

Scottish Government's response to the Constitution, Europe, External Affairs and Culture Committee Inquiry into 'Transparency of Intergovernmental activity and its implications for parliamentary scrutiny'

Introduction

The Scottish Government recognises the increased complexity of the devolution settlement and intergovernmental activity since EU Exit, and the need for appropriate transparency to ensure the Scottish Parliament can fulfil its function of scrutinising the Scottish Government's intergovernmental activity.

There is also a need for a shared, private space for intergovernmental discussion between the governments within the United Kingdom.

The Scottish Government welcomes the Scottish Parliament's inquiry into 'Transparency of intergovernmental activity and its implications for parliamentary scrutiny' and submits written evidence setting out an assessment on the following three themes:

1. progress on the UK Government's commitment to a 'reset' of relations with the devolved governments and what it means for parliamentary scrutiny;
2. transparency of formal intergovernmental structures and impact on scrutiny;
3. transparency of intergovernmental activity outside of formal intergovernmental structures, particularly considering arrangements such as the UK Internal Market Act 2020, common frameworks, the Sewel Convention and the potential for dynamic alignment with EU law as a result of new UK/EU agreements.

The relevant questions of the Inquiry, as tailored by the Committee's Clerk for Scottish Government's response, are included under each theme for ease of reference:

1. Progress on the 'reset' committed to by the UK Government and implications for parliamentary scrutiny

Question:

- *The progress to date on the intergovernmental relations reset committed to by the UK Government, and what the reset means for parliamentary scrutiny.*

1.1. Scottish Government's assessment of the 'reset' in the relationship with the UK Government

The new UK Government was formed by the Labour Party following its victory in the General Election on 4 July 2024. The Labour manifesto stated:

"As part of Labour's plans to clean up politics and return it to the service of working people, we will reset the UK Government's relationship with devolved governments

in Scotland, Wales, and Northern Ireland [ensuring] the structures and institutions of intergovernmental working improve relationships and collaboration on policy.”¹

The first anniversary of the new UK Government provided the opportunity for the Scottish Government to review how the reset has worked in practice. Evidence gathered from across the Scottish Government has allowed Scottish Ministers to conclude that there has been a partial reset in the relationship, with particular progress regarding the tone and frequency of engagement.

Significant progress was noted on issues where policy objectives between the governments were aligned, such as: engagement on pandemic preparedness; and joint work on clean energy ambitions, such as the UK Government’s Clean Power 2030 mission.

In relation to the formal intergovernmental structures, the Scottish Government concluded that the UK Government has generally maintained a good level of participation. Over the past year, the Prime Minister has held four bilateral meetings with the First Minister, and a consistent level of dialogue has existed at the middle tier, through the Interministerial Standing Committee and Finance Interministerial Standing Committee. There have also been two (top tier) PM and Heads of Devolved Governments meetings in this period (for comparison, there was only one held in 2022 with no top tier meeting taking place in 2023). Overall, despite some problems in individual groups, the Scottish Government consider there has been improvement in the general functioning of portfolio-level Interministerial Groups (IMGs), with all groups having met at least once over the first year.

Notwithstanding these improvements, the Scottish Government considers that several high-profile problems in intergovernmental working have occurred since the Labour government came to office. These include a lack of involvement and information sharing on UK trade deals (even when they significantly impact devolved interests) and an unwillingness to share information ahead of significant policy announcements with clear devolution read across.

An important example of this is the UK-EU summit negotiations, where in the later stages the devolved governments were not kept informed or consulted on progress, even in clearly devolved areas such as fisheries. Similarly, the Scottish Government was not informed of the proposed US-UK Trade Deal ahead of announcement, despite its impact on devolved responsibilities.

There has been acknowledgement from the UK Government of the deficiencies in its trade deal development and official-level engagement has improved since this acknowledgement. However, for the reset to have been truly successful, devolved governments must be involved more closely in the conduct of trade negotiations as well as the formulation of UK policy and engagement in international matters more generally.

The Scottish Government was also concerned about a lack of engagement ahead of announcements on other major policy initiatives, such as the changes to Winter Fuel

¹ [Change Labour Party Manifesto 2024](#), p.109

Payments and the UK Spending Review. Collaboration was also lacking in the development of the UK Trade Strategy and the UK Child Poverty Strategy.

Regarding both the statutory review of the Internal Market Act (IMA) and the UK Government's manifesto commitment to a memorandum of understanding (MOU) to "*strengthen the Sewel Convention*", as set out in detail below, progress has so far been insufficient to address the issues created by the previous UK Government.

While the new UK Government did not breach the Sewel Convention in relation to Scotland in its first year, there were numerous examples of bills being introduced without devolution issues being resolved, and with provisions which the Scottish Government has not been able to support in its memorandums to the Scottish Parliament. If UK Government departments continue to take this approach to legislation, there remains the risk of breaches in the future. The Scottish Government will work with the UK Government on its proposed MOU on the Sewel Convention, which needs to demonstrate to the Scottish Parliament how the Convention is being strengthened to respect the Parliament's decisions on questions of legislative consent.

In relation to the statutory review of the Internal Market Act, not only did it explicitly rule out, in advance, the Scottish Government's preferred option of repeal and replace, but it was also conducted without permitting the close collaboration of the devolved governments. There was no opportunity to discuss, far less jointly agree, the scope of the review and there was no acknowledgement that the Act was imposed by the previous UK Government without the consent of any devolved legislature. Moreover, the devolved governments were treated throughout the process as stakeholders, not partners; the review recommendations made little or no reference to the positions and priorities of the devolved governments and legislatures; and there was no acknowledgement of the IMA's constitutional effect, far less proposals on how this might be addressed.

As part of the stated 'reset', the UK Government has created the Council of the Nations and Regions (CNR), which brings together the Prime Minister, the Heads of Devolved Governments, the Mayor of London and the mayors of combined authorities and combined county authorities. The Council has met twice since the UK general election.

The CNR sits outwith formal IGR Review structures. It is a distinct forum with separate governance structures, agendas and membership owned wholly by the UK Government. While the CNR is still a relatively new entity, at this point Scottish Ministers have concerns about the value it adds to effective intergovernmental working, particularly given the asymmetric devolution arrangements between the heads of the devolved governments and the mayors of English regions, as well as the lack of a clear set of objectives meaning that, in our opinion, little benefit has been derived from the CNR plenary.

Furthermore, there are barriers to effective scrutiny of the CNR. There is no independent secretariat (the existing IGR secretariat is not currently used for this

purpose), the dates of the meetings are confirmed at short notice, agendas are set by the UK Government without opportunity for co-design by governments in attendance, and minutes are taken and agreed by the UK Government only, with no opportunity for devolved ministers to assure the minutes before they are finalised.

The UK Government has also tied the Top Tier PM and Heads of Devolved Governments meeting to the CNR, with both meetings taking place on the same day due to reasons of diary scheduling. While the increased frequency of the Top Tier PM and Heads of Devolved Governments meeting has been welcomed, making this meeting part of the programme of engagements under the CNR has served to limit the duration of the Top Tier meeting as well as impacting on the co-design of the Top Tier agendas, which is a principle set out in the IGR review.

Overall, Scottish Government Ministers have concluded that significant work is still required from the UK Government to fully reset the relationship; ensure its approach respects devolved responsibilities; fully involve Scottish Government at the appropriate point in policy development; and maintain a consistent approach to collaboration across all priorities areas.

The partial nature of the reset also has an impact on the Scottish Parliament, particularly in terms of how its devolved responsibilities and legislative processes are respected and engaged with. There remains wide inconsistency in the meaningful consideration from UK Government departments of Scottish Parliament procedures in the development and passage of legislation, which risks undermining the Parliament's role and authority. The assessment of the reset by the Scottish Government as 'partial' also reflects this impact on the powers of the Scottish Parliament.

1. 2 Implications of the 'reset' for parliamentary scrutiny

Continuing inconsistency in information sharing across UK Government departments or lack of meaningful engagement throughout the policy development process can also hinder the Scottish Parliament's ability to scrutinise effectively the relevant inter-governmental activity as the information available is more limited in scope or the activity is taking place later in the process.

It is therefore the Scottish Government's view that improvements need to be made by the UK Government to address these issues across departments and reaffirm the position that devolution ushered in new, legitimate centres of political authority across the UK, with important expectations and norms regarding democratic accountability.

In particular, the Scottish Government would welcome improvements in the consistency of experience across policy areas; improvements to information sharing generally and further work across the UK civil service to increase capability when it comes to dealing with devolved governments and legislatures, to raise standards in

the UK Government towards the best practice already demonstrated in some parts of the UK Government.

2. Transparency of formal intergovernmental structures and impact on scrutiny

Questions

- *The extent of transparency of formal structures of intergovernmental relations and whether transparency could be improved.*
- *Whether procedures and mechanisms for joint working between governments could be developed and/or improved to ensure practical cooperation and resource sharing whilst safeguarding the powers of each government and the Scottish Parliament.*
- *If parliamentary scrutiny of intergovernmental activity can be improved and, if so, how.*
- *How inter-parliamentary work can aid the scrutiny of intergovernmental activity and lead to an increase in transparency and accountability. What level of information should be provided by governments in order to facilitate transparency.*

2.1 Formal IGR structures set out by the Intergovernmental Relations Review

The UK Government and the devolved governments concluded a Review of Intergovernmental Relations (IGR) ² in 2022. The new processes and structures established through the Review have become the main framework through which formal intergovernmental relations are conducted.

The Review's report set out five principles for engagement and collaborative working. It also introduced some practical improvements such as a fairer and more transparent escalation and dispute resolution mechanism; an impartial, standing IGR Secretariat; and improved reporting on intergovernmental activity, providing further transparency to, and accountability from, each government's respective legislatures.

Since the conclusion of the Review, the Scottish Government has worked collaboratively with the UK and other devolved governments to implement its recommendations. The Scottish Government has also engaged constructively through each of the different tiers of the new structure – the Top Tier PM and Heads of Devolved Governments meeting; Interministerial Standing Committee (IMSC), Finance Interministerial Standing Committee (FISC), and individual Interministerial Groups (IMGs).

² [Review of intergovernmental relations - GOV.UK](https://www.gov.uk/government/reviews/intergovernmental-relations-review)

The arrangements are supported by an impartial secretariat. A key function of the IGR Secretariat is not only to promote impartial and efficient intergovernmental relations between all governments but also to support individual governments to report to their respective legislatures regarding their IGR activity, as required.

As part of their work to support transparency and parliamentary accountability, the IGR Secretariat publishes communiques and terms of reference from the structures it supports, namely: the Prime Minister and Heads of Devolved Governments meeting; the Interministerial Standing Committee (IMSC); as well as any time-limited Interministerial Committees that may be formed by the IMSC. Secretariats supporting the Finance: Interministerial Standing Committee (F:ISC) and individual portfolio Interministerial Groups (IMGs) also publish communiques from their meetings. These can be found in one central hub on the UK Government website - [Intergovernmental relations - GOV.UK](#).

The IGR Review also established that the IGR Secretariat will publish annual reports on intergovernmental activity. It is expected that annual reports for the periods 2022-23 and 2023-24 will be published in autumn 2025. Future annual reports will settle into a regular publication schedule as the IGR Secretariat becomes more established. Scottish Government officials will inform the Scottish Parliament once the reports have been published.

2.2 The Scottish Parliament – Scottish Government Written Agreement on Intergovernmental Relations

The [Scottish Parliament – Scottish Government Written Agreement on Intergovernmental Relations](#) - signed in 2016 - currently provides the basis for parliamentary scrutiny of formal intergovernmental activity, although it is worth noting that intergovernmental working will also be scrutinised by individual committees through routine examination of policy development for which intergovernmental working is a consideration.

In 2024, the Scottish Parliament and Scottish Government commissioned a [report](#) by Professor Nicola McEwen and Dr. Coree Brown-Swan to assess the extent to which the Agreement remained fit for purpose in light of the complexities and challenges to devolution posed by EU Exit and the COVID-19 pandemic. The report reflected on the changing nature of intergovernmental relations and devolved policymaking in the UK since the Agreement was introduced.

The report also recommended that there was more the Scottish Government could do to recapture the spirit of the Agreement. It argued that, in order to ensure the Agreement was fit for purpose, the transparency arrangements with respect to the Scottish Government's intergovernmental activity should keep pace with constitutional and intergovernmental developments and recognise and adapt to a new more complex landscape.

The Scottish Government has welcomed the report and its recommendations and is committed to working with the Scottish Parliament to update the Written Agreement, ensuring it captures the current (and adapts to the future) state of intergovernmental

structures and ensures appropriate levels of scrutiny on intergovernmental activity. The Scottish Government agrees with the report's message that it is necessary *'to strike the balance between the need for confidentiality with the need for sufficient transparency to enable the Scottish Parliament to scrutinise the Scottish Government's approach to, and engagement, in intergovernmental relations.'*³

The Scottish Government remain committed to working with the Scottish Parliament to refresh the written agreement, although it is worth noting that this work has been paused pending the outcome of this Inquiry to ensure that its conclusions can be reflected in any refreshed agreement.

3. Transparency of intergovernmental activity outside of formal intergovernmental structures (Internal Market Act, Common Frameworks, UK-EU negotiations)

Questions:

- *How open intergovernmental activity falling outside of the formal structures (for example common frameworks) are and what this means for Parliamentary and stakeholder scrutiny.*
- *The potential consequences of insufficient scrutiny of intergovernmental activity, particularly considering arrangements such as common frameworks, the UK Internal Market Act 2020 and the potential for dynamic alignment with EU law as a result of new UK/EU agreements.*
- *What the evolving shared intergovernmental space means for parliamentary scrutiny and accountability, particularly in relation to legislative consent facilitated by the Sewel Convention, and the taking and exercise of delegated powers by UK Ministers in devolved areas.*

3.1 The UK Internal Market Act

The UK Internal Market Act (IMA) was introduced by the previous UK Government and passed at Westminster without the consent of any devolved legislature. It introduces radical new uncertainty as to the effect of laws passed by the Scottish Parliament and effectively provides a veto to UK Ministers on laws passed by a democratically accountable legislature. The Scottish Parliament has twice voted in favour of its repeal.

The Scottish Government's [position paper](#), published in April 2025, set out the impact of the Act on the powers and responsibilities of the Scottish Parliament and the Scottish Government, calling on the UK Government to acknowledge the Act's constitutional effect and to work with the devolved governments to jointly design a workable, agreed alternative. No one wishes to see new, unnecessary barriers to

³ [Commissioned report: The Scottish Government-Scottish Parliament Written Agreement on Intergovernmental Relations: Still Fit for Purpose?](#) P.5

trade for Scottish businesses and consumers. It is entirely possible to guard against these whilst also respecting devolution and the democratic accountability of the Scottish Parliament, in a manner which the IMA does not and cannot allow for.

In the Scottish Government's view, the [UK Government response to the Review of the United Kingdom Internal Market Act 2020 and Public Consultation](#), published in July 2025, represents a missed opportunity to remove an unnecessary source of friction between the governments of the UK and restore confidence in the devolution settlement.

Through the review, the UK Government has, unfortunately, chosen not to acknowledge the Act's far-reaching constitutional effect, despite the strength of evidence set out by not just the Scottish Government but the overwhelming majority of academic and legal commentators and a wide variety of civil society groups.

The proposals set out in the UK Government's response focus on non-binding administrative and procedural changes. These include consideration of environmental and public health policy drivers, a new *de minimis* threshold for economic impact and a renewed commitment to give effect to IMA exclusions where there is agreement to do so through a Common Framework.

There is also a proposed mechanism for referring matters to the Office for the Internal Market and a new reserve process which reverts decision making to UK Ministers, where agreement cannot be reached through a Common Framework. How this will operate alongside the existing dispute and escalation mechanisms for Common Frameworks remains unclear, as does how the Scottish Parliament's position is protected in this process.

This package of measures falls significantly short of what is needed to address the damage the IMA has caused to the powers of the Scottish Parliament, to effective intergovernmental relations, and to the establishment of a workable, proportionate and transparent post-EU Exit market regime which delivers for businesses, consumers and citizens.

Unfortunately, the UK Government has followed its predecessor in asserting that the IMA is necessary, arguing only that improvements to its operation can be made, without any legislative change. The Scottish Government is equally clear that the Act is fundamentally misconceived and incompatible with devolution, and that it should be repealed and replaced with a balanced and agreed system of co-operation that both ensures market efficiencies and respects devolution.

The Welsh Government's position is also that the Act should be repealed and replaced with a workable, agreed alternative. [OBJ]

The UK Government has stressed that it went beyond the statutory minimum requirements for the review, undertaking it at an accelerated pace and with a slightly expanded scope. However, the review was undertaken solely by the UK Government, and a more collaborative approach to its design and delivery might have allowed for acknowledgement of the absence of co-production and consent, both governmental and legislative, that marked the introduction of the IMA.

The conclusion of the review leaves significant questions as to how the fundamental issues with the Act can be addressed. The commitment to foregrounding Common Frameworks as the primary mechanism for managing divergence between the nations of the UK is welcome, but there remains a lack of clarity on how the UK Government propose Common Frameworks fulfil their intended role. The market access principles of the IMA continue to apply automatically in almost all cases and subsequently condition the operation of Common Frameworks. The Scottish Government also welcomes the acknowledgment that the exclusion process has not operated as intended but remains unclear on how the situations we have previously seen can be avoided without acknowledging the more fundamental issues with the Act.

As matters stand, it is hard to see how the Scottish Parliament's well-founded and long-standing concerns about the Act's potential to undermine effective scrutiny of draft laws will be allayed by the UK Government's response.⁴

The UK Government's decision not to address the constitutional impact of the IMA also continues to hamper effective parliamentary scrutiny. The Scottish Parliament has previously been put in the position of scrutinising and passing laws whose legal effect was wholly undermined by the IMA;⁵ the Scottish Government cannot say with any confidence that a similar situation could not occur in future.

The UK response to the review does not set out how the proposals will enable effective parliamentary scrutiny. Most significantly it does not address concerns that decisions on devolved matters, which are the responsibility of the Scottish Parliament, can revert to UK Ministers where consensus cannot be reached through a Common Framework.

The financial assistance power in Part 6 of the IMA provides a means for the UK Government to spend directly in devolved areas, including economic development, infrastructure, sport and culture. This enables the UK Government to extend its powers in Scotland beyond those reserved in the Scotland Act 1998 and bypass the role of the Scottish Government and Scottish Parliament in these areas.

The previous UK Government used the IMA power to deliver, among other funds, the Shared Prosperity Fund, which replaced EU Structural Funds, and the Levelling Up Fund, which had originally been announced as England-only and was expected to generate Barnett consequential. This resulted in no role for the Scottish Government in the decision-making or delivery of these funds and no role for the Scottish Parliament in scrutinising their effectiveness.

The Scottish Government has consistently opposed the use of the Part 6 financial assistance power and called for funding to instead be provided to the devolved governments in the usual way. As set out in the Scottish Government's position

⁴ For academic commentary on the UKG review see, for example, Prof Horsley's article: <https://ukconstitutionallaw.org/2025/07/21/thomas-horsley-reforming-the-uk-internal-market-the-uk-governments-response-to-the-review-of-the-united-kingdom-internal-market-act-2020/>

⁵ For example, regulation relating to Scotland's deposit return scheme, and provision to ban the sale of rodent glue traps in the Wildlife Management and Muirburn (Scotland) Act 2024.

paper on the Internal Market Act 2020, the Scottish Government remains of the view that the Part 6 financial assistance power should be repealed. However, as the UK Government excluded Part 6 from the review and intends retaining it in legislation, then it should at least put in place conditions on its use. The UK Government should work with the devolved governments to codify the circumstances in which it may consider using the Part 6 power and agree that this power should only be used with the consent of the devolved government in question.

3.2 Common Frameworks Evaluation

The Scottish Government recognise that the lack of formal mechanisms for oversight, and the intergovernmental nature of the process, have led to concerns as to the role of the Scottish Parliament in the operation of Common Frameworks. Parliamentary scrutiny and the experiences of stakeholders have highlighted several persistent issues: the lack of visibility, transparency and clarity, where Frameworks are non-statutory and often operate at the official level, which limits public and parliamentary oversight; and inconsistent implementation and stakeholder engagement, with some Frameworks demonstrating strong stakeholder engagement and others adopting a more limited approach.

Since their introduction, there has been a commitment by all four governments to the introduction of post-implementation reporting on the effectiveness of Common Frameworks to legislatures and stakeholders to secure their future accountability. However, as the current provisional frameworks have not reached final agreement and moved into post-implementation the intended joint annual reporting on the effectiveness of Frameworks operations has not yet commenced. From a Scottish perspective, the challenges of finalising Frameworks continue to be compounded by the undermining of devolution through the impact of the UKIMA.

The nature of post-implementation monitoring of Frameworks is part of our ongoing discussions with the other governments as we seek to conclude the Frameworks programme. The views of the Parliament and Scottish stakeholders are an important element of the post-implementation monitoring and review of Common Frameworks.

The Scottish Government's starting point remains that of the 2017 Common Frameworks statement of principles: that frameworks will respect the democratic accountability of the Scottish Parliament.

We are engaging with the UK and devolved governments on how we give effect to this principle, and welcome further engagement with the Scottish Parliament on this matter.

3.3 Sewel Convention

The 2024 Labour general election manifesto committed to “strengthen the Sewel Convention by setting out a new memorandum of understanding outlining how the nations will work together for the common good”.

The previous UK Government set aside the decisions of the Scottish Parliament on legislative consent on a dozen occasions, undermining the Sewel Convention, which is a crucial safeguard for the Scottish Parliament in our constitutional system. A Convention that can be ignored by the UK Government when it chooses to do so is no effective safeguard for Scotland's democracy.

Restoring confidence in the Sewel Convention is therefore key to resetting the relationship between the UK and devolved governments and ensuring that the position of the Scottish Parliament is protected, with sufficient opportunity for scrutiny. The convention is a fundamental part of the devolution settlement and there should be a shared ambition to repair the damage done to devolution by the previous UK Government. The Scottish Government therefore welcomed the proposal for a memorandum of understanding to strengthen Sewel. Although there has not been significant work on this commitment yet, the Scottish Government stands ready to assist and looks forward to progress in the near future.

It will be important that the MOU demonstrably addresses the issues that have arisen in recent years to give the Scottish Parliament confidence that the Sewel Convention has been strengthened for the future.

Notwithstanding any progress on the proposed MoU, proof of meaningful respect for the Convention will be in the experience on individual bills: in timely sharing of drafts of bills and amendments; in allowing sufficient time for proper scrutiny by the Scottish Parliament and its committees; and in respect from the UK Government for the legislative consent decisions of the Parliament.

It should be noted that the UK Government has not breached the Sewel Convention in relation to Scotland during its first year in office. All individual negotiations between governments on legislative consent were concluded successfully, allowing the Scottish Government to recommend consent to the Scottish Parliament, which has been agreed.

However, there remain numerous examples of Bills being shared too late in the process for the Scottish Government to lodge its legislative consent memorandum in time to meet Scottish Parliament standing orders. There have also been instances of late sharing of amendments and timetabling pressures leading to inadequate time for proper consideration by the Scottish Parliament. As an example, seven legislative consent motions were passed in the final week of the Scottish parliamentary year. The Scottish Government will continue to press the UK Government on timely sharing of information and proper recognition of Scottish parliamentary procedures in its Bill timetabling processes.

3.4 UK / EU negotiations

The UK Government's tone and approach to EU relations has shifted significantly since the 2024 General Election and the new government's attempt to reset relations. This approach extended to an offer to integrate the Scottish Government's concerns more closely into the process of negotiating closer relations with the EU.

This initial ambition culminated in the UK-EU Summit in London on 19 May and the announcement of a new strategic partnership, building on previous agreements including the Withdrawal Agreement, Windsor Framework, and Trade and Cooperation Agreement, and a Common Understanding between the two parties on a range of policy priorities. The parties agreed to establish nine 'negotiating tables' covering:

- SAFE defence fund;
- Youth experience;
- Erasmus+;
- Sanitary and Phyto-sanitary measures;
- Emissions Trading Scheme (ETS) linking;
- Electricity trading;
- Wider security (including health, development, maritime);
- Law enforcement and judicial cooperation;
- Irregular migration.

Throughout the UK Government-EU engagement to date, Scottish Government Ministers and officials have sought a strong presence for the Scottish Government in order that specific Scottish considerations are given due regard. In the run up to the summit, SG produced seven policy papers in areas of priorities for Scotland. We consider that these papers had a positive influence on the summit outcomes.

Nevertheless, for the summit agreements, there were significant strains on relations at times when the UK-EU Relations IMG process was not used to share information with the Scottish Government. A clear example of this was the fisheries agreement, where no information was shared in advance. Scottish Government Ministers have made clear this was unacceptable.

Over the summer, the UK Government and the EU have been preparing for a negotiating process in which they will agree the details of these policy priorities. The degree of legislative activity the summit agreements will create is considerable and the UK Government, in parallel to negotiating with the EU, is currently assessing what legislation will be required to implement the expected substantial re-adoption of EU law in areas where full alignment has not been maintained.

Primary legislation will be required, with the expectation of a bill being introduced in the second session (before summer 2026). A UK bill team for this purpose will operate from the Cabinet Office. A transposition model is expected, with powers taken to implement the necessary EU law via secondary legislation. A key objective for the Bill team will be to enable the UK to meet the EU's demands for dynamic alignment with EU law.

Primary legislation will involve devolved competence. The split between powers for devolved governments, UKG or concurrent powers will need to be agreed, taking account of devolved interests as well as practical repercussions of complying with EU law.

It is anticipated that the volumes of secondary legislation needed to implement the negotiated outcomes will be very significant with consequent capacity impact for the

Scottish Parliament and SG internal resources. The principal policy areas impacted by the talks have initiated work to assess the re-brigading and/or additional resources that are likely to be required.

We expect that the Scottish Parliament's Standing Order requirements on legislative consent will be engaged. The Cabinet Sub-Committee on Legislation (CSCL) will require to agree the Scottish Government's proposed Legislative Consent Memorandum and position on legislative consent.

Considerations around timing and timelines for legislation and implementation are significant. With the commitment given in May that there would be a series of annual UK-EU summits, we expect at a political level, both parties to seek tangible progress in delivery before a second summit in spring 2026.

For legislation, dates are harder to set and the timing of the Scottish Parliament election, and the time taken post-election to form a government, could be relevant, e.g. for practical impact on the timing of consent to the UK Bill, depending on when it is introduced and the speed of its progress through Westminster. Welsh Government Ministers share similar concerns regarding the timing of their own elections to the Senedd, likely to be similar in date to the Holyrood elections.

Given this degree of uncertainty, SG officials expect to work with the CEEAC Committee before the elections and its successor to agree on the most effective means for the Scottish Parliament to scrutinise the anticipated legislation.

To manage the SG response, officials will engage in the legislative process including the interface with and impact on the existing legislative programme:

- For primary legislation, SG officials are engaging with their UKG counterparts to influence the Bill content, its design, powers, and Legislative Consent Memorandum arrangements with ministerial preference for legislation to include concurrent powers with statutory consent mechanisms.
- Associated secondary legislation is expected to be significant in volume. SG will centrally track these independent policy areas and anticipate secondary legislation in the following policy areas: Sanitary and Phytosanitary (SPS) measures, Emissions Trading Scheme (ETS), and electricity trading.

There will be a high degree of responsibility on the UK Government to include devolved governments in the negotiation process and to share information as promptly as possible. The Concordat on International Relations, agreed by the UK and devolved governments, states that the governments will co-operate on the formulation of UK policy and conduct of international negotiations. The extent to which future legislation and the implementation of policies under negotiation will sit within devolved responsibilities strengthens the need for close cooperation. Given the very significant degree of activity across policy areas, there will be an ongoing need for the SG to monitor activity to ensure that devolved interests are incorporated into the UK Government's negotiating position and the practical planning for legislation.

At a ministerial level, we maintain a four-nations dialogue with UK, Wales, and Northern Ireland lead ministers through the Intergovernmental Ministerial Group in UK-EU relations. The Group last met in Edinburgh shortly before the summit and had a first post-summit meeting on 23 September to discuss the negotiations process. Bilateral engagement also takes place with Mr Nick Thomas-Symonds as Minister for the Constitution and European Union Relations. Both group and bilateral engagements have been an opportunity to raise concerns about the UK Government's approach to Intergovernmental relations given the high degree of devolved input required to the negotiations.

At official level the SG EU Secretariat are coordinating cross-SG activity and an internal governance process is being implemented to ensure there is sharing of information and coordination of response.

Despite our own governance processes there will remain a clear risk that, either through insufficient regard for devolved considerations, or through an unintentional failure of their IGR processes to meet the high workload and complexity of undertakings, UKG does not include Scottish Government sufficiently or reflect Scottish policy interests. SG Ministers are aware of this risk and, while tasking their officials to take full mitigating measures possible, have indicated that the degree of success the UKG achieves in incorporating the SG into the EU reset will reflect the extent to which the UKG has delivered a full reset and improvement of relations with the SG overall.

SG officials have thus far updated the CEEAC Committee, maintaining a commitment to provide written reporting at key points in the calendar (for example each time there is a round of TCA Specialist Committee meetings) as well as at officials' informal sessions with the Committee. As negotiation and legislative activity increases, we will incorporate these processes into the new overall governance process being implemented within the Scottish Government, taking direction from the Committee on the routines for reporting and updating that will assist their scrutiny. As ever, officials will be led by the requirements of the Parliament for this work.

4. Conclusion

The Scottish Government is clear that the ability of the Scottish Parliament to scrutinise Scottish Government's intergovernmental activity, especially where there is an impact on devolved areas, is vitally important.

The Scottish Government will continue to abide by the spirit of the current Scottish Parliament–Scottish Government Written Agreement on Intergovernmental Relations and will work with the Scottish Parliament to refresh this Agreement to reflect the increasingly complex backdrop and the outcome of this inquiry.

If the UK Government is committed to resetting relations with the Scottish Government, it must demonstrate a willingness to ensure that the powers of the Scottish Parliament are protected. This should include helping facilitate the proper transparency and scrutiny of intergovernmental structures. The Scottish Government believes that while there has been some progress in resetting relations with the UK Government, it remains incomplete. Further steps are needed to achieve meaningful

policy outcomes, including clear commitments from the UK Government to respecting and upholding the powers of the Scottish Parliament.

This should include ensuring the timely communication of agendas and communiques, for intergovernmental forums, to ensure the Scottish Government is able to fulfil its own commitments to the Scottish Parliament by providing advance notice.