

Written evidence submitted by Dr Paul Anderson (IGR0004)

Scottish Affairs Committee

Call for Evidence: Intergovernmental relations: 25 years since the Scotland Act 1988

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1. I am Senior Lecturer in Politics at Liverpool John Moores University. For several years, I have been working on issues of UK devolution and intergovernmental relations (IGR). My forthcoming book, *Territorial Politics in Catalonia and Scotland: Nations in Flux* (Manchester University Press), examines the development of devolution and IGR in Scotland since 2010. I am making this submission in a personal capacity.

Intergovernmental Relations and Devolution

2. In the drafting of the Scotland Act 1998, little attention was paid to how relations would develop between the Scottish executive and UK government, with no mention of intergovernmental machinery in the 1997 White Paper, *Scotland's Parliament*. During the passage of the Scotland Bill in the House of Lords in July 1998, debate on how dialogue would be maintained between the UK government and Scottish executive led to the proposal for the creation of a 'joint ministerial committee', 'an entirely consultative body' to bring together representatives of the UK government and devolved administrations.ⁱ
3. Subsequently, the Memorandum of Understanding between the UK and devolved administrations published in October 1999 established the Joint Ministerial Committee (JMC). The JMC was set-up to provide, *inter alia*, 'central co-ordination' between the governments and 'to consider non-devolved matters which impinge on devolved responsibilities, and devolved matters which impinge on non-devolved responsibilities' as well as 'to consider disputes between the administrations'.ⁱⁱ The JMC was created as a forum for discussion rather than a co-decision making body.
4. In the first two terms of the Scottish Parliament, the experience of IGR was rather problem-free. This was largely a result of party congruence whereby the Labour Party was in power in Westminster, Holyrood and Cardiff Bay. There were some tensions between the Scottish executive and UK government (e.g. over policy decisions such as free personal care for the elderly), but such disputes were handled bilaterally and informally and outside of formal IGR structures. IGR in the period 1999-2007 was very much an intra-party affair.
5. Given the preponderance of bilateral and informal relations, the JMC fell into disrepair from 2003 onward. While the JMC Plenary was envisaged to meet once a year, no meetings took place between 2002 and 2008. Other subcommittees (e.g. on health, knowledge economy and poverty) equally failed to gather much steam and ceased operations by 2003. The outlier during this period was the JMC Europe. This was the most active subcommittee which met regularly (typically ahead of meetings of the European Council) to facilitate discussion on EU policy matters that affected devolved jurisdictions.

Managing IGR from 2007

Changes in government

6. More attention was paid to IGR in the aftermath of the SNP's election to government in 2007. Unsurprisingly, the change in executive (hereafter, renamed government) led some to assume there would be increased tensions between the Scottish and UK governments. This has certainly been the experience in other states where intergovernmental forums have become sites of competition between subnational and central governments.
7. In the case of the UK, however, there was little identifiable change in IGR after 2007, despite different parties in power in Edinburgh and London. The SNP government was instrumental in the resurrection of the JMC plenary but while periodic tensions emerged between the Scottish and UK governments, the Scottish government sought to cultivate close and amicable relations with various ministers and departments in Westminster and Whitehall. This seemed to form part of the SNP's political strategy to prove competence in government.
8. The change of government in Westminster in 2010 and the formation of the Conservative-Liberal Democrat coalition government likewise did not result in an immediate change in intergovernmental dynamics. David Cameron came to power promoting a 'respect agenda' towards the devolved administrations, though intergovernmental meetings (in the JMC plenary and JMC domestic format) remained limited to one or two meetings a year.
9. Changes in government from 2016 on, however, did affect the operation of IGR. The Theresa May government promised regular engagement with the devolved governments, but this did not translate into meaningful interaction vis-à-vis negotiations on EU withdrawal. Relations between the Scottish and UK governments were further soured under the Boris Johnson government, a consequence of Mr Johnson's muscular unionism strategy to maintain the Union (that is, seeking to preserve the Union by asserting the supremacy of the UK Parliament over the devolved institutions). This was particularly clear in the actions of the Johnson government in pursuing a centralised approach to withdrawing from the EU, with little regard for the perspectives of the devolved governments, and passing legislation despite the withholding of legislative consent by the Scottish Parliament. A similar situation prevailed during the Liz Truss administration. Prior to Liz Truss' appointment as Prime Minister she suggested 'ignoring' the Scottish First Minister as a UK government strategy towards the Scottish government. During Prime Minister Truss' short tenure she did not speak at all with the First Ministers.

The 2014 independence referendum

10. The formation of a majority SNP government following the 2011 Scottish Parliament election moved debate on an independence referendum closer to a matter of when not if. Despite diametrically opposing constitutional visions on the parts of the Scottish and UK governments, and different viewpoints about which institution had the power to organise a referendum, in 2012 Prime Minister David Cameron and First Minister Alex Salmond signed the Edinburgh Agreement to ensure the delivery of a fair and legal referendum on Scotland's constitutional future. Prior to the signing ceremony much work had taken place behind the scenes with both sides compromising on certain issues to facilitate the holding of a referendum.
11. The Agreement represented a success for intergovernmental relations and avoided much of the acrimonious wrangling that is found in other states with electorally successful pro-independence political parties. Noteworthy in the UK case was the conscious decision to solve disagreements on the referendum (e.g. a binary question versus multiple/multi-option

questions) politically via discussion between officials and ministers rather than, as has been the case in other states, recourse to the courts.

The Devolution of further powers

12. Both the Calman and Smith Commissions (published in 2009 and 2015 respectively) highlighted the need to enhance IGR between the Scottish and UK governments, particularly given their recommendations for the devolution of further legislative and fiscal powers to the Scottish Parliament. The Smith Commission, for instance, in cognisance of the increasing legislative and fiscal interdependencies between the Scottish and UK governments that would result from further devolution, called for IGR reform 'as a matter of urgency' with a view to 'scaled up' structures and 'greater respect' between the different governments.ⁱⁱⁱ
13. In response to the devolution of further fiscal powers in the Scotland Act 2012, a Joint Exchequer Committee (JEC) was established to facilitate the implementation of a Scottish Rate of Income Tax. These meetings took place from 2011, bringing together senior ministers and officials. In general, the JEC is well regarded by participants in the Scottish government, with rotating chairs and locations and allowing ministers to meet based on a parity of esteem.
14. Modelled on the JEC, in 2015 the Joint Ministerial Working Group on Welfare was established to ensure the smooth devolution and implementation of social security and employment-related powers as devolved in the Scotland Act 2016. Akin to the JEC, the welfare working group rotates chairs and locations and as communiquees from the meetings suggest, both governments value the forum as an opportunity to forge more positive working relationships on welfare matters.^{iv}

Withdrawal from the EU

15. In the aftermath of the referendum result to withdraw from the EU, IGR between the Scottish and UK governments significantly soured. After her appointment as Prime Minister, Theresa May came to office promising to enhance the voice of the devolved governments in the process of exiting the EU. The Prime Minister's rhetoric, however, did not match the actions of her government, which took a centralised approach towards the withdrawal process, displaying a unitary mindset that side-lined the perspectives and priorities of the devolved governments.
16. In 2016, following agreement of the UK and devolved governments, the JMC (EU Negotiations/ EN) was established to, *inter alia*, 'discuss each government's requirements of the future relationship with the EU' and 'seek to agree a UK approach to, and objectives for, Article 50 negotiations'.^v
17. From the get-go, the JMC (EN) was plagued by the typical problems of other JMC forums: information was not shared in a timely manner, meeting locations were organised with short notice, detailed minutes of the meetings were infrequently produced, and membership of the committee was dominated by the UK government. Further, despite the committee's terms of reference, there was little evidence of meaningful engagement on the part of the UK government with the devolved governments. In January 2017, in a speech at Lancaster House Prime Minister May set out the UK government's priorities for negotiating withdrawal. These priorities, however, had not been negotiated with the devolved governments. In its December 2016 paper, *Scotland's Place in Europe*, the Scottish government called for continued single market membership, but Prime Minister May

announced in the Lancaster House speech that the UK would leave both the single market and customs union. It appeared that little consideration had been given to the preferences or perspectives of the devolved governments.

18. Further evidence of the absence of meaningful engagement came only a few months later when the Scottish government learned of the UK government's intended date to trigger Article 50 after it was reported by news outlets. Given the lack of consensus over the negotiations and triggering of Article 50, the JMC (EN) failed in its primary objectives – there was no agreed UK approach to triggering Article 50 and subsequent negotiations.
19. While devolved governments were involved in JMC (EN) meetings, their attendance did not equate to being able to exert much influence over the UK government's Brexit strategy. That said, both the Scottish and Welsh governments used meetings to push for changes, specifically amendments to legislation, such as the European Union (Withdrawal) Bill. Tellingly, while relations between the Scottish and UK governments soured throughout the Brexit process, the Scottish and Welsh governments worked closely, often forming a united front to collectively exert pressure on the UK government.
20. A more promising feature of IGR as relates to EU withdrawal was the process of agreeing common frameworks to manage the interface between devolved and reserved competences post-withdrawal. There was agreement among all governments that common frameworks would be necessary, though in light of the ill-experience of the JMC (EN), the devolved governments made clear this would only work through collaborative working and a consensual approach. In general, the approach to common frameworks has been well-received by the devolved governments, particularly given the effort to ensure frameworks are mutually agreed with respect for devolution.
21. In assessing IGR during the withdrawal period, a mixed picture emerges. While relations between the Scottish and Welsh governments were strengthened, and the devolved governments were able to secure some important concessions vis-à-vis UK legislation, relations between the Scottish and UK governments were significantly challenged. The UK governments of both Theresa May and Boris Johnson in the pursuit of a Brexit crafted in their image, appeared to take little genuine interest in the priorities or concerns of the devolved governments, leading to relations characterised by acrimony and a lack of trust. Preparing for Brexit was, *par excellence*, a clear illustration of the weaknesses of IGR in the UK and the need for reform.

The Review of Intergovernmental Relations

22. The Review of Intergovernmental Relations published in January 2022 proposed the replacement of the JMC with a three-tier system of intergovernmental structures. The top tier, the 'Prime Minister and Heads of Devolved Government Council' (the Council), chaired by the Prime Minister and held annually has been established. The first meeting was held in Blackpool in November 2022.
23. The middle tier consists of two committees: an Interministerial Standing Committee (IMSC) to oversee the work of the lower-tier interministerial groups and consider cross-sectoral issues and wider strategic international matters, and a Finance: Interministerial Committee to discuss funding issues (F:ISC). The lower tier includes a series of Interministerial Groups (IMGs) which bring together representatives from the UK and devolved governments in a number of policy areas.

24. The Review identified a number of areas in which policy portfolio engagement should take place. It noted that some of these were already in existence and operated on a regular basis (such as on Environment, Food and Rural Affairs), but also called for the creation of other IMGs. To date, most of these have been established, but some (e.g. for the Department of Health and Social Care) remain on paper only. In line with the Review, these structures are supported by a standing secretariat. With the exception of some IMGs, the majority of the new IGR framework has been implemented.
25. In general, the mood music about the new structures from the different governments seems to be positive. Former Scottish First Minister Nicola Sturgeon described the first meeting of the Council in November 2022 as ‘cordial and constructive’, believing that both she and Prime Minister Sunak shared the same ambition ‘to build a good constructive working relationship’.^{vi}
26. The IMSC is envisioned to meet ‘every other month’, but to date only four meetings have been held. This is a similar story for the F:ISC, which while envisioned to meet less regularly than the IMSC (every quarter) has likewise been convened only four times. Notably, there were no meetings at the middle tier level between June 2022 and February 2023, with several meetings postponed by the UK government. This was clearly an eventful period for the UK government (with three prime ministers in a period of only three months), a consequence of which was an almost complete absence of intergovernmental interaction.
27. For IMGs, a mixed picture emerges. Some IMGs have met frequently (the IMG for Environment, Food and Rural Affairs has met 10 times since January 2022) while others have held only one meeting (e.g. IMG for Transport Matters). These meetings, nonetheless, benefit from rotating chairs and locations, as do the IMSC and F:ISC. As I argued elsewhere, ‘Rotating chairs and locations are a welcome advancement in UK intergovernmental relations, fostering a less hierarchical approach to intergovernmental interaction’.^{vii}

Dispute Resolution

28. The reform of the dispute resolution mechanism following a procedure agreed by the UK and devolved governments was a welcome development. This addressed one of the principal criticisms of the JMC whereby the UK government, even though it may be party to a dispute, decided whether or not to take a dispute forward. The new procedure made several changes including, criteria for escalation (stage one, consideration by the Secretariat, stage two by the IMSC or F:ISC and stage three, by the Council), the introduction of time limits (10 working days for the IMSC and F:ISC and one month for the Council), the ability to seek third party advice, and the reporting of dispute outcomes to the respective legislatures.
29. The F:ISC has its own dispute resolution process, though grounds for raising a dispute are limited to instances ‘where there is reason to believe a principle of the Statement of Funding Policy may have been breached’. As I argued in previous evidence to the Scottish Parliament’s Constitution, Europe, External Affairs and Culture Committee, to avoid potential disputes ‘this will require greater effort on the part of the Treasury to meaningfully engage with the devolved governments prior to, for example, changes to the Statement of Funding Policy.’^{viii}

Transparency and Parliamentary Scrutiny

30. The new framework is undergirded by a commitment from all governments to increase transparency of IGR through regular publications online and reporting to respective legislatures. One of the main issues with the previous IGR framework was a lack of transparency with little opportunity for legislatures to hold governments to account. Hence, the intentions of the governments in the new framework to enhance transparency is a welcome development, providing greater accountability and scrutiny of each government's actions.
31. There is an online space on the UK government's website which collates information relating to IGR, including the terms of reference for different committees and published updates after meetings. In the case of the Scottish government, similar communiqués are published after intergovernmental meetings, as well as published communications between ministers and parliamentary committees on IGR activity.^{ix} This is certainly a welcome development. Regular reporting of IGR is key to enhancing transparency, allowing both Parliament and the electorate to hold governments to account.
32. There is already an agreement in place between the Scottish Government and Scottish Parliament committing the former to give notice of meetings and agendas, share a summary of IGR meetings and publish an annual report on IGR. This is an important model of good practice. That said, given the increased interaction envisioned by the new framework, I believe there is a stronger role to be played by parliamentary committees in all parliaments to enhance scrutiny of IGR. Given IGR are dominated by governments, there should be regular and more effective scrutiny by parliamentary committees on intergovernmental activity. This could take the shape of cross-parliamentary scrutiny within legislatures (e.g. different committees within one parliament), or indeed, in an effort to enhance interparliamentary relations, cross-parliamentary scrutiny across different legislatures.

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ⁱ HL Deb 28 July 1998, Vol 592, cc 1487.

ⁱⁱ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/316157/MoU_between_the_UK_and_the_Devolved_Administrations.pdf

ⁱⁱⁱ Smith Commission (2014), *Report of the Smith Commission for further devolution of powers to the Scottish Parliament*, p 14; 5.

^{iv} For instance, see minutes from January 2023 meeting:

<https://www.gov.uk/government/publications/minutes-from-the-joint-ministerial-working-group-on-welfare/joint-ministerial-working-group-on-welfare-minutes-25-january-2023>

^v https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/562364/joint-ministerial-committee-communique-24-october-2016.pdf

^{vi} See, <https://www.heraldscotland.com/politics/23117122.nicola-sturgeon-rishi-sunak-hold-constructive-cordial-talks/>

^{vii} Paul Anderson and Johanna Schnabel. 2023. 'The UK's intergovernmental relations remain a work in progress', British Politics and Policy at the LSE Blog. <https://blogs.lse.ac.uk/politicsandpolicy/the-uks-intergovernmental-relations-remain-a-work-in-progress/>

^{viii} <https://www.parliament.scot/-/media/files/committees/constitution-europe-external-affairs-and-culture-committee/written-submission-from-dr-paul-anderson-and-dr-coree-brown-swan.pdf>

^{ix} See, <https://www.parliament.scot/-/media/files/committees/constitution-europe-external-affairs-and-culture-committee/correspondence/2022/letter-from-the-deputy-first-minister-to-the-convener--ceac-committee--interministerial-standing-co.pdf>