

Constitution, Europe, External Affairs and Culture Committee

**15th Meeting, 2022 (Session 6), Thursday
9th June 2022**

Intergovernmental Relations Panel

This paper provides background information and analysis on the four themes relating to intergovernmental (IGR) for discussion with the panel at today's meeting.

The purpose of intergovernmental relations

Intergovernmental relations in devolved and federal systems serve two purposes: to make policy jointly where that is desired; to manage conflicts between governments. The former characterises cooperative systems, the latter characterises 'coordinate' systems, with each level making its own policies.

Scottish devolution has largely followed the coordinate model, because of a rather clear division of competences and the preferences of Scottish Governments. Wales has been developing in a more coordinate manner because of the greater legal and functional integration of Wales and England and the preference of the Welsh Government.

Following Brexit, there is an increase in the number of overlapping competences between Westminster and the Scottish Parliament, requiring more intergovernmentalism. Whether this means more cooperation or coordination is an open question.

The Committee's adviser, Professor Michael Keating, argues that inter-governmental mechanisms have been under-developed.

Theme 1: Recent changes in IGR mechanisms

To explore whether the recent changes to IGR mechanisms as a result of the joint review address some of the criticisms of the old approach and the extent to which the purpose of the relationship – joint policy making or dispute resolution – influences the opportunity for and perception of success.

IGR mechanisms 1999-2022

The main forum for intergovernmental relations in the UK has been the Joint Ministerial Committee (JMC). It was established by a Memorandum of Understanding, which was amended most recently in 2012. The JMC met in different configurations, in plenary sessions or through various sub-committees for example the JMC (Europe). Plenary sessions were attended by the prime minister, heads of devolved governments, the relevant secretaries of state, and, sometimes, other government ministers.

The JMC system was meant to facilitate communication and cooperation between the UK Government and devolved governments. JMCs were in abeyance for long periods, with the exception of the JMC (Europe) which had regular meetings corresponding to the calendar of the Council of the EU and had a clear task in accommodating devolved matters within the UK position in the EU. There have also been 'quadrilateral' meetings on finance, which have a clear purpose.

The joint review of IGR and the Dunlop Review

The UK Government and devolved governments agreed to undertake a review on intergovernmental relations in the UK in 2018.

In 2019 Lord Dunlop was tasked with [a review of "UK Government Union Capability"](#). The Dunlop Review made recommendations in six different areas: the machinery of government, Civil Service capability, spending, intergovernmental relations, public appointments and communications. It concluded that *"the IGR machinery is no longer fit for purpose and is in urgent need for reform."*

The Dunlop Review also stated:

"It is important to be realistic about what this reform can achieve. No IGR machinery, however perfect, is capable of resolving fundamentally different political objectives of the respective administrations, particularly where these involve very different visions for the UK's constitutional future, and nor should it. It is, however, realistic to expect that serviceable and resilient working relationships, based on mutual respect and far greater levels of trust, can be established between the governments across the UK."

On 13 January 2022 a document described as [the 'conclusions' of the review](#) was published. This document set out a range of proposals for new IGR structures which all four governments have agreed to work to.

Changes as a result of the Joint Review

The Conclusions of the joint review were seen by the UK Government as:

"a new era for IGR with improved reporting on intergovernmental activity, [providing greater transparency, accountability and the opportunity for improved scrutiny from each government's respective legislatures.](#)"

Deputy First Minister, John Swinney MSP was more cautious, saying:

“re-branding of existing structures will not deliver the step change in attitude and behaviour from the UK government that is needed if there is to be a genuine improvement in intergovernmental relations.”

The conclusions to the joint review includes a set of principles which the new IGR structures are intended to embody:

- maintaining positive and constructive relations, based on mutual respect for the responsibilities of the governments and their shared role in governance of the UK;
- building and maintaining trust, based on effective communication;
- sharing information and respecting confidentiality;
- promoting understanding of, and accountability for, their intergovernmental activity; and
- resolving disputes according to a clear and agreed process.

Writing for the [Bennett Institute for Public Policy](#), [Professor Michael Kenny and Jack Sheldon](#) suggest that the report signals that IGR processes will be used for *“more substantive purposes than previously”*, specifically *“policy challenges that cut across devolved and reserved competences such as pandemic recovery, tackling the climate crisis and delivering sustainable growth.”*

There is, however, no evidence that the change in IGR mechanisms signals such a shift in the purpose of IGR in the UK. The review does not change the way in which decisions are made (the aim being joint decisions by consensus) but it does set out new structures through which decisions will be taken.

The main change to the IGR mechanisms is that the JMC is being replaced with a new three tier structure. The new arrangements are set out in the diagram below.

What will intergovernmental relations look like?

Proposed outline of new intergovernmental relations structure

Top tier:

The Council

This is made up of the Prime Minister and heads of devolved governments.

Middle tier:

Standing committees

The Interministerial Standing Committee (IMSC)

Ministers responsible for IGR consider issues that cut across different policy areas, and facilitate collaborative working between groups in the lowest tier.

The Finance Interministerial Standing Committee (F:ISC)

Will comprise Finance Ministers and consider finance and funding matters.

Additional interministerial committees

These committees might be formed temporarily to consider issues that would otherwise be in the remit of IMSC, but which require special consideration.

Lowest tier:

A number of interministerial groups (IMG) will be formed to discuss specific policy areas, such as on transport, Net Zero, and the Trade and Cooperation Agreement with the EU.

In contrast to the JMC, which met only when called by the UK Government, engagement within the new structure is to take place regularly. The Council will meet once a year or more frequently if needed. The Council, it appears, will provide strategic direction and oversee the entire system of IGR.

The IMSC is expected to meet every two months and the **Finance Interministerial Standing Committee (F:ISC)** quarterly, though they may meet more or less frequently if agreed unanimously. The proposals state that further guidance will be issued on IMGs that includes recommendations on the frequency of meetings, but that the final decision will be agreed between governments. A number of IMGs are expected to be established including trade, EFRA and Net Zero.

Some of these IMGs have already started to meet. The [minutes from the December 2021 meeting of the IMG on Environment, Food and Rural Affairs \(EFRA\)](#), for example, showed that there had been discussion around whether an exclusion to the market access principles of UKIMA for single use plastics was required.

A new IGR Secretariat will be staffed by all four governments and will be accountable to the Council, not the UK Cabinet Office. The Secretariat will publish an annual report on intergovernmental engagement. The [first annual report on IGR](#) was published in March 2022 and covered the period 1 January to 31 December 2021.

Dispute resolution

A central point of criticism of the old IGR structure (JMC) was its dispute resolution process. Any party to a disagreement had the power to veto the decision to take a disagreement to the formal dispute resolution process. This included the UK

Government, which chaired meetings. The 2019 Dunlop Review noted "the strong case for the creation of a more robust and trusted dispute handling process."

Under the new IGR mechanisms, the Secretariat rather than parties to a disagreement, will decide whether a disagreement is to enter the formal dispute resolution process. The Secretariat will make the decision based on a set of criteria, such as whether the disagreement has previously been discussed by officials and whether it has implications beyond its policy area.

No party to a disagreement can be appointed to chair at stage 1 or 2 of the dispute resolution process under the new arrangements. A chair can be drawn from a government not party to the dispute or be an independent chair agreed to by all parties to the dispute. The chair will not have decision-making powers.

The new process also includes more extensive reporting requirements about disputes. The IGR Secretariat is required to report on the outcome of disputes at the final escalation stage, including on any third-party advice received. Each government is also required to lay this report before its legislature. In addition, if a dispute cannot be resolved at the highest level, each government is required to make a statement to its legislature about why a solution was not reached.

Dispute resolution – financial

The middle-tier [Finance Interministerial Standing Committee](#) differs from the rest of the new structure in its dispute resolution process. The dispute resolution process for this Standing Committee states that disagreements on funding may only legitimately be escalated where there is reason to believe "*a principle of the Statement of Funding Policy may have been breached*" and further, that "*policy decisions on funding are strictly reserved to Treasury ministers, with engagement with the devolved administrations as appropriate*".

This is significant given that most intergovernmental disputes in the past have been about funding. These provisions appear to afford the UK Government, through the Treasury, a continued, more central, role in the new IGR machinery with regards to financial matters than the rest of the document would suggest.

Professor McEwen has noted the different approach to financial dispute resolution and in the approach of The Treasury in a blog article ["Worth the wait: reforming intergovernmental relations"](#), saying:

"Throughout the report, the old practice of referring to "the UK government and devolved administrations", or worse, "the DAs" – nomenclature that reinforced their inferior status – has now been replaced by recognition that they all carry the status of governments. Alas, the Treasury didn't get the memo. The six references to the 'UK government and the devolved administrations' are all in the section on the F:ISC."

[Dr Paul Anderson and Dr Johanna Schnabel have argued](#) that this approach has the potential to undermine 'collaboration and cooperation':

“It is not surprising that the UK government wants to keep its hand on the new arrangements. The experience of countries like Australia, Canada, and Spain shows, however, that it is a bad idea – one that undermines the message of collaboration and cooperation the UK government is seemingly trying to convey.”

Statutory basis

There have been calls for IGR in the UK to be put on a statutory basis. During an evidence session for the House of Commons' Public Administration and Constitutional Affairs Committee report on Devolution and Exiting the EU, Professor Alan Page, said:

“the basic machinery has to be put on a statutory footing so that the Parliaments are making it clear, “This is our expectation as to the way these relations will be conducted,” rather than leaving it to the discretion of individual Administrations.”

A statutory underpinning that regulates IGR in the UK was also advocated by the House of Commons Public Administration and Constitutional Affairs Committee in its 2017 report [Devolution and Exiting the EU and Clause 11 of the European Union \(Withdrawal\) Bill: Issues for Consideration](#) and in its 2018 [report on Devolution and Exiting the EU; the 2015 House of Lords Constitutional Committee's report on Intergovernmental Relations in the UK](#), and the [2018 report from the National Assembly for Wales Constitutional and Legislative Affairs Committee](#).

The new proposed IGR structure does not have a statutory basis. However, in a [recent letter](#) [March 2022] to the Welsh Senedd's Legislation, Justice and Constitution Committee Mick Antoniw MS, Counsel General and Minister for the Constitution states:

“In January 2022, the Welsh Government, along with the UK Government, the Scottish Government, and the Northern Ireland Executive, agreed to use the package of reforms which emerged from the joint IGR Review as the basis for the conduct of intergovernmental relations. [...] we hope that the Review and the package of reforms will be codified in a new MoU and, if all governments agree, underpinned in statute.”

Some experts argue that the lack of statutory basis has given IGR mechanisms the ability to maintain flexibility and adapt to new challenges.

Theme 2: The impact of post EU exit arrangements

To explore the impact of post EU exit arrangements on the number and nature of decisions being taken at an intergovernmental level; how intergovernmental policy and decision making can be scrutinised effectively in the post EU context, and the role of interparliamentary working in effective scrutiny of IGR.

EU exit and IGR

Following EU exit, there has been an increase in the number of areas where the competence of the Scottish Parliament relates to reserved matters. Trade for example is reserved, but agriculture policy is devolved. If a future trade deal requires certain animal standards to be met then there is an overlap between a reserved and a devolved matter. This means that more intergovernmental working is required.

Similarly, the increase in the number of executive powers for UK Ministers in devolved areas can be seen to require more intergovernmental working to agree consent (through the Sewel Convention for primary legislation and through mechanisms for consent required for secondary legislation).

Given the increased importance of intergovernmental work, post EU-exit concerns about transparency (explored more in theme four) and accountability may be seen as a matter of urgency.

The Committee noted in its [report on the UK internal market](#) (February 2022) that:

“There is a risk that the emphasis on managing regulatory divergence at an intergovernmental level leads to less transparency and Ministerial accountability and tension in the balance of relations between the Executive and the Legislature.”

Common frameworks and IGR

Common frameworks are intergovernmental agreements. They are written by specialists for specialists tend to be very technical which can create difficulties for transparency and scrutiny.

Frameworks are about how to deal with ‘retained EU law’ in certain areas that were previously governed by EU regulations and are within devolved fields. It is now clear, however, that the scope of some frameworks is wider than retained EU law, encompassing policies and laws which were not formerly governed at an EU level (e.g., the [Animal Health and Welfare Framework](#)).

Common frameworks allow governments to harmonise regulations or to agree to diverge. In practice, the most common form is an agreement to handle divergence (by, for example, setting out processes in which divergence will be discussed and agreed or not agreed), but there are instances of joint policy-making provision. This model of agreements to manage policy divergence are consistent with the ‘coordinate’ model of IGR.

The Agricultural Support Framework, for example, is described as *“a non-legislative framework for the UK collaboration, coordination and cooperation on agricultural support”*. *The framework indicates that framework groups will make joint decisions on recommendations made to Ministers with the groups “deciding which policy recommendations are to be escalated to Ministers individually or collectively”*.

The Food and Feed Safety and Hygiene Framework Concordat states that the food safety authorities will carry out *joint risk analysis* for proposed changes within the scope of the framework. When the food safety authorities have reached a

decision, they will present *joint recommendations* to Ministers, setting out whether a common or divergent approach is proposed.

Framework laws have been a feature of other federal and devolved systems, where they are laid down by the central level. In Spain a *ley marco* and Italy a *legge quadro* stipulates the degree of discretion regions have in applying national laws, in much the same way that the European Union directives did. The use of such provisions has lately been much reduced in Germany. In Spain and Italy framework laws have caused conflict as regions have complained that they are too detailed. The UK has not had such laws in the past and, thus far, no frameworks are implemented through legislation (although some frameworks have legislative elements such as the Fisheries Management Framework of which the Fisheries Act 2020 is a part). Rather, frameworks are implemented by a Memorandum of Understanding or a Concordat between the governments. These written agreements are not legally enforceable, something the agreements themselves often make explicit. No frameworks have been imposed by the UK Government.

Intergovernmental oversight of the common frameworks programme

The new [Interministerial Standing Committee](#) (IMSC) emerging from the joint review on Intergovernmental Relations will oversee common frameworks and the UK internal market.

Intergovernmental dispute resolution mechanisms sit above the dispute resolution processes for each common framework. As such, where disputes about the operation of frameworks cannot be settled through framework processes, intergovernmental dispute resolution mechanisms (described earlier in this paper) can be used to reach agreement.

In its report on the UK internal market, the Committee stated that there is a need to re-examine the UK's approach to IGR within the context of common frameworks. It also expressed its concern that if the operation of frameworks is viewed as being solely inter-governmental this may undermine the Scottish Parliament's commitment to being accessible, open and responsive as well as undermining its ability to develop procedures which make possible a participative approach to the development, consideration and scrutiny of policy and legislation.

The Committee recommended that consideration needs to be given to opening up the common frameworks process to allow opportunity for public consultation and parliamentary scrutiny in significant policy areas prior to inter-governmental decisions being made.

In its [response to the Committee's report](#) the Scottish Government stated that it "*recognises the importance of avoiding any diminution of transparency and parliamentary oversight as a result of leaving the EU, and is committed to ensuring that Parliament is provided with sufficient opportunities to scrutinise the arrangements for intergovernmental relations*".

The response also stated that it is *“important to emphasise that frameworks are policy neutral and are agreements about ways of working rather than particular policy outcomes. Any measures agreed within frameworks or affected by the exclusions process would be subject to Parliamentary scrutiny the same way as other policies, through established processes.”* And that *“Because of the range of subjects covered by frameworks we anticipate that some will be used more than others in order to facilitate divergence in particular areas.”*

The Scottish Government also highlighted the ongoing work between Scottish Government and Scottish Parliament officials *“to discuss new ways of working to manage the complex environment which now exists after EU exit”*.

Theme 3: Balancing confidentiality and transparency

To consider the transparency challenge which IGR presents and how to balance the confidentiality desired by governments with the transparency legislatures need to enable scrutiny and ensure accountability (including whether the written agreement on intergovernmental relations between the Scottish Parliament and Scottish Government is successful in balancing these demands or requires revision post EU exit).

Transparency

Intergovernmental working raises issues of transparency. The JMC system of IGR in the UK faced significant criticism for its lack of transparency. There were some limited reporting requirements, for example an annual report on activities of the JMC.

In 2020 Professor McEwen, Dr Coree Brown Swan and colleagues asserted in [an article](#) that such reports were *“not always published annually”* adding that:

“[n]either the post-meeting communiques nor the annual report offer much insight into the substance of discussions or disputes.”

The proposals for new IGR structures do respond to some concerns about the lack of transparency in intergovernmental engagements and their effects on parliamentary scrutiny. The new structure includes a requirement for the independent Secretariat to produce yearly reports on intergovernmental engagement and produce additional information on disputes. The dispute process itself also requires governments to make statements to legislatures if they are unable to resolve disagreements at higher levels of engagement.

Writing recently (January 2022) for the [Bennett Institute, Professor Michael Kenny and Jack Sheldon](#) note:

“The report commits to transparency and enhanced reporting of information about meetings to the respective legislatures. One of the benefits of doing this is that it helps address one of the most difficult aspects of IGR processes in democratic systems – the problem of how to ensure parliamentary scrutiny for deals done

between heads of government and their ministers. The onus is on the legislatures to establish appropriate arrangements for this, and just as importantly to consider the viability of developing an interparliamentary dimension to this system, involving joint work between members of Westminster and the devolved legislatures.”

This comment echoes proposals made by Professor McEwen, Dr Coree Brown Swan and Dr Bettina Petersohn in 2015 who, [in a report to the Devolution \(Further Powers\) Committee of the Scottish Parliament](#), suggest that legislatures should expand their scrutiny role, for example by establishing permanent scrutiny committees and strengthening interparliamentary working.

In its report on the UK internal market, the Committee highlighted its support for inter-parliamentary working and agreed that it is essential in developing more effective scrutiny of IGR.

It also recognised the tension between transparency and confidentiality in IGR when seeking to improve the scrutiny of inter-governmental relations.

Professor [Nicola McEwen has noted](#) that “parliamentary committees in every UK legislature have called for greater transparency and greater oversight of IGR, not least in light of its increased importance in the context of both Brexit and Covid.” In Professor McEwen’s view the outcome of the IGR review “offers very little” in addressing these concerns. Professor McEwen noted that “there is no reference to parliamentary oversight or a requirement to engage the parliaments.”

In its [response to the Committee’s report on the internal market](#), the Scottish Government stated that:

“The IGR proposals deliver many elements of what the Scottish Government set out to achieve from the review and offer the prospect of improvements to current processes. They also set out a series of principles for collaborative working:

- a. Maintaining positive and constructive relations, based on mutual respect for the responsibilities of the governments and their shared role in the governance of the UK;*
- b. Building and maintaining trust, based on effective communication;*
- c. Sharing information and respecting confidentiality;*
- d. Promoting understanding of, and accountability for, their intergovernmental activity;*
- e. Resolving disputes according to a clear and agreed process.*

These proposals if properly implemented and followed should lead to a better functioning formal engagement. However, the UK Government’s approach to EU Exit, and imposition of the UK Internal Market Act show that procedural improvements alone are not enough for improved intergovernmental relations.”

Written agreement

The Scottish Parliament and the Scottish Government have [a written agreement](#) on intergovernmental relations agreed in 2016. A copy of the agreement is provided at **Annexe A**. The agreement is:

“the agreed position of the Scottish Parliament and Scottish Government on the information that the Scottish Government will, where appropriate...provide the Scottish Parliament with regard to its own participation in formal, ministerial level inter-governmental meetings, concordats, agreements and memorandums of understanding.”

The Agreement recognises the *“increased complexity and ‘shared’ space between the Scottish and UK Governments that the powers proposed for devolution entail.”* It also recognises that *“the increased interdependence between devolved and reserved competences will be managed mainly in inter-governmental relations.”*

In light of the conclusion of the joint review of IGR and the constitutional developments in the post EU exit landscape, the Committee may wish to consider whether the written agreement could be reviewed and updated to reflect the position at present to allow for increased transparency and accountability.

Consideration could, for example, be given to including information on the operation of common frameworks, meetings and decisions of the Partnership Council, and meetings of the Specialised Committees (under the TCA). A review and update of the written agreement would fit with the conclusions of the Committee in its report on the internal market around the need for increased inter-governmental transparency:

“there is a risk that the emphasis on managing regulatory divergence at an inter-governmental level may lead to less transparency and Ministerial accountability and tension in the balance of relations between the Executive and the Legislature.

The Committee is concerned that this may result in reduced democratic oversight of the Executive and a less consultative policy-making process. Our view is that there is a need for a much wider public debate with regards to how to deliver appropriate levels of parliamentary scrutiny and public and stakeholder engagement at an inter-governmental level especially in relation to the operation of common frameworks.”

The Scottish Government has not provided an annual IGR report to the Scottish Parliament since the one laid in May 2019 [covering 2017/2018](#).

Theme 4: The approach to IGR in other countries

To explore the approach to IGR taken elsewhere and what can be learnt from these systems.

Consent mechanisms

In contrast to the approach taken in other countries, the developing system of intergovernmental relations in the UK relies heavily on the concept of 'consent'. This originated in the 'Sewel Convention' at the outset of devolution, by which Westminster would not 'normally' legislate on devolved matters without the consent of the Scottish Parliament. This was extended also to legislation altering the powers of the Scottish Parliament.

While the Sewel Convention was put into statute in the Scotland Act (2016) it is not legally enforceable, as confirmed by the Supreme Court in the Miller case. There was no consent provision for UK statutory instruments covering devolved matters, with a few exceptions such as in Section 30 of the Scotland Act, concerning changes to devolved competence which requires the approval of both the UK and Scottish Parliaments.

The EU Withdrawal Act 2018 contained a consent provision where the UK Government was required to seek a 'consent decision' from the Scottish Parliament before proceeding with regulations to mark those areas of retained EU law that it wished to protect from modification by the devolved legislatures (this provision was [repealed in March 2022](#)). In that case, a refusal of consent or the absence of a decision were explicitly taken as consent. A similar provision in the UK Internal Market Act 2020 (the Secretary of State must seek the consent of devolved counterparts before exercising powers to amend the scope of the non-discrimination principle) is explicit that lack of consent by the devolved bodies will permit the measure to proceed. The Professional Qualifications Act 2022, on the other hand, only provides for 'consultation' on UK ministerial decisions in devolved matters.

Michael Keating has argued that 'consent' appears to mean something stronger than 'consultation' but not that devolved legislatures or governments should have a veto over UK legislation in devolved matters. Until Brexit the issue was, arguably, moot, as the UK Government had not in practice legislated without the consent of the Scottish Parliament in devolved matters. Since 2016, however, the number of consent provisions has increased, while Westminster has on several occasions proceeded with legislation in the absence of devolved consent.

This issue does not arise in the same way in other countries since the concept of consent in the British sense is absent. There is no principle that the central legislature can act in matters that are within the competence of other legislatures. Instead, state-wide priorities and preferences are secured by other intergovernmental mechanisms. Framework laws are one such mechanism and they have been subject to controversy. In Spain, the Sectoral Conferences (*Conferencias Sectoriales*) (the equivalent of Interministerial Committees) provide for voting, with the central government having the same number of votes as the regional governments together. Italy has a Permanent State-Regions Conference (*Conferenza Permanente per i rapporti tra lo Stato, le Regioni e le Provincie Autonome di Trento e Bolzano*), which has a deliberative and coordinating role. In Germany, the second legislative chamber (*Bundesrat*) represents the governments of the regions (*Länder*) and its consent is required for federal action in Land competences. Belgium a federal system with both regions and language

communities - their agreement is required for joint action or action in regional or community matters. While this appears to create many veto points, the political culture in Belgium is based on negotiation and compromise, not only among the various tiers of government but also with the social partners. There are Ministerial Conferences and a Concertation Committee (with equal numbers of ministers from the federal and federated governments), whose purpose is to secure cooperation. In all these cases, there is a legal/ constitutional backstop allowing any government to take matters to a constitutional court for a binding ruling. In consequence, the courts have played a larger role in IGR than they have done in the UK, although in all four countries there are provisions seeking to resolve matters by political negotiation before they reach that point.

**Sarah McKay (senior researcher, SPICe) and Professor Michael Keating
(Committee adviser)**

24 May 2022

Annexe A: Inter-Governmental Relations

Written Agreement Between the Scottish Government and the Scottish Parliament

Background to this Agreement

1. The Smith Commission agreement considered the issue of inter-governmental relations in some detail. Amongst the recommendations of the Commission was that inter-governmental arrangements to support the devolution of further powers be “underpinned by much stronger and more transparent parliamentary scrutiny”.
2. The Commission stated that this improved transparency would include the laying of reports regarding implementation and operation of any revised Memorandum of Understanding between governments and the pro-active reporting to parliaments regarding inter-administration bilateral meetings established to implement the proposals for further devolution. Examples of multilateral and bilateral meetings cited by the Commission were the Joint Ministerial Committee and the Joint Exchequer Committee.
3. The Devolution (Further Powers) Committee considered the issue of intergovernmental relations in its report, ‘Changing Relationships: Parliamentary Scrutiny of Intergovernmental Relations’. In particular the Committee made the following recommendation:

“The Committee considers that a new Written Agreement on Parliamentary Oversight of IGR between the Scottish Government and the Scottish Parliament with regard to the provision of information and how the views of the Scottish Parliament will be incorporated with regard to IGR agreements is an appropriate approach to adopt in order to aid transparency in this area.

The Committee considers that information provided by governments must enable parliamentary scrutiny of formal, inter-ministerial meetings before and after such meetings. Such information, must include, as a minimum, a ‘forward look’ calendar of IGR meetings and the agendas for these meetings. Subsequently, detailed minutes of meetings held and the text of any agreements reached must also be made available to legislatures in a timely manner”.

4. In response to the Committee’s report, the Deputy First Minister wrote to the Committee Convener, Bruce Crawford MSP, confirming that the Scottish Government was supportive in principle with the Committee’s recommendation with regard to a written agreement between the Scottish Parliament and Scottish Government. The Deputy First Minister noted that the approach taken would be “subject to the need to both respect the views of other Governments involved and maintain confidentiality around discussions as and when appropriate”.

Purpose of the Agreement

5. This Written Agreement represents the agreed position of the Scottish Parliament and Scottish Government on the information that the Scottish Government will, where appropriate (see paragraph 6 below), provide the Scottish Parliament with regard to its own participation in formal, ministerial level inter-governmental meetings, concordats, agreements and memorandums of understanding.
6. In reaching this Agreement, the Scottish Government recognises the Scottish Parliament's primary purpose of scrutinising the activity of the Scottish Government within formal inter-governmental structures. The Scottish Parliament also recognises and respects the need for a shared, private space for inter-governmental discussion between the administrations within the United Kingdom, such as, in situations where negotiations are on-going.
7. This Agreement is in recognition of the increased complexity and 'shared' space between the Scottish and UK Governments that the powers proposed for devolution entail. It further recognises that the increased interdependence between devolved and reserved competences will be managed mainly in inter-governmental relations. This Agreement seeks to ensure that the principles of the Scottish Government's accountability to the Scottish Parliament and transparency with regard to these relationships are built into the revised inter-governmental mechanisms from the outset of this structure of devolution.
8. This Agreement establishes three principles which will govern the relationship between the Scottish Parliament and Scottish Government with regard to inter-governmental relations. These are:
 - Transparency
 - Accountability
 - Respect for the confidentiality of discussions between governments

Scope of this Agreement

9. This Agreement applies to the participation of Scottish Ministers in formal, inter-governmental structures. This means, in practice, discussions and agreements of, or linked to, the Joint Ministerial Committee (in all its functioning formats); the Finance Ministers' Quadrilaterals; the Joint 3 Exchequer Committee; the Joint Ministerial Group on Welfare; and other standing or ad hoc multilateral and bilateral inter-ministerial forums of similar standing as may be established. This Agreement does not cover other engagement between the governments, although the Annual Report (referred to in paragraph 16) will comment upon the range and scale of such activity.
10. This Agreement is intended to support the Scottish Parliament's capacity to scrutinise Scottish Government activity and to hold Scottish Ministers to account in the intergovernmental arena only. The Agreement in no way places obligations on other administrations and legislatures involved with inter-

governmental relations and the groups and agreements described here. In line with the principle of respect for the confidentiality of discussions between administrations, the Agreement recognises that the release of details of discussions directly involving intergovernmental partners is subject to their consent.

11. Subject to the above, the Scottish Government agrees to provide, to the relevant committee of the Scottish Parliament, as far as practicable, advance written notice at least one month prior to scheduled relevant meetings, or in the case of meetings with less than one month's notice, as soon as possible after meetings are scheduled. This will enable the relevant Committee to express a view on the topic and, if appropriate, to invite the Minister responsible to attend a Committee meeting in advance of the intergovernmental meeting. Advance written notice will include agenda items and a broad outline of key issues to be discussed, with recognition that agenda items, from time to time, may be marked as "private" in recognition of the need for confidentiality.
12. After each inter-governmental ministerial meeting within the scope of this Agreement, the Scottish Government will provide the relevant committee of the Scottish Parliament with a written summary of the issues discussed at the meeting as soon as practicable and, if possible, within two weeks. Such a summary will include any joint statement released after the meeting, information pertaining to who attended the meeting, when the meeting took place, and where appropriate, subject to the need to respect confidentiality, an indication of key issues and of the content of discussions and an outline of the positions advanced by the Scottish Government.
13. The Scottish Government also agrees to provide to the relevant committee of the Scottish Parliament the text of any multilateral or bilateral intergovernmental agreements, memorandums of understanding or other resolutions within the scope of this Agreement.
14. In line with the provisions of paragraph 9 above, in circumstances where the Scottish Government intends to establish new arrangements with the aim of reaching an intergovernmental agreement the Scottish Government will provide advance notice to the Scottish Parliament of its intention to do so.
15. The Scottish Government also agrees to maintain a record of all relevant formal intergovernmental agreements, concordats, resolutions and 4 memorandums that the Scottish Government has entered into and to make these accessible on the Scottish Government's website.

Annual Report

16. The Scottish Government will prepare an Annual Report on intergovernmental relations and submit this to the relevant Committee of the Scottish Parliament. This report will summarise the key outputs from activity that is subject to the provisions of this agreement, including any reports issued by relevant inter-

governmental forums. It will also comment upon the range of broader inter-governmental relations work undertaken during the year, including dispute resolution. That report will also, provide as much information as is practicable and appropriate of issues expected to emerge in the year that follows.

Appearances before committees

17. In line with the Parliament's overarching Protocol between Committees and the Scottish Government, Scottish Ministers will attend, as appropriate, meetings of the relevant committee of the Scottish Parliament when invited.

18. When issuing an invitation for a Minister to provide oral evidence the relevant clerk(s) should liaise with the Minister's private office in the first instance to determine a suitable date and time and should take into account the timing of Cabinet and other major Ministerial commitments already scheduled in the diary. When reasonable notice has been given, the Minister should give priority to attending the committee meeting.

19. Furthermore, the relevant committee(s) may invite Scottish Government officials alone (i.e. not accompanying a Minister) to attend a meeting for the purpose of giving oral evidence on any relevant matter which is within the official's area of expertise and for which the Scottish Government has general responsibility.