

**Evidence for the Constitution, Europe, External Affairs and Culture Committee**

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*Intergovernmental Relations*

**Overview**

- 1.1 This submission draws on a report *Reforming Intergovernmental Relations in the United Kingdom* co-authored with N. McEwen, M. Kenny, and J. Sheldon. It draws on evidence about how intergovernmental relations (IGR) works in five broadly comparable multi-level political systems - Australia, Belgium, Canada, Italy and Spain and made recommendations for reforms of the UK's system of IGR, some of which were included in the 2022 Joint Review. This submission also draws upon more recent and ongoing ESRC-funded work, conducted by Professor Nicola McEwen (Edinburgh) and myself which examines the management of internal markets in Australia, Canada and the United Kingdom, with particular attention to the intergovernmental forums and mechanisms which underpin these economic unions.
- 1.2 The UK's intergovernmental machinery is characterised by its largely ad hoc nature. In some respects, this has allowed for a flexible response to new challenges as they emerge. However, the absence of more routine and formalised intergovernmental machinery, especially when compared with other states, has had repercussions for the administration, operation and transparency of IGR. Over time, a consensus has emerged which suggests that existing arrangements for intergovernmental relations are not fit for purpose. Specific criticisms include the ad hoc nature of JMC meetings, held on the terms of the UK government, the lack of institutional support, low levels of transparency which inhibits scrutiny by devolved legislatures, and the absence of mechanisms for joint decision-making and dispute resolution.
- 1.3 The vote to leave the European Union and the protracted and contentious negotiation process shone further light on the weaknesses of the system, at a time when more coordination was likely to be necessary. The Covid-19 pandemic cut across the competences of the devolved and UK governments, necessitating coordination on the response to the public health crisis, and subsequent economic impacts. Coordination initially took place under the auspices of COBRA and the Ministerial Implementation Groups, but this regular communication ceased in summer 2020.
- 1.4 In the face of concern about the quality of IGR, a joint review was commenced in early 2018. The *Review of Intergovernmental Relations*, published in January 2022 and agreed by the devolved and UK governments, outlined core principles, including: mutual respect; effective communication; sharing information; accountability; and an agreed process for dispute resolution. The principles are not statutory. It is still too early to evaluate the efficacy of these reforms but they mark a positive step towards a more institutionalised, and hopefully, more cooperative system of IGR.

**Brexit and IGR**

- 2.1 Despite initial commitments to collaboration following the 2016 vote, the Withdrawal Act and the Internal Market Act were passed in the face of opposition from the

devolved governments and legislatures, placing further strain on relations between the devolved and UK governments. The realities of a post-Brexit economic system, outside of the structure of the European Union single market, are likely to necessitate a greater degree of coordination.

- 2.2 Increased intergovernmental working is necessary in the negotiation and agreement of Common Frameworks to cover policy areas repatriated post-Brexit. These policy areas are those which intersect with devolved competences. Coordination is also necessary to ensure the functioning of the internal market – balancing competing needs of ensuring a functional market with certainty for business, respecting the competences set out in the devolution settlements, and ensuring compliance with international obligations.
- 2.3 Internal markets require active management and coordination between levels of government. We can look to federal states to understand this process of coordination. In Australia, the emphasis has been on mutual recognition of standards, underpinned by the Trans-Tasman Mutual Recognition Agreement (which includes New Zealand), agreed by the Commonwealth and state governments in the 1990s. In this arrangement, goods eligible for sale in one state are eligible for sale in the others. Opt-outs can and have been secured on the basis of public health and environmental considerations, including allowing for requirements for the labelling and recycling of beverage containers and single-use plastics. In Canada, reforms to the internal market have taken place in multiple rounds, the most recent of which was the Canadian Free Trade Agreement (2017), which sought to lower barriers to trade. There are two modes of thinking about the internal market in these two states – in Australia, there is comparatively minimal state level resistance to processes of harmonisation, whilst in Canada, barriers to trade are, to a degree, considered an acceptable cost to maintain provincial autonomy.
- 2.4 In Australia and Canada, the role of the state/province-level parliaments in scrutinising agreements is limited. However, there is a greater level of transparency in both. Intergovernmental activities are supported by a secretariat, meetings take place on a regular basis, and the agendas and outcomes of meetings are published and publicly available.

### **Transparency and Scrutiny**

- 3.1 Intergovernmental relations are typically dominated by executives, negotiating in private, away from the media and wider political scrutiny. This secrecy can be necessary – particularly when the subject matter is sensitive – and can allow for greater candour but it must be balanced with the public interest in transparency. Issues of transparency are evident in other countries, but nowhere is the problem more pronounced than in the UK. Concerns about this have been raised frequently by parliamentary committees and academic observers.
- 3.2 Scrutiny is shaped by the timing of, and access to, relevant information relating to intergovernmental decision-making, the tools and procedures available to the legislature to engage in scrutiny, and the transparency and publicity associated with intergovernmental processes.

- 3.3 In comparative work carried out with N. McEwen and colleagues, we noted the contrast between the United Kingdom and federal and quasi-federal states in the domains of scrutiny and transparency. In Belgium, the Concertation Committee, which brings together federal, regional, and community ministers, take place at a set time each month, and following the meeting, a report is filed with each parliament. These meetings gained more significance and media attention during the Covid-19 pandemic, where decisions about restrictions were taken. In Canada, each provincial legislature has a parliamentary committee which includes within its remit scrutiny of IGR. Government departments charged with IGR are often required to submit a report to parliament, although it is difficult to judge the degree of scrutiny that occurs. In Quebec, the intergovernmental affairs minister endorses cross-border and intergovernmental agreements, and ministers embark upon intergovernmental negotiations, the National Assembly can support and reinforce their negotiating position by publishing unanimous resolutions which provide a more formal expression of Quebec's positions.
- 3.3 In Scotland, arrangements for reporting on intergovernmental activity have been in place since 2016, underpinned by a Memorandum of Understanding between the Scottish Government and Parliament which sets out the process and timings by which the Government will provide notice of meetings and report back as to the outcome of those meetings. In addition, the Scottish Government agreed to prepare an annual report on IGR. A similar agreement was adopted between the Welsh Government and the Senedd in 2019.
- 3.4 MOUs have successfully enhanced transparency, providing information about the meetings taking place and any outcomes, but are often quite brief, lacking the detail necessary to facilitate a deeper understanding of the negotiation process. Ministers can be called, but time constraints may make this difficult. In addition, there is no mechanism by which committees can input on the negotiations, either in advance, as is the case in Quebec, where committees provide the minister a “mandate” ahead of negotiations or after the fact.
- 3.5 The joint review published in 2022 outlines the commitment of each government to “increased transparency of intergovernmental relations through enhanced reporting to their respective legislatures”, with each participant encouraged to prepare and publish reports from their meetings, in addition to an annual report. However, there is no statutory requirement to do so, and again, there may be limited opportunities for committees to exercise influence.
- 3.6 Inter-parliamentary cooperation has taken place through the *Inter-Parliamentary Forum on Brexit* but more general cooperation has not yet been agreed and changes might be required to the Standing Orders of individual parliaments. Our research on interparliamentary coordination on the scrutiny of IGR suggests this is more limited – a result of the nature of IGR, lower levels of transparency, limited interest and attention, as well as demanding workloads. Some interparliamentary cooperation has taken place between EU member state parliaments, particularly in the domain of security and defence.