

Northern Ireland Executive Office – Written Evidence (GOU0013)

- 1. In the absence of the Northern Ireland Executive, how has Northern Ireland been represented within the new intergovernmental relations structures in place since January 2022 and how effective has this been? How, if at all, will this change now that the Northern Ireland Executive has been restored?**

In the absence of a First Minister and deputy First Minister from February 2022 until February 2024, Executive Office officials engaged with their equivalent colleagues in the other governments on operational matters related to the functioning of the new machinery for Inter-Governmental Relations (IGR). The Head of the Northern Ireland Civil Service also attended meetings of the Inter-Ministerial Standing Committee (IMSC) in an observer capacity. Executive Ministers other than the First Minister and deputy First Minister continued in office (under the provisions of the Northern Ireland (Ministers, Elections and Petitions of Concern) Act 2022) until 28 October 2022, at which point they ceased to hold office. Until then, they were able to participate in portfolio Inter-Ministerial Groups (IMGs). Only one meeting of the Prime Minister and Heads of Devolved Governments Council (The Council) took place, in November 2022, and this was attended by the Head of the Northern Ireland Civil Service, again, as an observer. With the return of the NI Executive, Ministers have taken an active role in all relevant IGR meetings and business, including the First Minister, deputy First Minister and Junior Minister Cameron attending the most recent IMSC on 12 March 2024.

- 2. How could the intergovernmental relations structures be enhanced to better promote joint working?**

We consider it too early to propose any enhancement to the structures. The current structures were developed and agreed following a lengthy process of discussion between the four governments, and all have demonstrated a commitment to their operation. Practical issues arising from the implementation of the IGR agreement are resolved at official level forums, established to oversee its operation. In addition, the creation of an impartial Secretariat has provided a valuable resource for administrative support and co-ordination of business across the governments.

- 3. Given the restoration of the Northern Ireland Executive and Assembly, to what extent will the Northern Ireland Executive's engagement with the intergovernmental relations structures be scrutinised by the Northern Ireland Assembly? What arrangements are in place to facilitate such scrutiny?**

The IGR agreement contains a presumption that the relevant legislatures will be informed of matters relevant to the conduct of Inter-Governmental Relations, although it is a matter for each government as to how this is effected. Northern Ireland Ministers are under an existing statutory obligation to make a statement

to the Assembly following participation in meetings of the North South Ministerial Council and British Irish Council. No formal arrangements have been put in place for IGR, but Ministers will be responsive to any requests for information and the benefits of statements to the Assembly following significant developments or significant decisions at meetings, will be considered as appropriate.

4. Has the Northern Ireland Executive used the dispute resolution process and if so, to what effect?

One dispute was raised, but while there was an absence of an Executive, this could not be progressed. The process was further paused due to the General Election. The relevant NI Minister is now considering whether to re-commence the process.

5. On 21 March 2024 Rt Hon Michael Gove MP wrote to Baroness Drake, the Chair of the Constitution Committee, and said: "I share your view that the restoration of devolved institutions in Northern Ireland will make it possible to make substantial progress in implementing Common Frameworks." What progress has been made to date? When do you expect the Northern Ireland Executive to have signed off on the 28 common framework agreements that are currently operating on a provisional basis?

Following the return of the Executive and a functioning NI Assembly, Executive Office officials have been working jointly with their Scottish, Welsh and UK Government counterparts on the processes to finalise Common Frameworks once all relevant legislatures, including the NI Assembly, have had the opportunity to provide scrutiny of the recommendations. Finalisation will take place once recommendations from legislatures have been taken into account and the Common Frameworks have undergone a quality assurance check.

6. Would the new intergovernmental relations structures be more effective if they were placed on a statutory footing?

Placing the structures ie. the Council, the IMSC and the IMGs on a statutory footing could confer an enhanced status on them but may not necessarily make them more effective. A statutory footing would be of limited practical value unless the processes and obligations underpinning the structures were also made statutory and included appropriate sanctions for breaches of agreements. It could also open up the prospect of legal challenges with the consequent implications for resources and relationships.

7. What role does the Northern Ireland Office play in improving communication and consultation between the UK Government and the Northern Ireland Executive? Is the Northern Ireland Office the route through which the Northern Ireland Executive engages the UK Government on policy issues, or does it sometimes engage directly with the relevant Whitehall department? If so, what determines the approach?

The Executive will be involved with the NIO, either on a bilateral basis or with other Whitehall departments, on specific issues, and we recognise the valuable

role which the NIO can play in presenting NI issues and considerations within Whitehall. It is, however, not the sole route through which the Executive engages the UKG: most departments will have direct links with their Whitehall counterparts - these links will reflect relationships built up over time on policy or legislative issues; formalised relationships through, for example BIC or IGR structures; or the increasing involvement of other Whitehall departments in devolved matters, for example the Ministry of Housing, Communities and Local Government (formally DLUHC).

8. Historically, to what extent has the Northern Ireland Executive been consulted prior to legislation being introduced in the UK Parliament that alters its executive competences? What impact has this had on the executive competences of Northern Ireland ministers?

Experience in this area has been variable and there have been instances where significant legislation has been introduced with short periods of notice to the devolved administrations, despite evident implications for them. Westminster legislation does not usually alter the legislative competence of the Assembly, other than when concurrent regulatory powers are taken to allow Secretaries of State to legislate in devolved areas after consultation with the relevant NI Department.

9. What has been the consequence of the Northern Ireland Assembly being unable in recent years to grant its consent to UK bills legislating in areas of devolved competence? What difference will the Assembly's restoration make?

The consequence has been that the inclusion of devolved matters in Westminster Bills has not received the consent of the Assembly. The return of the Assembly means that, subject to the agreement of the Executive Committee to the inclusion of the relevant devolved provisions in a Westminster Bill, the Assembly's consent will now routinely be sought. The Assembly may either consent or withhold consent.

10. Has respect for the Sewel convention eroded or strengthened in recent years? If so, what has been the cause of any such development?

Given that in recent years it has not been possible for the NI Assembly to provide legislative consent, we are not in a position to offer a view.

11. Is there a case for updating the Devolution Guidance Notes? If so, do you have any priorities as to which sections require updating and how?

There would be merit in updating the Guidance Notes to reflect the new IGR arrangements and to provide amendments to reflect updated circumstances, for example, the devolution of policy and justice in Northern Ireland.

12. Is there any scope to strengthen the Sewel convention. If so, how?

a. Would there be any benefit in introducing a statutory 'duty to co-operate' among the governments of the United Kingdom, similar to that which exists among European Union states?

b. Alternatively, is there an argument for abolishing the Sewel convention altogether and replacing it with an express statutory provision that Westminster will not legislate in areas of devolved competence?

(A) As suggested earlier, statutory duties are only useful insofar as they are accompanied by provisions relating to the consequences of breach of the duty, including negativising, appeal or imposition of sanctions.

13. What are the implications of the UK Government:

a. Using delegated legislation in areas of devolved competence, with or without consultation or consent?

b. Using Henry VIII powers to alter acts of the devolved legislatures?

(A) As suggested earlier, statutory duties are only useful insofar as they are accompanied by provisions relating to the consequences of breach of the duty, including negativising, appeal or imposition of sanctions.

4 September 2024