against consent to Westminster legislation just 10 times since 1999

Figure 5.4 Legislative consent motions in the three devolved legislatures, 1999 to March 2019



Source: Institute for Government analysis of data from the Scottish Parliament, Welsh Assembly and Northern Ireland Assembly.

The total number of legislative consent motions is higher than the 202 Acts of Parliament mentioned, because in many cases more than one motion is voted on for the same bill, for instance where amendments at Westminster lead to a requirement for a fresh grant of consent. Our analysis found that the three devolved legislatures have voted on at least 352 legislative consent motions.

What is striking about the legislative consent process, aside from how frequently and broadly it has been used, is that in the vast majority of cases it has operated without controversy. In total, out of more than 350 legislative consent motions, on just 10 occasions has consent been denied, in part or in full.

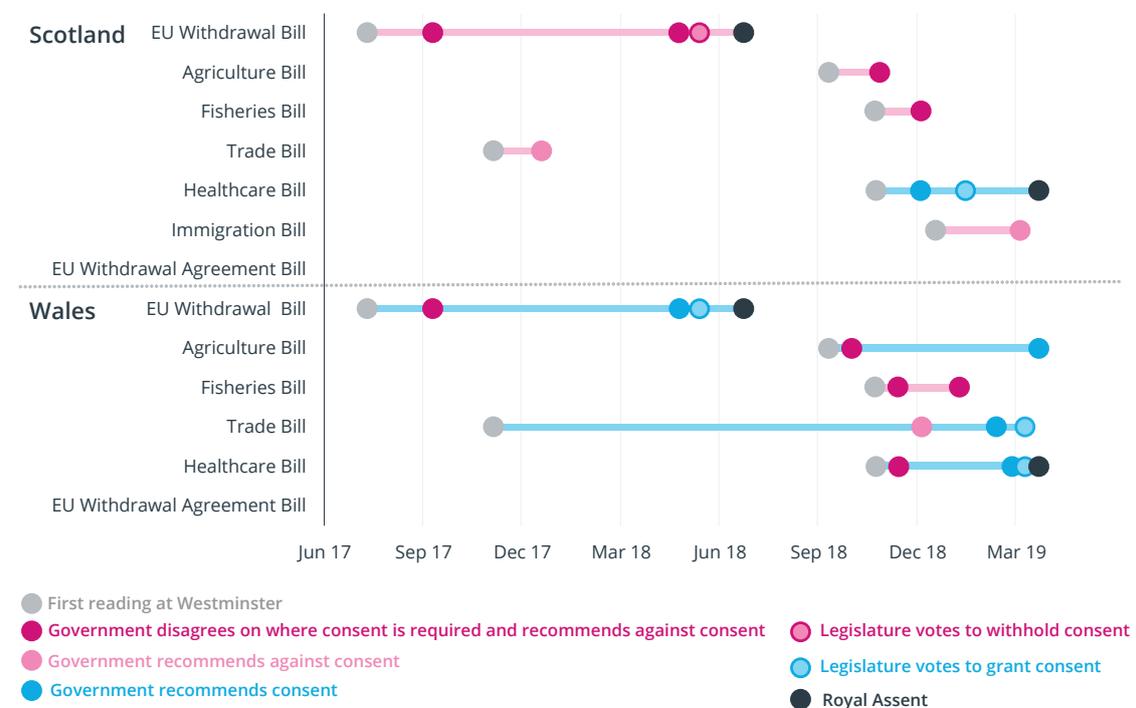
On other occasions, however, concerns raised by devolved ministers have led to amendments or other commitments at Westminster to resolve devolved objections. For example, the Public Pensions Act 2013 as originally introduced would have applied to certain pension schemes under devolved control. The Scottish Government argued that it had not been consulted sufficiently and informed the UK Government that it would not recommend consent. The bill was amended to take out the Scottish provisions, and no consent motion was ever debated.<sup>11</sup> Also in 2013, the UK Government had the Marriage (Same Sex Couples) Act amended to remove Northern Ireland from certain provisions, in light of opposition at the devolved level.<sup>12</sup> The Scotland Act 2016 and Wales Act 2017 were also held up by threats to withhold consent, until agreement was reached on the financial implications of the legislation.

Of the 10 cases where consent has been formally withheld, seven have occurred in Wales, where ambiguity and disagreements over the boundary between devolved and reserved functions have been more frequent.<sup>13</sup> Twice, the bill in question was then amended to meet Welsh objections. Five times, the UK Parliament proceeded to legislate despite the absence of consent, typically because UK ministers did not agree that the disputed provisions were in devolved areas, meaning they disagreed that consent was required.\* The Northern Ireland Assembly has only voted against consent once, on the Enterprise Bill in 2016, which was then amended to exclude Northern Ireland from the disputed parts. There was a similar outcome when the Scottish Parliament withheld consent from parts of the Welfare Reform Bill 2011/12: UK ministers agreed to amend the bill and consent was secured. The second time Scottish consent was withheld has been altogether more contentious: this was the vote to deny consent to the European Union (Withdrawal) Act in May 2018.

The normal pattern since 1999 has been for Westminster to respect the Sewel Convention, and for the devolved bodies to grant consent to UK bills where required, often after concessions by UK ministers over the terms of the legislation. The convention has played a central role in facilitating good relations between the UK and devolved legislatures. However, Brexit has placed the legislative consent process under pressure, leaving its status in doubt.

## The UK and devolved governments disagree on several Brexit bills

Figure 5.5 Scottish Parliament and Welsh Assembly consent to UK Parliament Brexit bills



Source: Institute for Government analysis of data from the UK Parliament, Scottish Parliament and Welsh Assembly.

\* These cases are discussed in Cowie G, *Brexit: Devolution and legislative consent*, House of Commons Library, 2018, pp. 47–51, retrieved 15 April 2019, <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-8274#fullreport>

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The European Union (Withdrawal) Bill was the first bill that the UK Government introduced to implement Brexit. It has been followed by several more that also require consent from Scotland and Wales, because they relate to devolved matters such as agriculture or fisheries, or adjust the powers of the devolved bodies. If the Northern Ireland Assembly were to resume functioning, its consent would also be sought for the same set of bills. However, the collapse of power-sharing in 2017 means that devolved institutions in Northern Ireland have not been able to make their voice heard in the Brexit process.

Devolution took place in the context of EU membership, which was assumed to be a permanent part of the UK's constitutional arrangements. Currently, even for policy areas that are devolved such as agriculture and the environment, devolved institutions are bound by the same EU laws as the UK Government. This ensures a degree of consistency across the UK nations when it comes to standards and regulations. Once the framework of EU law is removed, however, the default position is that full control of powers repatriated from Brussels will revert to the devolved level if they relate to policy areas that are not reserved to Westminster under the existing devolution legislation. This will increase the potential for policy and regulatory divergence within the UK.

To avert this, the European Union (Withdrawal) Bill – when introduced in 2017 – included provisions to hold all powers repatriated from the EU in Westminster. This was opposed by both the Scottish and Welsh Governments, with Nicola Sturgeon (First Minister of Scotland) and Carwyn Jones (the Welsh First Minister at the time) criticising the bill as a “power grab” by Westminster. Both devolved governments recommended against consent.<sup>14</sup>

After months of negotiations, the bill was amended sufficiently to secure the consent of the Welsh Assembly but not the Scottish Parliament.<sup>15</sup> The UK Government accepted that powers returning from Brussels in devolved areas should return by default to Edinburgh, Cardiff and Belfast. However, it insisted on creating a way for Westminster to freeze some devolved powers for up to seven years. The Scottish Parliament withheld consent for this provision, but the bill was enacted at Westminster nonetheless. This was the first time the UK Government had proceeded to legislate without consent, having agreed from the outset that consent should be sought.

In response, both the Scottish and Welsh Governments called for reform of the Sewel Convention to make it more difficult for Westminster to override the will of the devolved bodies. The Scottish Government proposed an amendment to give the convention legal force, by inserting a provision in the Scotland Act 2016 that the UK Parliament “must not” rather than “will not normally” legislate in devolved areas without consent.<sup>16</sup> Meanwhile, as Welsh First Minister, Carwyn Jones proposed reforms including a new parliamentary stage in the House of Commons for bills where consent had not been granted, so that devolved concerns could be aired and ministers could be held accountable for their decisions.<sup>17</sup>

The UK Government has not responded to these proposals, and for now the Scottish Government has declared that it will not recommend consent for any of the other Brexit bills.<sup>18</sup> This raises the spectre of ongoing conflict between Westminster and Holyrood over the implementation of Brexit and how the two governments should

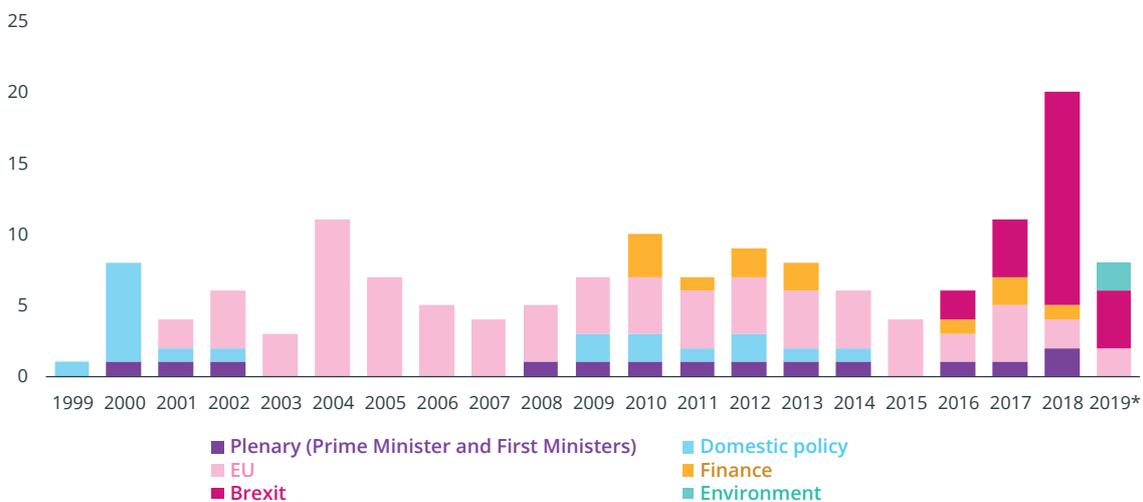
work together after Brexit. Scottish ministers have now laid memorandums opposing consent to the Trade, Immigration, Agriculture and Fisheries Bills.<sup>19</sup> In the latter two cases, they also disagree with the UK Government about which parts of the bills relate to devolved matters. The Scottish Brexit Minister Michael Russell has also said that consent will not be given to the European Union (Withdrawal Agreement) Bill, which will need to be introduced if the UK Parliament approves a Brexit deal.<sup>20</sup> The Scottish Government made an exception for a bill making provision for continued reciprocal healthcare arrangements with countries of the European Economic Area (EEA) and Switzerland.<sup>21</sup> Consent was granted by the Scottish Parliament in January 2019, and the bill received Royal Assent shortly thereafter.

Welsh ministers were also critical of the decision by Westminster to pass the European Union (Withdrawal) Act without Scottish consent, but they have adopted a more emollient approach subsequently. Having backed the Withdrawal Bill itself, the Welsh Government has recommended consent for the Healthcare, Trade and Agriculture Bills. In the latter two cases, the initial position adopted was to oppose consent, but concessions at Westminster enabled Welsh ministers to change their position. Final agreement has yet to be reached on the Fisheries Bill, but here again the UK Government has made amendments to address Welsh concerns, and Welsh ministers believe that it is likely that consent will be granted in the end.<sup>22</sup>

These developments illustrate that despite the tensions in the UK–Welsh relationship, the legislative consent process is still functioning. UK ministers have been willing to compromise to secure consent for their bills, and Welsh ministers have continued to engage with the process. In the case of Scotland, relations are clearly more strained. If consent is withheld from the remaining Brexit bills, UK ministers will face a difficult decision about how to proceed, and whether to press ahead without consent once more. Meanwhile, the parties in Northern Ireland have no formal mechanism by which to give their consent to these bills.

## Brexit has led to more joint working – with mixed success

Figure 5.6 Number of meetings of UK–devolved ministerial committees since 1999



Note: 2019 data up to the end of March. Data for meetings between finance ministers is only available from 2010 and may be incomplete.

Source: Institute for Government analysis of sources including [www.gov.uk](http://www.gov.uk), [www.gov.wales](http://www.gov.wales), [www.gov.scot](http://www.gov.scot) and data provided by the Scottish Government.

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Since 2016, UK and devolved ministers have disagreed on various aspects of Brexit and its impact on devolution arrangements. To resolve these differences, they have created new forums involving representatives from the different administrations. But these forums have operated in a sporadic fashion, often at the whim of UK ministers, to the frustration of the devolved administrations.<sup>23</sup> This is not a new issue: ever since the start of devolution, committees of ministers from the four governments have met irregularly and with little transparency, leading to criticism from the Institute for Government and other observers.<sup>24</sup>

Since 1999, the main official forum in which UK and devolved ministers meet has been the Joint Ministerial Committee (JMC). This meets in 'plenary' form, referring to summit meetings between the Prime Minister and First Ministers. The JMC (Plenary) is designed to resolve disputes between the governments and to keep the overall state of intergovernmental relations under review. JMC (Plenary) summits are intended to be held at least annually, but they stopped taking place after 2002 for six years. During this period there was no Northern Ireland Executive and the UK, Scottish and Welsh Governments were all Labour-led, so, according to former Scottish First Minister Lord McConnell, formal heads-of-government meetings were unnecessary.<sup>25</sup> The UK and devolved governments agreed to restart these summits in 2008, after the Scottish National Party (SNP) had come to power and a new Northern Ireland Executive had been formed. These meetings have been held most years since then.

The JMC also meets in various 'functional' formats, with ministers meeting to discuss issues of joint interest and to improve co-ordination. In 1999, several domestic policy JMCs were established, including for health, poverty and the 'knowledge economy'. After an initial flurry of activity, these quickly ceased to meet, suggesting that there was little interest in developing common approaches in policy areas that were now the responsibility of the devolved institutions. After 2008, a new all-purpose JMC (Domestic) was established, although that too met infrequently and ceased operation in 2014. A separate 'Finance Ministers Quadrilateral' forum also meets occasionally.

The only ministerial committee that has met regularly through the whole two decades of devolution since 1999 is the JMC (Europe). This body has typically met quarterly for UK and devolved ministers to discuss forthcoming business before meetings of the European Council of Ministers. The peak of its activity came in 2004, when the EU Constitution was being negotiated, and the JMC (Europe) met 11 times.

In 2016, after the EU referendum, it quickly became apparent that there was a need for ways of dealing with the tensions and complications caused by Brexit. In October 2016, a new JMC (EU Negotiations) was established, with a remit to "seek to agree a UK approach to, and objectives for, Article 50 negotiations" before starting the withdrawal process.<sup>26</sup>

However, after the governments failed to agree on how to proceed with Brexit, this new body ceased to meet between February and October 2017. This marked a low point in relations between the governments. In March of that year, the Prime Minister Theresa May invoked Article 50 without having developed a common 'UK approach' to Brexit. This prompted the Scottish Government to make a renewed push for an independence referendum – only to be rebuffed by the Prime Minister.<sup>27</sup> In July 2017,

following the UK general election, the European Union (Withdrawal) Bill was published after limited consultation with Edinburgh and Cardiff, leading to the disputes discussed above.

In October 2017, the JMC (EU Negotiations) was reconvened and, for the first time, agreement was reached on a substantive Brexit issue – the contested question of what should happen to powers repatriated from the EU. The devolved governments and the UK Government reached a compromise: the overall effect of Brexit would be an expansion of devolved policy autonomy, but new ‘common frameworks’ would be required in some areas to limit policy divergence within the UK.<sup>28</sup>

Since then, there have been more regular meetings of the JMC (EU Negotiations), as the UK Government has attempted to reach a compromise on its Brexit bills, and to take forward the development of common frameworks. Despite the continued tensions between UK and Scottish ministers, the JMC (EU Negotiations) and a separate ‘Ministerial Forum’ on Brexit continue to meet. In 2018, they met 15 times. In February 2019, a new inter-ministerial group was created on the environment, food and rural affairs, key areas where Brexit will affect devolved powers. In all these forums, Northern Ireland is represented only by civil servants due to the absence of a government in Belfast. This means that there are no political representatives from Northern Ireland present in these important discussions.

But while meetings between the UK and devolved governments are taking place more regularly than was previously the case, the key test is whether such interactions help to bring the governments to agreement both on the Brexit legislation discussed above and on the scope and content of new common frameworks to replace EU law in devolved areas. The evidence suggests that there is a long way to go to reach this point.

## The UK and devolved governments are struggling to agree on how to replace EU law in devolved policy areas

Figure 5.7 Areas of EU law where the UK and devolved governments will need to co-operate after Brexit



Note: One Defra and HSE policy area where a legislative framework may be required is shown under Defra. Policy areas under the Health and Safety Executive, the Food Standards Agency and the Government Equalities Office are listed under DWP, DHSC and CO respectively.

Source: Institute for Government analysis of *Revised Frameworks Analysis*, Cabinet Office, April 2019.

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In 2017, the UK and devolved governments agreed six principles to guide decisions on where common frameworks should be created in place of EU law:

- to enable the functioning of the UK internal market
- to ensure compliance with international obligations
- to ensure that the UK can agree new trade agreements and treaties
- to enable the management of common resources
- to provide access to justice in cross-border cases
- to safeguard national security.<sup>29</sup>

Officials from the four administrations of the UK have since worked together to identify the areas of overlap between EU law and devolved powers and to decide where, in light of the agreed principles, common frameworks may be required. Analysis published by the UK Government in April 2019 shows there are 160 areas of EU law that intersect with devolution in at least one of the three devolved nations, meaning that powers in this area are devolved but currently constrained by EU law. Northern Ireland has the largest number – a total of 157 – due to its more extensive devolution settlement. There are 111 for Scotland and 70 for Wales.

The UK Government believes that UK-wide legislative frameworks may be required in 21 of the 160 areas, although negotiations are still ongoing. The implication is that the UK Parliament would legislate to impose new constraints on devolved policy autonomy in these areas. Many are policy areas where regulatory divergence between the different parts of the UK could create additional costs for businesses, or could make it harder for the UK Government to agree and implement trade deals that open up UK markets to foreign competitors. Of the 21 areas:

- 16 are in areas led by the Department for Environment, Food and Rural Affairs (Defra), including aspects of agriculture, fisheries, animal welfare, food standards, plant health and chemicals regulation
- three fall within the remit of the Department for Business, Energy and Industrial Strategy (BEIS): the mutual recognition of professional qualifications, potential replacements for the EU Services Directive and the emissions trading scheme
- two are in health and food standards: the provision of reciprocal healthcare after Brexit and food and feed safety regulations.

At the time the European Union (Withdrawal) Act was passed, the UK Government expected to use the Act to 'freeze' devolution in the areas where legislative frameworks would subsequently be created.<sup>30</sup> So far, this has not happened. Instead, the governments have worked together to try to reach agreement on the terms of the new frameworks. There has been extensive civil service engagement on these issues, which is a positive sign of strong working relationships at the official level.<sup>31</sup>

However, ministers do not appear close to agreement on how these frameworks will operate, or what governance mechanisms should be set up to oversee them. In March 2019, Scotland's Brexit Minister Michael Russell said that the "the Scottish Government is refusing to have any truck with the UK Government's invented concept of the supposed needs of some non-existent 'UK Single Market'".<sup>32</sup> If agreement

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cannot be reached, Westminster retains the power to impose new frameworks without consent. But this would be highly controversial and far from conducive to effective joint working between the governments in future.

In addition to these priorities, the UK Government has identified 78 areas of EU law where full control will transfer to Scotland, Wales and Northern Ireland after Brexit, but where non-legislative frameworks may be needed to facilitate co-operation between the four governments. Over half of these policy areas fall under policing and justice, so are devolved to Scotland and Northern Ireland only. Other departments expected to develop non-binding frameworks include the Department of Health and Social Care (DHSC) (for instance on blood safety and organ donation), the Department for Transport (DfT) (particularly with Northern Ireland, where areas such as driver licensing are fully devolved) and Defra (including to ensure common standards on air quality, waste management and the protection of habitats). But not all the powers returning from Brussels will require frameworks at the UK level. There are 63 policy areas that will be devolved in full to one or more of the devolved nations, and where the UK Government believes no UK-wide frameworks will be needed.

Overall, the UK Government's 2017 commitment that Brexit will lead to "a significant increase in devolved decision-making power"<sup>33</sup> looks set to be met. However, in more than 20 important policy areas, the UK Government faces a challenging task of trying to agree with Edinburgh and Cardiff on how to replace EU law. The potential for further disputes seems high. Improving the operation of the intergovernmental machinery, which is being reviewed at present,<sup>34</sup> will clearly be an important task if post-Brexit common frameworks are to operate effectively.

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- 34 HM Government, 'Joint Ministerial Committee (Plenary): 14 March 2018: No. 10 Downing Street', HM Government, 2018, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/690527/Joint\\_Ministerial\\_Committee\\_communique%CC%81-\\_14\\_March\\_2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/690527/Joint_Ministerial_Committee_communique%CC%81-_14_March_2018.pdf); Gourtsoyannis P, 'Tories drape a Union flag on fund to fill Brussels gap', *The Scotsman*, 29 September 2018, retrieved 12 April 2019, [www.scotsman.com/news/politics/general-election/tories-drape-a-union-flag-on-fund-to-fill-brussels-gap-1-4807363](http://www.scotsman.com/news/politics/general-election/tories-drape-a-union-flag-on-fund-to-fill-brussels-gap-1-4807363)

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## About the authors

**Aron Cheung** is a senior researcher at the Institute for Government. He currently works on the Devolution at 20 project and leads the Whitehall Monitor project. Aron has previously conducted research on outsourcing, government finances and transparency, fiscal devolution and the impact of parliamentary committees.

**Akash Paun** is a senior fellow at the Institute for Government. He leads the Institute's work programme on devolution, and has also conducted research on areas including civil service accountability, coalition and minority government, parliamentary candidate selection and the role of select committees. Akash previously worked in the Constitution Unit at University College London (UCL).

**Lucy Valsamidis** is a research intern at the Institute for Government, working on the Institute's programme marking 20 years of devolution to Scotland, Wales and Northern Ireland and on the impact of Brexit on devolution. She has previously worked in charity communications and editorial roles.

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Institute for Government  
2 Carlton Gardens, London SW1Y 5AA  
United Kingdom

☎ +44 (0) 20 7747 0400

✉ [enquiries@instituteforgovernment.org.uk](mailto:enquiries@instituteforgovernment.org.uk)

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