

BETTER GOVERNMENT FOR THE UK



Cooperation, not conflict

Last year I commissioned a series of papers on how Scottish Labour, working alongside our UK Labour colleagues, could deliver a stronger Scotland in a modernising United Kingdom. The political backdrop to that request was a grim one. Across the UK people were crying out for change and - in the wake of Covid - a real recovery.

Since then situation facing so many has become even more difficult, the cost of living crisis has left too many facing the impossible choice between heating and eating.

Despite that, our political debate in Scotland is again dominated by talk of a second referendum. We have two bad governments that work to unpick the ties that bind us together for their own political advantage.

All while households face soaring energy bills, rising water bills, astronomical prices at the petrol pumps, and steeper costs at the checkout.

At Holyrood, the SNP focus on their priorities at the expense of Scots, leaving 700,000 people languishing on waiting lists. Boris Johnson's Tories endanger the UK with every scandalous headline, and are a gift from those who want to divide us.

Because the truth that the Tories and the SNP don't want to talk about is that constitutional politics can never end poverty or inequality. It doesn't build any schools, or train any nurses. It cannot - alone - build a better nation.

But, when both of Scotland's governments stand to gain politically from the chaos of division, it means bad government thrives and people pay the price. That is - at the heart of it - what this first paper is about.

We can put cooperation and not conflict at the heart of the United Kingdom, to make sure every layer of government works for the people. Labour can deliver change without needless division and put power, wealth and opportunity in the public's hands.

That is one small step to building a better future for everyone on these islands. I know that Scotland's best days lie ahead of us - a Labour government would unlock that potential. That is why winning matters.



ANAS SARWAR MSP,
SCOTTISH LABOUR LEADER



SARAH BOYACK MSP, **SHADOW CABINET SECRETARY FOR THE CONSTITUTION**

Labour campaigned for the establishment of a Scottish Parliament to push power closer to communities and enable Scottish solutions to Scottish problems.

We believed a Scottish Parliament was key to a better and more democratic future. When Labour came to power in 1997, people voted overwhelmingly for a new parliament with tax raising powers and in May 1999 the new Scottish Parliament started work, with Donald Dewar MSP elected as First Minister.

In addition to devolving powers to the Scottish Parliament the newly elected Labour government set in train radical constitutional change across the UK: the Senedd in Wales, the signing of the Good Friday Agreement and an Assembly for Northern Ireland. We also saw devolved and central governments working together, not against each other.

Since then, the Scottish Parliament has had new powers on railways, powers to set a Scottish rate of income tax and, most recently social security.

But since Brexit, we've seen a UK Conservative government increasingly disrespecting the devolution settlement. And we've seen an SNP Government happy to blame the Tories for their

own failure, whether it's NHS waiting times or cancer treatments, the fact that Scotland has gone into reverse on educational attainment, or the lack of progress on fuel poverty which is now seeing people having to choose between heating or eating.

Labour is the party of devolution. Two decades on we need change to shift power from the centre, to stop governments hoarding power and to ensure we all benefit from the pooling and sharing of resources across the UK.

Putting power back into the hands of the people is, and always will be at the heart of what we want to achieve. We need governments at the UK, Scottish and local level cooperating to deliver for our communities, whether it's tackling the cost-of-living crisis, addressing our climate crisis and creating the jobs and investment we need across our communities. This document presents our plan to revolutionise how devolution works, rooted in Labour values, for the benefit of all.





14 03 17

Introduction

Scotland is being failed by two bad governments who seek to maximise disagreements and disordered relationships across the UK and use a political climate of division for political gain. The consequences for Scotland are severe.

Even before the pandemic, the Scottish economy suffered from low levels of growth, investment, productivity, limited domestic ownership, and labour market inequalities. One in four children in Scotland currently live in poverty and 68 per cent of children in poverty live in a household where someone is in employment. Scotland's public services are being let down by an SNP government that has been in power for 15 years and has run out of ideas for improvement and reform. Repeated campaigns for a referendum and constitutional disputes are used as a distraction from the SNP's failures in government. The challenges faced by Scottish society are treated as reasons to support separation from the UK, instead of issues in need of a Scottish government solution.

Meanwhile, a disastrous Conservative government in Westminster is failing people the length and breadth of the UK: Presiding over a low wage, low growth economy resulting in the longest ever decline in UK incomes. They have watched on as wages have stagnated and responded by raising taxes; failing to deliver any plan for prosperity and opportunity while riding roughshod over the devolution settlement.

These myriad failings are not inevitable - they are created by two governments who are out of ideas and more interested in dividing than uniting people on these islands.

Constitutional politics alone cannot fix the unequal distribution of economic and political power. However, we can set a framework that makes the current reality of two bad governments seeking political advantage from division a thing of the past. That begins with a system that puts cooperation in the foreground and mandates joint working between Scotland's governments.

The UK's constitutional future is based on institutions that enshrine cooperation while fostering each nation's right to take a different approach in devolved areas.

In this paper, we look specifically at the need for reform of our UK wide governance and relationships. We propose a series of rules and processes for UK wide joint working that would be co-owned by all four UK nations. This would protect Scotland's influence on the UK government and ensure all nations and regions have a strong distinctive voice within the UK parliament. We also propose formal recognition of policy interdependence in areas like trade, which would empower the Scottish government, encourage cooperation and improve outcomes for people in Scotland and the wider United Kingdom.

All while fostering the creation of a modern, progressive and forward-looking United Kingdom.



Scottish Labour's Approach to **Constitutional Change**

Recent constitutional debate in Scotland has not served our country well. Independence continues to be promoted by the SNP government at the expense of a vision for what is possible through the Scottish Parliament and the extensive powers it already has. The SNP's preoccupation with independence has meant that innovation in our public services, fresh thinking about how we reinvigorate our economy and questions about how we reform our democratic institutions have disappeared so that political capital can be stored up for a future independence referendum. This has come at the expense of improving lives across Scotland.

Constitutional change must be rooted in making people's lives better and our proposals, both in this paper and more broadly, are rooted in Scottish Labour's core values. Our work has been guided by six key principles:

- 1** The Scottish people are sovereign and have the right to determine the best form of government suited to our needs.
- 2** The UK should be a union of equal nations.
- 3** Power should lie with the people; the best forms of government empower local communities and do not hoard power in our parliaments and governments.
- 4** The UK is a redistributive union where wealth and opportunities are shared, and our nations and regions should work together to realise its benefits.
- 5** The primary function of the Scottish Parliament is to represent the Scottish people, hold the Scottish government to account, and scrutinise the operation of our public services.
- 6** The Scottish government and Scottish Ministers' priority should be taking decisions in the best interests of the people of Scotland. They should manage our public services effectively and work cooperatively and transparently with other UK governments and local government.

The Labour Party has always approached devolution and constitutional change by asking where powers should lie to best improve people's lives. Scottish Labour not only led the campaign for the creation of the Scottish Parliament, we established it. For the Labour party, the creation of the Scottish Parliament was undeniably about responding to the demands from the Scottish public for democratic justice and the desire to reflect the Scottish identity within the union. Yet, it was also part of a wider set of constitutional reforms; under the Labour Party the Welsh Senedd was established, the Good Friday Agreement was signed and the Northern Ireland Assembly was created, the London Assembly and Mayor were introduced, the House of Lords was reformed, the European Convention of Human Rights was incorporated into UK law with the passing of the Human Rights Act 1998, and a separate Supreme Court was established.

These reforms were part of Labour's ambition to modernise the United Kingdom and ensure its political institutions reflected the country they were there to serve. We sought to bring power closer to people and ensure it worked in the interests of people and communities across the country.

Current UK Challenges

In the two decades since the establishment of the Scottish Parliament, successive UK and Scottish governments have paid insufficient attention to how the UK and its central institutions need to change in response to power shifting away from the centre. Where reforms have occurred, gaps have been left where there should be formal structures for intergovernmental working and interparliamentary relationships. Tensions remain over the need for distinct representation for England in the sphere of devolved powers, as well as how UK Parliamentary sovereignty and the UK Parliament's ability to make any UK law exists alongside Scotland, Wales and Northern Ireland's right to legislate on devolved areas.

The creation of the Scottish Parliament and further devolution inevitably brought about "policy interdependence", that is, overlap of UK and Scottish government interests. In response to this, in 1999 the Joint Ministerial Committee (JMC) was established as a forum for joint working between the UK's nations. **It was intended to bring together relevant Ministers from across the UK to:**

- 1. consider reserved matters that impact on devolved responsibilities (and vice versa),**
- 2. consider devolved matters if it was beneficial to discuss their respective treatment in the different parts of the UK,**
- 3. keep the arrangements for liaison between the governments under review, and**
- 4. consider disputes between the governments.**



While set up with good intentions, the JMC structure has been ineffective and suffered from a number of flaws.

Although intended to support joint working, the committee was consultative with no decision-making powers and meetings could only be convened and adjudicated by the UK government. The forum also lacked transparency and an effective dispute resolution mechanism for if, and when, there was a breakdown in agreement.

These flaws, and the lack of genuine commitment from current political leaders, eventually led to the breakdown of the JMC system. Participants reported that committees became forums for grandstanding and airing grievances rather than cooperation.

The JMC Plenary has not convened since March 2018. Previous sub-committees of the JMC had focused on poverty, health, the knowledge economy and domestic policy in general, but they were disbanded several years ago. Although the UK government has shown a willingness to act on intergovernmental relations, detailed agreement has not been reached on structures or how committees such as a finance committee could operate.

The JMC's collapse was fundamentally due to its ineffectiveness but attempts at joint working have also been undermined by the SNP and Tory governments putting partisan politics ahead of public interests. The current framework also lacks separate and transparent representation for England

meaning that, in the context of intergovernmental decision-making, the UK government is often left to act in a dual role across devolved competencies. But, as has been shown in the Brexit fallout, UK supremacy in law making means that this situation leaves Scotland and the other devolved nations on an unequal footing.

Policy interdependence, and the conflicts between Scotland's two governments, have undoubtedly increased. While the UK was in the EU, the supremacy of EU law ensured regulatory consistency and alignment across the UK over a series of areas to allow for barrier-free trade and a consistent approach to areas like environmental standards. When the UK left the EU, and a number of these policy areas moved under the control of the devolved governments, it became incumbent on the UK government and devolved governments to work together to continue alignment. However, existing joint working processes have proven ineffective.

Limitations have been exposed and exacerbated by two political parties with dramatically different agendas and no interest in making devolution work.

A failure to respect and recognise the status of the devolved nations is also at the heart of recent actions by the current Prime Minister and UK Tory government to undermine our devolution settlement.

For example, when first published in July 2017, the UK Withdrawal Bill placed powers within devolved areas, which were previously exercised by the EU, in the hands of the UK parliament as 'retained EU law'. In its current form, the Shared Prosperity Fund (the UK Tory government's replacement for EU Structural Funds) allows the UK government to invest directly in devolved nations with limited engagement with devolved governments; an undemocratic approach which centralises power at the expense of existing devolved powers. The Sewel Convention has also proved inadequate in the face of a Prime Minister who routinely defies constitutional convention. The Convention was designed to compel UK governments to voluntarily rescind their ability to legislate in any devolved area under all normal circumstances, but the UK Internal Market Act was passed at Westminster despite both the Scottish Parliament and Welsh Senedd refusing to give their consent, and the Supreme Court's judgement in the 2017 case of *Miller v The Prime Minister* confirmed that the UK government has considerable discretion in deciding what constitutes abnormal circumstances.

The Tories' treatment of the devolved governments is well documented, anti-democratic and unacceptable. But the SNP has not helped by seeking to increase opposition to the UK government at the expense of finding consensus and exploiting the weaknesses in joint working arrangements for their own political purpose. For example, the Scottish

government were aware in advance that their UNCRC (Incorporation) (Scotland) Bill possibly breached the Scotland Act: the UK government had written to Scottish Ministers and the Law Society of Scotland made suggested amendments relating to competence. However, rather than working constructively with the UK government, the SNP chose to fight a high profile, costly and antagonistic battle in the Supreme Court. The result is that more than eight months on from the judgement, the Bill has progressed no further. Similarly, the SNP have attempted to blame the UK government, and the slow delivery of data from the Department for Work and Pensions (DWP), for the delays to the roll out of the Scottish Child Payment. Yet, evidence from DWP officials to the Scottish Parliament's Social Justice and Social Security Committee revealed that no approach was made to the DWP, or discussion had regarding data, during the design of the policy or prior to its announcement. In 2020 SNP MPs voted against the Fisheries Bill at Westminster, publicly criticising it as an attack on devolution, even though at Holyrood the SNP had voted with the Scottish Parliament to give legislative consent to the Bill after extensive joint working between officials. It is unacceptable that uncooperative, counterproductive relations between our two governments have been allowed to become the norm due to bad faith interventions from political actors who want to see devolution fail. These conflicts benefit no one in Scotland or the rest of the UK. We should expect better from our political leaders.

The global challenges facing both Scotland and the UK are better addressed when governments cooperate, instead of expending time and resources fuelling tension. Effective joint working with good results is possible, as shown by the vaccine roll out during the Covid-19 pandemic and the cross-border referrals for Scottish patients accessing specialist NHS treatments in England. During economic shocks, the UK has a wider level of resource upon which to draw, as demonstrated most recently by the furlough scheme during the Covid-19 pandemic. Following Brexit, the need for good cooperation is also all the more crucial. The development of common frameworks shows us that collaboration and consensus in areas of devolved power is possible. In 2018, over 30 'deep dive' workshops were reportedly held to prepare for the repatriation of powers from the EU, bringing together civil servants from different administrations to discuss common frameworks for specific policy areas and on cross-cutting areas like the UK internal market. However, guaranteeing this cooperation going forward is important. 60 per cent of Scottish exports go to the rest of the UK and so protecting barrier-free access to trade and regulatory consistency across the UK is vital.

A set of new intergovernmental structures could reset the bad relationship between our two governments which have become normalised in Scotland. However, this will only work if the devolved nations are truly equal partners.



A Reformed UK **that** **Works for** **Scotland**

It is time for the UK's constitutional framework to adapt to devolution. Depending solely on the efforts or willingness of Ministers to cooperate positively is evidently not sustainable, especially in situations where politically there is not already natural alignment or could be actual advantage in hostility.

Scottish Labour believe we need to make the voices of Scotland and the other devolved governments louder and more influential within the UK and place them at the heart of decision making.

To achieve this, we set out three proposed reforms:

1. A legal duty to cooperate.
2. New Joint Governance Councils.
3. Replacing the House of Lords with a Senate of the Nations and Regions.

Together, these changes would help empower devolved governments in their relationships with the UK, deliver appropriate checks on the functioning of UK government powers, and crucially ensure that respect for devolution is embedded within intergovernmental structures.



A Legal Duty to Cooperate

Despite our distinctiveness, Scotland has always had shared interests and common goals with the other nations and regions across the UK. Even with devolution, there are several areas where both the UK and Scottish governments have different powers that operate in the same clear policy areas. Joint working will remain difficult unless both can move away from their competitive and combative approach to the union but formalising the need for cooperation will be a first step to constructive inter-government working and achieving our common objectives.

The UK and Scottish governments could work much better together to improve the lives of people in Scotland. We are not naïve enough to suggest that our two governments in their current form would develop an extensive list of shared policy initiatives, but we need to ensure that conflicting policy outcomes which lead to wasteful uses of public money are avoided. There are outcomes that even two sides with different politics should agree on but important opportunities for joint working have been missed.

To embed constructive working, Scottish Labour therefore propose the development of legal 'shared responsibilities' between the UK and Scottish governments. These would in no way reduce or diminish the Scottish government's existing devolved powers but would identify areas where both administrations have responsibilities that need to function well together. These 'shared responsibilities' would be set out in legislation and duties would be placed on both governments to cooperate and demonstrate that cooperation in a transparent manner. There would be no requirement for joint decision making but governments would be required to show that opportunities for joint working were sufficiently explored, and that data sharing was taking place as far as possible. Both governments would have to provide advance access to policy development and announcements, with obvious requirements for confidentiality. Meetings, at both a ministerial and official level, would need to be regular with meeting schedules and minutes published regularly. Where appropriate, local government would also be included in 'shared responsibility' arrangements.

Scottish Labour believe that areas of 'shared responsibility' should be agreed on collectively by the serving UK and Scottish governments, and local government where appropriate. However, as an example and an initial list we propose the following areas:

- 1. Energy,**
- 2. Social security,**
- 3. Transport,**
- 4. Support for refugees.**

As well as setting out a process for enhanced engagement, these proposals would improve scrutiny and transparency. The electorate and parliaments would be better able to see when and how joint working was taking place, or where it was breaking down.

These obligations would also direct the cultural change required in the approach of the SNP government and UK Tory government, and help manifest the benefits of constructive working. For example, a joint strategy for reducing consumer energy prices in a sustainable way could have been developed many years ago, bringing together UK government powers on transmission capacity, grid access and charging with Scottish government powers on licensing and renewables, and local government powers on community energy generation. Current grid charges do not make sense as renewables capacity grows and Scotland's coast becomes a site for more offshore wind generation. A requirement for joint working would support better collaboration, not just in times of crisis, but in the best interests of people living in Scotland.



New Joint Governance Councils

Rules that govern joint working across all UK nations will also be key to empowering devolved governments and ensuring that joint working, particularly in devolved policy areas, does not just happen on the UK government's terms. Progress has already been made in this area with recently published proposals on joint working co-produced by all four governments of the UK.

Building on these ideas, we propose a new model intergovernmental working, which we are terming Joint Governance Councils. The rules and procedures governing these Councils would be set out in statute but crucially they would be designed so that every nation operates as an equal – on a parity of esteem. To support this, the role of secretariat would be independent, the chair would rotate on a regular basis around the four nations, and an improved dispute resolution mechanism would be introduced to command the confidence of every nation. Council meetings would be transparent, occurring regularly on an agreed basis and with minutes published. Joint Governance Councils would have limited and agreed scope for joint decision making but only with the advance agreement of all nations' representatives. Areas for decision-making could match those already set out by Common Frameworks and so recognised as key to the UK internal market.

Membership of Governance Councils would vary and recognise the policy interdependence that exists between reserved and devolved powers. In areas

of devolved competence, Ministers from each of the devolved nations would attend along with a representative for England. It would be for MPs representing English constituencies, along with regional leaders and local authorities, to decide what form this should take. In areas where powers have been devolved to the English regions, local mayors or authority leaders could also be invited to attend the Council.

Proportionality is important; forums and formal frameworks should not create unnecessary bureaucracy and should only be established where necessary. The exact number and subject of Councils would therefore vary and depend on the collective agreement of the four nations. Nevertheless, Scottish Labour believe there should be at least three Councils established as a priority.

Firstly, a high-level Council to bring together the leaders of the devolved nations. The UK Prime Minister would attend but, crucially, they must be there to represent the whole UK and alternative representation would also be required for England.

Given the recent conflict over the distribution of the UK Shared Prosperity Fund, a Finance Council should also be convened. Part of its scope should be to guarantee early

involvement of the devolved leaders in the allocation of the Shared Prosperity Fund and introduce a mechanism to require their further input and agreement for any money allocated in devolved areas.

Finally, within the context of shared responsibilities and formal joint working, trade has a unique status. Although a reserved matter, trade has a clear and direct impact on devolved competencies. A special Trade Council that includes representatives from the UK government and devolved nations should therefore be established to enable early input from devolved representatives on trade deals and negotiations. Under this arrangement, the UK government would not normally proceed with negotiating mandates on devolved matters unless agreed with relevant devolved governments. Where agreement cannot be reached, conflict resolution and expert advice should be sought.

These would be positive improvements, but structural change needs to go further than rules for joint working if the UK government are to be prevented from undermining devolution and using the UK Parliament as a vehicle to act unilaterally in devolved areas.

- 1. Members should be elected on a mandate to represent their nation or region.**
- 2. Representation must come from across all of the UK nations and regions, with a system of representation that learns from international best practice to ensure that our smallest regions, including within Scotland, have strong a voice in the Senate and cannot be marginalised.**
- 3. Term length and election cycles should be designed, as far as possible, to ensure that party political loyalties are not prioritised at the expense of national and regional interests. Elections should take place at different times to other elections and term lengths should be longer than those of MPs, MSPs, and councillors.**

In the first instance the Senate of the Nations and Regions should continue many of the functions the House of Lords currently performs, bringing expertise and scrutinising the UK government through questions, debates and specialist committees. It is important to recognise how well many current Lords perform these functions, in recent years reigning in the worst excesses of the Tory government. For example, the 2016 Dubs amendment allowed for the unaccompanied refugee children to relocate to the UK and the eventual concessions forced from the UK government made changes to the Internal Markets Bill. The Constitution Committee within the House of Lords has also been a valuable source of information and expertise.

Like the House of Lords, the new Senate should also play a key role in legislation but also give a stronger voice to the concerns of the nations and regions. The Senate should have the power to recommend amendments to legislation, as the Lords does today, but in respect of constitutional legislation it should be given additional responsibility to strengthen and protect the Sewel Convention. The Senate should therefore have specific routes to carry out additional scrutiny over UK government actions and act as an additional incentive for the finding of consensus and compromise at an earlier stage or through Ministerial channels.

Resetting the Power Imbalance

Though each of the UK's devolution settlements are different, power in the UK is becoming more decentralised. UK Parliamentary sovereignty is not definitively incompatible with this shift but, in its current form, the principle is increasingly discordant with the reality of devolution. Scottish Labour believe that the UK's nations and regions need greater opportunities to input into UK legislation and reforms to give them a strong and distinctive voice within the UK Parliament so that current Parliamentary sovereignty makes sense in a UK where power increasingly exists outside the UK Parliament.

To this end we propose replacing the existing House of Lords with a Senate of Nations and Regions. The House of Lords is an undemocratic institution, long overdue further reform. Its role as a second revising Chamber is

important but its unrepresentative makeup is no longer justifiable. If UK Parliamentary sovereignty is to legitimately function in a society where power and political will can be expressed elsewhere, there must be adequate opportunity for the distinct voices of the nations and regions to be expressed within both the UK Parliament's Chambers.

The exact nature of the election and composition of the Senate of Nations and Regions should be decided by broad consultation across the UK and to ensure a diverse group of representatives are appointed. **However, there are certain elements that Scottish Labour consider important for ensuring our nations and regions are effectively represented:**

Conclusion & Next Steps

These proposals set out the changes that Scottish Labour believe are needed at a UK level to modernise and strengthen good governance across the UK, and make the UK operate as a union of equal nations. But they should not be viewed in isolation. They are just one part of our broader work on the modernising of our constitutional arrangements, which examines the need for further devolution to the Scottish Parliament, a new settlement for local government and reform of the Scottish Parliament.

Scottish Labour have a vision for Scotland, one where local communities are supported and empowered to take decisions and deliver services that transform lives on a local level. We want to see a stronger Scottish Parliament, empowered with the purpose of achieving social and economic justice for people living in Scotland, and a politics that unites people, rather than dividing them. We believe that Scotland should be an equal partner in the UK, contributing and sharing in the wealth of the UK resources, but a partner that has a louder and more influential voice in the direction of our country.

Radical reform of the UK has happened before under Labour and we will ensure it happens again. The proposals in this paper are just the start of our plan to work with people and communities across Scotland to build the future of our country, together.



