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The Scrutiny Gap

This submission relates principally to the following element of the inquiry:

“The procedural steps required to facilitate greater joint working between committees of each of the UK’s devolved legislatures and committees of the House, for purposes including shared scrutiny of intergovernmental working on policy areas of common interest.”

Summary

Two features of current devolved arrangements have arguably produced a *scrutiny gap*: a dualist understanding of devolution that does not always pay adequate attention to shared and interdependent competences and a tendency for these matters, especially finance, to be left to relations between executive branches in London and Edinburgh to the exclusion of respective Parliaments.

Key points

Debate has tended to assume a dualist understanding of devolution with two categories of responsibilities and powers: devolved and retained. This *dualist* understanding ignores substantial areas of shared and interdependent competences and powers. Significant fiscal devolution since 2016 has added further complexity to shared and interdependent arrangements. This contributes towards weaker effective shared scrutiny. Greater recognition of shared and interdependent areas, especially fiscally, is required to address the scrutiny gap. Institutional design acknowledging this interdependence is required. Fiscal policy is governed by the *Fiscal Framework*, a complex intergovernmental agreement that was negotiated with little input from either Westminster or Holyrood.

A recurring problem is the extent to which the timetables for the UK, Scottish and local budget cycles are interdependent but operate separately. This interdependence is now also marked by the greater volatility, complexity and uncertainty arising from the devolution of further financial powers and the Fiscal Framework agreement between the two governments. Consequently, the timing of the publication of the Scottish Government’s draft budget and the time available for parliamentary scrutiny are inextricably linked with the timing of publication of the UK budget as is the time available for local authorities to adequately consider and plan budgets.

Brief overview of new system and interdependent institutions

When the Scottish Parliament was set up in 1999 it was a spending Parliament with very little revenue rising powers. This changed with the Scotland Acts 2012 and 2016 which devolved wide-ranging fiscal powers resulting in an increase in the Parliament's budget rising from c.10% to c.50%. This change has often been described as providing Holyrood with greater fiscal responsibility. As former Scottish Auditor General Caroline Gardner has noted, 'We've seen a shift from a spending parliament to one that needs to balance spending with revenue and manage much greater complexity, volatility and uncertainty'.¹

Part of this complexity, volatility and uncertainty is a result of the shared, interdependent nature of the changes brought about by the 2012 and 2016 Acts. A key concern raised by the Independent Budget Process Review Group, set up jointly by Holyrood's Finance and Constitution Committee and the Scottish Government, was the need to take greater account of the different components of the Scottish budget – revenues, spending, borrowing and reserves – which in turn are interdependent with decisions made through intergovernmental agreements between Edinburgh and London. A summary explanation of the new system is available [here](#).

The Fiscal Framework has a number of interconnected elements that link decision making in London and Edinburgh:

- Block Grants determined by the Barnett Formula;
- Devolved taxes, shared taxes and non-tax income;
- Block Grant Adjustments to account for the devolution of elements of the UK tax and welfare system;
- Reconciliation payments (payments to correct for earlier forecasting errors); and,
- Borrowing (with complex rules governing how much, and for what purposes).

This has required new institutions and processes including the Scottish Fiscal Commission (SFC) and Social Security Scotland (SSS), as well as a new role for the Office for Budget Responsibility (OBR) and new obligations on Her Majesty's Revenue and Customs (HMRC). While the SFC and SSS report and are accountable to the Scottish Parliament alone – the effect of their work impacts upon areas of reserved competence. Yet there is no role for the UK Parliament in scrutinising their work.

In the same way the OBR is accountable to the UK Parliament, and yet it is the OBR who are responsible for producing one of the key components of the fiscal forecasts that underpin the size of the resource budget available to the Scottish Parliament each year. Similarly, new responsibilities have been placed on HMRC, HMT and DWP as part of the fiscal framework agreement – but they are solely responsible to the UK Parliament. It is perhaps reasonable that accountability is to a single entity but scrutiny ought not to be.

¹ Gardner, Caroline (2019), 'Scrutiny and Transparency' in Jim Johnston and James Mitchell (eds.), *The Scottish Parliament at Twenty*, Edinburgh, Luath Press Ltd., p.102.

While the existence of public bodies operating across areas of devolved and reserved competence is not itself new (the Food Standards Agency is a good example that predates further devolution to Scotland) this now intrudes significantly in devolved budgeting. This had the inevitable effect that informal mechanisms have had to be developed to provide avenues for information sharing and scrutiny.

None of this is to criticise the organisations involved in facilitating the Fiscal Framework as these bodies have engaged constructively in engaging with the UK and Scottish Parliaments but we note that if we are to have interdependent decision making in key areas, we need to provide clear mechanisms by which this can be subject to scrutiny by both the devolved and UK Parliament.

These are current issues of concern. For example, during the pandemic HM Treasury took the (welcome) decision to provide minimum guaranteed levels of funding to the Scottish Government outside of the normal Barnett Formula mechanisms. But how is such a significant financial decision scrutinised by either (or both) Parliaments? This was a decision by a UK Government with significant (positive) implications for the devolved Scottish Budget. Interdependencies can bring with them political controversies too which can create opportunities for disagreement. Such controversies can often add to challenges in scrutiny.

A further recent example concerns the Scottish Government's decision to pay a 'bonus' to NHS workers of £500, accompanied by a demand that the UK Government waive the tax that NHS workers would incur from this payment (as whilst decisions over tax rates and thresholds are devolved the definition of the tax base remains reserved). In the subsequent political debate that ensued the perception created by both sides was that the outcome could have been better if only the 'other side' had taken a different decision. The interdependencies of the system created the potential for a political argument to develop which arguably erodes confidence in the underlying policymaking process.

Role of Parliaments

Accountability and scrutiny are key functions of Parliaments. The cross-party Consultative Steering Group, established to consider operational needs and working methods of the Scottish Parliament, proposed four key principles, which were in turn adopted by the Scottish Parliament:

- the Scottish Parliament should embody and reflect the sharing of power between the people of Scotland, the legislators and the Scottish Executive;
- the Scottish Executive should be accountable to the Scottish Parliament and the Parliament and Executive should be accountable to the people of Scotland;
- the Scottish Parliament should be accessible, open, responsive, and develop procedures which make possible a participative approach to the development, consideration and scrutiny of policy and legislation;
- the Scottish Parliament in its operation and its appointments should recognise the need to promote equal opportunities for all.

Efforts to improve scrutiny and accountability have arguably been challenged by the extension of fiscal competences that were, at best, afterthoughts in negotiations between governments. Holyrood has had to try and adapt and design new processes and mechanisms to scrutinise its new powers after decisions have been presented as *fait accompli*. These new responsibilities require careful consideration of the adequacy of existing scrutiny arrangements. These developments added to shared and interdependent complexity without comparable increased resourcing or recognition of the need for new (interdependent) scrutiny arrangements.

Complexity and timing

In contrast to the early years of devolution where the Scottish Government's budget was entirely determined by a block grant determined by the Barnett formula, it is now also influenced by devolved tax revenues and non-tax incomes, a block grant adjustments (BGA) for devolved taxes and welfare, any reconciliation payments (+ve or -ve) to correct for the effect of earlier forecasting errors, and borrowing.

- The Barnett formula is by now well known, and translates changes in UK Government spending on 'comparable' services in England into an equivalent (population share) change for Scotland. Once UK Government spend is known for a given year this is relatively straightforward to work out.
- Devolved (and shared) taxes have to be forecast, and this is done by the SFC in Scotland.
- The equivalent BGAs are estimated by the OBR but ultimately decided by HM Treasury.
- Reconciliation payments are the result of differences between outturn revenues (calculated by HMRC) and these forecast revenues.
- Borrowing can be undertaken for differences between forecast and outturns and during a 'Scotland specific shock'.

It is in this context that some procedural and timing problems have emerged in recent years that create anomalies in the budgeting process. These became clear during the pandemic.

In early 2021 an issue emerged that affected the 2021-22 Scottish Government budget round. This stemmed from the timing of the SFC forecasts for the devolved taxes, which were released alongside the draft Scottish Government budget document, compared to the OBRs forecasts of UK wide taxes which were released to coincide with the UK fiscal event a couple of months earlier in November 2020. In the interim, there had been significant economic news: a further lockdown had taken place late in 2020 and into 2021 which was not anticipated in the OBR's forecasts.

The effect was that the conditions for a 'Scotland specific' economic shock were unlocked², providing the Scottish Government with additional fiscal flexibilities. However, this was purely an artefact of the timing of the two forecasts and not a reflection of evidence of differential underlying economic performance. Had the OBR

² A Scotland specific economic shock is defined as where: annual GDP growth in Scotland, on a four-quarters-on-four-quarters basis (4Q-on-4Q), is below 1.0 per cent and 4Q-on-4Q growth in Scotland is 1.0 percentage point or more below the UK.

produced new forecasts coincident with those of the SFC this situation would likely not have occurred.

Setting aside the question about how to mitigate against asymmetric sub-national economic shocks, no one can think it sensible that the timing of component forecasts has significant influence upon the fiscal envelope that devolved administrations have access to. In this case it erred in the right direction of providing additional flexibilities, but it is not hard to see that it might do the reverse reducing the resources available to the devolved administration. It goes without saying that the sums involved are small in a UK context, and while the impacts at a devolved level could be significant, a bigger issue is the transparency of the framework.

While each Executive will seek to maintain its own flexibilities with respect to the timing of fiscal events, the devolved administrations are in a relatively fixed budget cycle with significant uncertainty over UK Government spending decisions (particularly given the recent move away from longer term spending review settlements) which continue to have a significant impact on the resources available to the devolved administrations. The adoption of formal processes and procedures to ensure better alignment of forecasts necessary for the calculation of devolved budgets, as well as other measures to provide greater surety to devolved administrations about future UK Government spending plans, seems to us an essential area of focus.

Conclusions

In contrast to what is often thought to be the case, devolution in the UK is based on an interdependent and not dual model. Powers are exercised not in exclusive domains but often in the same domain with interdependences clear between the decisions of one level of government and the other. Yet these issues are rarely thought through, and even more rarely are steps taken to recognise this interdependence in developing processes for executive scrutiny.

In this submission we have sought to illustrate a series of issues that have emerged through the operation of new fiscal and social security powers to the Scottish Parliament. In doing so we have highlighted the important impact that the approach to operationalising these powers has had on the twin issues of accountability and scrutiny.

We believe that the issues identified in this submission are good examples of the practical challenges that need to be addressed given the increasingly complex nature of policymaking in the UK. These would be excellent areas of focus in designing new cross parliamentary procedures and approaches to support improved scrutiny and policymaking in the UK. Such reforms would not be easy and would likely require a change in the way in which parliamentary scrutiny is undertaken in the UK. But with greater interdependencies now evident in UK policymaking – and arguably only likely to increase in the years ahead – now is the time to have such debates. Ideas such as the possibility for annual or twice-annual shared committee hearings between key UK and devolved committees are worthy of consideration.

This submission is based on joint research into the operation of the Fiscal Framework in Scotland, and specifically the ways in which this has affected the accountability and scrutiny in this area in the Scottish Parliament