

Devolution and the UK's Response to Covid-19:

Report for the UK Covid-19 Inquiry

Professor Ailsa Henderson

About the author

I am a Professor of Political Science at the University of Edinburgh, with a Baccalauréat ès sciences sociales from the Université d'Ottawa, an MSc in Social Research from the University of Edinburgh and a PhD in Politics from the University of Edinburgh. I have more than twenty years experience across universities in Canada (Wilfrid Laurier, Toronto) and the UK (Edinburgh) conducting research on multi-level and multi-national states, with a particular focus on the relationship between sub-state political institutions and sub-state attitudes and behaviour. I teach courses on research design, quantitative data analysis and Scottish/British politics. I have written or edited ten books and 50 articles on this, including *Englishness* (OUP, 2021, with Richard Wyn Jones) and *The Referendum that Changed a Nation* (Palgrave, 2022, with Rob Johns, Jac Larner and Chris Carman). I currently lead the ESRC-funded Scottish Election Study (and have done since the 2014 Scottish Referendum Study), and co-direct the Cardiff-Edinburgh Future of England/State of the Union surveys. I hold two public appointments, as a commissioner of the Boundary Commission for Scotland, and as Chair of Boundaries Scotland (formerly the Local Government Boundary Commission for Scotland). While conducting research on voter research is made much easier by careful partisan neutrality, the public appointments I hold also require formal neutrality. This report is written in my capacity as an independent expert. The facts stated are to the best of my knowledge

Author statement

I confirm that this is my own work and that the facts stated in the report are within my own knowledge. I understand my duty to provide independent evidence and have complied with that duty. I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

Ailsa Henderson

25th September 2023

Preamble

Details of literature and evidence relied on in making of this report

I have been asked to rely on desk-based research. The research has therefore drawn on four clusters of data or information:

- annual reports, minutes or official proceedings of relevant decision-making bodies (or, at times, minutes of other organisations to piece together events), as well as related testimony to the Covid inquiry.
- published academic and review work of other organisations (eg OECD).
- original research coding daily UK government COVID briefings;
- original research on public opinion;

These are detailed in the bibliography

Across these different sources there is often a range of opinion. I have endeavoured to draw attention to differences of opinion as well as to identify reasons for it.

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Part I: Devolution in the UK

The UK as a multi-level state

1. The United Kingdom is a multi-level state. Multi-level states take many forms but it typically involves some level of decision-making at the meso (middle) or micro (local) level. In federal states sub-state units exist as creatures of the constitution (rather than statute) and retain significant authority to create policy across large tracts of public policy, and elect sub-state legislatures and executives to deliver that policy (e.g. Germany, Belgium, Canada). Unitary states lack this but can have regions that possess decision-making powers below the level of the central state (e.g. France). The United Kingdom sits between these two poles, as a unitary state with asymmetrical devolution. Three of its constituent units (Wales, Scotland, Northern Ireland) have meso-level legislatures and executives elected by their own electorates. These generate policy on a range of topics including health, education and transport. The largest constituent unit by population, England, has no legislature of its own. Instead, the UK Parliament legislates on reserved (UK-wide) issues such as defence and foreign affairs, but also legislates for England on issues devolved to other territories. At times it legislates for other groupings (for example in England and Wales on issues of justice).
2. There are many ways that we can examine multi-level states. One is to explore their constitutional origins and the authority of their constituent units. Another is to explore the extent of self and shared rule within the state. Self rule refers to the level of authority exercised by sub-state legislatures. Shared rule, by contrast, refers to the extent to which constituent units play a role in central decision-making. Mechanisms of shared rule could include meetings among state and sub-state executives, or an upper house whose membership is weighted to reflect these constituent units. Hooghe et al's Regional Authority Index provides a means to assess the level of self and shared rule across states, and, where there is variation within a state, across its constituent units. Table 1 outlines the most recent available scores (2018) for the regional authority index for a range of OECD countries, along with their constitutional type.
3. The results make clear two things. First, there is considerable variation within types of state structure. Some federations have a powerful sub-state level (Canada) and others less so (Australia). Some unitary states devolve a considerable amount of authority to the regional level (France).
4. Second, there is no necessary relationship between self and shared rule. Countries with high scores on self rule do not necessarily have high levels of shared rule. Belgium is high on both, but India, despite being a federation, has high self rule and low shared rule. In this table, the United Kingdom has below average levels of self rule (even among fellow regionalised unitary states such as France, Italy and Spain). Its shared rule scores are very low, not unlike Italy and France, but markedly less than Spain. In other words, the constituent units of the UK engage less with central decision-making than in other similar states.

Table 1: Regional authority scores for OECD countries, 2018

	Type	Self rule	Shared rule	Total
<i>Australia</i>	Federal	14.95	10.50	25.45
<i>Austria</i>	Federal	14.00	9.00	23.00
<i>Belgium</i>	Federal	22.40	11.48	33.88
<i>Canada</i>	Federal	21.65	6.12	27.77
<i>Denmark</i>	Decentralized unitary	7.19	0.15	7.34
<i>Finland</i>	Decentralized unitary	7.05	0.04	7.09
<i>France</i>	Regionalised unitary	21.84	0.01	21.85
<i>Germany</i>	Federal	25.67	12.00	37.67
<i>Greece</i>	Centralized unitary	9.00	0.00	9.00
<i>Ireland</i>	Centralized unitary	11.00	0.00	11.00
<i>India</i>	Federal	27.97	7.49	35.46
<i>Italy</i>	Regionalised unitary	22.73	3.22	25.95
<i>Netherlands</i>	Decentralized unitary	10.00	7.50	17.50
<i>Norway</i>	Decentralized unitary	12.11	0.00	12.11
<i>Portugal</i>	Centralized unitary	9.24	0.27	9.51
<i>Russia</i>	Federal	13.86	8.00	21.86
<i>Spain</i>	Regionalised unitary	22.65	12.95	35.60
<i>Sweden</i>	Decentralized unitary	12.00	0.00	12.00
<i>Switzerland</i>	Federal	18.00	8.50	26.50
<i>United Kingdom</i>	Regionalised unitary	8.48	1.11	9.59
<i>United States</i>	Federal	22.18	7.44	29.62

Source: RAI scores (Schakel 2018)

The UK as a multi-national state

5. The UK is sometimes referred to as a multi-national state. According to this view, the boundaries of nations do not necessarily coincide with those of the state. Nations can exist as states, inside states or across them. The term multi-national states can refer to housing multiple sub-state nations (eg Scotland, Wales), or can include nested nations, where the state is considered a nation (eg Spain, Canada, UK) but so are discrete communities within it (eg Catalonia, Quebec, Scotland). If there is debate about which nations exist within a state (whether certain communities are nations or regions, for example) it is sometimes referred to as a pluri-national state. This appears to be the case in the UK, where the most popular view is to believe that there is a British nation but also nations in sub-state territories such as Scotland. But it is also the case that between 18 and 26% of respondents across the UK believe that there is no such thing as a sub-state nation, with one third of Scots, 30% in Northern Ireland and one in five in Wales believing that this is no such thing as a British nation.

Table 2: Nations in the United Kingdom

	England	Scotland	Wales	Northern Ireland
Only one nation: the British nation	25	18	26	22
Only sub-state nations	17	33	19	29
Both British and sub-state nations	44	41	46	39
Don't know	14	7	8	10
n	1603	1610	1610	1580

Source: State of the Union Survey 2021

6. In one sense, none of this matters for the daily operation of politics in the UK. It relates to a wider understanding of the UK in two limited ways. First, the language of 'national' institutions sometimes refers to institutions existing at different territorial scales. Scotland and Wales each have a 'National' Library, Museum, Galleries and Orchestra. National Records of Scotland conducts the Scottish census and is responsible for maintaining records of the Scottish government, courts and other public bodies.¹ The language is more varied in Northern Ireland, which has a network of National Museums, but since there are competing understandings of which nation is being invoked with that label, its use is typically avoided. The UK also has a number of national institutions but each covers slightly different territorial scales. It has a National Health Service (or technically four)², a National Institute for Economic and Social Research, but also a National Archives (which is primarily responsible for maintaining records for the UK government and courts in England and Wales), and a National Institute for Health and Care Excellence (which plays a quality assurance role in England alone but issues clinical guidance for the whole of the UK).³ This shifting territory invoked in the term national becomes relevant later.

7. Second, a perception that Scotland and Wales are nations has been credited with driving support for devolution. Obviously a level of devolution or decentralization within a state does not require sub-state communities to be nations; it can be explained purely by support for the principle of subsidiarity. But a belief that sub-state communities are nations can drive demands for greater autonomy. Whether different parts of the UK view themselves as nations is therefore sociologically or politically relevant to the establishment of devolution, but whether it is relevant to day-to-day operations is a matter for debate.

¹ Indeed in 1891, Welsh MP Alfred Thomas introduced the National Institutions (Wales) bill, proposing a Welsh Office, Welsh National University, National Museum of Wales and a Welsh Parliament. Although the bill was ultimately unsuccessful, many of these organisations exist today.

² The National Health Service Act 1946 and the National Health Service (Scotland) Act 1947 established a comprehensive health service. In Scotland and in Wales it is referred to as NHS Scotland, NHS Wales and in Northern Ireland it is referred to as Health and Social Care.

³NICE applies in Wales too. In NHS Scotland, Scottish Intercollegiate Guidance Network (SIGN) has primacy with other guidelines, including NICE guidelines, used if relevant SIGN guidance is not available.

Origins and nature of Devolution in the United Kingdom

8. In the UK, democratic devolution to Scotland, Wales and Northern Ireland 'arrived' in 1998/1999, but had been preceded in each instance by administrative devolution and in NI, by periods of democratic devolution as well. Each of these originated through different processes but each required a referendum supporting change.
9. Unlike devolution to Scotland and Wales, devolution in Northern Ireland has a longer history, with an elected Parliament from 1921 to 1972. Its recent form has its origins in the Belfast Agreement 1998, (also referred to as the Good Friday agreement, reflecting the day on which it was reached). Under the agreement both the UK and Irish governments organised referendums on 22 May, each addressing slightly different issues. The Republic Of Ireland referendum was only to approve the British-Irish aspects of the agreement, as well as to amend that part of the Constitution of Ireland that referred to the goal of a 32 county united Ireland. The Northern Ireland referendum was to approve the agreement and the establishment of a devolved legislature. The results were 94.4% support in the Republic and 71.1% support in Northern Ireland. This then established a 108-member legislature (reduced to a 90-member legislature in 2017), as well as bodies to manage intergovernmental relations within the island of Ireland (the North-South ministerial council) as well as relations between the UK and Ireland (British Irish Council).
10. Following the 1997 UK General Election the Labour government organised referendums on devolution in Wales and Scotland. The Scottish referendum held 11 September 1979 included two questions, one on the creation of a Scottish Parliament and the second on the ability of any Parliament to have tax-varying powers. Both referendum questions passed, with greater support for the first (74.3%) than the second (63.5%). One week later, the Welsh referendum passed with 50.3% supporting the creation of a Welsh Assembly. Elections to both assemblies occurred in May 1999, using the Additional Member electoral system.
11. In England, there is no England-specific legislature, with policy on what is otherwise devolved decided either by Westminster or in some instances by other more local bodies.
12. The three devolved assemblies legislate on devolved areas and the settlements originally differed on whether they specified what the devolved legislatures *could* do (initially a conferred powers model, as in Wales) or specified what they *could not* (a reserved powers model, as in Scotland and Northern Ireland, and Wales from 2017 onwards). While Westminster will not normally legislate in relation to devolved matters it retains the ability to legislate on any issue, whether it is reserved or not.⁴
13. In each instance, devolution has been motivated by a desire to facilitate subsidiarity, the notion that decisions are taken at the lowest possible level, to better reflect variations in need, priorities and preferences. One automatic consequence of devolution – in other words the putting into practice of different needs or preferences, and the fact that devolved electorates might select governments of different partisan stripes - is that there will be policy variation across the state. In the

⁴ This is discussed in greater detail below in reference to the Sewel convention.

early days of devolution this included high profile policy variation on higher education fees and funding, the costs of care for vulnerable older people, or smoking policy.

14. Three points about policy variation are worth clarifying. First, policy variation brings benefits, in that it provides an opportunity to evaluate the different strengths (or weaknesses) of particular policy approaches. Second, we know however, that there are varying degrees of support for the principle of policy variation in the UK, with considerable support for policy uniformity across the state (see for example Henderson et al 2013, Henderson and Wyn Jones 2021). Third, the practice of policy variation has been criticised for leading to 'postcode' lotteries, with individuals in different parts of the state able to access different services or at different costs than other citizens, claims which suggest that variation undermines social solidarity across the state.

Scope and extent of devolution in Northern Ireland

15. Given its origins, the language used to describe devolution to Northern Ireland often differs from that used in other devolved settlements. The Northern Ireland Act 1998 offers a reserved powers model but unlike in Scotland and Wales there is a distinction between reserved and excepted powers (both of which sit outside the assembly's competence). Excepted matters are expected to stay with the UK government indefinitely, but reserved matters might transfer to the assembly under certain conditions. Also unlike Scotland and Wales, Northern Ireland has its own civil service. The separate civil service dates from the Government of Ireland Act (1920).⁵
16. The wider Belfast agreement has three strands: the internal arrangements of Northern Ireland, relations between NI and the Republic of Ireland (strand 2 north/south relations), relations between UK government and Irish government (strand 3 British Irish Council and British-Irish intergovernmental conference).
17. Executive formation functions differently in Northern Ireland, as a result of the consociational nature of the legislature (more on which below) with the Executive comprised of ten Ministers, including a Minister of Justice appointed by a cross-community vote in the legislature. The executive therefore includes, by design, ministers from different parties (and communities). Under such a system there is typically no official opposition, as many parties eligible for ministerial posts will sit in government. This has led some to question whether the executive is subject to the same scrutiny as in other UK legislatures (Haughey 2019).⁶ After the 2016 devolved elections, however, there was an official opposition for just over six months but this has not been resurrected following subsequent elections.⁷

⁵ In 1921 Irish civil servants were transferred to a new Northern Ireland civil service following the partition of Ireland.

⁶ The same author has suggested the preponderance of time spent on constituency work is as likely to inhibit scrutiny (Haughey 2017) although time commitments to constituency service appear fairly consistent across devolved legislatures (Bradbury and Mitchell 2007)

⁷ Arrangements followed a Private Members' Bill by John McCallister, The Assembly and Executive Reform (Assembly Opposition) Act 2016. The UUP and SDLP had declined to nominate a minister for the Executive and

Scope and extent of devolution in Wales

18. The devolution settlement has changed more in Wales than in the other devolved territories. The Government of Wales Act 1998 provided for the establishment of the Assembly for Wales and transferred powers of the Secretary of State for Wales to the Assembly. As a result, the legislature could create secondary legislation in the areas of, for example, health, education, and agriculture. It operated as a single corporate body with both executive and scrutiny functions.
19. The subsequent Government of Wales Act 2006 separated the roles for the Assembly and its executive (the Welsh Assembly Government) to facilitate scrutiny, and gave the Assembly the power to create primary legislation. These powers took effect after the 2007 (third) devolved elections.
20. A third change to devolution in Wales followed a vote in the Welsh Assembly itself. In February 2010 members voted in favour of holding a referendum on further law-making powers (thus changing the relationship between reserved and devolved powers). The UK government agreed to allow such a referendum. In the March 2011 referendum 63.5% of Welsh voters backed additional powers. As of May 2011 the Welsh Assembly acquired full primary law-making powers to pass legislation in all areas listed in schedule 7 of the 2006 Act. Restrictions and exceptions are listed in schedule 7 and section 108 of the Act.
21. The Wales Act 2014 devolved fiscal powers to the Welsh Assembly. This allowed it to legislate on stamp duty and landfill tax, and limited income tax changes (for rates but not bands). The Wales Act 2017 changed the nature of devolution, identifying, like in Scotland, a reserved powers model. Rather than list the policy areas for which the National Assembly could legislate, a reserved powers model outlines what it cannot do. The shift brought additional legislative competence over elections and transport, as well as energy and environment. As a result of the Senedd and Elections (Wales) Act 2020, the National Assembly is now referred to as the Welsh Parliament or Senedd.

Scope and extent of devolution in Scotland

22. The Scotland Act 1998 created a reserved powers model, listing policy areas for which the Scottish Parliament did not have the power to legislate in respect of reserved matters, with all other areas deemed to be within competence. There have been two subsequent Scotland Acts. The Scotland Act 2012 increased the fiscal powers of the Scottish Parliament, allowing it to create a new rate of income tax, the ability to have its own stamp duty (Land and buildings transfer tax), a new landfill tax, capital borrowing, and the power to create new devolved taxes. These powers were to be transferred over time, and thus by the time of the 2014 Scottish independence referendum some of the 2012 Act additional powers had not yet been transferred to (or used by) the Scottish Parliament. Following the 2014 independence referendum the Smith Commission recommended a further devolution of powers. The Scotland Act 2016 extends to the Scottish Parliament

they became part of the official opposition following the 2016 elections. The arrangements ended when the Assembly was dissolved following the collapse of the Executive in Jan 2017. Since then there has been no official opposition (although the SDLP refers to itself as such).

the ability to set not just income tax *rates* but to set the *bands* as well, a new air passenger duty, as well as elements of social security. With the 2016 Act, the Scottish Parliament also acquired the ability to legislate on its own electoral arrangements.

Mechanisms and structures to give effect to devolution

23. There are three relevant mechanisms and structures giving effect to devolution: legislation, financial arrangements and intergovernmental arrangements. The acts of parliament mentioned in the sections above, both the original acts and the more recent acts, outline the legislative competence of the institutions, as well as, in some instances, how they may be amended over time (more on which below).
24. The financial arrangements include the mechanism by which public policy, as decided by the devolved governments, is funded in each of the devolved territories. Much of the income is via a block grant from the UK government, the size of which is calculated on the basis of the Barnett formula.⁸ The Barnett calculations are based initially on English spending and then calculated for the devolved territories in light of population. This is important because it means that some seemingly English-only legislation has knock on financial consequences for the devolved territories (and this, with English Votes for English Laws in mind, makes it more than a simple matter to identify truly English-only legislation). The source of the block grant income is UK government revenue, including taxes raised by citizens in the devolved territories (but also in England).
25. Last, there are mechanisms for inter-governmental relations and dispute resolution. These include the Memorandum of Understanding (2013), Joint Ministerial Committee (JMC), the inter-ministerial group (IMG) and the joint-ministerial sub-committee..

Legislative competence

26. The three devolved legislatures have different levels of legislative competence, as outlined in Table 2. These variations have three sources. First, the three devolved legislatures had different origins, with the Northern Ireland legislature generated through an international agreement. Second, the devolution referendums in 1997 established different levels of legislative competence in part because there was perceived to be different levels of appetite or demand for devolution, with greater perceived demand in Scotland than in Wales. Different levels of competence were therefore offered to the electorates from the outset. Third, the current devolution settlements have since then been the result of repeated change, much of it implemented in an ad hoc way in response to external pressures (including the previously mentioned request by the Welsh Assembly, as well as the 2014 Scottish independence referendum). Because there has not been a single devolution process but three separate processes, devolved legislative competence could be described charitably as best reflecting the various political cultures of the devolved

⁸ It was this calculation that the leaders of the three largest unionist parties referenced in the Vow before the 2014 independence referendum, promising to retain them if Scotland voted No to independence.

constituent units. An alternative explanation is that it has been piecemeal, reactive and ad hoc.

Table 3: Devolved legislative competence

	<i>Scotland</i>	<i>Northern Ireland</i>	<i>Wales</i>
<i>Health and social services</i>	X	X	X
<i>Education, training and skills</i>	X	X	X
<i>Housing</i>	X	X	X
<i>Economic development</i>	X	X	X
<i>Agriculture, Forestry and fisheries</i>	X	X	X
<i>Environment and planning</i>	X	X	X
<i>Transport</i>	X	X	X
<i>Tourism sport, culture and heritage</i>	X	X	X
<i>Fire and rescue</i>	X	X	X
<i>Water and flood defence</i>	X	X	X
<i>Justice and policing</i>	X	X	
<i>Charity law</i>	X	X	
<i>Stamp duty</i>	X		X
<i>Some social security elements</i>	X		X
<i>Devolved legislature and local government elections</i>	X		X
<i>Some income tax</i>	X		X
<i>Landfill tax</i>	X		X
<i>Equal opportunities in relation to public bodies</i>	X		X
<i>Road signs and speed limits</i>	X	X	X
<i>Licensing of onshore oil and gas extraction</i>	X	X	X
<i>Equal opportunities</i>		X	
<i>Drink drive limit</i>	X	X	
<i>Crown Estate assets</i>	X		
<i>Air passenger tax</i>	X	X (long haul only)	
<i>Air weapons</i>	X		
<i>Abortion</i>	X	X	
<i>Consumer advocacy and advice</i>	X		
<i>Policing railways</i>	X	X	
<i>Energy</i>		X	
<i>Employment law</i>		X	
<i>Social security, child support, pensions</i>		X	
<i>NI civil service</i>		X	
<i>Time</i>		X	
<i>Welsh language</i>			X

In the table above, X indicates that the policy area is devolved

An alternative way to examine this is by looking at reserved powers. These are summarised in table 4.

Table 4: Reserved (and excepted) powers⁹

	<i>Scotland</i>	<i>Northern Ireland¹⁰</i>	<i>Wales</i>
<i>Constitution</i>	X	X	X
<i>Foreign affairs</i>	X	X	X
<i>Defence, national security</i>	X	X	X
<i>Nationality, immigration and asylum</i>	X	X	X
<i>Macro-economic and fiscal policy</i>	X	X	X
<i>Financial services and pensions regulation</i>	X	X	X
<i>International trade and financial markets</i>	X	X	X
<i>International development</i>	X	X	X
<i>Elections to UK parliament</i>	X	X	X
<i>National minimum wage</i>	X	X	X
<i>Competition</i>	X	X	X
<i>Intellectual property</i>	X	X	X
<i>Honours</i>	X	X	X
<i>Air services and international shipping</i>	X	X	X
<i>Broadcasting</i>	X	X	X
<i>Telecoms and wireless</i>	X	X	X
<i>Foreshore and seabed</i>	X	X	X
<i>Nuclear energy</i>		X*	
<i>Firearms and explosives</i>		X	
<i>Employment law</i>	X		X
<i>Cross border rail</i>	X		X
<i>Energy</i>	X		X
<i>Some social security</i>	X		X
<i>Equal opportunities not otherwise devolved</i>	X		X
<i>Genetics, surrogacy, medicines and embryology</i>	X	X**	X
<i>Abortion</i>			X
<i>Civil service</i>	X		X
<i>Postal service</i>	X	X	X
<i>Justice and policing</i>			X
<i>Charity law</i>			X

In the table above, X indicates that the policy area is reserved. * but other forms devolved ** genetics, surrogacy and embryology reserved but some aspects of medicines are devolved

⁹ Excepted powers apply to Northern Ireland alone.

¹⁰ Note that while various aspect of international relations are excepted, NI has scope to make international agreements with Ireland within the confines of the North-South Ministerial Council framework.

Mechanisms and structures for executive decision-making in Scotland, Wales and Northern Ireland

27. Westminster, and the devolved legislatures, are examples of parliamentary systems where the executive sits within the legislature. The executive is typically formed by the largest political party in the legislature and the leader of this party becomes the Prime (or First) Minister. Arrangements for Northern Ireland are different and are discussed below. These cabinets, or executives, are responsible for formulating and implementing government policy. In the UK, there is one civil service for the whole of Great Britain, and a separate civil service for Northern Ireland.
28. The different electoral systems used in Westminster and in the devolved legislatures are expected to generate different types of governments. First past the post (used in Westminster) is expected to produce majority governments, where the cabinet will typically be composed of members from a single party. The Additional Member System, used in Wales and Scotland, was anticipated to generate minority or coalition governments. While this was true at the start of devolution there have been a range of electoral outcomes over time, including majority governments. At the start of 2020, the Scottish Parliament had an SNP majority government while the Welsh Senedd had a Welsh Labour-led administration supported by the single Liberal Democrat elected to the legislature (and later an independent who had left Plaid Cymru). The current (post-2021) administrations in Scotland (SNP) and Wales (Labour) are both minorities, although the SNP is in a power-sharing arrangement with the Scottish Greens.
29. Arrangements for Northern Ireland are different, reflecting a consociational or power-sharing approach to representing distinct communities. Parties nominate candidates for an executive. Ministers are nominated by the political parties in the Assembly. The number of ministerial offices to which each party is entitled is determined under the d'Hondt formula, based on the number of seats each party holds. The only exception is the office of the Minister of Justice which, since the devolution of policing and justice in 2010, has been appointed by a cross-community vote (ie both unionist and nationalist) by the Assembly. The First Minister and the deputy First Minister are from different communities. As of 2022 this included Sinn Fein as the largest party (therefore eligible to nominate the First Minister) and the DUP as the second largest (and thus able to nominate the deputy First Minister). The Assembly was not formed and thus these posts were not filled. This was a reversal of these two party positions following the 2020 elections.
30. By January 2020 there were four different political parties heading governments across the UK: the Conservatives in Westminster, SNP in Holyrood, Labour+LibDem in Cardiff Bay and a DUP-SF mandatory coalition in Stormont (the coalition was mandatory, not the specific party composition of it).
31. The size of the different administrations varies widely. Northern Ireland has a dedicated civil service, containing around 24,000 staff and led by the Head of the Northern Ireland Civil Service and nine permanent secretaries. All others are part of a unified civil service, distributed across UK departments (around 400,000),

Scottish departments (17,000) and Welsh departments (5,000). The Scottish and Welsh civil servants are led by a single permanent secretary each, while there are 30 permanent secretaries for the UK government's civil servants.

Extent of executive devolution for England

32. The size of England (by population) has inhibited the creation of an England-wide legislature but there have been various developments at a more local level. This includes the creation of the Mayor of London, who is responsible for overall strategy and vision for London including on issues such as transport, planning, arts and culture. The 25-member London assembly holds the mayor to account by scrutinising policies. The assembly can approve or reject the mayor's budget. The budget itself comes from a block grant and transport fares as well as council tax income and business rates.
33. A November 2004 postal vote referendum on the possibility of devolution to the North East of England, perceived to be an area where it was more likely to succeed, ultimately failed with 22% backing the idea (in a referendum with 39% turnout). From this point on, efforts to bring a degree of subsidiarity to decision-making in England have focussed on cities (or city-regions) rather than larger regions. These include directly-elected mayors, as well as devolution deals to Greater Manchester and Liverpool in 2014 giving both funding and powers to combined authorities, as well as West Midlands (2015) and Tees Valley (2016). Policy areas included local health budgets, decision-making over transport, local business support, skills training and investment to facilitate economic growth, as well as control over local planning and development (to facilitate decisions about housing, land use and infrastructure). There are also discussions to extend executive devolution to larger regions (eg Northern Powerhouse, Midlands Engine). These are targeted both at enhancing local decision making (under the principle of subsidiary) but also targeting economic development.

England and Westminster

34. Following the 2014 independence referendum in Scotland David Cameron announced that

"I have long believed that a crucial part missing from this national discussion is England. We have heard the voice of Scotland – and now the millions of voices of England must also be heard. The question of English Votes for English Laws – the so-called West Lothian question – requires a decisive answer".
35. Such views chimed with those of the Conservative Party's 2008 report Devolution, the West Lothian Question and the Future of the Union, and later the subject of investigation by the McKay Commission. In its 2015 election manifesto the Conservative party proposed a form of **English Votes for English Laws** (with the Labour and Liberal Democrat manifestos making reference to the same issue). The procedures were approved in October 2016 and first took place the following January.

36. After first reading, the Speaker would judge whether a bill in whole or part referred to England only, or to England and Wales. If the bill in its entirety dealt only with England it would be considered by an England-only committee (with membership roughly proportional to party share in England) after the normal committee stage. Legislation with a territorial scope other than UK-wide (e.g. just England and Wales) would be reviewed by a Legislative Grand Committee composed of the relevant constellations of MPs (England and Welsh MPs for English and Welsh sections). The proposals were seen as a way to ensure that only English voices could contribute to English policy but they were also criticised as creating two classes of MPs and in so doing were seen to undermine the role of Westminster as a UK-wide legislature. Use of the procedures was suspended in April 2020 as a result of the COVID pandemic. In July 2021 it was formally abolished by the House of Commons following a motion from the Conservative government. This now reverts to the status quo ante. MPs from outside England may vote on England-only legislation if they wish.¹¹

Managing legislative competence

37. Even though Westminster retains the power to legislate on devolved and reserved matters (and, in Northern Ireland, excepted matters), it typically limits itself to reserved matters. If it wishes to legislate in a devolved policy area the devolved legislatures have the opportunity to pass a **legislative consent motion** (“LCM”) (sometimes referred to as the Sewel convention or a Sewel motion¹²). The specific wording of the convention indicates that the UK Parliament will ‘not normally’ legislate with regards to devolved matters if an LCM is not granted but the failure of a devolved legislature to grant a legislative consent motion has been no impediment to the UK Parliament proceeding with the bill. While the Scotland Act 2016 (s2) and Wales Act 2017 (s2) make explicit mention to this convention, the UK Supreme Court also decided in 2017 that even if devolved legislatures have rejected a legislative consent motion this does not provide them with a legal veto on UK government legislation.¹³ This reflects the principle of parliamentary sovereignty for the UK Parliament.

¹¹ Jan 2023 England-only legislation on Draft Environmental Targets, for example, saw Conservative MPs from Wales and Scotland voting to support the government (25 Jan 2023). Likewise, the Public Order Act 2023, which applies only in England, saw Scottish and Welsh Conservative MPs voting at third reading to support the bill in October 2022 (18 October 2022).

¹² The name refers to Lord Sewel, who set out the terms in a House of Lords debate during the legislative proceedings for the Scotland Act: “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 (21 July 1998, Hansard, House of Lords vol 592, col 791) LCMS are also employed for UK bills changing the legislative or executive competence of a devolved legislature.

¹³ The LCM procedure was included in the Standing Orders of the National Assembly for Wales following the Government of Wales Act 2006. Although it is not on a statutory footing in Northern Ireland the convention still applies. Paragraph 150 of the judgement reads: “The Lord Advocate and the Counsel General for Wales were correct to acknowledge that the Scottish Parliament and the Welsh Assembly did not have a legal veto on the United Kingdom’s withdrawal from the European Union. Nor in our view has the Northern Ireland Assembly” R (on the application of Miller and another) (Respondents) v Secretary of State for Exiting the European Union (Appellant).

38. In the early days of devolution the use of LCMs was fairly limited, although typically higher in the case of Scotland.¹⁴ Their use (especially outside Scotland) has increased in recent years, perhaps because the list of devolved competences has increased and the border between what is devolved and what is reserved has blurred with this expansion. There have now been more than 350 motions in the three devolved legislatures. The increased frequency of their use has coincided with an increased use of withholding consent. In the first rejection, in 2011, the Welsh legislature withheld consent for the Policy Reform and Social Responsibility Bill (followed by the Scottish legislature withholding consent on the Welfare Reform Bill). It was not until 2015 (with the Enterprise Bill) that the Northern Ireland legislature withheld consent. All three withheld consent from the European Union Withdrawal Bill 2020 (the Scottish Parliament having also done so for the EU (Withdrawal) bill two years previously).¹⁵ One change around LCMs is therefore not just their increased appearance in Wales and Northern Ireland, but the fact that the UK government has chosen to pursue legislation in the absence of devolved consent. There were no rejected LCMs relating to COVID.
39. LCMs were also originally envisaged as a way for parliaments to communicate with each other rather than only governments/executives to do so.¹⁶ The Scottish Affairs Committee, Procedures committee and Northern Ireland Assembly have conducted investigations into their use.

Table 5: The use of LCMs by territory and legislature (using Scottish/Welsh election cycles) 1999-2021 Passed (rejected)

	Scotland	Wales	NI
1999-2003	39 (0)	0 (0)	6 (0)
2003-2007	38 (0)	0 (0)	0 (0)
2007-2011	30 (0)	15 (1)	25 (0)
2011-2016	45 (1)	30 (6)	44 (1)
2016-2021	43 (3)	41 (2)	26 (1)

Source: UK Parliament 2022. As periods are defined by electoral cycles in Scotland and Wales, in the case of Northern Ireland, LCM counts are to the closest equivalent session (eg to October 2003 instead of March 2003 etc)¹⁷

¹⁴ Bills subject to LCMs in the first four Scottish administrations included: civil partnerships, which was interpreted as ‘buck-passing’ (Keating and Cairney 2009), the Compensation bill (2005) re mesothelioma cases as the law of damages is devolved, and the Pensions Bill (2007), because although pensions is reserved, pension compensation sharing orders would relate to decisions of Scottish courts. In 2009 the Scottish Parliament passed an LCM for the Constitutional Reform and Governance Bill, which changed the executive competence of Scottish ministers. The Scottish Parliament also passed an LCM in 2012 for the Defamation Bill, which would likewise have an impact on Scottish courts. The higher incidence of LCMs in Scotland can be attributed in part to Scotland’s separate legal jurisdiction.

¹⁵ See Cowie and Torrance (2020) for the full list of rejected motions in Scotland, Wales and Northern Ireland 2011-2020.

¹⁶ It was originally intended to highlight the legislative supremacy of Westminster as well as the legislative competence of the devolved legislatures. It was, in short, a mechanism for navigating the authority of Parliaments (or legislatures). It has become, however, a mechanism by which executives communicate. The UK government alerts devolved executives of their legislative intentions, and individual UK departments can directly approach their devolved counterparts, communicating via letter early in the legislative process. It is most often, therefore, executives providing a view on behalf of their legislatures unless the issue is put to a vote. Memoranda for a vote are typically put to the devolved legislature within two weeks of a UK bill’s introduction. See the House of Commons Library (2005).

¹⁷

Changing legislative competence

40. The arrangements between the devolved legislatures and Westminster are outlined in the respective acts. At times a devolved government might wish to acquire additional powers. With respect to Wales, His Majesty in Council could amend the powers of the Senedd after a draft Order has been laid before and approved by both the UK Parliament and Senedd by using a s109 order in council, or amending schedule 7a or 7b in the original Act. The former requires the Assembly to approve the changes. The latter does not (although an LCM would normally be sought). For this reason s109 is perceived to be a more consensual route.
41. The s116C orders of the 2006 Act are legislative instruments used to transfer additional functions and powers to the Senedd. They provide a mechanism for amending the competence of the legislature by adding, for example, new taxes to the list of devolved taxes. The procedure under s116C requires both the Senedd and UK Parliament to approve by resolution a draft Order, following which an Order in Council may be made by His Majesty in Council.¹⁸ In Northern Ireland, the process of changing legislative competence is detailed in s4 of the Northern Ireland Act 1998. Areas listed as transferred (devolved) or reserved can be altered by the Secretary of State, who can lay before Parliament a draft Order in Council amending schedule 3 (the list of reserved matters). This power is limited. Changing policing and justice from a reserved to a transferred power required a motion tabled by the First and deputy First Minister, and this then needed to be passed by a majority of assembly members, including a double majority of both communities (nationalist members, unionist members). Excepted powers are listed in schedule 2 of the act. Reserved powers are listed in schedule 3. All others are transferred.
42. In Scotland section 30 of the Scotland Act 1998 outlines how possible modifications to the balance of legislative competence might be made, through Orders in Council. Section 30(2) of the Scotland Act allows modifications to be made to schedules 4 and 5 of the Act, effectively adding to (or subtracting from) the list of reserved matters on which the Scottish Parliament cannot legislate.

Changing executive competence

43. There are also mechanisms for altering the executive competence of devolved and UK ministers. In Scotland, Section 63 of the Scotland Act 1998 allows functions of UK ministers to be exercised by Scottish ministers, but when this happens the policy area remains reserved. Section 93 enables UK and Scottish ministers to exercise each other's functions, but again without altering the competence of either legislature. Section 58 of the Government of Wales Act 2006 provides for the transfer of executive competence to Welsh ministers, the First Minister or the

¹⁸ For more see this National Assembly for Wales 2018. For more on things one should consider before amending legislature competence in one direction or another, see [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/701462/DGN - Parliamentary and Assembly Primary Legislation Affecting Wales.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/701462/DGN_-_Parliamentary_and_Assembly_Primary_Legislation_Affecting_Wales.pdf)

Counsel General (solely, jointly or concurrently with UK ministers) by Orders in Council. The Order in Council must be preceded by approval from each Parliament and the consent of Welsh Ministers or after consultation with a Minister of the Crown. For Northern Ireland, section 22 indicates that an Act of the NIA may confer powers on ministers so long as that power is already devolved. If it wishes to legislate on an excepted reserved matter then it is subject to approval from the Secretary of State (s8).

Managing relations between legislatures (and between executives)

44. There are a number of mechanisms to facilitate good working relations between the different governments in the UK. The summary provided in this section covers inter-governmental relations as they existed at the start of the pandemic. Changes during and after the pandemic (including those following a formal review of IGR) are discussed in later sections below. The **Secretaries of State** for Scotland, Wales and Northern Ireland are cabinet positions within the UK government. The Scotland, Wales and Northern Ireland Offices liaise with various departments of the UK civil service, including those serving the UK government (of which the most obvious is the UK Governance Group within the Cabinet Office) and the devolved governments (including around Brexit and city deals). These posts are held by MPs of the governing party at Westminster.
45. The **UK Governance Group** was created in spring 2015 and is responsible for intergovernmental relations, constitutional and devolved matters in the UK. Located within the Cabinet Office it is, fundamentally, an administrative unit within the civil service. It includes the Cabinet Office's Constitution Group, Scotland and Wales Offices, as well as the Office for the Advocate General for Scotland. Explaining the purpose of the UKGG in 2017, its then-head, Philip Rycroft noted that the UKGG had been tasked with improving knowledge of devolution with the wider civil service and that devolution was now 'meat and drink' for civil servants (Rutter 2017). The UKGG generates an annual report and is also referred to in the annual reports of its constituent groups. Within the Cabinet Office it addresses strategic objective 1 (see CO 2020/21 annual report), 'Maintain the integrity of the Union', the 2020-2021 budget spend for which was £94.1 million (of £1759.93 million total). In addition, there are dedicated devolution coordinators in other departments.
46. The **Memorandum of Understanding** and Supplementary Agreements (most recent version 2013 replacing the version published in 2011) outline how the UK and devolved governments will interact with each other, the principles underlying that engagement, the individuals and organisations involved as well as mechanisms for dispute resolution. Originally dating from the advent of devolution, the document is not legally binding but operates as a guide to practice. It calls for good communication, early notice of developments, consideration of the views of others, and sharing scientific, technical and policy information including statistics and research so long as it is practical, in a 'reasonably accessible' format and that would not involve disproportionate cost. The section on statistics also refers to data quality, referencing the need to generate data to the 'required standard', with the practical elements of cooperation addressed in an agreement between the relevant chief statisticians in the devolved territories and the National Statistician for the UK,

as well as bilateral agreements between UK and devolved departments. The MoU also includes three concordats outlining how the four governments will adopt similar practice on the coordination of EU policy, financial assistance to industry and international relations. There is no specific mention of managing emergencies or times of crises, but the general principles of cooperation, clear communication and data sharing would obviously provide a backdrop to the interaction of administrations.

47. The MoU references the need for confidence and confidentiality, not only in the domain of research and data. It outlines that the various legislatures may debate any policy area, devolved or reserved, but clarifies that only the UK Parliament may legislate beyond those policy areas normally reserved to it, noting the convention that it would not 'normally' do so 'except with the agreement' of the various devolved legislatures.
48. The MoU sets out the institutional architecture by which the governments will come into contact with each other and argues that much of this will take the form of routine daily or weekly contact between UK and devolved departments (between officials or ministers). It also allows for a more formal **Joint Ministerial Committee**, bringing together the First Ministers of the devolved legislatures (and deputy FM in the case of Northern Ireland), the PM (or delegate), and the Secretaries of State for the devolved territories to meet in plenary at least once a year.
49. Before the beginning of the Covid-19 pandemic, the role of the JMC was to discuss the borders between devolved and reserved matters, discussing devolved areas that might 'impinge' on reserved matters and vice versa, to keep under review arrangements for how the different actors work together as well as to provide a venue for dispute resolution. It was a consultative rather than an executive body, and thus aimed to reach agreements rather than decisions as such. The JMC may meet in formats other than full plenary, in one of its functional formats – but regardless of format all meetings are chaired by the relevant UK Minister (which varies by format).
50. The MoU outlines the level of administrative support for the JMC, including a Joint Secretariat staffed by officials from the Cabinet office and devolved administrations to provide an impartial service to all members. The Joint Secretariat will liaise with the secretariats of other organisations with which the JMC has informal contact (e.g. British Irish Council).
51. Despite being expected to meet annually, the JMC met three times during the first devolved administrations, then did not meet at all 2002 to 2008, its absence often explained by the dominance of Labour in Westminster, Cardiff Bay and Holyrood, as well as the existence of direct rule for Stormont.¹⁹ In a way this was anticipated, as the MoU indicates a clear expectation of (and priority for) routine daily interaction among ministers and civil service staff. This too, however, was often lacking. Rebecca Evans notes in her testimony to the Covid Inquiry that the planned quadrilateral meetings among the devolved Finance ministers and Chief Secretary to the Treasury were 'infrequent and lacked a reliable routine' an issue of such

¹⁹ See, for example, <https://www.instituteforgovernment.org.uk/article/explainer/devolution-joint-ministerial-committee>).

concern that she proposed at her first meeting a 'more regular rhythm' as well as better parity among participants, including the rotation of chairing responsibilities (INQ000190666). The frequency of engagement did not 'pick up' until the pandemic. In his testimony Welsh Minister of Health Vaughan Gething similarly complained that, at the time of Exercise Cygnus in 2016, "My impression was that UK ministers did not take ministers and officials from the devolved governments seriously... [but] it seemed clear to me that officials took relationships between governments much more seriously than UK ministers did" (INQ000187304). He likewise reports that over two years while Minister for Health and Social Services he did not meet with UK Minister for Health Jeremy Hunt once, despite requests, nor had he met with Matt Hancock before the pandemic.

52. The resurrection of the JMC was requested by the SNP when it assumed office in Edinburgh in 2007. After this, it met eleven times before March 2020 but even this was seen as insufficient. Former Welsh First Minister Carwyn Jones complained in his testimony to the Covid inquiry that there

"were no regular, frequent meetings between heads of government in the UK when I was First Minister [Dec 2009 to Dec 2018]. The Joint Ministerial Council (JMC) met quarterly, but the UK Prime Minister would only come once a year to those meetings. The JMC itself was largely ineffective as a body as it tended to become a place where grievances were aired rather than one where discussions took place and agreements made ... there is no question in my mind that a more formal and meaningful structure could be put in place" (INQ000190664)

By contrast JMC Europe met 80 times between 1999 and 2020. This JMC was distinct from the JMC on EU negotiations which met between 2016 and Brexit. Other functional JMCs (poverty, knowledge economy, health) met a handful of times before 2003 but after this did not meet again before 2020.

53. Responsibility for this lies with the Prime Minister, who chairs the JMC and the relevant First Ministers undertake responsibility for the MOU on behalf of the devolved territories. Different cabinet ministers have responsibility for other concordats (the FCO for EU, and IR, the Secretary of State for Business, Innovation and Skills for financial assistance). In addition, the Secretaries of State for each of the devolved territories are responsible for promoting devolution and facilitating good working relations between governmental levels.
54. The MoU discusses dispute resolution, with expectations that this would be dealt with bilaterally first, then with the involvement of the relevant Secretary of State and only then a matter for the JMC to consider. Questions related to legislative competence can also be referred by the various Law Officers to the UK Supreme Court.
55. The MoU references bilateral (at times multilateral) arrangements to manage inter-governmental relations beyond the borders of the UK. The **North-South Ministerial Council** had met 23 times in plenary between 1999 and 18 November 2016, its last meeting before the advent of the coronavirus pandemic. In addition it had 10 institutional meetings and 229 sectoral meetings. The **British Irish Council** ("BIC") meets in different forms. As a full summit it had met 33 times between its formation and the end of 2019. In addition it holds ministerial meetings on specific

topics (e.g. languages, education). In the years before 2020 there were eleven such meetings in 2019, three in 2018 and three in 2017.

56. The pre-pandemic network of institutions and groups for facilitating inter-governmental relations in the UK has long been criticised by practitioners (see above) and academics as insufficient (Jeffery 2007, Trench 2004, 2008, 2014) with structures 'not sufficiently strong to withstand a crisis', (Sandford and Gormley-Heenan 2020) factors that some claim have proven true as Brexit stress-tested intergovernmental relations (Wincott, Davies and Wager 2021).

Forums for managing emergencies

57. Governments respond to emergencies and natural disasters through a network of cabinet committees, agencies and advisory groups.
58. **COBR** (named for Cabinet Office Briefing Rooms), sometimes referred to as Cobra, is the Civil Contingencies Committee. It is chaired by the Prime Minister or another relevant UK minister. It provides an opportunity for relevant UK ministers and other actors to coordinate a government response to emergencies, major disruptions or natural disasters. It is supported by SAGE, the Scientific Advisory Group for Emergencies, which provides scientific and technical advice. Normally SAGE meets ahead of COBR meetings and the UK government's Chief Scientific Advisor (GCSA) represents SAGE at COBR meetings. Minutes from COBR meetings are not public and because it may convene in different contexts and for different reasons its membership is fluid.
59. The **GCSA** is the personal advisor to the PM and cabinet on science and technology-related areas, and heads the Government Office for Science. In addition, most UK government departments have their own Chief Scientific Advisor (CSA). The CSAs have their own network which advises the GCSA. From 2017 this network met weekly and included all UK departmental CSAs as well as the CSAs from devolved governments (Peter Halligan INQ000190667). Unlike the UK government, devolved administrations tend not to have a CSA for each ministerial portfolio. In his testimony Welsh CSA (Health) Rob Orford suggested 'there should be better connectedness at a CSA level across UKG via the CSA network' with invitations extended to the CSAHs in Scotland, Northern Ireland and Wales (Rob Orford INQ000190665-1). The four Chief Medical Officers also have their own network.
60. **SAGE** is chaired by the GCSA and the UK Chief Medical Officer, and can only be activated by COBR. Triggers include a need for scientific or technical advice, the coordination of advice at UK level, cross-government coordination for level 2 or 3 emergencies affecting the devolved territories, focussing scientific or technical advice on specific aspects of an emergency, and tailoring advice at UK cross-government decision-makers.
61. The minutes of SAGE are accessible online. In the seven years before the COVID-19 pandemic SAGE met six times. Meetings addressed both domestic and international emergencies (such as flooding, Ebola or the Zika virus). There were no representatives of the devolved administrations at any of these meetings. In two

instances this would have been linked to the geography of the crisis at hand (eg flooding in England). In general, attendance varies depending on the nature (and geographic location) of the particular emergency.

62. For any health emergencies there were also public health bodies throughout the UK. This includes Public Health England, Public Health Scotland, Public Health Wales and the Public Health Agency Northern Ireland. Each devolved administration has a chief medical officer and a chief scientific advisor and, as in the UK government, particular directorates or departments might also have their own CSAs, although typically this applied solely to Health. There was at the time an existing network among these individuals although much of the communication is informal. CMOs, for example, tended to meet four times a year (Ruth Hussey INQ000185186). Scotland and Wales also had Scientific and Technical Advice Cells to provide advice to any groups coordinating public health emergencies (among other roles). Local Resilience Forums also operated in England, Scotland, Wales and Northern Ireland.
63. Although civil contingencies powers were devolved to Wales in 2018 former First Minister Carwyn Jones notes in his testimony that 'no budget was transferred to accompany those powers' (INQ000190664).
64. Following Exercise Cygnus in 2016, which evaluated the UK's emergency preparedness for a flu pandemic, the devolved governments conducted reviews of their own preparedness. Wales, for example, subsequently established the Wales Pandemic Flu Preparedness Group, having conducted its own review in 2014. Northern Ireland established a Pandemic Flu Sub-group. The Scottish Government participated in Cygnus but had also conducted its own such exercise (Exercise Silver Swan) in 2015 (Alexander & Mann INQ000203349).
65. The Cygnus report had identified various possible improvements to pandemic preparedness, including communication and coordination across levels of government, between the UK-devolved administrations but also including more local levels (PHE 2016, see also Nick Phin INQ00018730) Specifically, "the Devolved Administrations reported that they felt they had been left out from some key decisions taken during the exercise". This repeated concerns raised in the Hine Review in 2011. It highlighted differing expectations about responsibility for data modelling, particularly between the UK and Wales, who each assumed the other would undertake modelling (Ruth Hussey INQ000185186). The post-Cygnus Pandemic Flu Readiness Board tasked with identifying workstreams to improve pandemic readiness in the UK had no workstream for coordination across levels of devolved or UK government and many of the workstreams dealt with England alone, presumably because health is devolved. For a full account of post-Cygnus actions see the expert report by David Alexander and Bruce Mann submitted to the Covid Inquiry (Alexander & Mann INQ000203349).
66. Particularly with respect to health emergencies, the Joint Committee on Vaccination and Immunisation (**JCVI**) provides advice to UK departments on associated topics. The 'joint' element does not refer to a partnership across the four different administrations but instead refers to working jointly across UK Government departments. Membership does not include any representatives of the devolved

administrations although minutes reveal that devolved government representatives attend JCVI as observers.²⁰

²⁰ As revealed in minutes of the 3 June, 27 Oct 2020, 22 June 2021 and 15 December meetings <https://app.box.com/s/iddfb4ppwkmjtjusir2tc>, for example. Such practices pre-dated the pandemic.

Part II: UK responses to the Covid-19 pandemic

A 'four nations approach'

67. From early on in the pandemic, the devolved administrations were integrated into UK-level meetings and decision-making. This included calls between the four nations arranged by the UK Department of Health and Social Care (DHSC) 21 January 2020, and involvement in the 24 January 2020 COBR meeting, the first on coronavirus. All four governments contributed to a Coronavirus Action Plan, published 3 March 2020, and fed into the development of the Coronavirus Act 2020. The devolved legislatures each agreed legislative consent motions for the Act as it touched on devolved areas of jurisdiction. Common messaging following COBR meetings and the UK government's control of various financial levers both ensured a coordinated approach to entering lockdown. By May, however, a lot of this coordinated effort was waning, with less frequent meetings to which the devolved administrations were invited (due to decreased use of COBR in particular), and different timings employed as different parts of the country sought to emerge from or remain in lockdown at different rates.
68. The **Coronavirus Action Plan** identifies what is known of the virus, the actions taken to mitigate it and the role the public could play in facilitating these actions. Its planning principles emphasise that the UK government and the devolved administrations are working together to assess risk, minimize the spread of the virus, its impact on society and coordinate with international efforts. It indicates that the four administrations have 'been planning an initial response', with the core objective to contain, delay and mitigate the outbreak. It goes on to note that 'the different phase, types and scale of action depends upon how the course of the outbreak unfolds over time. We monitor local, national and international data continuously to model what might happen next, over the immediate and longer terms'. Such a statement implies that variation across localities was anticipated, in reaction to the scale of outbreaks.
69. The Coronavirus Action Plan lists coordinated action to date, including how the four public health agencies have worked with the Border Force. It outlines the different powers that devolved bodies have. Scottish Health boards have powers to restrict the activities of infected individuals while Welsh local authorities have powers to apply for orders to be made by Justices of the Peace to isolate or detain individuals, with similar powers available to the Public Health Agency in Northern Ireland. It notes that Welsh ministers, like UK ministers, have powers to make regulations as the level of risk increases.
70. The Coronavirus Action Plan directs individuals to consult the devolved authorities for information, clarifying that UK departments provide information for England, while equivalent Scottish and Welsh guidance is available from the Health Protection Scotland or Welsh Government websites. It also clarifies that the UK government will play a coordinating role, including through COBR, with equivalent crisis management systems operating in the devolved territories. These include

Regional Resilience and Local Resilience Partnership to coordinate a local response in Scotland, and Emergency Preparedness Groups to fulfil a similar role in Northern Ireland. In England these include Local Resilience Forums and Local Health Resilience Partnerships, and in Wales crisis management systems were run through health emergency planning structures and Local Resilience Forums, operating as Strategic Coordination Groups in response to the pandemic. The plan also outlines the role of various coordinating bodies, including the various subgroups of SAGE, NERVTAG and the JCVI.

71. By virtue of its arrangements with the Republic of Ireland, Northern Ireland also signed a **Memorandum of Understanding on Public Health Cooperation on COVID-19 Response** with Ireland, to which the two Departments of Health were signatories on 7 April 2020. This followed a joint statement issued 14 March 2020 that 'everything possible' would be done to facilitate coordination and cooperation between the administrations'. The MoU outlined animating principles governing joint work (agility, openness, consistency and trust). Joint endeavours included modelling, testing and contact tracing. There was no expectation on uniformity, acknowledging the 'justifiable reasons' for which measures and approach might vary, but stated that 'strong collaborative arrangements, including good information-sharing' would mitigate any negative consequences of this variation. It emphasised a commitment to considering the impact of measures on the other jurisdiction, and the need for consistent public messaging.
72. A second MoU signed by the two chief medical officers covered cooperation on an all-island basis for the provision of critical care. This confirmed that each jurisdiction would put in place 'surge plans' to manage critical care provision but that each jurisdiction would accept critical care patients if they had the capacity to do so, referring to the need to develop protocols for patient transfers. In addition to critical care capacity the second MoU also referred to the transfer of staff, equipment, technical support and pre-hospital care. It committed the two jurisdictions to weekly communications on critical care.
73. These various documents (the UK Coronavirus Action Plan and the two Northern Ireland/Ireland MoUs) offer statements of intent and are consistent in their call for common messaging, clear communication and collaboration, but also acknowledge the prospect and indeed inevitability of territorial variation as a result of different approaches and different circumstances.

Legislation and changes to powers

74. Although health is devolved, the UK Government believed emergency powers would be needed to cope with the emerging public health situation and activated emergency powers under the Public Health (Control of Disease) Act 1984. This facilitated the use of lockdowns, as well as powers to control the disease. The use of some of these emergency powers was reserved. To ensure that the devolved governments had similar powers, Westminster extended these to the devolved legislatures in the **Coronavirus Act 2020**, with the exception of powers that had already been transferred to Welsh Ministers in the Governance of Wales Act 2006. This was designed to ensure that each devolved administrations had the necessary package of legislative competence across a range of domains required.

75. The Coronavirus Act gave to Scotland and Northern Ireland additional powers over health, education and justice to make more symmetrical the situation in Wales, who had acquired these powers earlier. S48 and 49 introduce schedules 18 and 19 – granting powers to the Northern Ireland and Scottish ministers equivalent to those held by UK ministers under the Public Health (Control of Disease) Act 1984 (esp s45A to T).²¹ In the NI instance they modify the Public Health Act (Northern Ireland) 1967.²² It also extended to the devolved administrations the ability to impose lockdowns, prohibit or regulate the movement of food in and out of territories, aspects of food safety or the supply of medicines. The Act was drafted in collaboration with the devolved administrations. All three devolved legislatures agreed legislative consent motions on 24 March 2020 for the Act. Not all of these provisions were used, but were put in place temporarily (and later revoked in July 2021).
76. One purpose of the Act was to facilitate a coordinated and consensual approach across the UK but also to facilitate deviation where necessary. It is also the case that the phrasing of the Act makes clear efforts to ensure that the devolved administrations were the appropriate bodies to give consent should UK ministers wish to act.²³ Section 87(2) indicates that a UK minister ‘may not make ... provision’ for certain aspects in the Act to come into force without the consent of the relevant devolved administration. Subsections 4 through 9 contain additional information about each devolved territory specifically. Section 26(5) states: “The Secretary of State may not impose a requirement under s25 without the consent of an authority ... if and to the extent that, that authority could itself have imposed the requirement.” This is stronger language than the Sewel convention, which indicates that Westminster will ‘not normally’ legislate without devolved consent. Section 88 provides the power to suspend and review various provisions within the Act, with consent required if the UK minister wishes to exercise this in relation to devolved matters. Various other sections s89, 91, 92 reinforce the notion of consent. This need for consent was not bidirectional. Devolved administrations could operate independently without UK government consent (in devolved areas). The Act also references joint working on food security.²⁴
77. The devolved legislatures used these powers to create their own acts. The Scottish Parliament modified the Public Health etc (Scotland) Act 2008 (Notifiable Diseases and Notifiable Organisms) making Covid a notifiable disease in Scotland. It passed the Coronavirus (Scotland) Act 2020 giving it similar ability to restrict access to public places and to close schools. It then published the Coronavirus (Scotland) Act 2020 (Emergency Provisions) order 2020, and three subsequent orders imposing restrictions. The Health Protection (Coronavirus) (Restrictions) (Scotland)

²¹ Section 45 (subsections A through T) enables ministers to limit international travel or quarantine individuals (s45B), require medical practitioners to notify of cases and keep children off school, prohibit events or gatherings (s45C), close premises (s45L), creates an offence of failing to comply with various aspects of the act (s45O)

²² There were no similar powers extended to Welsh ministers in this area because Wales was already covered by the Public Health (Control of Diseases) Act 1984.

²³ For example, section 26(5) states: “The Secretary of State may not impose a requirement under s25 without the consent of an authority ... if and to the extent that, that authority could itself have imposed the requirement.”

²⁴ See sections 25 to 29 as well as explanatory notes, which refer to longstanding collaboration between DEFRA and the devolved administrations

Regulations 2020 passed 26 March 2020 required a range of businesses to close, including those selling food or drink for consumption on the premises. These were revoked by the Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020 on 11 September 2020.

78. The Welsh Assembly/Senedd passed three regulations governing various aspects of pandemic management, including the Health Protection (Coronavirus, Business Closures) (Wales) Regulations 2020 and equivalent regulations covering International Travel and Restrictions.²⁵ Welsh Ministers also made a significant number of items of subordinate legislation in relation to the Coronavirus pandemic, including in relation to private tenancies and protection from eviction.
79. The Northern Ireland assembly passed three regulations covering the same fields as the Welsh Assembly as well as a variety of other regulations including an act modifying notice periods for private tenancies (Private Tenancies (Coronavirus Modifications) Act (Northern Ireland) 2020.²⁶ Many of these were short term orders laid before the Assembly with set expiration dates.²⁷
80. Because legislative consent motions are used when the UK government legislates in a devolved area, or when it changes the legislative or executive competence of a devolved institution, it is not surprising that COVID led to several LCMs.²⁸

Table 6: COVID-related LCMS passed 2020-2022

	Scotland	Wales	Northern Ireland
2020	Coronavirus Act	Coronavirus Bill	Coronavirus Act
2021		Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill Commercial Rent (Coronavirus) Bil	

Changes to funding January 2020 to May 2022

81. The economy is largely a reserved policy area. Macroeconomic policy rests with the UK Government. Monetary policy and the main levers of fiscal policy are not

²⁵ Later, the Senedd passed the Elections (Coronavirus) Act giving it the power to postpone the 2021 devolved elections if required.

²⁶ For a full set of NI legislation and regulations related to Covid see here:

<https://www.health-ni.gov.uk/covid-19-legislation>

²⁷ In 2022 it passed the Non-domestic Rates Valuations (Coronavirus) Act (Northern Ireland) 2022 designed to mitigate the impact of coronavirus on rates valuations.

²⁸ The Scottish Parliament, for example, considered LCMs while the UK Parliament was discussing what became the Scotland Act 2012. LCMs on the transfer of competence do not apply in Northern Ireland, where the Secretary of State may do so if requested by the Northern Ireland Assembly. Likewise, the Senedd's Standing Orders allow for a separate procedure where the UK Secretaries of State lay a statutory instrument that might amend primary legislation in a devolved area.

devolved, nor is policy on international trade or key regulations covering goods and labour markets. Both the UK and devolved governments introduced a variety of economic support schemes. UK government stimulus to cope with the fallout of business closure and lockdowns included the Coronavirus Job Retention Scheme (the 'furlough' scheme) and a Self-Employment Income Support Scheme, Bounce Back loans and the Coronavirus Business Interruption loan scheme. Any other/additional spending for England resulted in additional money to the devolved governments as a result of the Barnett formula. An 11 March 2020 announcement by the Chancellor of the Exchequer, for example, included £12bn for public services, business and individuals affected by Covid-19, £5 bn additional funding for devolved matters such as the NHS, and a £2.2bn grant scheme for small business in England. The Treasury announced that the devolved administrations would receive additional money through Barnett (an additional £780m for Scotland, £475m for Wales and £260m for Northern Ireland). A (Nov) 2020 OECD report estimates the UK government provided almost £7 billion (3.5billion to the Scottish government, 2.1 billion to Wales and 1.2 billion to Northern Ireland). The UK Block Grant Transparency document identifies total funds (both routine and extra funding) provided in 2020-1 and 2021-2²⁹

82. The Scottish government established rate relief for various sectors, grants for businesses, a fund for newly self employed and an enterprise resilience fund for those companies perceived as vital to the Scottish economy as a whole or to local areas.³⁰ The Welsh government established an Economic Resilience Fund (ERF) which included a Lockdown Business Fund, which local authorities could use to distribute funds to various SMEs.³¹ Northern Ireland legislated for non-domestic rate relief, statutory sick pay, financial assistance to bus operators, the hospitality industry and high street businesses, for example.³²

Summary of main institutional mechanisms for handling the coronavirus pandemic

83. We can distinguish between institutions coordinating a UK-wide response and those operating solely within the devolved territories.
84. At the heart of the UK government, **Cabinet Office** played a coordinating role. Cabinet Office documents show that its pre-pandemic budget total was £1200

²⁹ See page 57 OECD (2020) Policy Responses to Coronavirus. The Territorial Impact of Covid-19: Managing the Crisis Across Levels of Government.

<https://www.oecd.org/coronavirus/policy-responses/the-territorial-impact-of-covid-19-managing-the-crisis-across-levels-of-government-d3e314e1/> See also Council of Europe 2020 European Committee on Democracy and Governance. The UK Block Grant Transparency document is here:

<https://www.gov.uk/government/publications/block-grant-transparency-december-2021>

³⁰ In the Non-Domestic Rates (Coronavirus Reliefs) (Scotland) Regulations 2020

³¹ For more information see Welsh Government (2020) Business Wales: Covid-19 support for business. A full list of businesses targeted under the ERF micro scheme, phase one, is listed here:

<https://businesswales.gov.wales/sites/main/files/documents/ERF%20Phase%201%20-%20Micro%20Scheme%20-%20Awarded%20Organisations%20Updated%20PDF.pdf>

³² A summary of measures in NI is included here:

https://www.nibusinessinfo.co.uk/sites/default/files/2022-08/Coronavirus_Business_Support_Schemes_2_August_2022.pdf

million (in 2019-2020, itself a four year high) but this expanded to just over £1800 million, a growth explained almost exclusively by COVID-19 related spending, much of this attributed to the ventilator programme and a government communications campaign.

85. It established a **COVID-19 Task Force** in May 2020 to support and advise the Cabinet to facilitate a coordinated approach. The task force eventually grew to include 320 people including members of the civil service, military and external experts to coordinate the UK government's response to the pandemic. The UK government communication service's public safety campaign – including the stay at home campaign – was estimated to reach 95% of adults up to 17 times per week with a total spend of £377 million.³³ It was estimated to save between 22 and 27 thousand lives and prevent 1.5 to 1.8 million infections.³⁴
86. Also at the centre, **COBR** meetings were chaired by a range of members of the UK cabinet, including the Health Secretary (Matt Hancock), the Prime Minister (Boris Johnson) or the Minister for the Cabinet Office (Michael Gove). Such meetings began 24 January 2020, with six in March 2020. COBR meetings were in abeyance from 10 May 2020 until autumn 2020. The leaders of the devolved administrations were typically present, as, from 16 March 2020 onwards, was the Mayor of London.

³³ See Cabinet Office (2022) Annual Report and Accounts 2021-2022

<https://www.gov.uk/government/publications/cabinet-office-annual-report-and-accounts-2021-22/cabinet-office-annual-report-and-accounts-2021-22-html>

³⁴ Figure was in UK Government Communication Plan 2021/2022 at

<https://gcs.civilservice.gov.uk/publications/uk-government-communication-plan-2021-2022/>

Table 7: COBR meetings 2020-2021

2020	2021
24 January	20 January (related to flooding)
29 January	13 August (related to Afghanistan)
24 February (including on Russian cyber activities)	15 August (related to Afghanistan)
26 February	24 November (related to boats)
2 March (chaired by PM)	15 December
9 March (chaired by PM)	
11 March (chaired by Hancock)	
12 March (chaired by PM)	
16 March	
23 March	
10 May	
22 September	
12 October	
2 November (chaired by PM)	
24 November (PM absent)	

SOURCE: Hansard, official proceedings of SP, WS, NIA

87. In addition, COBR had a number of **subgroups** that began meeting daily in March/April 2020, including the Central Public Services Ministerial info group. Some of these were chaired by the Chancellor of the Exchequer or by the Secretary of State for Business, Energy and Industrial Strategy.
88. By mid March 2020, COBR meetings were supplemented by four ministerial implementation committees (MICs) later referred to as **ministerial implementation groups (MIGs)** covering: Health, Public Services, Economic response, International, each chaired by a different UK government minister (SOS Health, Minister for Cabinet Office, Chancellor of the Exchequer, Foreign Secretary respectively). My understanding is that these met daily initially and were also routinely attended by representatives (typically ministers and officials) of the devolved administrations, including, but not limited to, the devolved ministers for health.
89. In April 2020 the UK government appointed three UK **'Tsars'** to tackle what it perceived to be major issues relevant to ensuring public health: vaccines (Kate Bingham), PPE (Paul Deighton) and test and trace systems (Dido Harding). These were personal ministerial appointments designed to facilitate communication across departments and to identify a single individual as a point of contact. The Vaccine Tsar reporting to the PM. The T&T Tsar reporting to the PM and cabinet secretary, the PPE Tsar reporting to the Health Secretary. On health and social care, recovery and transformation, for example, the UK-wide Tsar reported to the UK Government DHSC and in the absence of minutes of meetings it is not clear how often they met with representatives from the devolved administrations. There are no references to the tsars in the official proceedings of any devolved legislature or in the organisations where devolved administrations were present (e.g. SAGE, JBC).³⁵

³⁵ The only tsar discussed in Wales was the February 2021 Catch Up Tsar discussed in an English context to ensure children did not lose out on educational opportunities. The only reference to a "tsar" discussed in the Scottish Parliament was a March 2021 reference to Putin.

While Tsars have been used before, the IfG notes that there are ‘no rules, procedures or codes’ governing their appointment or role and it is not clear how they are held to account.³⁶ Two of the three are peers in the House of Lords.

90. By June 2020, the MIGs were replaced by **two cabinet committees**, one for operations (Cabinet-O – or COVID-O) and one for strategy (Cabinet-S – or COVID-S). This distinction between operations and strategy is common. Similar operational and strategy committees were established for Brexit and for the union. COVID-S -GOLD was chaired by the PM, COVID-O by Michael Gove. Members of the devolved administrations were not invited to attend these on a standing basis (Sargeant 2020).
91. COBR was supplied with information by **SAGE** (Scientific Advisory Group for Emergencies). Online minutes show that SAGE met 105 times on Coronavirus between 22 January 2020 and 10 February 2022.³⁷ SAGE had a number of pre-existing and new subcommittees and these reflected a dual role of generating data for England and providing advice for the government of the whole of the UK. Subgroups included Scientific Pandemic Insights Group on Behaviours (SPI-B), Scientific Pandemic Influenza Group on Modelling (SPI-M), Public Health England Serology Work Group, COVID-19 Clinical Information Network, Environmental Modelling Group, Children’s Task and Finish Working Group, Hospital Onset COVID-19 Working Group, Ethnicity subgroup, Social Care working group. SAGE also drew on advice generated by NERVTAG, the New and Emerging Respiratory Virus Threats Advisory Group, although this is not a formal subgroup of SAGE itself.
92. By 12 May 2020 this institutional architecture was supplemented by the creation of a **Joint Biosecurity Centre** designed to generate and share data on the virus. A directorate within the Department of Health and Social Care, the JBC brought together the Secretary of State for HSC, and the health ministers in Scotland, Wales and Northern Ireland. The purpose of the JBC was to share data, information and analysis and provide advice to the four Chief Medical Officers. This included a sharing of data across the UK and devolved administrations as well as the ability of the devolved administrations to commission products from the JBC. Funded by a budget from DHSC this involved daily situational awareness meetings. JBC recognised that responses to the pandemic would be targeted to territorial variations and thus that ‘each devolved administration will have the freedom to move forward at its own pace’. The Political Agreement notes that devolved staff would be invited to embed themselves – virtually or physically - within the JBC to facilitate a four nations approach. This would include bilateral ‘embed’ moves in either direction, with staff retaining pay and conditions of their host employer once bilateral agreements had been reached (JBC 2020).
93. On 1 October 2020 the JBC was integrated (along with Public Health England) into the **UK Health Security Agency**, itself a renamed incarnation of the National Institute for Health Protection, a change designed to avoid confusion on the

³⁶

<https://www.instituteforgovernment.org.uk/article/comment/government-reaches-tsars-its-coronavirus-responses>

³⁷ The minutes of subsequent meetings are not online.

territorial scale of the term 'national'.³⁸ The JBC and data functions of Public Health England came to be housed within the Data, Analytics and Surveillance stream of the UKHSA. The UKHSA, despite its name, has a UK lead role but is predominantly an England-focussed institution (as discussed below).

Devolved engagement with central organisations

94. COBR typically involved the First Ministers of Scotland, Wales and Northern Ireland (and deputy First Minister in Northern Ireland) and their Health Ministers. On 8 July 2020, for example, Mark Drakeford told the Welsh Senedd that there was not a single meeting of COBR to which he had been invited that he had not attended. The relevant health ministers, or other ministers, also attended various COBR subgroups, which met more frequently. COBR meetings often led to follow up bilateral exchanges of information (for example between the Welsh First Minister and Chancellor of the Exchequer, 20 October 2020). The Health Ministers also met separately, for example 31 March, 7, 14 and 17 April.³⁹ The devolved administrations engaged with three of the four MIGs (all but international) typically by the inclusion of the health minister.
95. The first SAGE meeting attended by a representative of the devolved administrations was 22 January 2020 (representing Health Protection Scotland). After attending the first two meetings in January 2020 there was no further representation of a devolved administration until 3 March 2020 (Gregor Smith, deputy Chief Medical Officer of Scotland). The first Welsh representative attended the 5 March 2020 meeting (Rob Orford Health CSA). The first representative of the Northern Irish administration was present at the 9 April 2020 SAGE meeting (Ian Young, Chief Scientific Advisor).
96. Additional representatives of the devolved administrations engaged in SAGE discussions were:
- Andrew Morris Scottish COVID19 Advisory Group,
Fliss Bennée, initially Health CSA Wales, later representing Wales Technical Advisory Cell,
Nicole Steedman dCMO Scotland (upon Gregor Smith's elevation to CMO)
Sheila Rowan CSA Scotland
David Crossman, Chief Scientist, Scotland
Kenneth Baillie Genomics Scotland
97. While most of the academic experts on SAGE were located in England, five were from Scotland, with **Name Redacted** (Edinburgh) and Ian Boyd (St Andrews) often in attendance. No academic from Wales or Northern Ireland attended the main SAGE meetings.
98. As previously outlined, there are various SAGE subgroups, minutes for which are not available online. The membership lists indicate patchy engagement with the devolved administrations. Fliss Bennée (then Wales Technical Advisory Cell, now

³⁸ See JBC ministerial meeting minutes, 22 March 2021. The responsibilities of Public Health England were replaced by the UKHSA and the Office for Health Improvement and Disparities.

³⁹ Separate evidence provided to inquiry (INQ000144792)

listed as Welsh Government) is a member of SPI-M, Jim McMenamin (PHS) is on NERVTAG and there are two representatives from NHS Scotland on the EMG. PHW Wales has a representative on the Children's Task and Finish Working Group. More than half of SAGE's subgroups, however, have no representation from a devolved administration. The PHE Serology group, disbanded April 2020 as the work was transferred to UKHSA, included five representatives of PHE but none from a devolved public health agency. This is not to say that there were not academics from the devolved nations listed as members of SAGE subgroups – see for example, the membership of the COVID-19 Clinical Information Network (CO-CIN) - but if the subgroups were designed as a means of communication as well as feeding in information then there were not always obvious routes for the devolved administrations to do so.

99. The **JBC**, by contrast, offered consistent representation for the devolved administrations. The Ministers of Health for Wales, Scotland, NI and for the UK as a whole (acting for England) participated in the three ministerial JBC meetings held before its integration within UKHSA. Attendees also include the CMO (Northern Ireland), deputy CMO (Scotland), the Permanent Secretary from Health (Northern Ireland) the DG for Health and Social Care (Scotland) and the DG from Covid Crisis Coordination (Wales). The JBC's steering board included representatives at permanent secretary or DG level from the devolved administrations and the four chief medical officers sat on the Technical board.
100. Upon the creation of UKHSA there were no minutes of meetings so it is not possible to identify who was involved in discussions.
101. It is also clear from minutes of official proceedings in the Welsh Senedd, Scottish Parliament and Northern Ireland Assembly that the first ministers were meeting regularly, either bilaterally or as a group of three. This included bilaterals between each FM and the PM on 21 September 2020. Sometimes this included UK ministers travelling outside London. Secretary of State for Health Matt Hancock travelled to Wales mid March 2020, for example, to meet with the Welsh health minister. While many of these meetings required the UK government to act first (for example COBR meetings needed to be called by a UK minister), the health ministers could meet separately (Vaughan Gething 2 December 2020). All four chief medical officers met routinely online, including daily for a period.⁴⁰

Devolved response

102. The devolved territories pursued approaches to pandemic handling that reflected the shared commitment to a four nations approach as outlined in the Coronavirus Action Plan. This included similar timing on lockdowns, at least at the very start, but it is also the case that, as infection rates varied after the initial lockdown across the UK, devolved and UK governments pursued slightly different policies on timing for lockdown exit and re-entry, as well as different rules governing the size of gatherings. This suggests that to the extent that variation was present it could be attributed to epidemiological conditions prompted by variations in density, or by different school calendars that would have provided entirely different timings on

⁴⁰ In the absence of minutes and interviews there is limited information on frequency, although it was reported as 'regular' in retrospect. INQ000092893

considerable mixing among young people. Another source of variation was a desire to follow public opinion, with the delayed re-opening and slightly earlier lockdown decisions evidenced in Wales and Scotland, for example, cleaving more closely to public opinion. Some variation might well have seemed of minimal epidemiological benefit (such as minor variations in the permissible size of small gatherings). IfG research highlights that variations in scientific advice or assessments of political considerations might have played a role (Sargeant 2020). Two examples of the latter are given, first for Northern Ireland since it had to consider the consequences of an open border, and second, for the UK government who by virtue of legislative competence would have been 'more mindful of debt incurred'. Both, Sargeant argues, would have explained faster ends to lockdown in each location. In his Covid inquiry testimony Michael Gove raises the prospect that the Scottish Government in particular merely has 'political interests in divergence from a wider UK position' (INQ000185354). Michelle O'Neill suggests the same political interests might have explained a willingness for convergence among some ministers of the NI Executive (INQ000183409).

103. Variation included lockdown timing. On May 7 and 8 2020 the Scottish, NI and Welsh governments announced extensions to the second lockdown, while 10 May the Prime Minister announced an easing of some (but not all) lockdown restrictions for England. Retail premises, pubs and restaurants, gyms and sports facilities all re-opened earlier in Northern Ireland and England than in Wales or Scotland.
104. The size of permissible gatherings varied. Individuals from two different households could mix as early as 13 May 2020 in England, 20 May in Northern Ireland, 29 May in Scotland, but not until 1 June in Wales. It is also the case that the size of the mixed household gatherings also varied, in part due to the original timing of the decision. So household mixing was limited to only two individuals in England but to larger numbers in the later announcements, to six in Northern Ireland, eight in Scotland and unlimited in Wales (Sargeant 2020).
105. The arrangements for handling emergencies within the devolved territories continued during coronavirus. This included devolved Chief Medical Officers, Ministers of Health, and devolved public health agencies. Each devolved territory also established dedicated structures or organisations to collate data, share advice and track progress.
106. In Scotland, a newly-formed **Scottish Covid-19 Advisory Group** met 60 times between 26 March 2020 and 3 February 2022. The group was convened to offer expert advice based on scientific analysis of the impact of Covid-19 in Scotland. It was anticipated that it would be informed in its deliberations by data from SAGE as well as other sources. It was chaired by Andrew Morris, director of Health Data Research UK and vice chaired by David Crossman, Chief Scientist (Health) at the Scottish Government. The anticipated audience of its advice was Scottish ministers and clinical advisors, including a SG Covid-19 Analysis Division and COVID-19 Corporate Analytical Hub. The analytical hub was tasked with modelling the pandemic within Scotland based on assumptions provided by SAGE to feed into decisions about resources or mobilisation. It met fortnightly (although there were periods when it met more frequently). Several of its members were present at COBR and/or SAGE meetings, including the Chief Scientific Advisor, CMO, deputy CMO, and representatives of Public Health Scotland. The Advisory Group had four

subgroups, on public health threat assessment, education and children's issues, universities and colleges, and nosocomial review.

107. At its first meeting 26 May 2020 SCAG acknowledged the considerable work that had already been undertaken by SAGE, two of its subgroups (SPI-M, SPI-P) and by NERVTAG and acknowledged that it would not seek to duplicate such work, instead ensuring that there was an open flow of information from Scotland to SAGE and vice versa. SCAG therefore interpreted advice from other bodies for the Scottish Government.
108. The situation in Wales, as described by the First Minister on 10 March 2020 is that Covid-19 was discussed at all cabinet meetings and that a core ministerial group met regularly. A Welsh minister (typically Minister for Health Vaughan Gething) attended all ministerial COBR meetings as typically did the FM. The core group of Welsh ministers meeting to address the pandemic was referred to by Vaughan Gething as **Cobra Cymru**.⁴¹
109. The Welsh Permanent Secretary notes that she established an executive committee ExCovid, whose membership included all Director Generals, the head of the legal services, HR and Finance Directors, the Director of Governance, head of Communications and head of the military team embedded in the Welsh Government. This operated as a cross-governmental committee, to facilitate communication and coordination among key officials (Shan Morgan INQ000185340).
110. A Wales **Technical Advisory Group (TAG)** was supported by a **Technical Advisory Cell**, providing advice to the Welsh Cabinet on coronavirus, undertaking modelling, and wastewater monitoring. In these functions it provided a Welsh equivalent to the English modelling and wastewater monitoring conducted by SAGE.
111. The TAG (and TAC) were chaired by Dr Rob Orford, the Health CSA and Fliss Bennee HSS Deputy Director of Technology and Digital. Other members include the Welsh CMO, chair of the Welsh Scientific Advisory Committee, Chief Scientific Adviser for Wales, the Chief Statistician and Head of Profession for Statistics in the Welsh Government as well as a range of other representatives of the administration (including several from Public Health Wales) and beyond. Its Terms of Reference, agreed 3 March 2020, indicate that its role was to ensure that advice coming from SAGE was developed and interpreted for a Welsh context, enabling the Welsh government and public sector to act on information.⁴² Two of its members (Orford and Bennee) routinely attended SAGE and so their role was also to feed scientific information from Wales into SAGE. They also attended a bi-weekly four nations scientific coordination group.
112. TAC's role was not to set policy but to provide the evidence base upon which ministers could formulate decisions. Its meetings took place Tuesdays and Fridays,

⁴¹ Gething 10 March 2020 <https://record.assembly.wales/Plenary/6262#C279770>. See also Senedd research using the same term:

<https://research.senedd.wales/research-articles/coronavirus-timeline-welsh-and-uk-governments-response/>

⁴² <https://www.gov.wales/technical-advisory-cell/terms-reference>

deliberately planned to accommodate Thursday SAGE meetings. It had eight subgroups (Policy Modelling; Research, Socio-economic Harms, Risk Communication and Behaviours, International Intelligence, Environmental Science, Children and Education, Virology and Testing) and an all-Wales Modelling Forum. The TAC issued 250 documents between 20 May and 2 February 2023, many of them summaries of the latest advice and wastewater monitoring reports alongside dedicated advice about particular contexts (the risk of transmission at ice rinks, swimming pools or schools, or how to handle an easing of restrictions). The TAC had an oversight committee staffed by the DG HSS, the CMO and DG COVID Crisis Coordination, the latter a directorate within the Welsh Government.

113. At the start of the pandemic the Northern Ireland executive established an ad hoc committee on COVID-19, partly to provide regular updates to MLAs on progress. The executive met as an Executive Covid-19 Crisis Management group, daily initially but that had reduced to two times a week by May 2020. It enacted its civil contingencies arrangements and coordinated its operational response through a Northern Ireland hub that sought to ensure a coordinated approach across governments. While it lacked modelling capacity at this start of the pandemic this was put in place by late March 2020 as was a Strategic Intelligence Group (SIG) to review SAGE and other papers and outputs to inform advice to ministers (Ian Young INQ000185346). By June it had established a rapid learning initiative to identify possible improvements.
114. Northern Ireland's geographic and institutional ties to the Republic meant that it had an additional coordination role in managing the coronavirus pandemic. As early as 2 March 2020 plenary discussions in the Assembly (Robin Swann, Northern Ireland Minister for Health) indicated that the Chief Medical Officers in Northern Ireland and Ireland had engaged routinely for weeks. He and his counterpart Simon Harris in the Republic of Ireland were in 'near-daily' contact by early March (NIA official proceedings 9 March 2020). Furthermore, the Health and Social Care Board in Northern Ireland were in frequent contact with the Health Service Executive in Ireland.⁴³
115. There was also early coordination on testing. All positive tests from the regional virology lab in Belfast were sent to Public Health England labs for confirmation. Within the administration, cross-departmental meetings were convened by the Executive Office in weekly Command, Control and Coordination (C3) meetings to coordinate response across departments. The Department of Health for Northern Ireland established a new directorate for 'surge planning' along with a regional

⁴³ That same day First Minister Arlene Foster commented on the close relationship: "I am very pleased to tell the House that we have had a very close working relationship with the Minister of Health since coronavirus became an issue. On Saturday, the deputy First Minister, the Health Minister and I held a conference call with the Taoiseach, his Minister for Health and the Chief Medical Officer in the Republic of Ireland, because, of course, our designated case came through Dublin Airport. We therefore wanted to make sure that the protocols that were put in place are working, and they are. It is very good to hear that. The conference call was also to make sure that we have close cooperation and continued conversations about the issue as times moves on." Also on the issue of coordination, Minister Swann said "We are in different jurisdictions and we will take different approaches at different times, but you can be assured that the coordination between us in the United Kingdom, Northern Ireland and the Republic of Ireland is something that I take very seriously, and it has worked to date" (NIA 9 March 2020)

- surge planning subgroup. These met in twice-weekly meetings, alongside surge planning workshops to ensure regional consistency across Northern Ireland.
116. By virtue of its geography the Northern Ireland Executive was particularly attuned to advice that varied across borders. This included contradictory signals to international travellers offered by the FCO and the Irish Department of Foreign Affairs. There were, however, ongoing efforts at coordination, with Northern Ireland ensuring the Republic was aware of the countries likely to be on the red list for travel, thus facilitating coherence across the two states.
117. Pre-existing organisations to facilitate inter-governmental working were notably not pressed into service during the coronavirus pandemic, confirming what other academics have argued is an under-developed set of practices and institutions to deal with 'shared rule' in the United Kingdom (McEwen et al 2020).⁴⁴ This included the use of JMCs and the British-Irish Council. There had been eight ministerial meetings of the BIC, one in 2020, five in 2021 and two in 2022. None of these addressed COVID (or at least, none of the communiqués resulting from the meetings mentioned COVID) although the remit of the body and the need to discuss various workstreams at meetings could easily explain the absence of minuted references to COVID. The 2020 BIC Summit was hosted by the Scottish Government but took place virtually. At it, Ministers discussed the economic recovery from and social impacts of COVID but it was not viewed as a decision-making body to facilitate a shared response to COVID. It was attended by the First Ministers of Scotland, NI and Wales, the Deputy First Minister of NI, as well as seven other ministers in the devolved administrations, the Secretaries of State for Scotland, NI and the Chancellor of the Duchy of Lancaster. The June 2021 BIC summit took place in person in Northern Ireland June 2021. Again, economic recovery was discussed. The subsequent meeting in 2021, and the ones in 2022 did not discuss the pandemic (or, as stated previously, if they did, such discussions were not recorded in the post-meeting communiqués).
118. The last JMC called before the pandemic was in May 2019 (on European negotiations) and none was called during the pandemic.
119. The Secretaries of State for Scotland, Wales and Northern Ireland are typically portrayed as key points of communication between the UK government (where they are members of cabinet) and the devolved administrations. Speeches in Hansard reveal that the Secretaries of State continued to liaise with various actors and attended COBR meetings but there is limited evidence that they were deployed in an enhanced role around the pandemic. The ten speeches Simon Hart made during the coronavirus pandemic are in each instance outlining the financial compensation made possible by the UK government to workers and businesses in Wales (rather than, say, detailing various meetings held). The same could be said of Alister Jack and Brandon Lewis, although the position of the Secretary of State for Northern Ireland was slightly different. Lewis referred in May 2020 to frequent meetings among the Secretary of State, First Minister, deputy First Minister and Irish Tánaiste.

⁴⁴ See also this briefing from the Scottish Parliament Information Centre, SPICE, outlining previous critiques of IGR in the UK (Spice 2022)
<https://spice-spotlight.scot/2022/01/18/intergovernmental-relations-in-the-uk-new-structure-new-approach/>

120. The wider territorial offices attempted to facilitate enhanced communication. This includes 'ramped up' meetings coordinated by the Scotland Office to create 'new channels of communication' bringing into contact decision makers and those with expertise in procurement for example.

121. In short, a number of the pre-existing arrangements for inter-governmental relations were either not thought of, or not thought suitable for coordinating inter-governmental cooperation in a fast moving environment where bespoke agencies or fora predominated. Whether this was a useful development is evaluated below.

Part III Effectiveness of relationships and communication among governments and decision making during COVID-19

Good practice

122. The minutes of various institutions reveal praise of what was perceived to be good practice welcomed by different actors. Internationally, the North South Ministerial Council meeting on 31 July 2020 welcomed the 'close and productive cooperation that has taken place between Health Ministers, Chief Medical Officers and health administrations, North and South, to deliver an effective public health response'. The November 2020 minutes of the JBC welcomed the Political Agreement and the value of having the involvement of the four UK CMOs feeding into its Technical Board, which it saw as a milestone for UK-wide cooperation. The minutes record agreement from the three devolved ministers for health, each praising the collaboration facilitated by the JBC.

123. The early involvement of the First Ministers and Health ministers in March 2020, the four nations approach outlined in the Coronavirus Action Plan, the fact that common messages about decisions often followed COBR meetings are all frequently mentioned in official proceedings. The Health Ministers likewise praised the work of the JBC and its 'four nations by default' approach. SAGE minutes reveal efforts to learn from policy variation in other jurisdictions, with a 28 May 2020 commitment of the Welsh government to share a paper on its use of circuit breakers and a 6 August 2020 call for the Scottish Government Advisory Group to share research on the segmentation of vulnerable people and their carers. There were obvious instances of data sharing and coordination on analysis, including the fact that the Department of Health and Social Care modelled the devolved R number for Northern Ireland.

124. It is also clear that individuals in the UK and devolved administrations praised aspects of the interaction. Parliamentary Under-Secretary of State for Wales David TC Davies (21 October 2020 Hansard Column 434WH) said he had 'never seen such cooperation between the UK government and the Welsh government'. A similar view was expressed within the devolved administrations. 10 March Welsh Health Minister Vaughan Gething stated: "I don't always agree with Matt Hancock, and I certainly don't always agree with Boris Johnson, but, during our COBRA calls, there has been a genuinely serious and grown-up attempt to go through issues and to reach agreement on finding the best way through."⁴⁵ In his testimony to the

⁴⁵ By 20 September that enthusiasm had tempered somewhat: "There is something about consistency there that may help with the message, and part of the welcome meeting today at COBRA was a recognition by the UK Government that it would help to have a conversation between the four Governments of the UK, both in terms of discussing and agreeing decisions wherever possible, but it would also help in communication terms. There was, at least, a partial recognition that not having four-nation meetings had not been helpful when it comes to clarity in the communication."

Covid inquiry NI Minister for Health Robert Swann reported that he ‘was satisfied with the level of engagement between the respective Ministers of Health across the devolved administrations and central government’ and praised the regular four nations ministerial meetings (INQ000192270). First Minister Mark Drakeford likewise praised the working relationships between officials, including the four CMOs and that relations across the devolved governments had been positive (INQ0000177804).

Room for improvement

125. That said, there were also frequent references to areas where practice could be improved. Two of these clustered around the themes of communication and competence.

Communication Across the Four Nations

126. Notwithstanding early involvement of the First Ministers in COBR, it ceased to meet after mid May 2020 for a matter of some months, as various other bodies became alternative fora for communication. By late September/early October 2020 Welsh First Minister Mark Drakeford complained he had not spoken to the PM in months. Both he and the Scottish First Minister issued a letter to the Prime Minister calling for COBR to meet again. Four COBR meetings took place in autumn 2020. In the Lords, Baroness Andrews complained that the PM had delegated contact with the First Ministers to Michael Gove rather than taking responsibility for this himself. This frustration cut both ways. David Davies, despite his high praise for the cooperation between the UK and Welsh government lamented (21 Oct 2020, Hansard) the fact that when they (in the Wales office) asked if it was possible to attend, as observers, Welsh cabinet meetings as representatives of the UK government they ‘received little response’, a development he described as a ‘disappointing lack of cooperation’.

127. Some of this was tied to the frequency of contact. The Scottish Affairs committee review of intergovernmental working highlighted that divergence in lockdown timing coincided with COBR meetings and MIGs falling into abeyance (although stops short of attributing it to this alone). They also note the fact that existing mechanisms for IGR were not employed as lines of communication.

128. Others note the impact of membership status and/or ownership of the mechanisms by which representatives came into contact. On SAGE, for example, the Minister for Health in Northern Ireland reported in June 2020 that while information from SAGE reached them via COBRA they had only ‘part-time observer status’ on SAGE. They could therefore attend the meetings to listen and could submit written questions to be addressed but could not actually participate because the Chief Scientific Advisor (Ian Young) was not a full-time member of SAGE.⁴⁶ In his testimony to the Covid Inquiry Ian Young noted that full participation (rather than observer status) of SAGE

⁴⁶ COVID 19 Disease Response, <http://aims.niassembly.gov.uk/officialreport/reportssearchresultsmoereport.aspx?&eveDate=2020/06/03&rid=301660&hwcid=2828534&m=0&c=0&p=0&s=4&mv=0&o=0&ov=&cv=1&pv=0&sv=22&mi=All%20Members&pi=All%20Parties&si=2019-2020&k=TjHHQyBKAM=&fd=&td=&pg=1&pm=0&per=1&aid=22502&evid=11926#2828534>

would have been more helpful and that “full representation of the devolved administrations ... should be essential if health issues are involved, since responsibility for health is a devolved matter” (INQ000185346).

129. Others have distinguished between procedures that are jointly owned or coordinated by the UK and devolved administrations, such as the JMCs or, for a time, the JBC, and those largely controlled by the UK government, to which devolved administrations might – or might not – be invited to attend. That the JMCs were not pressed into service to facilitate communication will not have surprised academics or practitioners, most of whom have been calling the JMCs not fit for purpose for years (Trench 2004, Birrell 2012, McEwen et al 2012, Cairney 2017, Anderson 2022). Or, as Welsh First Minister Mark Drakeford told the Senedd, 1 July, “... at no point did anyone reach for the JMC structure as a means of engaging on an ongoing basis. And I think that will tell us how, in truth, all governments in all parts of the UK regard those structures as not fit for purpose and in need of pretty fundamental reform.” Such statements suggest that joint ownership of procedures was rather less important than issues of access and use. It was the lack of access – via Cobra, or within Sage - that caused concern, not necessarily who staffed the various secretariats. In a way, these were cultural rather than institutional obstacles. Or, put another way, it was the spirit in which actors approached inter-governmental work that mattered. The existence of fora on paper matters little if they are not called into session, or have a limited approach to information sharing, or where voices are excluded.
130. This view is echoed by then Minister for Health Matt Hancock in his submission to the inquiry (INQ000181825) in which he calls for a new Public Health Act “to improve the operation of the devolution settlement in a pandemic that does not recognise administrative boundaries”. This could be viewed as a call for improved coordination but could as easily reflect a concern over the UK government’s ability to act quickly, and unilaterally (more on which below). Former Scottish Chief Scientist (Health) in Scotland Andrew Crossman also noted the need for greater attention to the existence of devolution and the need for structures that facilitate communication between the UK and devolved personnel, including on procurement and data sharing. He likewise noted that structures to facilitate communication and coordinated were put in place from scratch at the start of the pandemic. The Welsh Government’s review of its health protection system and its implementation plan likewise notes a need to ‘continue and strengthen four nation’ links (Welsh Government 2023). Similar recommendations are in the 2022 interim report of the Scottish Standing Committee on Pandemic Preparedness (SCoPP 2022).
131. The Memorandum of Understanding outlining best practices in intergovernmental working outlines principles of cooperation and communication, identifies institutional structures in which actors might come together but it is, fundamentally, a statement of high principle and was never intended to replace robust bilateral arrangements. The MoU was viewed as never intending to operate as the sole mode of inter-governmental working (Ken Thomson INQ000184894). It is noted, above, that the fora described in the MoU were not pressed into service during the pandemic. It is clear that representatives of the devolved administrations felt at times that the lines of communication were closed or that the UK government had taken action before the views of devolved administrations could be considered (Arlene Foster INQ 000205274, Michelle O’Neill INQ000183409). Deputy First Minister Michelle O’Neill reported that this included UK statements made about Northern Ireland

before the Executive had had a chance to make a collective decision. Or, as one devolved minister noted 'The choice not to talk with us as equals was plain and obvious' (INQ000187304). Mark Drakeford likewise reported that 'the arrangements for meeting at head of government and ministerial level did not measure up, in practice, to the purposes which arose during the pandemic' (INQ000177804). This might well be interpreted as a partial breach of the spirit of the MoU. The tension, between acting quickly and involving all possible actors was addressed by Michael Gove in his testimony

'We did, however, face a problem as to how we could legitimately bring the Das into decision making which needed to be taken on a UK-wide basis but where decisions needed to be taken urgently. This led to the unsatisfactory choice between either asking DA representatives to attend UK government Cabinet sub-committees or decision-making bodies (with their status somewhat unclear) or reaching agreement first at UK-Government level and then working with the Das (which inevitably appeared as if decisions were being 'imposed'). (INQ000185354).

The statement is instructive, partly because it shows that actors in the UK government were aware of this tension, but also that they believed its initial conditions – a lack of clarity over status, the fact that decisions were to be taken in Cabinet sub-committees – were somehow external constraints not of their own making. Decisions were taken in sub-committees because the UK government shifted to the use of MIGs the Cabinet operational and strategic committees. The lack of clarity of status is similar because there had never been an effort to address how devolved actors might play a role in decisions that affected devolved areas of jurisdiction when interacting with a UK government simultaneously wearing two hats.

132. That said, First Minister Arlene Foster has reported that NI officials found it easier to acquire data from the UK Government than from the Irish Government, for example on passenger data for arrivals to Ireland planning onward travel to Northern Ireland, a concern she attributes not to the absence of systems for information sharing but to the role of Sinn Fein as the official opposition (INQ 000205274). She likewise noted that the Institute of Public Health, established to facilitate joint Ireland-NI working on health, had only limited input to the pandemic response. This would be yet another example of an existing forum not being pressed into service to facilitate intergovernmental coordination in the pandemic. NI CSA (Health) Ian Young likewise noted that at an official level, collaboration was much closer between Northern Ireland and the UK than between Northern Ireland and the Republic of Ireland, despite the fact that the island of Ireland was essentially a single epidemiological unit (Ian Young INQ000185346). Deputy First Minister Michelle O'Neill has described coordination as being prompted by a desire to mitigate difficulties 'rather than a coordinated and consistent response' (INQ000183409).
133. The engagement of the government-appointed 'tsars' and their engagement with devolved administrations is rather more difficult to evaluate. Records of official proceedings within the different legislatures reveal that the only discussions were either items of congratulation or complaints about either the process of appointment or the lack of information about what the tsars were doing (see, for example, HoC Valerie Vaz 10 December 2020). Throughout 2020-2021 no UK Minister commented

on progress (or specifics of the role) in the House, nor is there any UK Government press release outlining a detailed account of their activities. The room for improvement here is less to do with communication between different entities and more the black hole of information about what the Tsars were expected to do, the territorial remit of their activities and their progress.

Legislative Competence and Executive Control

134. Lockdowns imposed financial burdens due to loss of income on business and individuals. The Coronavirus Act bestowed upon the devolved administrations powers to close businesses but the administrations have variously argued that they were unable to use these with sufficient discretion because they had limited control over economic support for workers.⁴⁷ It was the UK government that funded business and workers across the UK, support which was predicated on businesses and workers across the UK being in similar conditions. The money tap was either on, or off. If only part of the UK was in lockdown, this would complicate matters as it would require financial support to be turned on or off at different moments for different parts of the UK. Likewise, if the UK government sought to end lockdown earlier than the devolved administrations, the latter would still require financial assistance but the tap would have been turned off. The additional funds provided to the devolved administrations via the Barnett arrangements could be pressed into use in a manner decided by the devolved governments. Each developed their own financial support schemes for small businesses, for example. But it is also the case that the devolved administrations have argued that this control over the flow of resources limited their room to manoeuvre (Arlene Foster INQ000205274). It was not possible to maintain lockdown in a devolved territory – or anywhere in the UK - without a furlough scheme as it would have imposed such dramatic financial difficulties on individuals and businesses. Devolved administrators could not move more quickly or sustain lockdowns much longer because they lacked the financial resources to support a divergent policy. This control of the economic levers arguably fuelled policy convergence. Indeed according to the Parliamentary Under-Secretary of State for Wales, this was its chief benefit.⁴⁸ But it is also the case that it has been criticised by other actors. See for example the response of the Welsh TUC (2020) when it became clear there were no UK furlough payments during the Welsh October 2020 circuit breaker lockdown.

⁴⁷ While there was evidence of a different appetite for lockdowns within each devolved legislature, this typically involved opposition members in Scotland and Wales raising concerns, particularly about variation across the UK, rather than a difference of opinion within governing parties.

⁴⁸ Hansard, 21 Oct 2020 David Davies (Parliamentary Under-Secretary of State for Wales): “On the point made that was made by the hon. Member for Cardiff South and Penarth, a telephone conversation took place last week between the First Minister and the Chancellor of the Exchequer; I am afraid that I cannot find the relevant part of my speech, but I know that that phone call happened. During that discussion, the First Minister indicated that he would bring forward this lockdown and indicated the date that it would start, and he asked for the financial support that the hon. Gentleman refers to. He was told very clearly that the Chancellor’s new scheme would apply on a certain date, and the Chancellor implored the First Minister not to bring in the lockdown on the dates proposed. The point is that the Chancellor and the First Minister had that discussion and knew each other’s position. The First Minister still decided to go forward with that lockdown, and therefore it is the First Minister’s responsibility to come forward with the proposals to support affected businesses in Wales”

135. The Coronavirus Act made provision for international travel restrictions, conferring on the Secretary of State the power to suspend port operations (s50, schedule 20). There is some disagreement on the extent to which the devolved administrations retained control over international borders. The UK border is reserved but as health is devolved then health restrictions at the border could be managed by devolved administrations. For this reason, each administration issued its own guidance to international travellers,⁴⁹ an arrangement that Minister for Health Matt Hancock has described as a source of confusion (INQ000181825) and one that warrants clarity in legislation. According to the devolved administrations UK government control over borders was another limit on policy variation as it made it impossible for the devolved administration to identify different schemes for controlling arrivals from overseas, including selecting among types of travellers who would be welcome and those it wished to exclude (facilitating business travel but not tourism, for example).⁵⁰ While much of this was prompted by frustration at insufficient checks or quarantine or control at the UK's international borders, the erection of border checks on the island of Ireland prompted different concerns, where the nature of the border connects to wider, political debates. A qualitative analysis of how those on both sides of the Irish border felt about COVID management suggested that there was public appetite for greater coordination and synchronicity (O'Connor et al 2021) on both sides of an open border rather than a desire for a closed border. There were also debates about the salience of internal borders. In Scotland and Wales, there was more mixed reaction to such matters. In general, those more attached to the union expressed a greater desire to keep internal borders open and to adopt similar policy (by which was typically meant the English policy to be adopted throughout mainland Britain).

136. Leaving aside formal legislative competence it is perhaps not surprising that the proliferation of organisations and groups led to confusion about which body was responsible for taking decisions rather than sharing information. An IfG report indicates that one frustrated SAGE member complained COBR was 'void of decision making' and that it was not clear who was taking decisions.⁵¹ It likewise noted that COBR tended not to commission scientific analysis from SAGE and as a result lacked specific answers to issues raised in meetings.

Variation within the UK

137. Notwithstanding the fact that the economic levers likely facilitated consistency, the "four nations approach" both foresaw and allowed for variation. Northern Ireland's 16 October 2020 'circuit breaker' lockdown was stricter than rules imposed in England. From the same date Wales barred entry to people from other parts of the UK with high Covid-19 levels, a move supported by the Scottish First Minister, but

⁴⁹ See, for example, Wales, <https://www.gov.wales/international-travel-and-wales-coronavirus>, Scotland, <https://www.gov.scot/publications/coronavirus-covid-19-international-travel-quarantine/> NI, <https://www.nidirect.gov.uk/articles/coronavirus-covid-19-travel-advice>

⁵⁰ Scottish Health Minister Jeanne Freeman noted, for example: "However, unlike New Zealand, we do not have control of our borders, which makes total elimination not practically possible, although our strategy remains to suppress the virus to the lowest level that we can." 8 October 2020 Scottish Parliament <https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/meeting-of-parliament-08-10-2020?meeting=12883&iob=116467>

⁵¹ <https://www.instituteforgovernment.org.uk/article/explainer/cobr-cobra>

decried by Conservative MPs as 'unconstitutional'. For the most part, observable variation was between Scotland, England, Northern Ireland and Wales rather than within, an absence that would have been particularly acute in England given its size.

138. There is evidence of frustration that there was insufficient variation within England and that financial support failed to precede restrictions (Roberts 2020). The 12 October 2020 imposition of tier three restrictions in Liverpool did not result in additional funds for those losing their jobs as a result, which led to criticism from the Mayor. The 9 October version of the furlough scheme only covered two thirds of the wages for workers in hospitality facing tier three restrictions in England, for example. A few days later the prospect of tier three restrictions in Manchester prompted Mayor Andy Burnham to suggest they were being "set up like canaries in a coal mine".

Delineation: England as the UK

139. SAGE, despite having representation from the devolved administrations, concerned itself almost exclusively with England. Minutes reveal only limited attention to variation across the UK. Much of the data described as 'UK data' is in fact England only (e.g. generated by ONS, or data collected by DHSC on the impact of bubbles). Minutes of 14 May 2020 imply this was due to concerns over the reliability of data from other parts of the country. But it is also the case that the ONS may collect data in devolved administrations on devolved matters only with the explicit consent of those administrations. As a result, the Covid Infection Study operating in April and May 2020 covered England alone and it was only later expanded to provide UK data at the request of the devolved administrations. The R number cited in SAGE meetings was not routinely differentiated across the four territories of the UK until 28 May 2020, but despite reporting four-territory results for a matter of weeks the typical practice became to report a UK-wide R number and an England-specific number. By this date, there was at least an effort to identify when the data applied to England alone.
140. Leaving aside data, an English frame of reference is visible in the deliberations of SAGE, with a focus on return dates for schools and universities tied to the English calendar, with no reflection that the Scottish schools were to return several weeks earlier. SAGE discussed concerns about public adherence to social distancing diminishing in light of stated intentions to relax rules but these were not UK-wide decisions, and applied only to England. The implicit frame of reference throughout is an English one, with English-only data seen as good enough to enable decision-making (and perhaps it often was) and the perceived salience of issues tied to English timing.
141. UKHSA likewise had a predominantly English focus. UKHSA had a dual hatted role, and thus some focus on England alone is understandable. But the UK aspects of its remit were less obvious throughout. Despite the name change, which was designed to enhance clarity about the territorial extent of its role, its minutes reveal an almost exclusive attention to generating English data (weekly totals, results from wastewater, arrivals to English airports, impact of coronavirus on childhood vaccination in England). UKHSA collected data for England, but did not appear to have data fed to it by other parts of the UK (or if it did, this was not reflected in its

meeting papers) and its Coronavirus briefings covered England only. Because such data is often labelled as UK data and the methodology is not always transparent it is difficult to know when the data cover the whole of the UK or merely England.⁵² Furthermore, the organisational structure of the UKHSA does not in any way reflect a UK wide organisation. Its 'regional' offices and contacts are located entirely within England although by dint of some UK-wide functions it has radiation protection advisory services in Glasgow. The UKHSA website does not refer to Scotland, Wales or Northern Ireland, nor does it direct readers from those parts of the UK to equivalent services in Scotland, Wales and Northern Ireland.

142. There is of course nothing new in having English-only briefings or data and particularly in the area of health, which is devolved in Scotland, Wales and Northern Ireland, it would make sense for there to be a series of England-only products to ensure that the equivalent level of information is available for all four parts of the UK. But the UKHSA had two insufficiently delineated roles. From its minutes the UKHSA believed itself not to be an English-only institution, but a UK one. Its 1 October 2020 announcement that it was fully operational mentioned the UK four times and England not at all. It did undertake some UK-wide activities. It signed, on behalf of the whole of the UK in December 2020 a Memorandum of Understanding with the European Council on Disease Prevention, referencing the UKHSA's ongoing commitment, "on behalf of the UK, to closest possible collaboration with ECDC". So outwardly it was a UK-wide organisation but in functional appearance it was predominantly an English one.
143. Separately, the NHS Test and Trace system was for England only but this information was not obvious from its name. The devolved nature of health means that the devolved administrations clarify this in their naming (referring to NHS Scotland and NHS Wales, for example) but the UK government typically does not.
144. One might rightly ask whether this is in itself a problem. If an institution reacts to timing that applies to only one part of the state, or generates data only for one part of the state, and that state represents 80% of the population is this not likely fine? There are two issues here.
145. First, it affects how organisations communicate both information and risk to the four UK territories. The 22 December 2020 UKHSA guidance reacting to changed isolation rules was prompted by changes made to the English timetable. Subsequent guidelines (about changes to the PCR process, 5 January 2022) clarify that this applied only to England but it remains the case that citizens outside England would have reasonably expected an institution with 'United Kingdom' in its title to offer UK-wide advice. The UK COVID dashboard link advertised by UKHSA (<https://coronavirus.data.gov.uk/>) points users to the English data. There appears not to be a UK-wide landing page. UK citizens are invited to examine data about their areas and can click on a map or input their postcode but the map (labelled 'UK interactive maps') is of Great Britain not the UK. Inputting any postcode for Northern Ireland results in an 'invalid postcode' message. This is one of several examples of how an 'England as the UK' frame of reference structured the timing and nature of

⁵² This is a widespread issue in the UK, present in academia as well, and not limited to COVID. The same can be said of efforts to identify support for or the effects of Brexit on political identities.

communications and made it harder for citizens outside England to identify information about their own circumstances.

146. Welsh MPs were at the forefront raising this England/UK elision given population movements across the England-Wales border but also because the media climate meant that individuals in Wales could easily have been watching an England-dominated news coverage.⁵³ Gerald Jones MP argued "... it is vital that families and businesses have clarity on which programmes apply to Wales and which apply to the UK as a whole – that is particularly important at the Downing Street Press conferences' (22 April). Simon Hart MP responded this was an 'entirely reasonable observation' and agreed it was 'absolutely essential that we stipulate what is devolved and what is not. Of course in some instances that line is quite blurred'. Chris Elmore MP followed this up to ask what is being said to the BBC and other broadcasters to make clear aspects of variation . Hart responded that approaches had already been made via the Wales Office to media outlets and said he noticed a shift in greater clarity from October 2020. This was not restricted to Wales. In her testimony to the Covid Inquiry then First Minister Arlene Foster likewise noted the tendency of national broadcasters to identify only the "UK Government's public health messaging" which focussed on England, while it was regional broadcasters who identified devolved variations. The result "was confusing for the public and may have undermined public confidence in the handling of the response by the respective administrations".
147. There is a separate point to be made about document naming and titles. The text of documents sometimes clarifies when the material is England-only, but the document names and titles refer to the UK. A 29 March 2022 communiqué discusses UK data on adult surveillance. Two of the sources are explicitly England only. The third says it is UK data but is actually only data from North London. These practices made it harder to understand the territorial area being analysed or the specific group of citizens being addressed.
148. Second, an England/UK elision raises the prospect of incomplete attention to risk posed by virus spread. The UKHSA 31 December 2021 omicron review provided one page on data from the four territories in the UK and a further five pages on England-only data. A 13 January 2022 Health Bulletin on omicron clarifies that it is only for England and Wales, but the data about humans is only from England. It is only the animal infections that include Welsh data.
149. The effects of this are obvious. If only data from one part of the UK is used, and virus spread is greater in that larger part, then other regions will be pulled along in its wake even if this is not necessary. Conversely, if virus spread lags behind that in other parts of the UK, then there will be lower levels of preparedness. A predominantly English frame of reference undoubtedly meant that advice to local populations at times did not meet local circumstances, although it is for those with access to data about virus spread to determine whether a more decentralised approach would have resulted in different impacts on transmission or economic cost.
150. While there was throughout, an asymmetry of information about England, Scotland, Wales and Northern Ireland (and thus an asymmetry of information used to inform

⁵³ See also Cushion et al.

decision making) there was also an asymmetry of information made available to citizens. I have yet to find a single instance when the UKHSA issued guidance on a change when the change was not an England-only change (eg 24 February 2022 about restrictions lifting). This is not just my view. Suzy Davies referred (14 October 2020) to a television interview by the Welsh Health Minister Vaughan Gething explaining that a Welsh technical advisory group was needed to 'get the science right' for Wales, because UK institutions were dealing mostly with England. Furthermore, the asymmetry of information provided to citizens did not go unnoticed by Ofcom, who issued notes to broadcasters in March, April and May warning of misleading information. Much of this dealt with the need for clarity on medical advice but the May notice also called for care with "statements about public health advice on Coronavirus which may not apply to all four nations in the UK, given the variations in official guidance between the nations. Care should be taken to ensure that viewers and listeners are made aware in an appropriate manner of the different approaches taken by public authorities in England, Wales, Scotland and/or Northern Ireland in areas such as social distancing requirements" (Ofcom 2020).

151. Such advice could as well have been directed to the UK government over its communications with the public. From 3 March 2020 to 23 June 2020 the UK government, represented by the Prime Minister or other Secretaries of State, provided daily briefings to outline how the government was responding to the pandemic, offering regular updates on testing, cases and deaths, as well as identifying new rules governing public behaviour, such as school closures or full lockdowns. After late June these occurred less frequently, with a further 24 in the remainder of 2020 and a total of 19 in 2021. By virtue of the fact that the UK government wears two hats – that it is the government for the whole of the UK but also for England for areas where policy is devolved to Scotland, Wales or Northern Ireland, it therefore had two sets of messages to communicate to two different, overlapping, audiences. An analysis of the texts of prepared speeches throughout 2020 shows that those speaking on behalf of the UK government did an incomplete job of outlining the territorial scope of their data, information or guidance. In the first months, there was almost no mention of the devolved administrations or their First Ministers. There was little attempt to outline what applied UK-wide and what applied only to England. The phrase 'this country' was employed frequently to mean England, or Great Britain or the UK.⁵⁴ In general, spokespeople were slightly more likely to clarify if a UK-wide matter applied to the whole of the UK. The most frequent instance of this was clarifying that daily statistics on tests, cases and deaths were UK wide. It was almost never the case, in the first two months, that an England-only matter was identified as such.

152. It was not until 27 May 2020 that Matt Hancock outlined the changes and then clarified that they applied to England only, making reference not just to variation in other parts of the state but identifying what that variation was. This is the only instance of this occurring in all the press conferences in 2020 and 2021. More typical was outlining that the guidance was for England alone but that the devolved administrations would offer their own guidance in due course (see, for example Jenrick 31 May, Shapps 4 June, Johnson 10 June, Johnson 23 June). Reference to reopening retail, which was England-only, was made less clear by referring to re-opening 'British high streets' (Raab, 15 June). On 23 June Johnson clarified that

⁵⁴ For a review of the first two months of press event see Basta and Henderson 2021.

the measures applied to England only, then set out rules to follow for ‘the British public’.

153. Notwithstanding earlier efforts to point to four nation variation, throughout 2020 UK COVID press briefings repeatedly failed to clarify that the new rules governing school closures, rules for social gatherings, funds for local authorities, funds for the Coronavirus Community Support Fund, the renewal task force, dedicated funding for mental health, bike voucher schemes, increased marshalls on rail networks, the reopening of car showrooms or other retail were all England-specific. This is particularly important as in some instances government spokespeople were calling for individuals to change their behaviour, and such rules would not have applied throughout the UK. Indeed it was advice about rules, rather than data, that suffered from a particular lack of clarity on territorial reach.

Public trust

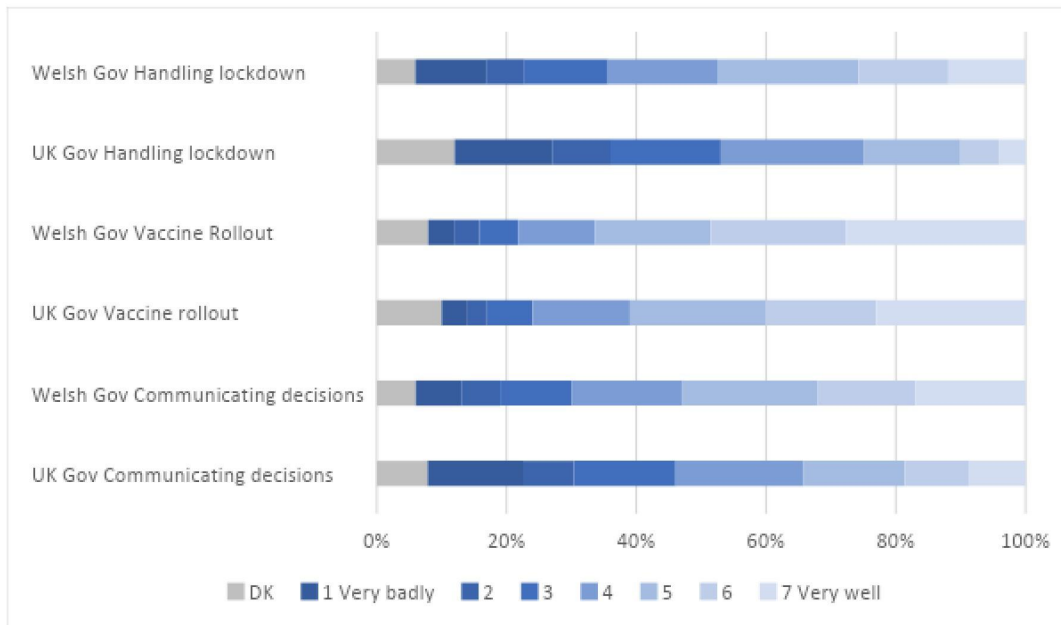
154. It is well established that, particularly in the early days of the UK pandemic response, there was limited variation in policy approach across Scotland, England, Wales and Northern Ireland. Any variation stemmed from the personal communication styles of the First Ministers or Prime Minister. Even by May and June, to the extent that there was variation, it centred on timing rather than measures, rationale or goals. And yet we know that there were markedly different evaluations of the pandemic response across levels of government. This is more than mere detail. If we know that confidence and trust in government is tied to compliance (more on which below) then variable confidence and trust is an important element of the effectiveness of the pandemic response in a multi-level, multi-national state. Two findings are relevant.

155. First, trust in government appears to have taken a knock during the pandemic but estimates of the size of the effect vary and it very much depends on how the question is asked. YouGov’s tracker on confidence in the House of Commons (so the lower House as a whole, not just the government) shows that in Nov 2019 64% had no confidence (either none at all or very little) and by May 2020 this had dropped to 45%, rising to 55% by October 2021. Over the same period confidence therefore increased from November 2019 to May 2020, from 23% to 40%, which speaks to a ‘rallying’ effect among the British public. By October this had dropped to 31%. YouGov’s tracker on UK Government handling of health, by contrast, shows that 23% of their GB sample believed the UK government was handling it well, compared to 66% who felt they were handling it badly. The percentage believing they were handling it well rose steadily, reaching 29% by 9 March and 47% by the end of the month. The figure remained in the 40s until the end of August 2020. Elements of the pandemic response were judged positively by the wider population but approval or trust in government were viewed differently. YouGov’s approval of UK government tracker shows that government approval was rising from April 2019, a trend that continued throughout the early stages of the pandemic until the 3rd of May, when it began to decline steadily until November of that year, rising until April 2021 and declining steadily since then. In their study of five longitudinal cohorts Parsons and Wiggins (2020) note a majority reported no change in their trust of government, but between one quarter and 30% reported a decrease and these figures were at the higher end among younger members of society. Younger

generations were twice as likely to report decreased trust. This general trend accelerated around the time of the Dominic Cummings ‘event’ and did not recover. In their analysis of public trust in the UK government’s handling of COVID, and its trustworthiness as a source of information, Neilsen et al (2020) find a steady increase in the proportion of their British sample very or extremely concerned about misleading information from the UK government, reaching a plateau in June 2020. The rate of increase (and level of distrust) for the UK government outstripped evaluations of politicians in general, news organisations, global health organisations or experts.⁵⁵ This suggests other, later, events in 2020 had no similar effect to the Cummings event, but also that concerns about handling predated that particular news story. These different levels of trust are important because of the link between trust and compliance (Fancourt, Steptoe and Wright 2020).

156. Second, at the time of the devolved elections in May 2021 the Scottish and Welsh Election Study teams created a series of questions to evaluate different aspects of the pandemic response, distinguishing among lockdown handling, vaccine rollout and communication of decisions. The results suggest that trust in devolved government handling was, in Scotland and Wales, higher than trust in UK government handling, and particularly so over communications.

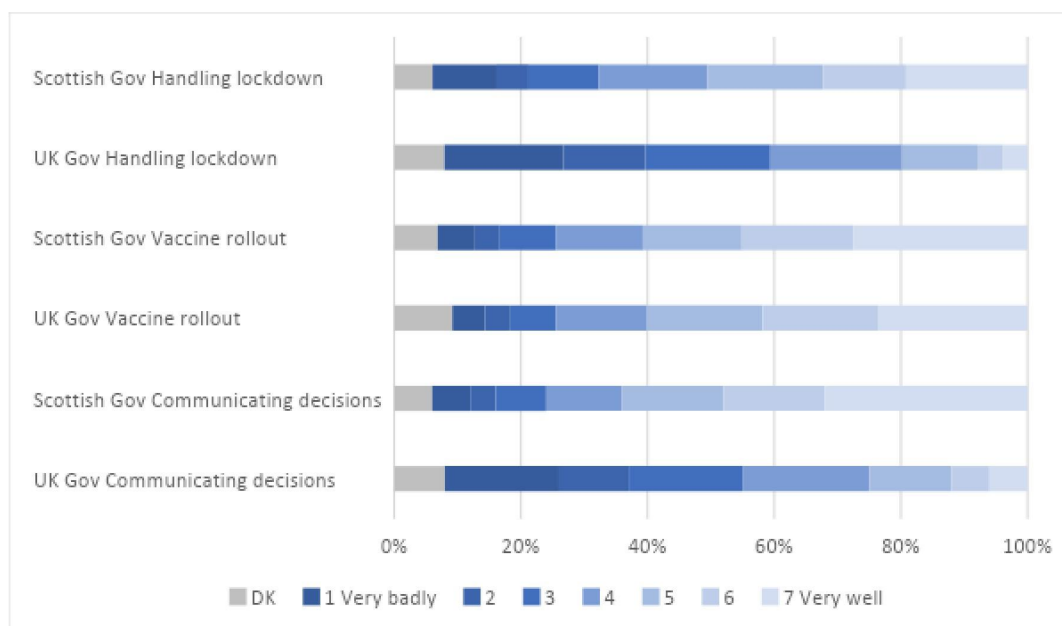
Figure 1: Trust in Government response to Pandemic, Wales



Source: Welsh Election Study, 2021

⁵⁵ Trend data are available in the tenth factsheet <https://reutersinstitute.politics.ox.ac.uk/most-uk-say-news-media-have-helped-them-respond-covid-19-third-say-news-coverage-has-made-crisis>

Figure 2: Trust in Government response to pandemic, Scotland



Source: Scottish Election Study 2021

157. The Scottish results are particularly polarised with almost 1/3 of the Scottish electorate giving the Scottish Government the maximum ‘very well’ scores for its communication, compared to just 6% giving the same score to the UK government’s communications. There is a similar (if smaller) gap on handling lockdown and only for vaccine rollout do we see similar scores. One way to view this is that the public formed differing evaluations of lockdown handling – policies that were remarkably similar – due to the way they were communicated to the public.

158. Nor was this something that only manifested itself after a year of pandemic management. As early as 2020 Fancourt, Steptoe and Wright (2020) drew attention to differing levels of trust in Scotland and Wales compared to England, differences that were exacerbated after the Cummings event. Their findings suggest those living in devolved areas, for example, were somewhat insulated from the ‘Cummings effect’ by virtue of their higher trust in their devolved governments and thus were not subject to the same loss in confidence in government or its attendant effects on compliance.

159. Furthermore, data from the Scottish Election Study suggest that ‘partygate’, the news that there were repeated breaches of lockdown rules in Number 10, had a mild negative effect on UK government trust (in part because Scottish opinion was

not high to start with) (Carman et al 2022) but also that it had a positive effect on evaluations of Scottish Government trustworthiness. In short, the revelations made Scots more trusting in Scottish political actors (Larner et al 2023).

Evaluating IGR

160. Inter-governmental relations can be described in different ways. They can involve vertical (state to sub-state) interactions or horizontal ones (among sub-state units). They can be constitutionally entrenched, referred to in statutes, or operate on a more ad hoc basis. They can provide fora for making decisions or purely for consultation and information sharing. Inter-governmental relations in the UK are typically classified as both horizontally and vertically weak, and operate on both an ad hoc and statutory footing. The Northern Ireland Act 1998, for example, references the North-South Ministerial Council and the British-Irish council. The 2013 version of the post-devolution Memorandum of Understanding references the JMCs and mechanisms of dispute resolution but as outlined above these have not met frequently.
161. While rather a lot has been written on IGR since devolution (and particularly so as a result of the strains prompted by Brexit), much of this is descriptive, highlighting what has and has not happened (sometimes what should happen) but rarely discussing or debating the dimensions by which we might *evaluate* whether things are working or not. This is different from the aforementioned dimensions used to describe IGR (the distinction between IGR that are constitutionally-embedded, statutory or ad hoc). Here we come into normative territory, where certain features are prized (or prized by some). We can identify eight dimensions, four of which would apply in any multi-level state:
- a. External inclusion: The capacity to bring into contact those who might not otherwise meet. This could be considered formal inclusion.
 - b. Regularized contact: Recognition that it is not just important to bring people together but to do so in a way that is sufficiently frequent for the task at hand. This would acknowledge that different types of actors might need different frequencies of contact.
 - c. Parity of esteem: Each state will have intergovernmental fora with different purposes, for sharing information or reaching decisions. Regardless of goal, parity of esteem and multilateralism would call for equal sharing of information across all parties, equal say in decision-making, or equal capacity to be heard.
 - d. Capacity for conflict resolution: Mechanisms for resolving conflict that are perceived by all actors to be legitimate and fair and not to be stacked against particular actors.
162. Purely within a UK context, however, we can identify four additional dimensions, reflecting the asymmetric nature of the state's institutional architecture.
- a. Four nations by default: Whether there are four nations by default or whether England is the implicit frame of reference. This reflects an awareness that the four territories have different institutions, that they commit to a level of

cooperation, exchange of information and resource allocation to facilitate full engagement

- b. Vertical Symmetry of access: Whether there is symmetry of access and quality with respect to data and analysis
- c. Delineation: Whether there is a clear delineation in the capacity in which the UK government is acting (i.e., is it acting in its role as government of the entire United Kingdom or is it acting for England alone)
- d. Clarity of public messaging: Whether actors and citizens understand the purpose of different institutions as well as the outcomes of different decision-making bodies. Some of this relates to transparency, other aspects to the way that information is communicated to citizens

163. With these in mind we can evaluate the different institutions, agencies or networks engaged in the UK pandemic response. The results in Table 8 suggest that it was devolved engagement via the short-lived JBC in particular that adhered to various aspects of best practice. By contrast its folding into the new UKHSA swept away a considerable amount of good practice. We can also distinguish between the capacity of fora to adhere to best practice *when they are sitting* but the capacity for such fora to cease meeting (e.g. COBR) at the whim of one level of government must be considered a weakness. The report card also suggests that, when viewed as a totality of institutions capable of facilitating intergovernmental working, the membership and therefore views of devolved administrations were often subordinate, invited not as full-members but as observers, or invited when it was felt necessary.

Table 8: IGR report card, 2020-2022

	External inclusion	Regular contact	Info sharing	Capacity for conflict resolution	Four nations by default	Symmetry of data & analysis	Eng/UK delineation	Clarity for citizens
COBR	Yes, when sitting	March-May 2020 No May to Sept	Yes, when sitting	No	March-May 2020 Not May to Sept	Yes	Yes	NA
SAGE	At times	Yes	Patchy	Mostly	No	No	No	NA
MIGs	Yes	Yes	Yes	No	No	Yes	No	NA
JBC	Yes	Until UKHSA	Yes	Yes	Yes	Yes	Yes	NA
UKHSA	No	No	No	No	No	No	No	No
JMCs	Yes	No	NA	NA	NA	NA	NA	No

NA = not applicable. BLANK = not available

Post-covid adjustments to inter-governmental relations

164. Even before the pandemic, there were concerns that the post-devolution system of IGR was under-developed in terms of structures, and even these were under-utilized. The JMCs met infrequently except with respect to Europe (and later EU withdrawal). Members of devolved administrations have frequently complained about a lack of opportunity to meet and, perhaps more importantly, to be heard and to make decisions (the JMC, after all, serves a consultative rather than decision-making function). As a result there have been various efforts to improve these, particularly so after Brexit. In 2017, for example, the Welsh Government proposed a UK Council of Ministers, similar to the EU council of ministers, to meet regularly to 'negotiate common rules and frameworks' (Welsh Government 2017). The same document argued that the new council should be staffed by an independent secretariat (like the British Irish Council) rather than a virtual one composed of officials within the constitutional teams of each administration.
165. PM Boris Johnson created a Minister for the Union in 2019 a post he occupied. Its official responsibilities are to emphasise that the postholder works to ensure the UK government is serving the entire union⁵⁶. The PM's 2021 cabinet reshuffle created a Department for Levelling up, Housing and Communities, which included the creation of the post of Minister for Intergovernmental Relations. The inaugural postholder was Michael Gove, who held the post from 18 September 2021 to 6 July 2022. It was vacant until 6 September 2022, at which point it was held by Nadhim Zahawi until 25 October 2022 (while Liz Truss was PM) and was then taken over again by Michael Gove (under PM Rishi Sunak). The Minister's remit was to coordinate interaction between the Territorial Offices (i.e. the Offices for the Secretaries of State for Scotland/Wales/Northern Ireland) and the devolved administrations.
166. As the pandemic eased all four administrations worked to conduct a **Review of Intergovernmental Relations**, something they had committed to undertaking in 2018. The need for frequent intergovernmental working during the pandemic would have provided fresh insight for a programme of work already on the cards. The January 2022 report identifies that the pandemic had confirmed the importance of coordination across the different devolved administrations and between the UK and devolved administrations. It outlined new structures, as well as new mechanisms of transparency. At ministerial level these would include Interministerial Groups (IMGS) meeting regularly to facilitate regular engagement (including on trade and international engagement). These would be supplemented by an Inter-ministerial Standing Committee (IMSC) to address issues not fitting neatly into particular portfolios, including cross-cutting and international strategic issues. A dedicated financial inter-ministerial standing committee, for example, would include representation from the Treasury and the devolved finance ministers. These would be attended by the relevant IGR ministers from each government, with additional

⁵⁶ The label has been retained by both subsequent Prime Ministers. A review of press releases related to the post provide few clues about its day-to-day requirements, with most announcements referring to Prime Ministerial duties (meetings with foreign dignitaries). Union connectivity is one theme, and there are references to the levelling up agenda.

<https://www.gov.uk/search/news-and-communications?page=3&roles=minister-for-the-union>

ministers attached to particular portfolios invited as necessary. The report identifies the potential for time-limited inter-ministerial committees as a result of political developments (Brexit might well have been one such example, as would COVID). Any such committee could be requested by any government, and, providing a consensus was established, the Terms of Reference for it could be drafted by the IGR secretariat.

167. The heads of government would meet in a new council, a 'PM and Heads of Devolved Governments Council' which would also include the DFM of Northern Ireland. The new Council would be chaired by the PM. The Council would oversee IGR, consider strategic policy issues, evaluate and reach decisions on the strategic direction of IGR and multi-level governance in the UK. It would also act as a final escalation stage of any dispute resolution process. The document appears to suggest that the Council would meet regularly but later makes clear that this is to be an annual meeting, with more frequent meetings possible if requested. The Council can delegate responsibilities to the other IGR tiers (IMGs, MSCs). All of these would be supported by a standing IGR secretariat with officials from across the four administrations, located within the Cabinet Office.
168. The proposals bear some resemblance to those in the 2013 MoU. One might be forgiven for assuming that the primary difference is actually one of nomenclature. They fail to take advantage of concerns that any secretariat should be independent rather than housed within the civil service of one particular actor. In light of this they might reasonably be seen as insufficiently radical, insufficiently attentive to the need for joint ownership of mechanisms, proposing structures whose use might just as easily fall into abeyance as their predecessors, and therefore unlikely to deliver a transformation to inter-governmental working in the UK.

The UK response in comparative perspective

169. The pandemic was a global one and therefore we already have access to analysis that seeks to compare the responses across states as well as to identify those features that helped or hindered pandemic reaction.
170. OECD analysis of multi-level governance (2020) reveals that the variation in COVID-19 fatalities by November 2020 was higher in some states than others, and particularly so in federations. There was low variation in COVID fatality rates in New Zealand, Korea, Japan, but also in federations such as Australia, Austria and Germany. Variation was much greater in Italy, the UK, United States, and Spain. In each of these instances, the lowest fatality rate (by NUTS 2 region) was lower than 20 per 100,000 inhabitants but the highest rates exceeded 160 per 100,000.⁵⁷ NUTS 2 levels do not necessarily correspond to the levels of government and the constitutional architecture of a state is not the only source of high rates. High population density, but also high levels of deprivation can cause fatality rates to increase and variation in outcomes can be attributed to variations in access to health care (including hospital beds, and density of healthcare workers) as well as

⁵⁷ NUTS stands for Nomenclature of Territorial Units for Statistics and was designed as a hierarchical system of classification of regions throughout the EU. Higher numbers correspond to smaller units of analysis. NUTS 2 regions treat Northern Ireland as a single unit but subdivide the other parts of the UK into local authorities (Scotland), unitary authorities (Wales) or counties (England).

variations in the ability to work remotely. In addition to constitutional architecture and resources, the OECD also cited better outcomes (via stricter compliance with restrictions) in areas where trust in government was higher (p76). This link between greater trust and greater compliance with COVID measures is well established in the academic literature internationally (Bargain and Aminjonov 2020, Pagliaro et al 2021), and in the UK in particular (Wright, Steptoe and Fancourt 2021).

171. To cope with divided responsibility for decision-making and implementation, some states established mechanisms of vertical coordination. Australia established a national cabinet, involving the Prime Minister and Premiers of Australian states and territories (see for example Rizzi and Tulich 2022). Korea established a Central Crisis Management Committee, chaired by the PM and including representatives of Korea's provinces and major cities. Spain used its existing Council of Presidents. There were also mechanisms to facilitate horizontal coordination. In the UK, the JBC is the most obvious instance of this. Switzerland, for example, employed its conference of cantonal governments. Other UK organisations made limited effort to facilitate horizontal or vertical coordination. Any review of IGR in the UK moving forward should identify mechanisms for both vertical and horizontal communication and coordination.

172. There were also multiple instances where the need for quick multi-level decision making across levels of government caused problems of coordination and communication. This includes in Belgium and the Netherlands (Van Overbeke and Stadig 2020), attributed, in the Belgian instance, to 'complex interdependent division of competences [which] caused burdensome coordination across government levels' (Bursens, Popelier and Meier 2023)

173. The OECD has identified various metrics by which one could identify a well-coordinated, regionally-sensitive reaction in a multi-level state:

- a. Coordination in design and implementation of measures
- b. Additional resources to sub state level
- c. Substate governments communicate directly with public
- d. Adapt exit measures to local situation
- e. Involve private sector and civil society
- f. Digital tools to track cases
- g. Extra human resources for substate governments

174. The previous discussion in section 2 makes clear that many of these were present in the UK response. The OECD also praised the dissemination of information to English local authorities (citing efforts of the JBC in particular (p37)). In England, the Local Government Association offered communications templates to help local authorities share best practice on communicating with citizens to ensure consistency of advice.⁵⁸

175. There was other praise for the UK response. Resende et al (2021) analysed primary care responses to Covid-19 and likewise argued that the UK experience

⁵⁸ (Local Government Association 2020 Coronavirus (COVID-19) Communications Support and Templates: Resident Communications, as referenced in OECD report.

was one of both coordination and collaboration due to the consistency of advice offered to primary care physicians (although they also note consistency in the fact that doctors generally felt unprotected from Covid-19).

176. A similar assessment is provided by Schnabel, Anderson and De Francesco (2023), who argue that centralisation does not always lead to consistency. Consistency, they argue, stems from coordinated, rather than centralised management. They identify four instances of disagreement that surfaced in multi-level reactions to COVID: contestation of measures, timing or jurisdiction, and fragmentation of narratives (or rationales for decisions). Comparing the UK to Germany and Italy they find limited instances of UK contestation over measures or timing in the early weeks of the pandemic with limited contestation over timing (in Scotland). By April, however, political leaders employed similar rationales to justify their actions, but took different decisions about timing in April and May. This can be compared to Italy in particular where there were several examples of disagreements over measures, timing and rationale between central and regional (and among regional) actors. Their findings suggest that decentralised communication does not necessarily bring inconsistency in messaging.
177. Vampa's comparative study of policy dynamics in France, Spain, Italy, Germany and the UK argues that the distribution of legislative competence mattered less to outcomes than the interaction across the different levels of government. Such a view is consistent with the OECD report, which prioritised lines of communication.
178. For Vampa, even in federal countries there was a tendency towards centralization either achieved via consensus with sub-state actors or imposed (prompting either acceptance or opposition). He argues there are three dimensions to dynamics: hierarchy, cooperation and competition.
179. Italy and Spain, for example, limited the powers of regions to facilitate centralization. In each case the initial response to the pandemic included a lack of coordination, with each region or autonomous community pursuing its own policies about lockdowns or closures. The centralization that followed included emergency decrees imposing lockdowns on areas, and were made without consultation. Likewise the state of alarm centrally imposed in Spain had not been negotiated with the autonomous communities but was proposed by the national government (and required the approval of congress).
180. In Germany, however, Vampa explains that despite having powers to act unilaterally (thanks to the Infektionsschutzgesetz (IfSG) Infection Protection Act) the central government sought to build consensus and coordination through 'compensation through participation' ultimately leaving the länder to enact the necessarily legislation. This reflects a high level of trust among actors facilitated by well developed mechanisms of IGR, and well-established regional co-decision making. During the pandemic this was marked by regular meetings to ensure a uniform approach. Decisions reached at such meetings were then implemented by the individual länder.
181. On the one hand, Vampa's account sounds a bit like the early days of the UK coordination efforts. Two differences emerge. First, well-established mechanisms for IGR in Germany ensured that there were both vertical (central and länder)

meetings and coordination as well as horizontal (among länder only) meetings, which also allowed for policy diffusion. The UK government's responsibility for both UK-wide and England-wide policy means that there is typically no distinction between vertical and horizontal coordination as the horizontal role is ever-present (by virtue of the UK government's two hatted role) but arguably always subsumed. In the UK it is also clear that pre-existing mechanisms of IGR had limited use and support.

182. Second, over time a hierarchical system reasserted itself within the UK. Vampa attributes this pre-existing hierarchy to the absence of an England-only tier of government and a weak regional tier within England, which ultimately fed competitive dynamics both within England and across the four UK territories. He likewise points to the lack of clarity over the territorial reach of various announcements as a source of confusion for the public (specifically citing claims over testing capacity). Arguably this relates to a wider point about the political culture within which such UK pandemic decisions were made, including weak pre-existing arrangements for IGR and a tendency to elide England and the UK in data, analysis and announcements.. Even though the Coronavirus Action Plan foresaw regional variation, the appearance of it caused frustration in some quarters, but it also caused confusion, which would have been compounded by imprecise communication from the UK government itself.
183. More to the point, the absence of any meaningful meso-level governance structures in England exacerbated centralisation. As with much of its constitutional affairs (chief of which is the distribution of legislative competence and arrangements for regional or local government within England), the UK's coronavirus response was asymmetrical. Obviously, centralisation cuts both ways. On the one hand, it likely mitigated widely varying regional responses and thus widely varying regional death tolls, as visible, for example, in Italy. On the other hand, if centralised decisions were not the right ones, there was asymmetrical capacity to mitigate their effects. While Scotland, and Wales in particular sought to slow the rates at which they emerged from lockdown, such a response was not possible within England where even tiers of alert levels were devised and imposed centrally.
184. To the extent that we can evaluate the UK response in light of international best practice it appears that there was insufficient consistent coordination via vertical and horizontal mechanisms for communication and coordination. These appeared at times, but were then changed or disbanded as new institutions appeared. Partly this stems from the absence of 'ready to use' fora of intergovernmental working.
185. Related to this, there was clearly a lack of agreement about the benefits of divergence. The Coronavirus Action Plan appeared to assume it would materialise as epidemiological conditions varied, but it is also clear that such variation was treated with unease in some quarters, and not communicated well by either the UK Government or the print media (hence the concern from Ofcom). While some have suggested divergence is to be avoided on a point of principle (Sargeant 2020) an acknowledgement that diverse conditions might prompt lockdowns at different points in time would have led to a more tailored response. Whether such a tailored response would have affected virus spread is for those with access to infection data to evaluate but it is clear that squeamishness about divergence in principle tied the

hands of some decision makers, and influenced the economic resources to which devolved governments had access.

Part IV Lessons learned

186. There are positive lessons in the UK experience. Early coordination among the four different administrations ensured that similar policies were implemented, and justified by a similar rationale throughout the UK. This is signified by devolved involvement in the drafting of the Coronavirus Act and the Four Nations Actions plan, but also in the enhanced language about devolved consent (surpassing Sewel) and the successful passing of legislative consent motions in Holyrood, Cardiff Bay and Stormont. It is also the case that the ability to modify legislative and executive competence devolved powers worked quickly.
187. On the one hand, the fact that the four administrations were led by four different parties with very different constitutional preferences, views of the union and different positions of the political spectrum could be seen to have sufficiently stress tested inter-governmental relations and structures for addressing emergencies but there are lessons here about the (i) the pace of change influencing capacity for coordination, (ii) delineation (iii) clarity and (iv) finances. To the extent that there were lessons for improvement it is in part because culturally and institutionally the UK has adapted unevenly to devolution.
188. This should not be read as a call for radical change. It is obviously the case that multi-level states with well-established forums of intergovernmental relations were able to press these into service faster and use these as a basis for sharing information, but it is less obviously true that the existence of such forums themselves led to improved outcomes. Having well-established forums of IGR did not preclude questioning the rationale of decisions taken in other parts of the state (as in Italy), which could well have served to undermine government messages and compliance. Likewise, theoretical debates about institutional features of 'good IGR', including over ownership of structures, are important, but when organisations fail to meet at all – or fail to meet for great lengths of time – then the question of appropriate ownership is something of a theoretical debate. Access trumps ownership of structure.
189. This relates to the first lesson. The pace of institutional creation created some good practice, particularly around the inclusion of voices from the UK and devolved administrations early in 2020. Notable here was devolved inclusion in COBR meetings, most MIGs and the JBC. But it is also the case that the continued creation of new forums and roles (the introduction of Tsars, the integration of the JBC within the more England-focused UKHSA) swept away some of that good practice (where devolved voices were less obviously included). In his Covid inquiry testimony Michael Gove reported that he felt there was too much overlap across the MIGs (INQ000185354) A distinction between observer status and full membership on SAGE likewise inhibited full participation of devolved actors.
190. Speed does not necessarily bring good practice, and change can move backwards as well as forwards. The creation of new forums, presumably because they were perceived to be better, when the strengths and weaknesses of the existing ones had not been evaluated, suggests a missed opportunity to evaluate what worked well in different contexts (and for whom).

191. Just as not all forums for meeting were equal, we can also distinguish between communication where the purpose was to learn of plans so as to disseminate them, and communication where the purpose was to provide input so as to devise strategy collectively. In areas of devolved responsibility the latter would better reflect the distinct jurisdiction of devolved administrations.
192. Second, issues of data availability and a long-running habit of eliding England and the UK meant that the unit of analysis for making decisions about lockdowns was not always clear, UK-wide data not always available and capacity for generating data uneven across the UK. While some of this tendency to equate England with the wider UK might have been considered to have institutional origins, if for example there were issues of capacity around generating data, this is also part of a wider cultural issue about the recognition of devolution and the existence of variation around the UK. It also meant that the UK Government, acting predominantly on the basis of England-only information, at times failed to consider the realities or conditions of virus spread (for example due to variations in school calendars).
193. Third, the lack of clarity over the delineation between UK-wide and England-only mechanisms caused confusion for citizens, which risked compliance with lockdown rules. In a more general sense it fosters citizen confusion over roles and responsibilities and inhibits an understanding of how the state operates. More than twenty years after devolution, it is clear that the public, and to a certain extent many of its political actors, are unaware of who controls which policy area, are uneasy with the principle of policy variation and some of this is undoubtedly due to UK government communications and its reporting in the media.
194. Fourth, control of the purse strings hampered the extent to which devolved administrations could deviate from central government policy and left local authorities in unenviable positions. If central policy is supported throughout the state and perceived to be effective, then this is fine, but if there is disagreement on aims or mechanisms among the administrations, and particular in the case of a pandemic if there are markedly different local circumstances, then the ability to respond relies in large part on the financial freedom to act. This holds for the devolved administrations but also for variation within England as well. In a health emergency with a contagious virus spread by population mixing, and where the personal and financial costs of lockdowns were so high, the ability of local actors to have a role in decisions about the lockdowns affecting them would have been appropriate. Just as mechanisms for vertical and horizontal communication across the three devolved and UK governments could have been put to use, a similar mechanism operating within England would have enabled decisions to better reflect local or regional realities.
195. This relates to the operation of dispute resolution mechanisms. There are long-standing concerns that existing dispute resolution mechanisms treat the UK government as both a party to disputes and as the chair of dispute resolution proceedings (McEwen et al 2020). The allocation of furlough funding when various parts of the UK faced different levels of restrictions is an example of a dispute which could have been resolved by an independent arbiter.

Possible Recommendations

196. Emergency planning

R1. Recommendation: Emergency planning and response to be viewed as an instance of inter-governmental relations rather than separate from it. It requires mechanisms that bring relevant actors into regular, sustained rather than ad hoc contact and a commitment to parity of esteem. This is particularly true for emergencies related to devolved areas of jurisdiction.

R2. Recommendation: Alongside the Review of IGR, detailed discussions about the creation of an oven-ready mechanism for a 'four nations by default' approach to emergency planning and response using the JBC's structure and membership as a template.

R3. Recommendation: Organisations tasked with emergency planning to have, as one of their criteria for success, the representation of devolved administrations so that their voices (including policy preferences) and associated data and science can be incorporated into a UK-wide response.

R4. Recommendation: A review of observer vs full membership status on all associated bodies to determine if there is a need for greater participation from devolved administrations

R5. Recommendation: Emergency planning to have, as one of its criteria for success both vertical (as above) and horizontal coordination. This should involve all four constituent units, but should equally provide a forum for horizontal coordination within England. It should also address Northern Ireland-Republic of Ireland coordination.

R6. Recommendation: Horizontal coordination across the UK to clearly delineate the UK-wide and English roles of the UK government, with representation by different individuals.

197. Capacity and competence

R7. Recommendation: A review of capacity around data and analysis, particularly within the devolved administrations, to identify possible obstacles in the event of future health or natural emergencies.

R8. Recommendation: UK agencies tasked with emergency planning to commit to incorporating UK-wide data in their decision-making and communications and to gathering such data if it would not be gathered otherwise.

R9. Recommendation: Funding arrangements to be sufficiently nimble that the tap does not need to be fully on or fully off. If, for example, lockdowns are to be a tool employed by devolved administrations, or local authorities, those units should have access to the funding required to act as required (in this instance to impose and lift lockdowns at a time of their choosing).

R10. Recommendation: A review of legislative competence related to emergency powers, public health, internal and external borders to ensure there is clarity over jurisdictional authority. This might include the identification and removal of asymmetries in the devolution settlements.

198. Communications

R11. Recommendation: A review of all UK government and UK agency websites to ensure that the territorial scale of operations is clear. All UK-wide organisations to have a UK-wide (not England-only) landing page, with clear links for viewers in Scotland, Wales and Northern Ireland to the relevant website if the matter is devolved. The term 'UK' should never be applied when Northern Ireland is excluded. The term 'UK' should never be applied when it means England alone.

R12. Recommendation: Develop communications guidelines for all UK government department speeches to clarify when measures apply to UK as a whole or England only (or apply to some combination of England and other devolved entities). The use of 'this country' to mean UK or Great Britain or England should be avoided at all costs. UK departments addressing policy areas that are devolved to Scotland, Wales and NI to put 'England' in their title and branding.

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Chief Scientific Advisor for UK, Sc, W, NI

Public Health England, Scotland, Wales, Public Health Agency NI

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