Welcome to our Newsletter

by Jane Williams & Professor Nicola McEwen

Welcome to the fourth edition of our newsletter and happy birthday to us 🎂

It’s been one year since the External Experts Panel was established as a pilot.

The External Experts Panel was set up to provide a means of supplementing existing means of contracting expert advice on behalf of parliamentary committees - principally the Finance and Constitution Committee, the Culture, Tourism, Europe and External Relations Committee and the Social Security Committee. These committees are at the heart of work that is done in relation to the implementation of the Scotland Act 2016 provisions and on Brexit. The broader purpose is to exploit the evident opportunity to promote knowledge exchange during a period of intense change in a way that supports the activities and priorities of the Scottish Parliament while meeting the needs of a wider expert grouping.

As a pilot the intention has always been to review how the External Experts Panel has worked so we will be contacting those who have supported the Panel over the past year to learn from your experiences of what works well, as well as, not so well.

Please share your views with us so we can enhance the future effectiveness of the Panel.

Also on the horizon is a seminar involving the external expert panel in Autumn 2018 so keep an eye out for further details.

Since the last newsletter Brexit has continued to dominate the work of the Parliament with the introduction of the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill on 7 March 2018. The Bill completed its passage through the Scottish Parliament in 2 weeks and is currently before the Supreme Court, to determine whether the legislation is constitutional and within devolved powers. We have more on other areas of Committee activity later in the newsletter.

Despite this domination, Committees are beginning to look beyond the 29 March 2019. The Finance and Constitution Committee recently launched an inquiry into common frameworks and also held a lively roundtable discussion on how EU funding should be replaced, post Brexit. Both of these issues are covered in more detail in this newsletter.
Forum Fun ... 4th meeting of the Inter-parliamentary Forum on Brexit, 21 June, House of Commons

Andy Proudfoot, Clerk, Delegated Powers and Law Reform Committee

As outlined previously in this newsletter, the Inter-parliamentary Forum on Brexit brings together parliamentarians (primarily conveners and chairs of constitutional, EU and secondary legislation committees) from Westminster, Edinburgh and Cardiff, along with officials from Belfast. It looks to bolster inter-parliamentary dialogue within the United Kingdom to support more effective scrutiny of the UK Government’s handling of Brexit.

After last being hosted in the Scottish Parliament in March 2018, the Forum held its fourth meeting at the House of Commons in June. Following updates from each jurisdiction and a discussion on the recent passing of the European Union (Withdrawal) Bill (now of course an Act), participants heard from the Institute for Government on its report ‘Devolution after Brexit’ before agreeing a statement on the current system of inter-governmental relations in the UK.

The next meeting will be hosted by the National Assembly for Wales in late October. This will provide the Forum with an opportunity to consider the work many of the participating committees have completed on the UK leaving the EU as well as look at the how the progress of Brexit-related secondary legislation is working at each legislature.
News from the Scottish Parliament and its committees

Culture, Tourism, Europe and External Relations Committee

The Committee began February by taking evidence, from the Minister for UK Negotiations on Scotland’s Place in Europe, Michael Russell MSP. The focus of the session was on the Scottish Government updated document on ‘Scotland’s Place in Europe: People, Jobs and Investment’.

This was followed by evidence taking on the Scottish Government’s ‘UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill’ and also on the UK’s future trade policy in the context of the Article 50 negotiations. Expert panel members Dr Gracia Marin Duran (UCL) and Dr Matias Margulis (Stirling) were among those who gave evidence on trade policy.

In May the Committee took evidence on UK common frameworks. Professors Keating, McEwen and Tierney provided evidence on this issue. The Committee's Brexit related activity concluded with an evidence session on the Article 50 Negotiations with UK Government Ministers from DExEU and the Scotland Office.

TELL ME MORE

FOR MORE INFORMATION:
Contact Stephen Herbert
Email: stephen.herbert@parliament.scot

Inquiry into common frameworks launched

‘Common Frameworks’ has emerged as the new term to describe those agreements between the UK, Scottish, Welsh and Northern Ireland Governments designed to ensure that post Brexit a UK approach is taken in key policy areas where previously a common EU approach was taken.

In its Interim Report on the European Union (Withdrawal) Bill, the Finance and Constitution Committee noted the importance of ‘common frameworks.’ The delegated powers supplementary memorandum published alongside the Clause 11 amendments to the Bill explains that the powers conferred by Clause 11 are required to allow the creation of common UK frameworks where these are required following Brexit. The proposed Intergovernmental Agreement states “that this is likely, in whole or in part, in 24 areas” where “common frameworks with a legislative underpinning may be required.”

The UK Government has published a framework analysis setting out areas of EU law that intersect with devolved competence in Scotland, Wales and Northern Ireland. This states that there are:

- 49 policy areas where no further action is required;
- 82 policy areas where non-legislative common frameworks may be required; and
- 24 areas where legislative frameworks might be needed.

111 of these areas fall within the devolved competence of the Scottish Parliament. In addition the framework analysis includes 12 further policy areas that the UK Government believes are reserved but are subject to ongoing discussions with the devolved administrations. There is no legislative provision within the Bill stipulating which areas within the framework analysis will be covered by Clause 11 regulations.

Given the future importance of these agreements the Finance and Constitution Committee has launched an inquiry into Common Frameworks, initially seeking written views on a number of key questions:–
What should replace the current EU policy-making processes across the UK;
Addressing the governance gap in relation to the monitoring, implementation and enforcement of frameworks;
The interaction between frameworks and the negotiation of new international agreements including free trade deals;
Funding of obligations and commitments arising from frameworks.

The Committee would welcome written submissions dealing with the issues outlined above and any other relevant views in relation to the development and agreement of common UK frameworks.

The Call for Evidence for this inquiry and details of how to send your views are available online. Deadline: 31 August 2018.

This work will be complemented by international research and a visit to Brussels to explore current experiences of intergovernmental working.

TELL ME MORE

FOR MORE INFORMATION:
Contact Jim Johnston
Email: james.johnston@parliament.scot

Membership changes underway

Just as we concluded our business before the summer recess, the First Minister made a series of changes to her Cabinet, the result of which was that a number of members of committees became ministers in the Scottish Government. The following members have now left the relevant committee.

Culture, Tourism, Europe and External Relations Committee
- Marie Gougeon MSP (SNP)

Finance and Constitution Committee
- Ash Denham MSP (SNP)
- Ivan McKee MSP (SNP)
- Kate Forbes MSP (SNP)

Social Security Committee
- Ben Macpherson MSP (SNP)

Details of their replacements (and any other potential changes) are expected to be made as we start business again in September.

Clerking team changes

In addition to some of the members of committees changing, we’ve also rotated some members of the clerking teams that support our three committees. You can contact us as follows.

Culture, Tourism, Europe and External Relations Committee
- Stephen Herbert, Clerk to the Committee (stephen.herbert@parliament.scot)

Finance and Constitution Committee
- Jim Johnston, Clerk to the Committee (james.johnston@parliament.scot)
- Jane Williams, Senior Assistant Clerk to the Committee (jane.williams@parliament.scot)

Social Security Committee
- Dougie Wands, Clerk to the Committee (dougie.wands@parliament.scot)
- Anne Peat, Senior Assistant Clerk to the Committee (anne.peat@parliament.scot)
Replacing EU funding: is Barnett the answer?
by David Phillips, Institute for Fiscal Studies

The UK is due to leave the EU at 11pm on March 29th 2019. However, current plans imply that we will continue our regular contributions to the EU’s budget and take part in EU schemes supporting farming, regional economic development, science and innovation and a host of other areas for another 21 months after that. That means we have some time to get the design of new programmes to replace these EU schemes right.

A key issue is how funding will be allocated to the various nations and regions of the UK. In its recent consultation, the Scottish Parliament Finance and Constitution Committee asked whether said funding should be brought under the purview of the Barnett Formula. Doing this would give the Scottish Government maximum discretion over how to spend its allocation – block grant funding subject to the Barnett formula comes with few strings. And despite its overall controversy, on a year-to-year basis, the formula avoids the wrangling and horse-trading that a more discretionary approach could lead to. It might therefore seem like an attractive option.

However, the Barnett formula isn’t well suited to allocating funding for regional development, agriculture, or science and innovation. Indeed, many researchers and commentators – including the author – have argued it is fundamentally flawed and isn’t well suited to allocating funding full stop. Why is that?

The Barnett Formula aims to give each nation the same cash-terms pounds-per-person change in funding. It takes no account of differences in initial levels of funding per person, in funding needs, or in the outcomes delivered. Funding need – measured by things such as levels of GDP per capita, and agricultural land area – has been core to determining funding allocations for regional development and agriculture since the outset of such programmes. Innovation and research funding is typically allocated on a competitive basis, often using peer review processes – to help ensure the best proposals with the biggest impacts get funded.

Giving each country the same pounds per head funding change can also lead to a squeeze in funding over time for devolved governments if funding levels for England are increasing in cash-terms over time, and the devolved governments initially receives more funding per person. For existing EU programmes, that is true for Scotland, Northern Ireland, and especially Wales.

This is because a given cash increase is a smaller percentage increase that higher the initial level of funding. Such a squeeze could be particularly brutal for Wales, which currently receives over 3.5 times as much funding per person as England, driven by the high levels of funding allocated to West Wales and the Valleys – one of the poorest regions in western Europe.

To see this, let’s run a thought experiment. Assume initial allocations to England and Wales were based on current EU allocations. Further, assume that inflation is 2% a year and funding for England increases by 2% above inflation each year – roughly in line with long-term economic growth. The Figure over the page shows what would happen.

While funding per person in England would be growing in real-terms – by about 1.5% a year after population growth -, funding in Wales would be falling. By almost 1% a year in the 2020s and 0.5% a year in the 2030s. By 2015, funding would have fallen from more than 3.5 times the English level to less than 2 times. Similar – albeit less dramatic – squeezes would also take place in Scotland and Northern Ireland under such circumstances. And they would happen even if funding needs in the devolved nations rose relative to England. This seems far from desirable and, especially in the case of Wales, a major political block to using the Barnett formula.

If funding in England was actually cut, we would instead see a Barnett ease rather than squeeze – relative funding levels in the devolved nations rising. In his submission to the Scottish Parliament Committee inquiry, Professor David Bell showed that application of the Barnett Formula could see Scotland continuing to receive hundreds of millions a year for agricultural
funding – even if such funding were abolished in England. Again, as well as undesirable such a scenario seems politically untenable.

Projected levels of replacement funding per person if Barnett Formula used for allocation

Source: Authors calculations using EU funding data, ONS population projections, and assumptions stated in the article

So if the Barnett Formula is not suitable, how should funding be allocated? The key thing is that the allocation method is compatible with the aims of the replacement programmes. That is likely to mean different methods are used for funding for farming, regional development and science and innovation.

Lots of decisions will need to be taken. Take regional development funding, for instance. Should allocations continue to be based largely on GDP per capita, or should other factors like household-level deprivation play a role? Should funding continue to be so targeted at those areas with the highest assessed needs or does that create a ‘poverty trap’ for regions? How frequently should allocations be updated to account for changes in needs? Should the funding be ring-fenced for the same kind of purposes EU funding is or should there be discretion to spend on broader public services and quality of life? Should strategic decisions on funding be taken at a higher level than now (e.g. UK level) or devolved to a regional or local level? And what state aid rules would have to be put in place to avoid damaging market distortions and risk to new trading relationships?

Similar and equally as important – and potentially controversial – questions need addressing in agriculture and innovation funding too. The detail will be incredibly important. But deciding just what the aims of the funding are is the vital first step in getting the detail right.
On Friday 15 June 2018, the Futures Forum, the Scottish Parliament’s Finance and Constitution Committee and the Royal Society of Edinburgh brought together a group of experts from throughout Scotland to consider the long-term sustainability of Scotland’s public finances.

The seminar was part of Scotland’s new budget process, which is designed to include a long-term outlook and focus more on prioritisation, addressing fiscal constraints and the impact of increasing demand for public services.

As part of the process, the Scottish Government published a Medium-Term Financial Strategy for the first time on 31 May 2018. At the same time the Scottish Fiscal Commission published revised forecasts for devolved tax revenues and Scottish onshore GDP growth forecasts and demand-led social security expenditure.

With this information, this seminar considered the Scottish Government’s expectations on the outlook for public finances over the next five years and explored the long-term sustainability of Scotland’s public finances.

Participants heard from Derek Mackay MSP, Cabinet Secretary for Finance and Constitution, along with a panel discussion featuring Caroline Gardner, Auditor General for Scotland, Dame Susan Rice, chair of the Scottish Fiscal Commission, Professor David Bell, Vice President of the RSE, and Jeremy Peat, Vice Chair of the RSE’s Business Innovation Forum.

Cabinet Secretary Derek Mackay MSP talked through the Scottish Government’s recently published Medium-Term Financial Strategy, which outlines the context and framework that the Scottish Government is operating within, along with a range of scenarios, an outlook, and the key commitments from the Government.

The Auditor General for Scotland, Caroline Gardner, provided some context to the discussion, noting that the proportion of devolved spending that is raised directly in Scotland increases about fivefold, from around 10% of spending in 2014-15 to around 50% as all the new powers come into effect. That means the shift from a spending Parliament to one that balances spending with revenue raising in much more complex ways.

As chair of the Scottish Fiscal Commission, Dame Susan Rice spoke about the Commission’s recent economic and fiscal forecasts. The Fiscal Commission view remains that an overall pattern of slower growth is likely to persist for the next five years. Significant factors include modest productivity growth and a declining population in the 16 to 64 age group although Brexit also contributes to the outlook.

Professor David Bell, Vice-President of the Royal Society of Edinburgh, people-related challenges: ageing, migration and skills. He noted that the working age population is declining slowly (which will have an important effect on tax revenues) and the older population is increasing quite rapidly. At the moment, there are 1 million people aged over 65; by 2031, there will be 1.5 million.
Jeremy Peat, economist, focused on the macroeconomic outlook. With potentially low growth and reduced tax revenue forecasts, the budget is going from tight to tighter. Options to address this include encouraging skilled migration, determining priorities for physical and digital infrastructure, and establishing a productivity commission to consider both high and low skills sectors.

Workshop groups considered Scotland’s strengths, weaknesses, opportunities and threats, along with the priorities for action. This included suggestions to:

- Improve links between business and young people
- Understand future skills needs better and improve lifelong learning
- Rethink the tax system to make it more robust to changes in employment and ageing and ensure that it is redistributive
- Offer incentives to grow SMEs and keep people in an “employed” status, ensuring the tax take stays in Scotland
- Position Scotland as an ethical voice in the context of new technologies, in skills and in certain industries
- Focus on future ways of working and the need for more evenly distributed connectivity, and link in to the natural assets of Scotland.

A full event report, including delegate list, is available on the Futures Forum website.

TELL ME MORE

FOR MORE INFORMATION:
Contact Jane Williams
jane.williams@parliament.scot

The event will contribute to the Parliament’s consideration of the Scottish Government’s budget and provide a longer-term context for discussions in the Finance and Constitution committee.
Revised process for parliamentary budget scrutiny

By Jane Williams, Senior Assistant Clerk, Finance and Constitution Committee

This year sees the start of a new budget scrutiny process agreed by the Scottish Parliament and Scottish Government following work undertaken by the Budget Process Review Group. Under this new approach scrutiny of the Scottish Government’s budget will be a continuous year round process whereby Committees undertake outcomes based budget scrutiny as part of their ongoing inquiry and legislative work drawing on a basket of evidence rather than just a draft Budget document.

Diagram 1: Evidence available for Committees to consider

This new process arose in response (in part) to new tax and welfare powers added to the Scottish Parliament’s responsibilities. This will result in the Scottish budget moving from a situation where the vast majority of its discretionary spending power came from a block grant from Westminster (under Scotland Act 1998) to a situation where approximately half of the spending power of the Scottish budget comes from taxes raised in Scotland (under Scotland Act 2016).

The move to year round scrutiny will mean that during budget evaluation and formulation Committees will consider which aspects of the budget to pay particular attention to, informed by a range of evidence, and focused on outcomes. This culminates in each Committee’s pre-budget report setting out views on the delivery and funding of existing policy priorities, any proposed changes and how these should be funded. Under the new approach following publication of the budget bill and budget documentation in December each year, Committees receive Ministerial responses to their reports and can then question Ministers further on how the budget addresses their areas of concern. The formal budget bill process then takes place (as now) in January and February each year.

New to the budget cycle is the Medium Term Financial Strategy (post UK Spring Statement) which was published for the first time this year and the Fiscal
Framework Outturn report (expected in September each year). Both add valuable context to budget scrutiny in terms of a medium term view of Scotland’s public finances as well as the operation of the fiscal framework.

After 18 years of the previous approach, success of the new budget approach will also depend upon cultural change. With this in mind two seminars were recently held between Scottish Parliament, Audit Scotland, Scottish Government and public sector representatives to discuss the impact of the new process. Whilst welcomed as providing an opportunity to improve scrutiny, the challenges of shifting budget scrutiny to a longer term view of the bigger picture were also recognised by those attending.

Moving away from focusing solely on the ‘numbers’ to also include scrutiny of outputs and outcomes will also be key to delivering the new approach successfully.

Finally the demands of the new year round process on the wider public, private, third and academic sector also cannot be overlooked as Committee engagement looks to explore the budgetary aspects of whatever policy or Bill is under consideration. One of the ways that can be achieved is through wider knowledge of how the new approach works so please read *The SPICe Guide to the new budget process*. 

Diagram 2: The year round budget process
Dr Tobias Lock, Senior Lecturer at the University of Edinburgh Law School has been awarded a British Academy Rising Star Engagement Award (BARSEA). The award will allow Dr Lock to create the “Brexit and Rights Engagement Network”, consisting of 12 early careers scholars working at universities in all parts of the UK. Over the course of the next year, the network will hold three roundtable events (in Edinburgh, Belfast and London) dedicated to the broad theme of Brexit, rights and devolution.

Report: Final report of the Welfare Conditionality Project | Dr Sharon Wright

Lost in Brexit Transition? | Dr Tobias Lock

Crisis, Headache or Sideshow? | Professor Nicola McEwen

Reasons to worry about the Future of Scottish Devolution | Professor Aileen McHarg

Is Small Always Beautiful? | Professor Michael Keating

Can the Sewel Convention Survive Brexit? | Professor Michael Keating

Is the UK ready for a Norway-style deal? | Professor Michael Keating

Westminster is taking Edinburgh and Cardiff to court – but it faces difficulties even if it wins | Akash Paun

The Scottish Parliament has rejected the Brexit bill – are we heading for a second independence referendum? | Akash Paun

Tax devolution is welcome – but the system increasingly lacks coherence | Akash Paun

Why devolution matters to fisheries policy? | Centre on Constitutional Change

Report: Scotland Will Struggle to Compete for Migrant Workers | Centre on Constitutional Change

By others

Contributing to the first full-scale review of Lords scrutiny committees in a quarter-century | Brigid Fowler, Hansard Society

The EU Withdrawal Bill raises questions about the role of smaller opposition parties in the legislative process | Louise Thompson, University of Surrey

Is Parliament Fit for Purpose? | Mark Bennister, Canterbury Christ Church

The Potential Impact of Institutional Collapse on Northern Ireland’s Public Accounts Committee | Clare Rice, Queen's University Belfast

On Brexit, sooner or later we will have to talk about immigration | Joe Owen, Institute of Government

The Legislative Supremacy of Government | Professor Stephen Tierney

Reforming working-age social security: lessons for policy makers | Nicholas Timmin & Paul Gray, Institute of Government

Evidence provided by various members of the External Expert Panel

Professor David Bell gave evidence on 13 June to the Finance and Constitution Committee of the Scottish Parliament on the funding of EU competences.

Professor David Bell provided written evidence on Preparations for Replacing EU funding for Wales: Evidence for the Finance Committee of the National Assembly for Wales
PARLIAMENTARY REPORTS & BRIEFINGS

All reports & research briefings published by the Scottish Parliament are in our new Digital Hub.

Recent reports and briefings from SPICe include:

- Attracting and retaining migrants in post-Brexit Scotland: is a social integration strategy the answer? Dr Paulina Trevena
- Will fishing be discarded in the Brexit, negotiations? Damon Davies
- The Scottish Government's Five Year Financial Strategy, Ross Burnside
- The impact of Brexit on Scotland's growth sectors, Tena Prelec
- Scotland's Economic Performance, Economy, Jobs and Fair Work Committee
- EU Engagement and Scrutiny by the Committees of the Scottish Parliament 2017-2018, Culture, Tourism, Europe and External Relations Committee
- Report on European Union (Withdrawal) Bill Supplementary LCM, Finance and Constitution Committee

FORTHCOMING EVENTS

- Making Sense of Parliaments, Political Studies Association, Parliaments Group, 8-9 November 2018, Belfast
- Identities, democracy and Brexit
  UK in a Changing Europe, University of Bath, 3 September
- Researching Brexit: between activism, engagement and the perils of neutrality
  UK in a Changing Europe, University of Bath, 4 September
- Brexit: a degree of clarity
Who’s who?

Members of the External Expert Panel

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