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Context

This submission focuses on the intergovernmental relations (IGR) dimension of the committee's inquiry into the governance of the United Kingdom (question 1). The reason for submitting evidence is our ongoing research investigating the new machinery of domestic intergovernmental relations. We focus on IGR in relation to UK-EU relations following the UK's withdrawal from the EU, particularly relations between the UK Government and the Scottish and Welsh Governments. Our emerging findings are based on semi-structured interviews with officials in Whitehall, the Scottish Government and the Welsh Government, complemented by expert interviews and documentary analysis.¹

1.0 The basis of the new IGR UK-EU machinery

1.1 Given the focus of our research on UK IGR in relation to UK-EU relations, the main intergovernmental forum arising from the new structures is the UK-EU Interministerial Group (IMG). This forum serves as the main ministerial-level forum for discussions between central and devolved governments regarding the UK-EU structures emanating from the EU Withdrawal Agreement (WA) and the Trade and Cooperation Agreement (TCA). The UK-EU structures in relation to the former are the Withdrawal Agreement Joint Committee (WJAC) and the 8 UK-EU forums where there is no devolved government representation. For the TCA, devolved government ministers have observer status on the UK-EU Partnership Council and devolved government officials are involved in preparations for and have observer status on other related structures, the Trade Partnership Committee, the Trade Specialised Committees, non-trade Specialised Committees and Working Groups.

1.2 Our understanding is that the basis for intergovernmental relations in relation to the TCA structures is the Lord Frost letter, dated 27.5.2021. It explains that when 'items of devolved competence are on the agenda' of a TCA structure body, the UK Government 'expect to facilitate attendance by Devolved Administrations at the appropriate level' but it places the discretion in this respect with the UK co-chair of the relevant body, depending on the nature of the discussion. The text therefore suggests some fluidity to the attendance of devolved government ministers. However, the letter is firmer in stipulating that the involvement of representatives in discussions preparing for TCA structure meetings 'should happen as normal practice', with devolved government officials likely to be involved as opposed to ministers.²

1.3 Outlining the intergovernmental machinery in relation to various UK-EU fora highlights that devolved governments' formal ministerial-level representation varies between them. It suggests ongoing inconsistencies in assessments of the degree to which devolved governments should be involved, and questions whether the five principles for intergovernmental relations established by the review are fully embedded in intergovernmental structures overall, e.g. 'mutual

¹ Current research in this area, '*Assessing the UK's new intergovernmental relations architecture post-Brexit*' Carolyn Rowe, Rachel Minto and Elin Royles, supported by the James Madison Trust.

² See Lord Frost, 'Letter from Lord Frost on engagement regarding EU matters' (UK Government, Cabinet Office, 2021).

respect for the responsibilities of the governments and their shared role in the governance of the UK’.

2 UK-EU IMG in practice

2.1 Whereas the UK-EU Inter-Ministerial Group has been meeting since 17 February 2022 and has held 6 meetings in the period up to early March 2024, its Terms of Reference (ToR) were only published in March 2024. No information regarding the committee was included on the list of Interministerial Groups available on the UK Government website and no communiqués issued by the UK Government on this IMG until the 6 March 2024 meeting. Our understanding is that the reason for this lack of formal adoption of the terms of reference and communication vacuum prior to this point was the lack of a functioning government in Northern Ireland and no ministerial representation on the committees until the March 2024 meeting. These circumstances have limited parliamentary scrutiny of this forum. It also highlights that despite having been established over two years ago, the new intergovernmental arrangements are in some respects still bedding in.

2.2 The UK-EU Interministerial Group’s Terms of Reference, confirmed in 2024, recognise that the UK’s devolved governments ‘have an active role in, and in places devolved responsibility for, the implementation of the Trade and Cooperation Agreement and the Withdrawal Agreement’. The IMG aims to ‘support constructive intergovernmental relations on these matters’ and to ‘facilitate meaningful ministerial engagement [on the TCA and WA]’. It is to ‘include understanding where common approaches may be taken and where views differ, in order to promote effective intergovernmental working, respect areas of devolved competence, strengthen existing communication and improve transparency. Ministerial engagement will be supported by ongoing official-level engagement’.³ These ToR effectively incorporate the principles and approach of the Review of Intergovernmental Relations and provide a basis on which to assess the effectiveness of these intergovernmental relations structures to date.

2.3 Our emerging findings suggest that in evaluating of the effectiveness of the UK-EU IMG, it is helpful to differentiate between two periods, February 2022 to September 2023, and September 2023 onwards. During the first period, there was no clear alignment between how the UK-EU IMG operated and the recently confirmed Terms of Reference. There are ample examples that suggest that this structure was not used to effectively consult the devolved governments. Examples include UK-EU Interministerial Group (IMG) being postponed, or meetings being held at very short notice (sometimes a few hours), making it difficult for devolved government ministers to attend. Furthermore, the meetings were not always well planned in advance with little opportunity for the devolved governments to inform the agenda. When they were held, they tended to be organised very close to key UK-EU meetings, thus providing limited opportunities for effective consultation or providing devolved governments with an opportunity to input into the UK’s position in those discussions. Instead, they seemed to have operated largely as an information sharing exercise on the part of the UK Government.

³ See <https://www.gov.uk/government/publications/interministerial-group-on-uk-eu-relations-terms-of-reference/interministerial-group-on-uk-eu-relations-terms-of-reference>

2.4 However, our emerging findings also suggest that the way in which the UK-EU IMG has operated since September 2023 is more in line with its Terms of Reference and in the direction of providing a means to effectively consult devolved government and promote collaboration and the avoidance of disagreements. A number of interviewees suggested that from the 11 September 2023 meeting, communication regarding the practical details of the meeting beforehand has been more effective, including with greater prior discussion of the agenda between the different governments. In addition, the more forward-looking content of the discussion focused on forthcoming UK-EU meetings provided greater opportunity for devolved governments to share their points of view for those discussions and an exploration of different positions prior to the meetings taking place. Our research also identified that the UK-EU IMG is considered in practice as the forum for escalating any issues that require ministerial-level involvement from the TCA committee structure engagement between the UK and devolved governments.

2.5 Based on our research into the UK-EU IGR arrangements, we can point to key elements that devolved governments consider as important to ensuring that the new intergovernmental structures maintain and improve relationships between the UK Government and the devolved governments.

They include practical and more organisational aspects:

- Good communication around meeting arrangements and planning
- Devolved governments involved in informing agenda development and being given advance notice of papers
- Meetings that are organised to be forward-looking in content and providing the UK Government with a sufficient time horizon to consider devolved government input, e.g. prior to forthcoming UK-EU meetings

Regarding to the nature of the consultation with devolved governments:

- Effective consultation is considered to be providing devolved governments with an opportunity to make representations to the UK Government, a space for there to be a two-way dialogue and seeking to identify common ground.
- There was a clear appreciation that the devolved governments would not always agree with the outcome as the primary aim is to develop a UK position. However, effective consultation was considered to be providing opportunities to feed in a view or position. As one interviewee explained: 'Not because that definitely leads to agreement, but actually it opens up a space in which ministers can seek to explore the extent to which positions could evolve to take account of the points that they are putting across rather than them either instantly being aligned or not aligned.'

3. Factors influencing the effectiveness of the new intergovernmental relations structures

3.1 Our emerging findings point to a range of different factors influencing the nature of relations between the different levels of government within the new intergovernmental relations structures.

3.1.1 There seem to be differences in interpretation of the extent to which some of the UK-EU relations impact on devolved competences and consequently the

degree to which the devolved governments need to be involved. If devolved governments are considered to be 'in direct scope', there are more conscious efforts on the part of the UK Government to more substantively engage the devolved governments.

3.1.2 The absence of Northern Ireland Executive ministers within the intergovernmental relations structures both impacted on the full organizational establishment of these structures and created imbalances within them until power-sharing returned in February 2024.

3.1.3 The context of party political tensions between different governments in the UK and the UK Government's attitudes towards devolution is considered to be impacting on the operation of the new intergovernmental relations structures. These aspects also highlight the ongoing impact of the repercussions of the high level of tension surrounding Brexit and the different attitudes towards EU exit. Party political differences also result in different perspectives on the European Union across the UK Government, Scottish Government and Welsh Government.

3.1.4 Official-level relations between different levels of government continue to be important and have a significant impact on the effectiveness of the new intergovernmental relations structures. Clear efforts are being made to develop positive official working relations and value was placed on proactive, close working at these levels. There were some suggestions that greater formalisation of the informal fora between officials could be beneficial to the operation of the new structures.

4. Conclusions

4.1 Our emerging findings suggest that the new intergovernmental relations structures are considered to be qualitatively better arrangements than predecessor arrangements, particularly by providing for more structured arrangements and with a dispute resolution mechanism now in place.

4.2 Whilst our findings point to the new intergovernmental arrangements moving in the direction of becoming a mechanism by which to maintain and improve relationships, it also points to the potential variability of intergovernmental relations under these new arrangements, particularly given the top-down dynamic of intergovernmental relations in the UK case and the impact of party politics on the operation of these mechanisms. Ultimately, official-level involvement continues to be significantly important to the operation of these new intergovernmental relations structures.

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