

Scottish Affairs Committee

Oral evidence: [Intergovernmental relations: 25 years since the Scotland Act 1998, HC 149](#)

Monday 18 December 2023

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Members present: Pete Wishart (Chair); Alan Brown; Wendy Chamberlain; David Duguid; Sally-Ann Hart; Douglas Ross.

Questions 80 - 142

Witnesses

[I](#): Professor Nicola McEwen, Professor of Public Policy, University of Glasgow, and Dr Coree Brown Swan, Lecturer in British Politics, University of Stirling.

Examination of witnesses

Witnesses: Professor Nicola McEwen and Dr Corree Brown Swan.

[This evidence was taken by video conference]

Q80 **Chair:** Welcome to the Scottish Affairs Committee and the last public evidence session of the year. We are thrilled to be joined by two of our top academics to help us with our inquiry into devolution after 25 years. I will let them introduce themselves and say where they are from, and make anything by way of a short introductory statement.

Dr Brown Swan: I am Corree Brown Swan. I am currently a lecturer in British politics at Stirling University and director of the Scottish political archive there. I was formerly at Queen's University Belfast and Edinburgh University's Centre on Constitutional Change so I have ping-ponged back and forth across the Irish Sea. I work across the politics of independence and union, with a specific focus on intergovernmental relations. I am working with Nicola McEwen on issues of economic union and comparative perspectives on economic union and internal markets.

Professor McEwen: I am Nicola McEwen, Director of the Centre for Public Policy at the University of Glasgow having until recently been professor of territorial politics at the University of Edinburgh—I moved along the M8 earlier in the year. Thank you very much for agreeing to allow me to give evidence online to you today. I am sorry I cannot be with you in person, but I very much look forward to the discussion, having worked on intergovernmental relations for a number of years now.

Q81 **Chair:** Thank you both very much and, yes, Professor McEwen is joining us online while Dr Brown Swan is in the room with us.

We will start with you, Dr Brown Swan. You have been watching some of our sessions as we have been conducting this inquiry and we have received a lot of interesting evidence about how the 25 years have worked out. What is your view about how things have developed from the early days of the Scottish Parliament, when it was the same Government in power in London, Edinburgh and Cardiff, compared with the situation we have now with different Governments across every devolved Assembly in the UK? What is your take on where we are currently? Perhaps you could talk us through how you see the journey from then to where we are now.

Dr Brown Swan: I recently read the House of Lords report from 2002, which offered a critique of intergovernmental relations as being over-reliant on good will, mutual trust and understanding, without the proper institutional structures. We have been talking particularly about the strain that the Brexit process has placed on intergovernmental relations, but those issues were there from the very start.

Two assumptions were made in the early years of devolution. The first was that the devolution settlement was sufficiently clear, that the



competencies were adequately delineated between reserved and devolved powers so that we would not need a huge amount of intergovernmental working. At least until 2007, there was a preference for handling any issues as intra-party issues rather than intergovernmental issues negotiated between representatives with common relationships, common trust and common interests. Once we saw political divergence and party incongruence between Cardiff, London and Edinburgh, we saw a change in the system of intergovernmental relations.

The Institute for Government has done some very interesting work, cataloguing meetings of the JMC plenaries, the Joint Ministerial Committee plenary sessions, which fell into disuse in the early 2000s, before meeting much more frequently under the coalition Government. We see, therefore, that these institutional structures were always there but there was no political imperative to use them, and that made relationships quite difficult when things became much more contentious and the institutional structures did not exist.

Q82 Chair: We have discussed this with former colleagues who were involved politically at that point. Do you think more resilience should have been built into intergovernmental relations and infrastructures, that perhaps the view should have been taken that there would be different governments and institutions across the United Kingdom? When devolution kicked off, was it adequate to deal with these eventualities?

Dr Brown Swan: It was an omission and I am not quite sure why. I have read the evidence that this Committee took reflecting on the political process, and perhaps there was a sense that this did not need to be addressed in detail. We see that when things are working, they are working and when you can reach agreement, you do reach agreement, but when things become contentious and more difficult, it hinders the process if the structures are not there.

Q83 Chair: Of course, some things could never have been taken into account back in 1999—for example an independence referendum, and leaving the European Union. I cannot imagine any set of situation conditions that could be built into any infrastructure that could easily anticipate and account for those sorts of things.

Dr Brown Swan: Absolutely

Q84 Chair: What about you, Professor McEwen? You have been there for the full journey from the late 1990s. What are your observations from where we started to where we are now? What are your impressions of the journey we have been on and of how Governments have related to each other throughout the 25 years?

Professor McEwen: Thank you for making me feel old. You spoke with Coree about whether some things should have been foreseen, and whether we might have needed more of a system for working together. Perhaps, yes, given that the Scottish Parliament and the other devolved



legislatures—but particularly the Scottish Parliament—came about as the outcome of a decades-long campaign to create institutions for self-government, but for all the players designing the system—those who would go on to serve in the Scottish Parliament and those within the UK Government—their whole focus was on creating those new institutions and their powers and responsibilities, so perhaps the architects of the devolution could be forgiven for not paying sufficient attention to the flipside of that and how to counterbalance what in political science terms is called self-rule with mechanisms and processes to facilitate shared rule.

Over the last few years, I have observed increased recognition of the importance of having shared-rule processes. That is partly because of the normality of party political differences in the Administrations; partly because of various Committees, including your own and the House of Lords Constitution Committee in particular in the first instance, bringing the issues to the agenda; and also because of the complexities that have emerged in the system. It was always a bit of an exaggeration to consider devolution as clearly delineating reserved powers and devolved powers. There was always an intersection there that needed to be managed, but it is way more complex now, first because of Brexit and also, in Scotland, because of the 2016 settlement. That is what the Smith Commission in particular identified as presenting a need to significantly scale up intergovernmental relations.

Q85 Chair: A recent parliamentary forum in the Scottish Parliament involved Select Committee Chairs from across all the Parliaments and Assemblies in the UK and the House of Lords. The sense from that meeting was that intergovernmental relations had never been in such a poor condition, that there is huge distrust across the capital cities of the United Kingdom when it comes to governance just now. Is that something that you share? If that is the case, how did we get to that situation?

Professor McEwen: Yes, without a doubt, there is a lot of distrust. This is the Scottish Affairs Committee, but it is also insightful to look at the relationship between the UK Government and the Welsh Government—I know you have discussed the thoughts of the Welsh First Minister on these matters. It is not all about the constitution when there are issues of distrust. The change in that relationship is another indication of the broader areas of mistrust.

Having said that, it would be wrong to conclude that no positive working is taking place. There is still a lot of positive working among and between officials—it is part of their core business—but there is also some positive working at the ministerial level. I could point to some examples of that.

Dr Brown Swan: I agree. The tone of intergovernmental relations at the Executive level is quite poor and you can see a breakdown in trust. Part of that reflects the partisan dynamic, viewing things through the lens of the constitutional question. Nicola McEwen is right to say that the mistrust is not just because of the dynamics of who is in government in



Edinburgh and London—we see a similar dynamic playing out with Wales. However, I wonder if some of it is at the civil service level: it may be the result of the maturation of devolution, with institutions having matured and come of age and perhaps asserted their autonomy to a greater degree, so you do not have ongoing relationships between civil servants with people moving between places, personal ties, and professional working relationships that can help to underpin the dynamics.

Q86 Chair: That has come out very clearly in the evidence. There is a distinction between some of the political discourse that goes on around the constitution, constitutional affairs, and what is happening within the civil service. I think you are right to characterise those as good working arrangements.

We got the new review and the new system of intergovernmental relations was introduced in January 2022. At the heart of it was a commitment from the four Governments to maintain positive and constructive relations and trust. Do you think the new IGR machinery has helped to achieve that? I am looking at some of the reviews since 2022. They are mixed. They are not as gloomy and pessimistic as you might expect. There is a lot of positivity from the Scottish and UK Governments, although the Welsh do not seem to enjoy it as much. What is your view of the new arrangements? What have you observed?

Dr Brown Swan: I think it is quite early days so I would hesitate to render a verdict one way or another. However, I think that the agreement represents a positive step, particularly as we move out of this political period, which has been dominated first by Brexit and then by Covid. Perhaps we now have an opportunity for more normal politics. I might knock on wood here.

The first meetings between the Prime Minister and the heads of the devolved Governments were held in November 2022. Notably, there have been no meetings this calendar year and the clock is ticking but we have seen the inter-ministerial working groups meeting more regularly. Some of them have built on established ties between people who had already been working well together. A tally of who has been meeting and which groups have been meeting shows they have been built on existing ties and relationships, which I think is to be expected.

The structures seem fairly solid. They were informed by extensive consultation and consideration. However, political culture and dynamics and partisan dynamics will play their roles. You can have quite an extensive machinery, especially compared with what came before, but it is what we do with the tools that matters the most.

Q87 Chair: What do you make of it, Professor McEwen, after Dr Brown Swan's comment? The big innovation in the new arrangements is the Prime Minister of the UK and Heads of Devolved Governments Council, which met once in November last year. What is the point of creating this new infrastructure if it does not convene and meet?



Professor McEwen: I think that it should convene and meet and that it does have a point. The processes and procedures can help to underpin relationships, particularly in challenging times, but we should not expect too much of formal machinery. Political relationships will be improved when there is a will to improve them on the part of the players.

One thing that interests me about the new machinery is that it is obviously being used in variable ways—some parts meet regularly, some less frequently, and some appear still to be set up—and it is not quite clear why. As Coree Brown Swan said, the groups that are meeting are the ones that already had a culture of meeting. I am thinking more about the environmental and rural affairs space. Maybe it is a consequence of the regularity of meetings that these are also the forums where there tends to be more of a shared understanding of devolution and the respective roles of the different Administrations. That is important.

If meetings and the regularity of meetings can help to foster and nurture that understanding, it is to be valued. However, the machinery has to be used, and it is notable from the intergovernmental meetings dashboard that a lot of meetings are taking place but most of them are not taking place within the new formal machinery. I don't know why that is the case but there we have it. Of roughly 60 meetings a quarter, about 12 are using the new machinery.

Q88 **Chair:** We will come to issues of transparency, which I think are important. When all this was being set up, there was a commitment to becoming more transparent so that people could see how things were decided and worked out. You made a point about EFRA meeting regularly and a lot of the evidence we have heard has referred to that, but committees such as justice and health have not even been properly set up yet. We are talking here about Governments who were committed to doing this properly, making sure that the committees were set up, attended and doing their job. Is it not a failing that so far very little has happened formally, leaving aside all the informal meetings and other positive work?

Professor McEwen: We are moving towards the end of this parliamentary term and looking ahead to the next. Maybe if we were to have a Secretary of State with responsibility for intergovernmental relations, it might be better if that role were not to be housed within a portfolio Department. When that role was in the Cabinet Office, there was evidently a role and reach across the Administration, which may make it easier to do things at a more strategic level. I don't know if part of the reason why we are not seeing consistency is because we do not have that strategic lead at a departmental level that has reach across Government but it is something that I would like to see in the next session.

Q89 **Chair:** Any thoughts, Dr Brown Swan?

Dr Brown Swan: I agree with Professor McEwen. I think that there are opportunities but they come from leadership, an understanding of



devolution and whether engagement with the devolved Governments and Administrations is a priority for that leader and that Government.

Q90 Sally-Ann Hart: Our Chair has already asked some questions about the intergovernmental relations framework, but pushing a bit further and looking at the commitment from the four Governments to maintain positive and constructive relations and trust, does the success of the arrangements depend on political tolerance? For example, in Scotland and in Wales, there are different political parties; the Scottish National Party has a drive towards independence. Is that a block to constructive relations no matter which party is in Government in the UK?

Dr Brown Swan: I don't think so. Take the resurgence of and increased attention to intergovernmental relations. Arguably the intergovernmental relations that underpinned the Edinburgh agreement, which made an independence referendum possible, were between two parties very much opposed to each other on the question of independence, yet we saw quite productive and solid working. That has been tested and strained and we still have the looming constitutional question, but I think that probably a greater degree of consensus and common ground can be found on a lot of issues around environment and agriculture and so on. When negotiating things post-Brexit, a lot of what Governments have to agree on is pretty technical and outside the political sphere.

Professor McEwen: No, I don't think that is the case either. I often hear it said that because the SNP Administration is pro-independence, it does not want intergovernmental relations to work, but I do not think that is the case. I don't think that the SNP Administration invests as much in the system as the Welsh Government does, because the Welsh Labour Government needs intergovernmental relations to work, but certainly a wise Administration—pro-independence or not—would invest in making the system work because there is an in-built dependence there. The devolved Governments need IGR more than the UK Government needs IGR because they are dependent for resources and information flow and they are trying to influence decisions that will have an impact on their own responsibilities and roles.

It would not be a very robust system if it only worked when the political players agreed with each other, whether on policy or constitution. It has to be designed to work in the context of very different outlooks, not least because whatever the constitutional arrangements of these islands are—and that may well, in the future, be some fundamentally different relationship—even in that context, there will still be issues that require co-operation and co-ordination by virtue of geography and sharing these islands. Therefore, the system must be robust and it is in everybody's interests that that is the case.

Q91 Sally-Ann Hart: What sort of mindset do the UK and Scottish Governments need to adopt to encourage effective intergovernmental relations?



Professor McEwen: Mutual respect. I noted with interest the submission that you received from David Cameron reflecting on his own time, before he was in the Government again. He talked a lot about the respect agenda and that was real in the sense that it made a difference compared with what had been there before. There is definitely something about respecting the autonomy of each of the Administrations but also their legitimate interests in areas that affect their autonomy. That is one thing.

We have talked a lot about trust, and trust is very important, but you cannot just decide to trust. You have to build trust, and that is a much more organic thing that comes from shared experiences of working together.

There are numerous examples now, even in the heated political context we find ourselves in, that suggest that intergovernmental relations work well when the Governments have a job to do. I am thinking of positive recent examples around the renewal of the fiscal framework agreement, or the joint approach to Homes for Ukraine. These were projects, concrete things, that the Governments could work together and collaborate on. That tends to be when intergovernmental relations work better and when you can build trust—when it is on a genuinely joint endeavour.

Q92 **Sally-Ann Hart:** Do you think that to be effective, there should be a pipeline of projects worked on together and delivered by the Governments—joint projects where we respect the devolved Administrations, they have their autonomy, but that would promote better working relationships and better unity across the UK?

Professor McEwen: Provided they are not just in areas of devolved competence. Take an issue like net zero—a big challenge facing all the Governments and spanning devolved and reserved competence—or the reduction of poverty, another big issue that spans areas of devolved and reserved competence.

I was a little bit disappointed with the common frameworks process. It started with exactly the sort of thing we are talking about—finding ways that you might work together, collaborate and do things on a four-nation basis. They did not, a priori, have to always be in areas of devolved competence, but that is how it ended up and that starts to feel like a challenge to the autonomy of the devolved institutions. If projects are genuinely collaborative and address policy challenges that span areas of devolved and reserved competence, that could be quite productive.

Dr Brown Swan: There must be a sense of everyone having a stake in the game. Anything that risks being perceived as an attempt by the UK Government to force alignment—

Sally-Ann Hart: Or do something—



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Dr Brown Swan: —or to do something that would encroach on devolved competencies might risk undermining a project. A sense of having a stake and a sense of willingness to compromise are important.

One thing that stuck out for me when reflecting on intergovernmental relations and the quality of intergovernmental relations is that differing opinions are not necessarily a problem or a sign of poor intergovernmental relations. The goal is not necessarily to align everyone or come to a consensus. The goal is to share positions openly and constructively in an environment that can facilitate trust and mutual respect. Even when conversations are very difficult, even when there is going to be disagreement and no policy alignment, can you work through the disagreement constructively and positively?

- Q93 **Sally-Ann Hart:** Of the intergovernmental and inter-ministerial groups that work together, the Chair emphasised that EFRA has met regularly, as has the net zero, energy and climate change group. There is a common policy aim to meet net zero by 2050. In other Departments, meetings are infrequent or yet to be established. Is that because less co-ordination is required or is it due to political differences? Why have those meetings not happened?

Dr Brown Swan: I think it is probably due to a mix of reasons. I did a tally this morning. Education has met four times and tourism has met only once; in contrast, EFRA has met 15 times and net zero 12 times. Probably part of the reason is the sense that education and tourism are devolved so do not necessarily require co-ordination. It might be nice to come together and talk about common challenges in education—for example, how we are helping children to catch up post-Covid—but it is not seen as a political necessity or imperative. There may be issues with political will or desire or even capacity within Departments—it has been a busy few years—to set up groups to engage in the process. The explanation is probably a mixture of political will, capacity and need.

- Q94 **Sally-Ann Hart:** In devolved Administrations with autonomy in their devolved areas—education being one—there have been no or few meetings. If we do not want it to be seen as if the UK Government are doing something to the devolved Administrations, would it be for the devolved Administrations, in this case Scotland, to approach the UK Government to have meetings on an area in their remit rather than the UK Government suggesting an intergovernmental meeting? Where would it be best for that proactivity to come from?

Dr Brown Swan: It could come from either direction. The bodies have rotating chairs and an independent secretariat but they are structures that have been developed at the centre, so perhaps it is for the centre to take the initiative.

There are probably opportunities for policy learning, for the devolved nations and central Government to learn from one another, and it is perhaps a shame to miss out by not having these forums for discussion



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and sharing. However, there is a challenge there. For example, if the Department for Education is not used to working on devolved issues or thinking about devolution, where is the political imperative and incentive to engage?

Q95 **Sally-Ann Hart:** Professor McEwen, do you have anything to add?

Professor McEwen: Yes. It is important to have a purpose for meetings and that broadly that purpose is an agreed one. I was struck by Lord Wallace's recollections of meetings at the prime ministerial level where they met a few times but had nothing to do and people stared out of the window. There is no point in meeting unless there is a clear shared and joint purpose, which might be working on something together or might be, and often is, when the devolved Governments initiate something about an ask or a complaint that they have. It might be that there is a particular policy learning to share, say where there has been an innovation in public policy and the other Administrations are open to learning about it and sharing practice.

I would like to see the devolved Governments initiate more. One of the pluses of the new machinery is that it relies less on Whitehall to initiate; and hopefully, once the secretariat is up and running, a bit more resource will be made available to all the Administrations that might want to initiate something. However, they are not going to do it for the sake of it; there has to be something concrete to make for a meaningful discussion.

Q96 **Sally-Ann Hart:** Education is devolved but we have a problem with absenteeism across the UK. Is that a common issue that the Administrations could get together on to see where the best work is being done? Is that the kind of thing that you are suggesting?

Professor McEwen: Possibly, although presumably—I am not an expert—that would be at the local authority level. I am thinking of something like, yes, education is devolved but there are aspects of education where the boundaries are a bit fuzzy, particularly around higher education, for example. There are also intersections between policy areas and other areas. Higher education, for example, has some intersection with some of the responsibilities of the Home Office and external relations.

The downside of thinking about relationships purely at a functional portfolio level is that you may not see some of the complexities of the bigger picture. Public policy challenges are sometimes a bit more complex.

Q97 **Sally-Ann Hart:** What level of ministerial seniority should attend inter-ministerial groups and standing committees? Are they given high enough priority by the UK and Scottish Governments?

Dr Brown Swan: It depends on the policy area and function. If it is something quite niche, it is probably better to have people who are much more focused and can speak to the issues directly, even if they are at a



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lower level of seniority. Skimming through some of the communiqués, you see a mix of seniorities at meetings. It seems to depend on what is being discussed but also on who is available. While I don't think it would make sense to prescribe a level of seniority, it would make sense to have Ministers present for wide and overarching issues that are writ large. In other cases, it might make more sense for people who are on top of the technical and day-to-day details to be there.

Q98 **Sally-Ann Hart:** Such as civil servants, for example?

Dr Brown Swan: Yes.

Q99 **Sally-Ann Hart:** Professor McEwen, do you have anything to add?

Professor McEwen: Yes. I agree with Dr Brown Swan and think that roles and responsibilities should be intertwined for the most part. The one exception is that I think it is important that the Prime Minister attends the Prime Minister of the UK and Heads of Devolved Governments Council. That has been one of the biggest failings of the implementation of the joint review since it was presented. The current Prime Minister had one meeting quite early on in his premiership and that was received very positively within the devolved institutions, but it has not happened again. Neither of his predecessors invested any time or inclination in nurturing those relationships.

Notably, in evidence at the Covid inquiry, former Prime Minister Boris Johnson described it as optically wrong for the UK's Prime Minister to hold regular meetings with the devolved Administrations' First Ministers. It was clearly something that he felt was inappropriate, which, putting the UK into a comparative context, looks quite unusual. For these relationships to work and to be seen as a fundamental part of the United Kingdom as it is configured politically, it is important for the head of the Government, the Prime Minister, to take part in the formal forum of intergovernmental relations with the other leaders, even if only once a year.

Q100 **Sally-Ann Hart:** You said taken in a comparative context. In comparison with where, which countries?

Professor McEwen: Other countries with multi-level government. They may be federations—Canada and Australia for example—or they may be systems that have something more akin to devolution, as in Spain. Where a political system is intended by design to share power or disperse power among different centres of power throughout the country, where you recognise that and where there are first ministers with the authority of their respective governments, it is important to the success of that system to maintain a working relationship with the prime minister. It is a signal of intent, as indeed it was when the current Prime Minister attended that meeting; it reflected the importance the leader invested in the relationship. Theresa May, as Prime Minister before the current machinery was up and running, attended the Joint Ministerial Committee



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plenary. I suggest that it is an important investment of time by whoever is the holder of that post going forward.

Q101 **Sally-Ann Hart:** How often do you think the Prime Minister should meet the First Ministers of the devolved nations?

Professor McEwen: Once a year would be good.

Q102 **Sally-Ann Hart:** A minimum of once a year? Ideally, how many times a year?

Professor McEwen: Twice a year.

Dr Brown Swan: Yes, twice a year. I think annually becomes just a photo moment. More substantive engagement would obviously be welcome.

Chair: A clear answer to a clear question. Wendy Chamberlain, did you want to come in?

Q103 **Wendy Chamberlain:** Briefly, yes. We had the agreement to review in 2018 and the review was published in January 2022, which is obviously quite a long time. I accept that we had a degree of political upheaval as well as Covid during that time but I wonder about the impact of Covid. Is that the reason why we are having more informal meetings that are not within the new framework? Basically it was through the IMGs that existed during Covid that things got done? Has Covid had an impact on the success of the implementation of the new mechanisms?

Dr Brown Swan: Probably, to a great degree, but I think those informal meetings have always taken place and that is why one of the main challenges of intergovernmental relations from a parliamentary perspective is scrutiny, because so many of those meetings take place outside the formal mechanisms and forums.

I have heard that Covid was instrumental in co-ordinating mayors and having more regular meetings because meeting informally, via Zoom and Teams, became normalised as a way of facilitating their relationships. Perhaps a similar dynamic has played out with the devolved Governments.

Q104 **Douglas Ross:** Professor McEwen, you spoke earlier about how the relationship between the UK Government and the devolved Administrations could be improved but then you spoke about it going from the devolved Administrations to the UK Government. I think you said that you felt that Labour-run Wales rather than SNP-run Scotland had worked better. Why would that be? What is the motivation for the Scottish Government to not work as collaboratively as the Welsh Labour Administration?

Professor McEwen: That is not quite what I said.

Q105 **Douglas Ross:** I couldn't remember. Could you repeat it?



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Professor McEwen: If you are a Government—

Douglas Ross: If you could just repeat what you said. It was along those lines. I just want to get that for the transcript.

Professor McEwen: That is what I am trying to do. If you are an Administration that is invested in the success of the Union, which the Welsh Government are, I suppose it makes more sense that it would have done a lot of the thinking, the imaginative thinking, about alternative models to do that. In the early years of the Brexit process, it was the Welsh Government who were putting forward a lot of suggestions for quite radical ways to reform the way business is done between the Administrations. They published a number of reports that I would recommend your having a look at because they were very interesting and offered some new ways of working. None of them were taken up, possibly the—

Q106 **Douglas Ross:** Sorry to interrupt, but just to mention there, you will know and you will go on to speak about it that the Scottish Government also produced several reports at that time. Michael Russell did.

Professor McEwen: It did but they were not on intergovernmental—yes, you are absolutely right but in a different context.

You were talking about two Administrations, not just one that is pro-independence and one that is pro-Union but one that was dealing with the fact that Wales had voted for Brexit and one that was dealing with the fact that Scotland had not. The reaction to the referendum and its aftermath was, initially at least, quite distinctive. The Scottish Government were kind of challenging the legitimacy of the process as it applied to Scotland because they felt it was not representative, had not represented the people of Scotland's preference, and they were looking for different ways to opt out of the process, whereas the Welsh Government were starting from a different perspective.

I have to say that the Brexit process did see them work a lot together and share a lot of opinions, positions, approaches and frustrations, but they collectively worked together. Interestingly, that forged a stronger bilateral relationship between the Scottish and Welsh Governments.

Q107 **Douglas Ross:** But your comments, just to be absolutely clear, are only about the workings of the respective Scottish and Welsh Governments post the 2016 Brexit referendum?

Professor McEwen: On intergovernmental relations?

Douglas Ross: I am trying to get a better feel for why you felt one worked better than other and everything you have outlined is post-Brexit. Was that the change or did you think the Scottish Government had opportunities from 2007 to 2016, when they were a nationalist Government, to have done better with the UK Government in that period?



Professor McEwen: There were some changes in that period but the Brexit referendum and the process that unfolded from that added a sense of urgency for all of the Administrations because of the removal of the EU regulatory framework that had provided a scaffolding for devolution. There needed be to some way of working together. They all did that, particularly in the context of common frameworks, which were largely depoliticised in the sense that a lot of that was done by middle-ranking civil servants rather than at the ministerial level. It was about process and procedure and often quite technical, but that was genuinely a cross-Administration process that was productive. I believe that the frameworks that have been published now are used regularly.

Q108 **Douglas Ross:** Professor McEwen, last week, we heard from the Secretary of State for Scotland about a range of issues within the Scotland Office. Now that we are looking at 25 years of devolution, and without looking at the political element of any of these decisions, what is your take on the first usage of section 35? How do you think both Governments have worked with that on GRR and some of the issues that we have seen with the deposit return scheme as well?

Professor McEwen: A lot of this is not all that transparent, so my knowledge is partial, with deposit return there seemed to be quite a lot of collaboration again with DEFRA and the Scottish Government throughout the process as part of their regular engagement.

There are clearly political tensions going on there and I will leave those aside. One of the challenges that came through when I was doing a lot of interviews with officials around intergovernmental relations is that there can be a frustration from the devolved Governments. They are wanting a response and they have to wait on an issue going through the Whitehall machine; then, once positions are taken at the collective ministerial responsibility level, you cannot really change them. All of that tells me that there is some need and opportunity to have engagement much earlier on in the process with all of those who will be the relevant players.

Q109 **Douglas Ross:** As Alister Jack explained last week, he could not really have those discussions on GRR because 12 months ago the other Parliament I sit in at Holyrood was still debating GRR and potentially changing it to such an extent that you couldn't make a significant decision until you knew exactly what was going to come from the Scottish Parliament. Is that fair?

Professor McEwen: Probably. For reasons that you may be sympathetic to, I have avoided that particular issue, but I will focus more on the issue that is more familiar to me around exemptions, the exemption process around the UK Internal Market Act. Something can be done there to make the process a bit clearer, not just about how you might secure an exemption but how you might co-ordinate and whether we can put some sort of procedure around the timescale, what is shared, how long everything takes. Apart from anything else, it is an awful waste of resource if you get to this point in the process and then feel that you



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have to abandon a policy at the end. There is something about the process earlier on that could foster co-operation as well as facilitate autonomy.

Q110 Douglas Ross: Last week, the Secretary of State confirmed that hundreds of businesses were grateful that he took the decision on DRS because of the issues that they had been raising with the Scottish Government that they felt were not listened to. Dr Brown Swan, on these two policy areas? I do not want to get into the politics of it.

Dr Brown Swan: Of course. I cannot speak directly to those internal processes, but I think Nicola is right in saying this was the first test; the deposit return scheme was the first real test of the Internal Market Act and the implications for regulatory divergence. We saw it with the single-use plastics in both Scotland and Wales. There were concerns expressed during that process of the time it took to secure those exclusions. Hopefully, there will be lessons learned outside of the political wrangling over the specific policy areas. There are lessons, perhaps, to be learned in how that process works and ensuring that it works smoothly to support the scrutiny and political process but also the necessary certainty for those affected by policy and necessary certainty for businesses. There were perhaps some teething pains, to put it at the most basic level, in the sense of this was the first time working through that process.

Q111 Douglas Ross: I will move on from the politics to the civil service. We have a UK-wide civil service. We have a Scottish civil service that supports the work of the Scottish Government which is ultimately part of that UK-wide civil service. There has been a lot of discussion in Scotland this weekend about social media messages and posts that have been put up, not by the SNP as the governing party in Scotland or their Green partners, but by the independent Scottish Government social media pages. I will read one that says, "In the UK Government's autumn statement, only £10.8 million of extra funding was provided for NHS Scotland next year". That is a lie. That is simply not true. I am sure that you will both confirm that the UK Government give a block grant and it is then up to the Scottish Government how they spend that. Should language like that, which is clearly misleading, be used by an independent civil service-run Scottish Government social media page?

Dr Brown Swan: I missed out on this discourse at the weekend. There are probably codes that civil servants need to abide by and social media guidelines, and perhaps those need another look, but I cannot speak directly to those.

Professor McEwen: I have nothing to add.

Douglas Ross: Can I ask why?

Professor McEwen: Again, as you know, I have not been feeling very well. I am vaguely aware of the issue that you are raising but I do not



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particularly feel expert enough in social media codes and civil service codes to comment on that.

Q112 Douglas Ross: Given your long history involved in Scottish devolution which the Chair was very kind to point out earlier, have you seen examples—

Professor McEwen: I am not a social media expert.

Douglas Ross: No, but have you seen examples in the past 25 years of the Government taking quite a party political stance on what they say, rather than leaving that to the political party?

Professor McEwen: Government messaging, from all the Governments—it is a probably a fuzzy line: where are the boundaries of government? You see that across all the Administrations, but I am not an expert on the regulations that govern the civil service.

One thing I will add, leaving aside that particular issue, the system, particularly post-Brexit but also post-2016 settlement, is incredibly more complex than it was before. I know you have talked before about secondments and fostering understanding of devolution. There is an ongoing need to foster understanding even within the Administrations of the complexities of the settlement across the Administrations.

Q113 Douglas Ross: Finally, the Scottish Parliament has been sitting for 25 years since the 1998 Act. Where has Scottish devolution and the Scottish Parliament done well and where can it still do better? Off the top of my head, I am looking at committees. We have a robust exchange here, we have a Chair—whether you like him or not—elected by this House. It is very different in Holyrood, where the Government have a majority and they are appointed. Previously in this session with other witnesses, we have looked at the dual role of the Lord Advocate in Scotland being the head of public prosecutions and a member of the Cabinet. Are these areas that are positive in Scotland and could be better run here, or could be improved in Scotland or vice versa? Is there anything else that you think could be done differently to improve devolution in Scotland 25 years on?

Dr Brown Swan: I will refrain from making a sweeping verdict on devolution, but there are issues in every political system. The way that we grapple with and discuss those issues is really important. Every institution, particularly an institution that is moving into that majority, probably needs an opportunity to reflect and consider. It is for the parliamentarians themselves to say what is working and what is not working. I would like to see more discussion and perhaps more creative thinking on devolution and the way that Parliament functions and works. I teach Scottish politics every year and do this whistle-stop tour of the early years of devolution. We talk about the rainbow Parliament and the first principles and ideals of the Scottish Parliament.



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It is always a good idea, at these milestone moments, to pause and reflect and say, "Have we met these ideals of openness and inclusivity?" Rather than render a judgment, they are perhaps some questions to consider.

Q114 **Douglas Ross:** On that, we have had different iterations of the Scotland Act since 1998 because it has devolved more power. We have not changed anything in the Holyrood Parliament over the same period. Maybe that is something that we should look at. Professor McEwen.

Professor McEwen: Thank you. One thing where the Scottish Parliament might learn from and emulate the Westminster Parliament is the Committee Chairs. I would like to see more robust Committees and, at least, an experiment with elected Chairs to see if that invests more authority in the Chair. Also, more resources given to the Committees. We have talked about the increased responsibilities with each iteration of devolution, but it is the same number of parliamentarians doing a much bigger scrutiny job. I know it is not a very popular position to suggest that you might need more parliamentarians, but I think you do. You are stretched far too thinly across a range of important areas of responsibility.

The one strength that you might want to look at and consider for future UK Parliament is electoral reform. We now have over 25 years experience of proportional representation and it has been a positive thing in the Scottish Parliament. It would have functioned in a very different way had it been the same system. Should that debate emerge once again, there is lots to be learned from the devolved institutions in thinking about how that might work and how it might work well.

There are clearly some challenges around the operation of the Scottish Parliament. Let me rephrase that. There are some challenges around the operation of devolution but a lot of those are not to be found in the Scottish Parliament. One of the striking things about devolution in the UK is that it happened somewhere else outside of it. It happened in Scotland, Wales, and Northern Ireland. By and large, the centre carried on as before. If the system is to work well, particularly as the governance of England becomes more complex, as I anticipate it will in the years to come, there needs to be some imaginative thinking within Whitehall about how it restructures itself to adapt to what is now quite a complex, multi-level system of government.

Douglas Ross: Thank you, both.

Q115 **Chair:** Coming back to the UK Internal Market Act, I want to get your impressions and views about this. It has not proven to be all that popular amongst devolved Parliaments and Assemblies. Both the Welsh and Scottish Governments refused to give legislative consent, with the Welsh even initiating legal challenges to the Act. What does this suggest to you both about the UK's approach to managing internal markets across the United Kingdom? Obviously, they are assuming the responsibility of the



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European Union in areas that were devolved and operated under EU law. Is it working? Is it fit for purpose? Could we expect more disputes around it?

Professor McEwen: Last week, Coree and I held a constitutional policy lab to look at the United Kingdom Internal Market Act, three years on. We reflected on whether there was a more consensual model going forward. One of the fundamental problems around the UKIM Act was that it reshaped devolution in quite fundamental ways without the consent of the devolved institutions. It was not a good starting point in that sense, but we also took into that session an understanding that the issue was real, that leaving the European Union created new challenges around how you balance political autonomy with a domestic market and market unity, because that issue is also very important.

We came up with a number of suggestions, which we would be happy to share with the Committee, around ways that you might, within the context of the legislation, introduce some amendments that can help to rebalance things a bit; or, in the intergovernmental system and processes, ways that you can operate and deal with these new and real challenges on a more consensual basis.

Q116 **Chair:** Thank you. Dr Brown Swan is very keen to give us a couple of examples. Just before you do that, is there a general sense that this is something that has been done to the devolved Parliaments and Assemblies? Is that the general impression that kicks around Cardiff and Edinburgh particularly.

Dr Brown Swan: I think the devolved Parliaments would certainly say so. They withheld their consent. It was passed with some changes, some amendments, but that consent was withheld. You see that in the political discourse around the UK Internal Market Act. When we think about the importance of goodwill and trust, I think the process by which that was passed had a negative impact on that sense of goodwill and trust.

Managing the internal market is very complex. There needed to be legislation to underpin an internal market to prevent the kind of dramatic challenge or the economic consequences of inconsistencies within the internal market. Now we have it, and the question we tried to explore last week—we began with identifying the problems and then encouraging people to look forward to the solutions. There needs to be a way of working and perhaps that can be improved by closer relationships.

Chair: I think that this Committee would be very interested in your work on this issue.

Dr Brown Swan: Of course.

Chair: Anything you can provide to us would be very helpful, given that we are looking at this and the current condition of intergovernmental relations.



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Q117 **Wendy Chamberlain:** Thanks to both witnesses for being here. I want to pick up on the tail end of Douglas Ross's questions about what we can do to improve things. We touched on Select Committees but given that the Select Committees' role is in some respects to scrutinise the work of the Scotland Office, what role do we think the Scotland Office, the Wales Office and Northern Ireland Office should have in these ways of working? How should they be delivering it, Dr Brown Swan? In some ways I see them as interlocutors, but I am interested in your thoughts.

Dr Brown Swan: Yes, absolutely. They could be quite effective interlocutors in serving as a kind of intermediary, someone to call to express your views and to engage with on these thorny political issues. They have a degree of engagement, but that could be expanded over time. That is not just in Scotland, where the constitutional issue looms large, but in Wales and Northern Ireland as well.

Q118 **Wendy Chamberlain:** Professor McEwen, do you agree with that?

Professor McEwen: The value of the Scotland Office is to ensure that if there are any particular interests in Scotland in areas of reserved policy, these are reflected in decision making at Cabinet level. Obviously, there is also a responsibility for overseeing and maintaining the devolution settlement as a departmental responsibility and that that is functioning appropriately.

As an interlocutor, I am not so sure. Certainly, the devolved Governments tend to prefer and nurture portfolio-level relationships, and I don't think that is new. It was interesting that Lord Wallace also said that about his experience as a Minister as well. I think they see more value in those direct relationships, but if it was a more co-operative relationship than the one we currently have, there might be possibilities to unlock some things.

Q119 **Wendy Chamberlain:** Yes, that is part of the challenge for me. I absolutely see that you would want to get those relationships from a portfolio perspective. For me, that leaves this question: what does the Scotland Office do and what is it responsible for? I think that is one of the challenges. What do you see that it should be doing, Professor McEwen?

Professor McEwen: I am ambivalent as to whether there is continued value in separate territorial offices, or whether we might want to think about whether it is a better structure with a senior Minister who has overall responsibility for the territorial Union or the territorial constitution. I do not have a particularly strong view either way.

I still think there is value because there are an awful lot of reserved policy areas that have an impact within Scotland, and sometimes the issues for Scotland are not necessarily the same as they are for other parts of the UK, so it is having a voice there that can reflect that. I don't know the extent to which the Scotland Office does that right now, but



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that is potentially still an important role whether it is stand alone or within a sort of constitutional affairs department.

Q120 Wendy Chamberlain: If I think about the Committee inquiries that we have conducted, they have reflected the areas where there are reserved issues, but Scotland has an interest, so that is interesting to reflect on.

I will come back round to common frameworks. I recall when we were previously discussing this and the progress of the Internal Market Act and questioning Paul Scully, who was the BEIS Minister then, it was almost as if the position was that if the common frameworks were set up properly, the need for an Internal Market Act would be much diminished. I remember trying to get the Minister to come up with an imaginary product or service that would not be in a common framework but, therefore, would require the Internal Market Act. Do you think that we have not focused sufficiently on the common frameworks, given that so many are still in place provisionally, Dr Brown Swan?

Dr Brown Swan: There is always a need for some sort of overarching understanding of the UK Internal Market Act and the management of the internal market. We see this when we look at comparative examples, similar provisions or provisions to maintain a degree of economic coherence while respecting the autonomy of devolved or decentralised states. The common frameworks are quite interesting, and they are an area in which intergovernmental relations work quite well, and so perhaps that was undervalued in that process. I think Nicola has much more experience with the common frameworks.

Professor McEwen: I think that when common frameworks were initially conceived they were probably thought of—at least from the UK Government's perspective—in a slightly different way. They perhaps envisaged something that was more of a common regulatory framework, whereas, by and large, they have evolved to become ways of working and more about the processes of working collaboratively and sharing when things are happening in a distinctive way. That is part of the explanation for why we moved from there to a feeling that there was a need for a legal underpinning for the domestic market.

One thing I will add, because it has become really complex now, is how frameworks are governed, how the inter-ministerial groups operate and how the UK internal market is governed. I think that there is a real need to integrate those ways of intergovernmental working, because they are all over the place and that makes your job in scrutinising them all the harder.

Q121 Wendy Chamberlain: Is that why the DRS situation ended up where it did—because there was that degree of complexity and confusion on where the Scottish Government went. Could it be agreed via a common framework? Did it need to get an Internal Market Act exemption? Is that one of the reasons why we ended up where we did, Professor McEwen?



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Professor McEwen: Those processes are integrated. A common framework agreement is the route to an exemption under the UK Internal Market Act, but I think there needs to be a lot more clarity on how you go about doing that, the timescale of doing it, the different actors involved in it and at which stage, just so that it all becomes a little bit more efficient and less politicised so that nobody is wasting their time. One of the things that came up from the business and environmental sectors when we talked about this last week was the deep uncertainty that it has created for people, where they just do not know what the regulatory field will look like, and that is very unfortunate.

Q122 **Wendy Chamberlain:** Dr Brown Swan, I think that is back to the acceptance of the work that you have done, and your meeting last week, that it is the reality that Brexit has created a new situation, and it feels for business that they have been on that journey too. Do you accept that?

Dr Brown Swan: Yes, absolutely. They stressed the need for certainty, but they also stressed an acceptance that things might diverge and that there might be divergences in a multi-level system, but they needed time and certainty.

Wendy Chamberlain: So that they could make the right competitive decisions. Thanks very much.

Q123 **Alan Brown:** I will return briefly to the Internal Market Act and other legislation where the devolved Administrations withheld their LCM and the UK Government still introduced it. Is it fair to say that in the current climate the Sewel convention is almost dead in the water? I will start with you, Dr Brown Swan.

Dr Brown Swan: I don't think so. It was damaged and very much tested by the Brexit process, but I would hate to be unequivocal. It worked for so long. We saw that period pre-Brexit where there were 140 LCMs lodged and only one of them was rejected. As we move out of these less contentious political waters of Brexit and we begin to work within the new structure, perhaps we can go back—at least to a degree—to an understanding of Sewel and an understanding of the need for it.

Q124 **Alan Brown:** What needs to be done to restore confidence for the devolved Administrations so that the Sewel convention will be restored effectively or will become the normal working arrangement?

Dr Brown Swan: We need those commitments facilitated by good intergovernmental relations and clarity on what "normally" means. "Normally" is doing a lot of work in the Sewel convention. What does "normally" mean and is there an obligation on the UK Government to seek consent or to receive consent? Sewel needs revisiting in a pretty significant way. It has worked successfully in the past and I don't think we should write it off because it is not clear what the alternative would be.



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Q125 **Alan Brown:** What does “revisit in a significant way” mean? Professor Jim Gallagher, who used to work in the Scotland Office, told the Committee that what happened after the Internal Market Act and other legislation was leaving an argument for strengthening the Sewel convention unanswerable. He actually thinks that a lot more needs to be done, so what would that look like?

Dr Brown Swan: You might see some sort of memorandum of understanding, which would outline areas in which Sewel would be exercised or areas in which the UK Parliament would normally legislate; that could be spelled out in a greater degree. Also, can we reset that process going forward? It is an outstanding question, but if you had the political will to do so, Sewel could be re-entrenched.

Q126 **Alan Brown:** Professor McEwen, do you have anything to add? What are your thoughts on what needs to be done with the Sewel convention to restore confidence?

Professor McEwen: There are no easy answers to that. It is the subject of our next constitutional policy lab, so we will be able to be more forthcoming at that point too. However, It is absolutely crucial that this is addressed because the Sewel convention was the way to combine devolution with continued parliamentary sovereignty. If we want to have those two things running in tandem, we have to find ways to restore confidence in the Sewel convention. I do not think it is dead in the water in that it is still used routinely, but it has lost its power. It has lost its power if there is the broad understanding that withholding consent will not mean what it once meant if legislation is going to happen anyway.

What could you actually do? In addition to the things that Coree has already suggested, there is a job of work to be done in the House of Commons in particular but in the Lords, too, to think through procedurally what the responsibility of the UK Parliament is when consent is withheld. How do you want to introduce, implement and observe the Sewel convention? Is there a willingness to revisit the legislation, or to carve out areas, or to work together with the devolved institutions, to try to get towards a position where, whatever the stumbling blocks are, they can be amended and addressed to secure consent; and, if not, are there ways that you might have an opt out? I think it is not beyond the wit of us to design some sort of procedural process to try to give it meaning and restore its authority, where withholding consent is meaningful again. That does not really answer your question but it is important.

Q127 **Alan Brown:** That may lead to the new dispute resolution mechanism that has not been used yet. Does that have any basis for helping to underpin or resolve these things, or is that just a wish? I will start with you, Professor McEwen, and then I will come to Dr Brown Swan.

Professor McEwen: The new dispute resolution process in the context of the intergovernmental machinery, no, it has not been used much, and that might be a reflection of the fact that the machinery has not been



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used all that much. When disputes emerge, they tend to emerge in the world of politics and they are not emerging there.

The one positive thing about the new process is that it addresses the problem with the previous version of dispute resolution, in that any Administration can raise a dispute and it has to be recognised as a dispute if they are raising it. That seems a basic point but that was one of the biggest problems with the previous incarnation of us.

The Sewel convention is, of course, a legislative process, not fundamentally an intergovernmental one, although I think if you get to the point of consent being withheld via Sewel processes, that is a failure of intergovernmental relations, because ideally you would have addressed at a much earlier stage in the process the problems and concerns that led to that withholding of consent. The two things are related but I am not sure. The dispute resolution mechanism is a positive thing, but I don't think it helps us address some of the issues around Sewel.

Q128 Alan Brown: Thanks. Dr Brown Swan, do you want to add to that?

Dr Brown Swan: I agree with Nicola that it is a positive thing, but we will not really know until we see it play out in practice. The fact that you have to lodge a formal dispute perhaps encourages better intergovernmental working, because there is an emergency stop button, where Governments can feel able to negotiate to try to avoid such a situation. There is something available to them in that process, but again we do not know exactly how that will work.

Q129 Alan Brown: I know that it is hypothetical, and we still need to see it play out, but instinctively is it not that the UK Government are the majority partner in the dispute resolution so what is to stop them always having the final say as the largest partner?

Dr Brown Swan: I think that there are some provisions built into that dispute resolution. There is not a ton of detail about how that works just yet, but I think that there are provisions so that the disputing party cannot be the first or second chair. I think the fact that you have a multilateral intergovernmental relationship can help. Northern Ireland is always very complex, but we have seen quite strong working together between the Scottish and Welsh Governments, and they might have similar concerns, so I think you could see positive outcomes as a result of that process.

Alan Brown: We need more detail on how it plays out in practice.

Dr Brown Swan: Yes, absolutely.

Q130 Alan Brown: To change tack slightly, we are told within the UK environment that the Scottish Parliament is the most powerful devolved Administration in the world. Is there any academic or scientific basis behind such assertions?



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Dr Brown Swan: Yes. There is almost a league table of shared rule versus self-rule in a decentralised context. I cannot remember exactly where Scotland sits in this, but it really depends on what issue areas we are talking about. Scotland has quite extensive powers over education, in contrast to the Canadian provinces and so on. It is difficult to create a direct indicator measure of that, but the Scottish Parliament certainly has quite significant powers.

Q131 **Alan Brown:** That label is hard to actually prove, to say the least. Professor McEwen, do you want to add anything?

Professor McEwen: Yes. Going back to the split between self-rule and shared rule, I think of self-rule as the powers and responsibilities of the laws that can be made within Scotland, within devolved competence, and then shared rule being the ability to influence those areas that intersect with devolution. Comparatively, it is fair to say that the powers of the Scottish Parliament are up there among some of the most powerful sub-state institutions in the self-rule category, but in the shared rule category, in their ability to influence, they are much lower down the league table. There are always controversies around how we measure these things, and it is not an exact science in that sense. It depends on the lens that you take, but it is a powerful institution.

One of the ironies is that the more powerful it has become, the more vulnerable it is to decisions taken at the UK Government level over which it has no control. In fiscal autonomy, for example, the 2016 settlement gave a lot of powers over income tax, as you know, a lot of powers over aspects of social security and, by and large, a lot of responsibility over both of those areas. In a sense that left them more exposed to decisions over, say, macroeconomic policy, which is reserved, that might affect revenues, the economy, work-based capacity and all of those. Therefore, I think that there are quite fundamental problems with the 2016 settlement that we might need to revisit at some point because those problems might accumulate as the years go on.

Q132 **Alan Brown:** Before I ask what you think needs to be revisited, right now we have arguments about the budget. Obviously, despite the additional powers that you said came with the 2016 Act, it is a fact that the Scottish block grants have been cut for two years in a row in real terms when compared to inflation. We spoke about the clash over legislation. Does there need to be something done to improve the budget-setting process?

Quite clearly, with the block grant, what happens is that we have the autumn statement, the Chancellor stands up, he makes an announcement and says, "Here is the money that is going to the Scottish Government and here are some Barnett consequentials as well, so be grateful for the Barnett consequentials," but the Scottish Government get no sight of that. There are no discussions on need. The Chancellor determines how he spends and assesses needs in England and Wales and



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then Scotland gets a cut through Barnett, but that is not looking at the needs of Scotland and the Scottish Government have no say in that block grant. As well as the powers, is there a need for a more collaborative way of working in budget setting?

Professor McEwen: The Scottish and Welsh Governments are in this space too and are having to make budget decisions in response to decisions taken by the Treasury. The more responsibility you have there, the more significant those decisions will be. I know that the FisC has been meeting. I don't know the extent to which that process is working or not working. I think that the relationship with the tax authorities is very positive, but I am not sure about ministerial level. It would be interesting to see that in further evidence.

If I can touch on the powers a little bit by way of illustration. Obviously, there has been discussion around the tax decisions that the Scottish Government will make. Income tax bands and thresholds are devolved, but income tax policy is not and savings and dividends are not. You have such a lot of responsibility placed on that one source of revenue and not that many high earners in Scotland that can help to plug a gap. There are debates about whether that is the right way to go anyway, but the Scottish Government have to be mindful that it is not as simple as setting the rate and then expecting the revenues to flow because there are opportunities there, for example, for people to shift income into savings and dividends, which is not devolved. Therefore, you might lose some revenues as a result of that rather than gain, so it becomes very difficult to forecast.

The reason I said that the settlement might need to be revisited is because of some of the longer term forecasts that the Scottish Fiscal Commission has produced. A massive element of the budget is, of course, the NHS, and when the NHS becomes more successful, it becomes more expensive as medicines improve and expectations increase. Also, it is difficult to see the costs of financing the system of social security going in any direction other than upward, and of course, the more upward pressures on that budget, the more pressures there are in other areas as well. I think a dispassionate reflection on the 2016 settlement would be timely and important.

Q133 **Alan Brown:** Do you have any sense of any political will for looking at that in the round? Obviously that involves UK Government and changes again to what are currently reserved matters, so has there been any serious discussion of which you are aware?

Professor McEwen: Not at the moment. I want to suggest that every time there is a new settlement, it always comes with some sort of description like "It is built to last" or something like that. My own view of these things is that the system ought always to evolve because things happen; we learn from experience; we see how things operate in practice once they are introduced. New things come along, like Brexit, like Covid,



that may expose some of the weaknesses as well as some of the strengths. It is appropriate that we build periodic reviews into our scrutiny, just to see how things are working and that may be a better way than letting politics always be the driver.

Q134 Chair: Thank you. We said we would come back to transparency, and it was a really big feature in the review into Government relations announced in January 2022. What are your thoughts on this? There seems to be quite a considerable variation in the level of detail included in communiqués for different inter-ministerial groups. What do you think should be the type of information included in these communiqués? What is the ideal practice for that?

Dr Brown Swan: There is a need for more information, but there is also a need for Government and Ministers to speak quite frankly with one another, so it is a difficult tension or a difficult balance to maintain.

The communiqués have expanded a bit in length from when we first started looking at this. We need to know who is present, the substance and the various positions and, if any decisions were taken, what concrete outputs or agreements came out of those. I think it will help with the secretariat. There has been a vast improvement in the information available since the signing of the intergovernmental agreement, and hopefully the secretariat will help consolidate and ensure that information is available.

Q135 Chair: Should this be a matter exclusively for the secretariat? I am presuming that there will be input from ministerial partners, those that are attending, but how does it actually work? How do we see what is included in these communiqués?

Dr Brown Swan: We have seen a variety of processes, some of which have been informed by the MOUs adopted between the Scottish Parliament and Scottish Government and the Senedd and the Welsh Government, where they made a commitment to share the communiqués and to open up the intergovernmental relations to scrutiny, so we can see a changing process. In other decentralised states we see independent secretariats that are responsible for both co-ordinating meetings and putting out agreed outputs from those.

Q136 Chair: Thank you. Do you have a view of what should be included in these communiqués, Professor McEwen?

Professor McEwen: Yes. I think the best one is not one of the new ones: it is the Joint Ministerial Working Group on Welfare, which is the bilateral UK Government-Scottish Government one. The reason it is the best one is not only because it gives you details of what is under discussion but the structure of it. It starts with action points brought forward from the last one and ends with a summary of action points, so that you can see what actually happened and you get the follow-through. Certainly, from my interviews, one of the major frustrations with



intergovernmental meetings was that issues would be raised, the Minister would say, "I will take that away," and then nobody ever knew if anything happened. Therefore, having that follow-on is a positive thing.

I have to say that the information available is much better than it was, despite transparency not featuring prominently in the review's conclusions. However, there is certainly a lot more information available, and it is variable. Where there is still a weakness is in the formal role given to Parliament to oversee things.

- Q137 **Douglas Ross:** This is something that I asked one of our previous panels. Obviously, we all get very excited when we speak about intergovernmental affairs, communiqués and such like, and I am sure your students will be interested, but what is the wider public understanding or interest beyond their just wanting their Governments to work well together to deliver for them? Is there enough interest or understanding, or is this something that should be left to the back rooms to work out behind the scenes and the public get the public services that they want, Professor McEwen?

Professor McEwen: There is an interest, not necessarily in the minutiae of the processes, but in seeing that they work together or that they co-operate to deal with stuff. That is fundamentally about intergovernmental procedures. More than that, it is important for accountability that the more complex everything becomes, the more transparency there is around who said what and what they did or did not do, because that is core to the democratic process. Without the transparency around that, we are left with the "he said, she said" political claims of each Administration. There is a democratic duty around that.

- Q138 **Douglas Ross:** Who should take that forward? Is it for the Government to try to promote this more? Is it for this Committee? Who does that rest with? We had evidence last week from Laurence Rockey, the senior civil servant in the Scotland Office, who cited the figure—I cannot remember it off the top of my head—that a large proportion of Scottish voters still believe the UK Parliament is responsible for their health service, despite it being fully devolved to Scotland since 1999. Are there bigger issues that we have to overcome first before we can speak more about intergovernmental arrangements?

Professor McEwen: I don't necessarily see it as an ordering issue in that sense. Particularly relating to the points I was making about accountability, the more transparency there is around that, the more we might be able to nurture the sense of understanding of devolution and how it operates. I don't think it is an either/or.

- Q139 **Douglas Ross:** On whom does it rest; whose job is it?

Professor McEwen: Sorry, yes. Everybody's. It is our job as academics in science communication. There is a role for the secretariat. One of the disappointments for me, which I noticed in the terms of reference for the



secretariat that were published quite recently, is that it is very much being set up as something that serves the Governments in conducting their relationship. There is an obligation to produce an annual report, but then that goes to the Governments, and it is up to them to decide how they present that to Parliament. I would like to see more of a robust secretariat that can come to you, which can and should and ought to lay its report before Parliament, so that you can have more parliamentary oversight, rather than leaving it for Committees to decide that they want to do that.

- Q140 **Chair:** Last, I know when you guys come to our Committee there is always a list of complaints about where it is not working, grievances about process and how things could be done better, but there are examples where working between the two Governments has worked. We have examples here of green freeports, city region deals, investment zones. Why do they seem to work well, where on other matters all the different Governments across the UK might not reach that high standard? Do you have any thoughts about that? Silence from both of you.

Professor McEwen: I am sorry I was—

Dr Brown Swan: To put it diplomatically, I think if someone comes to you with money, you can be a bit more open. Particularly in this very constrained environment, no one is going to say no.

- Q141 **Chair:** It is all about giving money to lots of people; is that how it works?

Dr Brown Swan: There is an element of that, although I know Mark Drakeford was really critical of shared prosperity funds, which were viewed as a way of bypassing devolution, so there is a risk there of a sense of the UK Government exerting—

- Q142 **Chair:** We did not get a chance to explore some of that because of the tight agenda, but do you have any thoughts about that, Professor McEwen? Why does it work? Is it all about communities getting money for things that they like to do?

Professor McEwen: No. I think that is part of it, but the levelling-up funding, for example, did not work out quite the way that Lord Dunlop recommended it should. You might recall that in his report it was envisaged that that would be a co-operative, collaborative thing, and I think there may be some thought to go back to something like that as we reset intergovernmental relations.

At the very beginning I mentioned some positive examples that were not really about the money at all but where there were joint challenges that spanned devolved and reserved competence—the Homes for Ukraine, or when we had the COP in Glasgow a couple of years ago, or the fiscal framework. There are concrete things to work on and urgencies that often bring people together collaboratively, where they can set aside some of their differences



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Chair: I thought to try to end it on a positive note and I am glad that both of you played along with it reasonably well. We will leave it there. There is a couple of things you are going to send through to the Committee, the joint work that you are doing on the UKIMA, which I think you said you would help this Committee with if that is possible. Professor McEwen, thank you. I don't know how many times you have attended this Committee, but we always enjoy your presence here and your very helpful contributions. I hope you are better soon and get back to full fighting fit.

Professor McEwen: Thank you.