



OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Constitution, Europe, External Affairs and Culture Committee

Thursday 2 October 2025

Session 6



The Scottish Parliament
Pàrlamaid na h-Alba

Thursday 2 October 2025

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CONSTITUTION, EUROPE, EXTERNAL AFFAIRS AND CULTURE COMMITTEE
25th Meeting 2025, Session 6

CONVENER

*Clare Adamson (Motherwell and Wishaw) (SNP)

DEPUTY CONVENER

*Jamie Halcro Johnston (Highlands and Islands) (Con)

COMMITTEE MEMBERS

George Adam (Paisley) (SNP)

*Neil Bibby (West Scotland) (Lab)

*Keith Brown (Clackmannanshire and Dunblane) (SNP)

Patrick Harvie (Glasgow) (Green)

*Stephen Kerr (Central Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Dr Paul Anderson (Liverpool John Moores University)

Professor Thomas Horsley (University of Liverpool)

Professor Nicola McEwen (University of Glasgow)

Professor Colin Reid (University of Dundee)

David Thomson (Food and Drink Federation Scotland)

CLERK TO THE COMMITTEE

James Johnston

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Constitution, Europe, External Affairs and Culture Committee

Thursday 2 October 2025

[The Convener opened the meeting at 09:00]

Transparency of Intergovernmental Activity

The Convener (Clare Adamson): Good morning and a warm welcome to the 25th meeting in 2025 of the Constitution, Europe, External Affairs and Culture Committee. The only item on our agenda is an evidence-taking session for our inquiry into transparency of intergovernmental activity and its implications for parliamentary scrutiny. We have received apologies for the today's today from Patrick Harvie and George Adam.

We are joined in the room by Professor Thomas Horsley, professor of law, University of Liverpool; Professor Nicola McEwen, professor of public policy, University of Glasgow; Professor Colin Reid, University of Dundee; and David Thomson, chief executive of the Food and Drink Federation Scotland. We are joined online by Dr Paul Anderson, senior lecturer in international relations and politics, Liverpool John Moores University. A warm welcome to you all this morning.

We will move straight to questions. I will start with a general question. Following the 2024 general election, the new United Kingdom Government announced its intention to reset devolution. What progress has been made in delivering that reset? Perhaps I could come to Nicola McEwen first.

Professor Nicola McEwen (University of Glasgow): Thanks and good morning, everyone.

A reset is a process, not an event. I think that we have seen a culture change in that process of resetting relations. As I understand it—although it is difficult because of the lack of transparency—there is a lot more willingness to share information. UK Government officials have a bit more ministerial permission, in a sense, to share, in contrast to what things were like before the general election under the previous Administration. There is definitely a lot more engagement and positive mood music around the relationship.

However, cultural shift will take you only so far. Some of the challenges that were there previously and which contributed to the difficulties in the

relationship are still there. We will come on to talk about some of those, but they include the United Kingdom Internal Market Act 2020 and the fallout from Brexit. There are lots of different things that have contributed to the relationship deteriorating.

We have had a response to the UKIMA review, but it has not addressed the issues that this committee or the Scottish Government had. As I understand it, we are still awaiting a resolution to bolstering and strengthening the Sewel convention. All those issues that were there before are still there. Culture takes you only so far.

The Convener: Okay. I will go to Paul Anderson online.

Dr Paul Anderson (Liverpool John Moores University): Good morning, everybody.

Nicola is right. What we have seen so far is, principally, a change in tone. In 2024, the rhetoric and the mood music were fairly positive, with positive notes from both the Scottish Government and the UK Government. However, the position has slightly deteriorated as things have gone on. Events have caused that. We saw, for example, the issue of the UK Government's negotiations with the European Union, particularly around fisheries, where the Scottish Government was not involved or indeed updated until what seemed to be the last minute. The rhetoric has improved since the previous Government, but there are still issues.

The creation of new structures such as the council of the nations and the regions is a tangible signal of engagement by the UK Government to formalise the process. The Scottish Government has questioned the value of that forum and the wider engagement specifically with the mayors of combined authorities in England. However, it is a signal of the UK Government's willingness to formalise things and have more engagement with the devolved Governments and partners. Those arrangements are still in their infancy and issues still need to be ironed out, but there has been, since 2024, a slight but certainly notable change in both the rhetoric and that willingness to engage with devolved partners.

The Convener: Thank you. Mr Thomson, do you want to give an industry view?

David Thomson (Food and Drink Federation Scotland): Yes, thank you. Thanks for inviting me.

I guess my interest here is to try to get across the impact of intergovernmental relations on businesses in the food and drink sector, but probably in general as well. I agree with others that the rhetoric has been more positive, down to, at the least, the previous Secretary of State for Scotland and the Deputy First Minister. All that seems positive.

However, as outside observers, we do not necessarily see that lasting beyond personal relationships and that initial warmth, in particular as we go into an election period in Scotland and Wales next year. If I were advising businesses, I would say, "Watch what they do, not what they say."

Again, as an outside observer, I have seen a little bit of loosening up of civil service relations, but it has limits and, as others have expressed, each side probably still has significant frustrations.

Professor Colin Reid (University of Dundee): The only thing that I would add to what has already been said is to emphasise that it can be a fragmented picture. Even before the reset, in some areas there was good collaboration and in others there was not. Things suddenly go ahead quickly as a result of pressures in politics and business in London or in Edinburgh. Although you can talk in generalisations, it will be topic by topic, issue by issue.

Professor Thomas Horsley (University of Liverpool): Good morning, everyone. I would only add my endorsement of a couple of points. What has been said is absolutely true. It is very much a process, and there has been a cultural shift.

If you were to look at some of the detail, points of tension have been raised, including things that were set out as specific objectives in relation to the reset. We have mentioned the Sewel convention and the memorandum of understanding, for example. There are other aspects as well. I would probably say that those are not insignificant points of tension and so they are ones to watch.

Perhaps my main point is just to reinforce that the reset does not reflect legally or constitutionally any dramatic change. It is still very much grounding intergovernmental relations in the political sphere, which, as we have heard before, makes them vulnerable to changes in political thinking and actions. I am sure that we will come back to develop that point later this morning.

The Convener: I will follow up on that issue of the political sphere. In the lead-up to the elections that we will have next year in Wales and Scotland, tension is evident from the discourse and from what is happening. Perhaps Mr Alexander's reports from the Labour conference, which is happening at the moment, will show that there seems to be a level of political interchange in what is happening.

Have you seen any difference between UK Government's relationship with the Scottish Government and its relationship with the Welsh Government, given that both the UK Government and the Welsh Government have the same party in control? Does anyone want to come in on that?

Professor Horsley: I will speak to one example. If we look at the Welsh Government and its approach publicly to the internal market act, you will see in its official response to the UK Government's review a shared willingness to engage quite openly with some of the changes, such as the move to the common frameworks as the primary instruments to manage regulatory difference. That has been publicly expressed.

At the same time, there is still public opposition to the internal market act, even with, as you mentioned, a Labour Government in the Senedd and now in the UK. There is still a defence of what the Welsh see as being devolved interests that transcends any cross-party alliance, if you like, in terms of the broader Labour family. I would speak to that with respect to Wales.

The Convener: Does anyone else want to comment on that?

David Thomson: As a real-world example, and being cognisant of the court case, I would give the example of the deposit return scheme, the interoperability of which, at the current stage, Scotland, England and Northern Ireland have all now agreed on. Wales has not yet agreed. In the long term, the Welsh want to go further and harder. Recent announcements from the Welsh Government show that it has begun to come a little bit more into the fold, but it is a real example of where there was significant difficulty in Scotland. Despite the fact that the Administrations are the same in England and Wales, there has not been the level of agreement that one might expect in order to deliver that scheme across the whole of the UK in a way that works for business.

Professor Reid: This is slightly at a tangent, but the elections coming up raises the issue of timings and the different schedules and cycles of the Parliaments, not only in-year, with the different recess dates, but in relation to the break that will come. It is underestimated how much inconvenience and practical problems the mismatch of timings causes in trying to operate the various mechanisms smoothly.

The Convener: Thank you. We move to questions from committee members, and I will go first to Mr Brown.

Keith Brown (Clackmannanshire and Dunblane) (SNP): Thank you and good morning. I am thinking how difficult it must be to take an academic approach to this when so much of it comes down to political will and the politics behind it all. I do not think that intergovernmental relations could be explained without reference to politics. To the public, it is a hot mess. They will not even try to comprehend it because it is not governed by any rationale across the piece.

Going back to devolution, we were told that the Sewel convention would be enshrined in law. People were told that before they voted in the referendum, but it was ditched immediately afterwards. That bad faith has continued since.

The internal market act, which is opposed by the Welsh and Scottish Governments and by this Parliament, has taken further the extent to which the UK Government can involve itself in devolved matters. I will give one recent example. Last week, the UK Government announced a substantial amount of cash that is to go out across the UK through the pride in place initiative. That was not the subject of any consultation with the Scottish Government and it will involve spending in local areas and the establishment of committees or boards across the country. There is no real criteria as to how the money is to be spent, and the initiative does not use the Scottish index of multiple deprivation or any other measure. The Convention of Scottish Local Authorities has not been consulted and no reference has been made to the grant-aid expenditure formula for local government.

I just wonder about that lack of consultation. Given that a Labour Government was responsible initially for the establishment of devolution, you would have thought that a Labour Government would want to respect devolution. Labour also decried the predecessor levelling up fund, so you would have thought that it would not have announced the initiative. What implications will the fact that it has done so have for the intergovernmental relationship? Does it blow out of the water any idea of a substantive reset, rather than rhetoric sitting alongside actions that do not mirror that rhetoric? I know that that is quite a loaded question, but I am interested to hear any answers on the implications of the pride in place initiative.

Professor McEwen: One interesting thing for me around that announcement was that it came alongside the announcement about the green freeport in Aberdeen, on which there was a lot of intergovernmental working and collaboration. It was a juxtaposition of a good example of collaborative working and one that did not seem to involve much in the way of collaboration at all.

09:15

Why is the UK Government doing that? Some of the reasons are similar to some of the reasons that the previous Government did the same. The Conservative Administration was more competitive when it came to devolution. Although I do not think that we are seeing that from the Labour Government, the Conservative Government also wanted to increase the visibility of the UK Government across the whole of the UK so that it

was seen as the legitimate Government of the whole of the UK, following on very much from the recommendations of Lord Dunlop's report of a few years ago. The Labour Government very much wants that, too.

For me, part of the root of all these things is that there is a mismatch in the understanding of the legitimate roles of each Administration. The Government has talked about bringing forward a memorandum of understanding on the Sewel convention. I would like to see it go back to the original memorandum of understanding, which is supposed to underpin all of the relationships and which has not been successfully reviewed since 2012 or 2013. An attempt to review it failed, partly because of that mismatch in understanding.

There are different views of what devolution means, its scope, and the extent to which the UK Government should intervene or have a role in areas that are otherwise devolved, including spending and other commitments on regeneration and economic growth, which it sees as very much within its bag.

On your initial observation about politics, I am a political scientist and I do not think that politics are ever out of the picture in intergovernmental relations. Intergovernmental relations are entirely political, certainly at the ministerial level. However, you can have processes in place that lie beneath that to support at least awareness raising, communication and, where appropriate, co-decision making. However, we are not quite there yet—in some ways, we are far from being there—with the processes that are in place around all these things.

Dr Anderson: My first comment picks up where Nicola McEwen left off on the politics. Intergovernmental relations happen in every system that has some form of multilevel governance and politics will always play a part. However, politics and political tensions or differences in political policy or ideology need not preclude Governments having to work together. At the end of the day, we are dealing with big issues such as climate change and the eradication of poverty that no Government can do alone anyway. At times, politics has to be put aside, albeit that it still colours and potentially clouds intergovernmental relations.

Linked to that, we should not underestimate the importance of officials who work behind the scenes. The civil service has often been referred to as the oil and glue in the system that keeps things going. Often when we see political tensions play out, those relations still happen behind the scenes.

With regards to the pride in place initiative—again, I am picking up on Nicola McEwen's point—

the UK Government not engaging properly with devolved Governments is an issue. We saw the Labour Party critiquing the approach to the shared prosperity fund when it was in opposition, so it is slightly disappointing to see that that engagement is not there.

However, there are two things. One is the emphasis, particularly in Labour in England, on patriotism and the union, for fairly obvious political reasons. It remains important for Labour to show the visibility of the UK Government across the whole of the UK. Linked to that is the fact that we are going into an election period in two of the devolved nations. That comes into it as well.

There is a mismatch in the understanding of devolution of different Governments across the UK. The UK Government and the UK civil service see no issue with the UK Government flexing its muscles or exercising powers in the devolved nations, because it is the Government of the United Kingdom. With regards to the reset, a lot of work is still to be done, notwithstanding 25 years of devolution, to try to change the unitary mentality that still underpins how the civil service in Whitehall and some Government ministers understand devolution.

Keith Brown: I will just come back on that point. If you think back to Brexit, the shared prosperity fund was essentially trying to replace the European funds that came before, but the EU, as a body, quite rightly often wanted to identify itself with those projects, so you saw the big signage.

The point that I am trying to make is that it goes way beyond the idea of the UK Government trying to say, "This is what we're doing in Scotland," in order to make itself relevant—which is quite legitimate. Can you imagine what the reaction of Westminster would be if, in Scotland, six months out from a UK general election, we set up a fund and gave individual sitting MSPs a crucial role in deciding how those funds were to be disbursed? I find this an extraordinary thing to have happened in respect of the implications for intergovernmental relations and interparliamentary relations as well.

On your point about the politics, the examples that we have and the submissions that we have received show that in Germany, for example, the procedures and practices seem to have been strong enough to withstand the political ebb and flow. That is my impression anyway. I do not know that from first-hand experience, but they seem to have the policies and processes in place, whereas here they are ad hoc, one sided or absent completely in too many cases for us to be able to say whether there is proper intergovernmental working.

Dr Anderson: There are two things when it comes to intergovernmental relations: there are

the processes and the structures, and then there is the political culture. In the UK, we have processes and structures that were traditionally—since the beginning of devolution and the establishment of the Scottish Parliament, for example—much more ad hoc under the joint ministerial committee. We have a litany of reports that show that. That is why the process in 2022 sought to formalise those relations. Those relations have been formalised, and so those structures and processes are there.

The key point about intergovernmental relations is that structures are one thing, but, if the people operating within them do not want those structures to work or are not keen on intergovernmental relations because of, for example, party-political differences, they will not work. What differentiates the UK from Germany, but even from other federal and multilevel governance systems, is the absence of what we, in political science, call a federal political culture—the willingness to co-operate and to operate on principles of consensus, partnership, equality and parity of esteem. That is lacking in the UK, and that has a huge impact when it comes to intergovernmental relations. If the UK Government does not see the devolved Governments as partners in the governance of the UK, it will not engage with them as it ought to or as you would see happen in another federal system. The political culture is not discussed so much in political science debates, but it is hugely important because it conditions how intergovernmental activity operates and takes place.

Professor McEwen: I agree with all of what Paul Anderson just said. I do not know the Scottish Government's intentions here, but I know that the pride in place programme came as a little bit of a surprise. I suppose that the one thing to add is that there is, following the IGR review, a dispute resolution process that does not allow the UK Government to deny the existence of a dispute. That was one of the positive changes to come out of the IGR review. It would be interesting to know whether the Scottish Government intends to use that route, which is available to it through the formal structures that are there, to raise the issue as a dispute.

Keith Brown: For your information, I do not know what the Scottish Government's intentions are, but mine are to write to the Electoral Commission and to the Presiding Officer, because that is a complete interference in the election process in Scotland.

On the general question, do other members of the panel have any views to express?

Professor Horsley: It will be no surprise that I endorse much of what has already been said. You are absolutely right. IGR is difficult to get your head around as an academic, and it is also

challenging if you are an industry stakeholder. It has been said already that it is an evolutionary system. It is basically bricolage. We have things like the council of the nations and regions just appearing, as well as city mayors and the mayor of London. However, there are often areas where we might have expected greater collaboration politically across the system post-reset, such as the designing of the terms of the internal market review, which were, again, imposed. There is a lot of politics here, and, as Paul Anderson said, this is part of intergovernmental relations—it is not unique to devolution up here.

I stress that our system, even comparatively, is relatively weakly institutionalised. It is non-statutory and it relies very heavily on the quality of political relationships. A reset is a process, but it is not an arc of history. We are not necessarily bending towards something good. The current UK Government could change or a future UK Government could change its engagement and willingness, either positively or negatively.

One final point that I would stress goes back to something that you mentioned as well: IGR has changed. There has been an evolution whereby IGR is not necessarily about high-level dialogue or dispute resolution. Particularly since Brexit, there has been a shift to using IGR as a space for actual policymaking. The internal market is one example of that. It is interesting because it poses challenges to the Parliament and to the exercise of powers and legislative powers here, at Holyrood. That is, if you like, an even more aggravated tension in the emerging IGR landscape, and I suspect that we might come back to talk about that in a moment.

Keith Brown: I have one last question. I may come back in if there is time afterwards, but I know that other members want to come in.

In relation to the Sewel convention, I forget who proposed it, but our papers mention the idea of having a designated committee within this Parliament to look at legislative consent motions. Is there any mileage in the idea of having a joint standing committee between this Parliament and the Westminster Parliament, with members from both sides on it, to try to ease some of the tensions around the Sewel convention? I do not know whether there is a precedent for it.

Professor McEwen: Possibly, but it depends on what it would do. A number of problems were associated with the operation of the Sewel convention even before we got to the point of it being set aside and the UK Parliament proceeding without consent. That, in itself, is the biggest issue, but there were other issues around timing—the devolved legislatures being given due time to consider legislative consent motions—and the possibility of legislation changing further down the

line, after consent has been given. There are all sorts of things to consider.

What would a standing committee do? Would it agree things together or would it look at what then happens? The missing bit of the picture for me has always been what happens in the UK Parliament if consent is withheld—the answer to that, so far, is nothing. If we want to bolster the Sewel convention, I would want to see a bit more than just an MOU between the Administrations. There is a role for the UK Parliament, too, in acknowledging whether it wants to recognise the fact or in some way amend its process if consent is withheld from one or more of the devolved legislatures. Perhaps if a joint committee could start to do that, it would be a positive thing.

Keith Brown: I have not thought it through—I must admit that—but I suppose the idea is that, if the committee was recognised by both Parliaments, its recommendations, if not binding, would at least carry weight and would have to be reported to both Parliaments. It would also address the point you make about timing and the fact that we often get an LCM late in the day. A designated committee could help with the timing of it, because it would go straight to considering it, whereas currently the relevant committee of this Parliament has to try to fit a meeting on it into its work programme.

It is just an idea. I will leave it at that, convener.

The Convener: Do any of the other witnesses want to come in?

Professor Reid: On that final point, there is a huge practical issue when we look at the number of supplementary LCMs that have to come here because of either continuing negotiation between the Governments as a bill goes through Westminster or changes at a late stage. Any revised process would require a fairly significant rethink of how things happen at Westminster to make it work.

Dr Anderson: Over the past few years, I have spent a lot of time thinking about the Sewel convention—more than is healthy, probably. I do not have any strong feelings about having a joint committee, but, with the disregard shown towards the convention since Brexit, which was the catalyst that brought it into disrepute, no option should be off the table.

09:30

In recent times, I have come to think about the parliamentary procedures around the Sewel convention. I think that I put this in my written submission, but I have mentioned it before. When the Sewel convention is engaged, the onus should be on the UK Government to engage with the UK

Parliament and explain what steps it has taken to engage with the devolved Governments. That would have the benefit of the UK Government having to consider the implications for the devolved institutions, to explain what those would mean, particularly in the early stages of law making, and to offer an opportunity to address any concerns. Also, when consent was withheld, the UK Government would have to explain to Parliament, through a clear and transparent process, whether proceeding without consent would be the right thing to do.

Since Brexit, we have seen a significant tranche of legislation passed for which devolved consent has been withheld, so it is important to explore parliamentary procedures through which the UK Government can be held to account, particularly when it is proceeding with legislation for which consent has been withheld. Reforming the memorandum of understanding is important, but perhaps more tangible steps need to be taken beyond that, to ensure that the convention is protected and entrenched as it should be.

Keith Brown: It is worth remembering that the UK Government told the Supreme Court that it viewed the Sewel convention as merely a self-denying ordinance, which undermines much of what people are trying to do to make it a more serious convention. That is just a comment.

Professor Horsley: I will briefly add—Nicola McEwen and others in the room have written about this as well—a point that is more on substance than on process. We have been talking a lot about politics, and devolution is overpoliticised in terms of the relationships between Governments. However, when it comes to the Sewel convention, it would be nice to see a hardening up of the substantives. For example, what does “not normally” mean? Nicola McEwen and I—and others—have been writing about that for ages and complaining. It leaves an awful lot to politics to just leave that hanging.

It would be quite nice if, as well as thinking about process issues, we could also think about that hard question. When, for example, do we want the UK to intervene—under what conditions? Are they effects-based conditions? Are they linked to market analysis or impact case studies? Do we find a legitimate role for UK-wide intervention that perhaps is not just political? Conversely, if the Scottish Government is leaning on, or leaning into, a UK instrument, what is the justification for not bringing that forward here, at Holyrood, as well? Some more work probably needs to be done in that space as well.

Professor McEwen: The Scottish Government’s evidence to this inquiry said that it

“welcomed the proposal for a memorandum of understanding to strengthen Sewel”

and that it “stands ready to assist”. That does not tell me what the Scottish Government wants. Short of a veto, which is not on the table, what does good look like in this space? I suppose that I want to encourage the Scottish Government to be more vocal. Maybe it is being so privately, but we are not seeing that. What does good look like from the Scottish Government’s perspective?

The Convener: That is important. The comparisons are difficult. Germany, for example, has a federal system, and the federal Government would not dream of legislating in an area of devolved state competency—that is in statute. For the first 20-odd years of devolution, the Sewel convention worked well, but it is only a convention, and that is part of our not having a written constitution.

It has been suggested that part of the problem is the fact that England does not have a devolved Parliament of its own and there is a dichotomy whereby the UK Government is for England but also for the whole of the UK. Dr Anderson, you say that nothing is off the table. Would you want to explore that?

Dr Anderson: When it comes to devolution, it is difficult to predict the future. The reality of having an English Parliament and an English Government is not on the table. I am doing a lot of work on this at the moment, but the direction of travel is mayoral combined authorities and regional mayors; so, I do not think that that idea is going anywhere.

What is interesting, though, is the new intergovernmental dynamic when it comes to how different Governments view devolution. In its evidence, the Scottish Government questioned the value of having the council of nations and regions engaging with the mayors. However, in the work that I have done with the mayors, it has been clear that the mayors see themselves as being more or less on a par with the devolved Governments. They do not have the same powers, but, performative-wise or leadership-wise, they are at the same level.

There are lots of interesting dynamics that colour and condition how devolution is developing in the UK.

The Convener: Can Sewel be put into statute? Is that possible?

Professor Horsley: Yes, that would be possible. However, if it were put into statute in the sense of it being legally binding and judiciable, that would be charging the Supreme Court with a particular set of responsibilities. I cannot speak for the Supreme Court—it might not want to accept

that—but you would end up with a resolution through the courts, which would bring its own very different dynamics to the resolution of some of these issues.

There are no legal or constitutional obstacles to making that move. I suspect that it is a direction in which we will not go, but it would not be problematic.

The Convener: As there are no further comments, we will move on to questions from Stephen Kerr.

Stephen Kerr (Central Scotland) (Con): Is it me now?

The Convener: Yes.

Stephen Kerr: I missed my cue completely—dear, oh dear.

Part of the problem that we face in the context of this discussion involves the consequences of Brexit. As the convener said, things were rolling along fairly calmly until we got to the point where we were legislating to depart from the European Union. At that point, all the working relationships that are necessary for these relationships to work without some sort of statutory backstop—if I may use that term in connection with departing the European Union—did not hold up, because all of the party-political positioning overwhelmed the need for a co-operative spirit.

Professor McEwen, in answer to a question a few minutes ago, you said, “we are not seeing that.” That is part of the problem with all this in the governmental relations stuff: everyone recognises that something needs to be in place, but we cannot see anything.

Paul Anderson, you said that we have the processes and structures in place. I am dubious about that, because I cannot see them. Everything is opaque. That does not lend itself to good working practice, does it?

Dr Anderson: No, but the situation is not unique to the United Kingdom. Intergovernmental relations, by their nature, often take place behind closed doors. We see the photo opportunity, which is important, as it has a symbolic aspect; we see the communiques that set out what has been agreed between the Governments; and, when the politicians within those relations brief the media after the meetings, we might also see what lies behind the communiques.

There are processes and structures in place. We have a machinery of intergovernmental relations: that architecture is there. That does not mean that it functions to the degree that it should, albeit it is functioning better now than it was before, but the political issues that go alongside it are also important. For example, you could put

intergovernmental relations on a statutory footing and say that the council of the nations and regions has to meet four times a year. However, that does not mean that much will be discussed in those meetings.

The important thing is that, often, the formal meetings inside those structures and processes are not where things are discussed. The informal meetings, bilateral discussions and things on the sidelines are sometimes much more important. Politics will always condition things.

Stephen Kerr: Yes, I accept the fact that there have been formal meetings, but, when we visited London recently, we heard evidence from a UK Government minister about how good the relationship was now after the reset between the UK and Scottish Governments. He told us that he was out with a UK minister—I do not know whether I am allowed to say their names. Am I?

The Convener: Yes.

Stephen Kerr: Okay. Douglas Alexander, the Secretary of State for Scotland, said that he was out with Ian Murray, driving about during a by-election campaign, and Ian got out of the car to find somewhere to talk on the phone to—I think—Kate Forbes. That is fine. We want to have a cordiality in the informalities of intergovernmental working, but that is not enough to sustain a modern state at all.

You say that we could have a statute that says that a certain council or other will meet four times a year. I do not see why we should not have clear train tracks that tell us when the next meeting of the council of the nations and regions will be. Does anyone know? No—it is just ad hocery gone crazy. We need to have some idea about what these structures are and the process needs to be open.

You are right about photo ops and John Swinney shaking hands with Keir Starmer and all the rest of it, but that adds nothing to the ability of the Scottish Parliament to scrutinise what the Scottish Government is up to in those meetings, because we do not know.

That is a rant, sorry. I find the situation frustrating, given that we all agree this does not work well and we need to do something different.

Dr Anderson: In the UK, there are two problems. First, as I said in my submission, we now know more about what goes on in the formal intergovernmental forums than we used to, but we still do not know that much. Things have improved, but we had a low bar from the beginning. If you have a look at the communiqués, as I have spent time doing, they do not tell you much.

Stephen Kerr: They tell us that there was a meeting—that is what they tell us.

Dr Anderson: Exactly, and that is important—

Stephen Kerr: We would not even know there had been a meeting without a communique.

Dr Anderson: The important thing about the informal meetings is that they happen much more frequently than people would think, and the challenge is that there is no obligation to report on them. If there were an informal bilateral between the Deputy First Minister and the Secretary of State for Scotland, neither of those figures would have to report what was said in that meeting to a parliamentary committee or anything else. That is where parliamentary scrutiny becomes super difficult.

In the UK, we are caught between a rock and a hard place. It is difficult to scrutinise the formal meetings because we do not have a lot of information, and it is impossible to scrutinise the informal meetings because we do not know anything. There is an obligation to ensure transparency and provide more information to Parliament and parliamentary committees to allow proper scrutiny to happen.

Stephen Kerr: The process seems to depend on ad hocery, culture and the personalities involved. Personalities play a big part in politics—I understand that. Michael Gove and Fergus Ewing seem to get on well, for example, and Kate Forbes seems to get on with everybody she encounters in the UK Government. However, you cannot rest intergovernmental relations upon that structure.

Professor McEwen mentioned something that I am passionate about. The Dunlop review brought forward some pragmatic ideas about how to structure the working relations between ministers in the different levels of government in the United Kingdom. One of his many suggestions was the idea of having a secretariat. The fact that there is not a neutral secretariat to guide the path of those meetings, to set them up, to make them happen and to produce the documentation, is a weakness.

I am doing a lot of speaking and I should not be. You should be giving us evidence. Professor McEwen, do you have a view on that issue?

Professor McEwen: There sort of is an independent secretariat, but it is not quite developing how we might have envisaged. I do not want to speak for Lord Dunlop, but that recommendation made me think of something a little bit more like the secretariat in the Canadian system, which is very visible—it has a website, for example.

There is an impartial secretariat that is made up of representatives from all the Administrations that helps to arrange the meetings and produce the communiqués. It is not quite as established as one hopes that it will be, which is the reason—

Stephen Kerr: This group will not have a lot to do, because the meetings are irregular.

09:45

Professor McEwen: It has a lot to do, because there are a lot of meetings and it has to produce a report. We have not had a report since the election last year, so we are due one, for sure.

Stephen Kerr: You take my point, though.

Professor McEwen: Yes, I absolutely take your point. The reports are probably more useful for us than they are for you because it is not that helpful for members to know what happened at meetings that took place six months ago.

One recommendation that Coree Brown Swan and I made in the report that we did for the committee and for the Government, which came through overwhelmingly from our discussions with members, was that it would be much more helpful for members to know in advance of meetings what the Scottish Government wants and the agenda and the priorities that it will take to them.

We have made a couple of pragmatic suggestions about how you might build that into the system of scrutiny within this Parliament in the context of a revised agreement. It seems to me that that would be more useful from the perspective of parliamentary scrutiny of what the Scottish Government is doing in its engagement with the UK Government than the present arrangement.

On your broader point about structures, I agree with you that structures are important. I also agree with Paul Anderson that the informal aspect is important, but having regular structures helps to facilitate the informal meetings. If you know when things are coming up, you can start to build a relationship, and building a relationship is absolutely critical to building trust.

Stephen Kerr: Sometimes you have to force people together. It suits some politicians not to speak to each other and to just shout at each other through the broadcast and other media. Does the idea that there will be a meeting and that, therefore, preparatory work needs to be done, and then post-meeting communiqués and so on must be produced, mean that, even when people do not like each other—when the chemistry is not good and the culture is not right—they still have to meet and speak?

Professor McEwen: Possibly, but it would be more useful if we had a sense from the communiqués what things were discussed—not just the agenda items, which is what lots of them contain just now, but what issues were at stake and whether they were resolved.

Stephen Kerr: You would like more transparency.

Professor McEwen: Definitely.

Stephen Kerr: I see that David Thomson wants to come in.

David Thomson: If the Scottish Parliament does not know what is going on and the academics do not necessarily get the latest information and have to rely on other stuff, can you imagine how difficult it is for businesses? My written evidence touches on the issues of clarity, transparency and information about timescales. None of that is there, from a business perspective.

Whether you represent a large business, a small business, a medium-sized business or an international business, you choose to invest based on confidence. It is difficult for me to advise businesses about how confident they should be regarding the path of regulation, the timescale of regulation and the impact of regulation. I am afraid that the situation that we got to with the deposit return scheme has cost an enormous amount of confidence on the part of businesses because, essentially, we had a law that was passed in Scotland that businesses needed to comply with until they did not. That, unfortunately, has brought the whole law into significant disrepute, and it happened because we do not have that clarity, structure and process that you are talking about, Mr Kerr.

The Convener: Mr Kerr, I would like to probe just a little bit more on that.

Stephen Kerr: Can I follow up my question, first?

The Convener: Yes, okay.

Stephen Kerr: The point that David Thomson is making is pertinent to the whole issue of common frameworks. Common frameworks have almost a mythological dimension. You cannot have common frameworks if you do not have structures that sustain them.

David Thomson: Our point of view about common frameworks is clear. A significant number of common frameworks cover food, feed and agriculture. The work that goes on behind them seems to be pretty good because it is all at the official level, but we have no idea what is discussed when and what decisions are made on the back of them.

The Convener: I mentioned Douglas Alexander, as did you. We are not picking on Mr Alexander at all. Indeed, in his previous ministerial role, he appeared in front of the interparliamentary forum and we were able to discuss some of these issues with him. However, it is about visibility and what the public and the industry see. These are

crucial and important issues, and we need confidence that the people sitting around the table are getting on with the job and doing it well. In the context of an election campaign at the moment, when people are openly critical of one another's Governments and of all these kinds of things, what does that do for the confidence of the industry itself?

David Thomson: It is difficult. Business confidence in the food and drink sector is at rock bottom at the moment. That is not necessarily anything to do with elections or anything like that. Businesses are wise enough to understand that that is the game.

Where it is difficult, though, is in long-term projects that outlast electoral cycles. The whole world of plastics and packaging is a long-term project with multiple Governments involved and with industry pretty much a cheerleader for a big chunk of it, but the timing and implication of that, which requires the Scottish and UK Governments to work together, has shown us both the best and the worst of how that might work.

Extended producer responsibility is being introduced on a four-nations basis. That work is proceeding, and the bills are hitting businesses just now. We might have an issue about how that money is then disbursed, but the four nations have worked very well together. DRS? No. They are both part of the same regulation, because they are all about the plastics and packaging in the industry.

Added to that is the UK plastics tax, which came first but should really have come last. All that kind of thing, which is a long-term 10-year project at least, has had no clear structure and no clear timeline, and we are still in dispute with the Welsh Government about its precise approach to it, which is really difficult.

Professor Horsley: On some of the points that we have discussed, it is probably worth recognising a distinction when it comes to scrutiny and accountability, because there is a limit to what the Scottish Parliament can expect from IGR processes that involve joint scrutiny. I endorse Nicola McEwen's point and the excellent work in the report with Coree Brown Swan, which I cite in my written evidence. One thing to think about is that the Parliament should focus on scrutinising—to use Nicola's phrase—what it is taking to those processes and what it is bringing back. That is key to bolstering those aspects.

The common frameworks are mentioned as well. I am sympathetic to the view that stakeholders, not just academics, are very much left in the dark about what is happening with those processes, which are under review. I would stress the UK Government's commitment—and it is a

shared commitment—to introducing greater space for stakeholder engagement in the common frameworks. That sounds very nice and it works well on many levels, but it has implications for the Parliament. If you are, in effect, bringing stakeholders into shared spaces towards the adoption of common policies, you are moving closer to making policy decisions and potentially taking them away from decisions made here, in this Parliament.

There is a lot at play here. Movements and improvements in IGR always have to be measured against the scrutiny concerns of this Parliament.

Stephen Kerr: I have two more questions, convener, and then other colleagues will want to come in. Then, if there is time, I will have 100 more questions, at least.

My first question is about the idea of having joint scrutiny, which Keith Brown alluded to. I am a strong believer in the idea that we should co-operate across Parliaments, because we have so many areas of joint interest. Where else in the world does joint scrutiny happen? Where else in the world would members of a House of Commons select committee, a Scottish Parliament committee, a Senedd committee and perhaps a Stormont committee come together to do a joint inquiry? Does that happen? How successful is it? How does it work?

Professor McEwen: It is difficult. I do not know about any comparable systems—that is the honest answer—but Germany has been mentioned. There is a different structure there in that the representatives from the regional Governments are in the national Parliament; so, in that sense, they are already doing that. If there was ever to be a reform of the House of Lords to create a chamber of the nations and regions, for example, that is the sort of place that would facilitate such joint scrutiny.

There is precedent at least in an ad hoc way, though. I remember that we hosted a meeting of the Scottish Affairs Committee and the Social Security Committee here at about the time of the Scotland Act 2016, when they were discussing the devolution of social security because there was a shared interest there. There have definitely been examples of that, but, much like other aspects of IGR in the UK, it is not systematic or institutionalised.

I could check and get a response for you on that.

Stephen Kerr: Does anyone else have any experience or knowledge of these things?

We have discussed it as a committee, and we have met with members of committees of the House of Commons and the House of Lords

because the scope for co-ordinated inquiries—let us call them that, if not joint inquiries—is great. One challenge that we have had here has been getting UK ministers to come and speak to committees with the regularity that we would like. Joint approaches might work better, because, constitutionally, ministers are responsible only to the Parliament that they sit in—I understand that. It would be helpful if there was a broader approach.

My second question is to do with the EU-UK reset, which could be another mythical creature for all I know. I am wondering about the consequences of agreements, particularly for the food and drink aspects of any reset. I do not know how near we are to having some agreement with the European Union, but undoubtedly one of the demands of the European Union will be that we operate in lockstep with its regulations. Setting aside the issue of whether we should be in lockstep at all, I am interested in the consequences for this Parliament of that arrangement, because, based on the reports that we get of the volume of regulation that would come our way, we would struggle to do anything other than just nod at its coming and going. There would be no scrutiny whatsoever.

Can I have some commentary from those of you who have a view on it about the consequences of a lockstep regulatory agreement between the UK and the European Union for scrutiny, accountability and democracy?

David Thomson: I will not go that far, but I will talk about the practicality of that agreement. Food and drink is heavily regulated, and a significant amount of regulation happens at the European level. Our current understanding from the Department for Environment, Food and Rural Affairs and the Scottish Government is that, if we are to follow dynamic alignment with Europe as part of the UK-EU reset, then, yes, we would need to follow European regulation going forward and, yes, we would need a process for the adoption of that regulation across the UK, because food and drink is generally devolved. That would seem to involve, in the initial phase, several hundred pieces of regulation just to meet any framework agreement that might come.

Already, because of the time that has passed since Brexit, there is a significant delta of change. Huge, untapped bits of regulation have been brought in, some of which will have significant negative impacts on businesses in Scotland. In general, the removal of some of the import controls with Europe will be better for the food and drink industry, but there will be issues, which I am sure this Parliament will talk about when we come to them.

Yes, in practical terms, I would expect a significant volume of regulation, initially at least and probably on-going. Then—and this is for others to answer—what ability you will have to say no here or in the Senedd or at Westminster is unclear. It becomes a bit more difficult to understand where the ability to defend Scotland's or the UK's interests will lie.

10:00

Stephen Kerr: We already know, from when we were members of the European Union, that we have no ability to say no. You sign up to the whole thing and that is it. Do any of the academics want to comment?

Professor McEwen: On the broader issue of the UK-EU reset, I think that the implications of dynamic alignment will be enormous. It will possibly be positive for a Parliament that supported the idea of keeping pace, as it might facilitate that, for sure. However, we do not yet know what the reset will look like, and we also do not yet know what the process will be. The expectation is that there will be a lot of secondary legislation coming through, to maintain dynamic alignment if that is what is ultimately agreed, and a lot of that will inevitably fall within devolved areas.

Going back to when the UK was a member of the European Union, the joint ministerial committee (Europe) met regularly, had a schedule and was an example of relatively good IGR. It will be important to have a system and a process that emulates that, to ensure that there is at least input into the discussions. It will also be important to ensure that the Parliament has a role within that—which was missing before—so that you are aware and engaging with the Scottish Government ahead of those meetings.

The timing issues that Colin Reid mentioned earlier will be very important as well, because a lot of that regulation might land when Parliament is not sitting—during the campaign or the aftermath of the campaign next spring. There is a real scrutiny gap there.

Stephen Kerr: Do you think that it could come as soon as that?

Professor McEwen: Who knows? The timing is potentially an issue, but there is an issue regardless of that.

Stephen Kerr: What about the volume?

Professor McEwen: I think that it will be enormous, I really do. However, the protocol agreement that you have in place here—Thomas Horsley will speak to this—has potential regarding what you can expect. I think that it has a bit more heft to it than the written agreement as it currently

stands. You might want to use that as additional leverage.

Stephen Kerr: What about democratic accountability? We are going to be faced with a flood of regulations—I think that we are agreed that the volume will be huge—and we cannot reject any of them. The scrutiny of them is probably going to be rubber-stamping. Does that not undermine the very basis of the Parliament? We talk a lot about democratic deficits—at least, some of us do—and that would be a huge democratic deficit, would it not?

Professor McEwen: The UK Government took the decision that it wanted to leave the European Union and, at the same time, have regulatory alignment. That comes at a price, and the price is democratic accountability at that level, because the UK is no longer at the table. That was a political decision, or a referendum decision, and it has knock-on effects for this Parliament when it comes to that process. That is why it is important to try to get at least the input processes right and make sure that the Parliament has a role in that respect.

Professor Horsley: The issue of “take it or leave” when it comes to dynamic alignment will be determined by the agreement that is reached, but you could end up in the same position as Norway, whereby “take it or leave it” applies not just to this Parliament but to the whole of the UK in the sense of what is on the table.

Stephen Kerr: Yes—it would do, would it not?

Professor Horsley: Exactly. If you are using the language of democratic deficit as a political choice, in our system it is a double hit.

On practical things that you can do, assuming, of course, that a new dynamic alignment structure allows space for the Parliament to consent to secondary legislation, as Nicola McEwen mentioned, you have the model of the protocol, which does have teeth and I think would be a useful instrument in that sense.

Stephen Kerr: But, ultimately, we could not reject secondary legislation that came to us in regulations from Brussels, could we?

Professor Horsley: Even if you have a consent mechanism under a system, there is the extent to which it binds anyway. Procedurally—

Stephen Kerr: That is genuinely an academic point, is it not?

Professor Horsley: Procedurally and also practically, you are absolutely right. Practically, you will have a situation whereby you may have a procedural—I do not want to use the language of formality—process through which at least some degree of scrutiny can be undertaken.

Stephen Kerr: But to no effect—that is the point, is it not?

Professor Horsley: It will depend on the design of the instrument that is negotiated and also on what the UK ultimately agrees. There is a world in which the UK may have some input—some opportunity to manage the alignment and to influence. No such model currently exists in the relationship with the EU, but it is—

Stephen Kerr: Have you met the European Union? I do not think that we would expect any of that, would we?

Professor Horsley: I have spent many a year working on European Union topics, and I am fully aware of the dynamic that animates European policymaking.

Stephen Kerr: The nature of the beast.

Professor Horsley: It is a concern for this Parliament. Realistically, there are probably limits to what can be done, but there are processes and mechanisms—as Nicola McEwen said—that can be modified, expanded and usefully applied.

Stephen Kerr: The concern that Professor McEwen has shared is that this could all fall next March, when we are not here. Is that an informed view or is that just a concern that you have?

Professor McEwen: It is wholly speculative. I do not know when it is going to fall.

Stephen Kerr: I thought that you maybe had an inside track.

Professor McEwen: I think it is reasonable to assume that that period will be at least a period of important negotiation, when the Parliament will not be sitting and able to scrutinise it.

Stephen Kerr: Yes. I suspect that that will be as opaque as the other stuff we have been speaking about.

Those were my two questions for the moment. I can come back in if we have time.

Neil Bibby (West Scotland) (Lab): This morning, we have heard a lot about Governments not telling us things—that they do not give the Parliament information and do not tell industry about matters that are being discussed. As an Opposition politician, I do not think that transparency is the Scottish Government's strong point on matters quite apart from intergovernmental relations. Do not get me wrong—I think that Opposition politicians at Westminster would say the same about the UK Government, and Opposition parties in any Parliament would probably say that about the relevant Government. In general, it would be nice if Governments just told us things.

It is correct that we need to see transparency and to consider modifying the ways in which we run our processes. Within the current system, though, is this committee, and others in the Scottish Parliament, doing enough? Clearly, we are discussing the issue and have done some work on it—and we thank you for all your contributions to that—but to what extent do parliamentary committees need to up their game on transparency? I am sure that we will not take it personally if you think that we need to do more, through our current mechanisms and processes, to improve the scrutiny and transparency of intergovernmental relations.

Professor McEwen: When you asked us to review the written agreement, that was an opportunity. I know that that work is currently paused because of the committee's inquiry. The inquiry itself presents another opportunity for the committee to shape what comes next and to achieve a more meaningful agreement about the kind of material that is shared and the point at which that should happen. For example, we considered the impact of the United Kingdom Internal Market Act 2020 on the processes of lawmaking and policy making. I do not see any reason why an assessment could not be shared with the committee, at the outset, when it becomes apparent that there might be an internal market interaction.

The issue is the timing of when things are shared. That is tricky because, as Thomas Horsley mentioned earlier, common frameworks have become a place where policy is made; they are not just for discussing issues that can be negotiated further down the line. It is important for the Government to have a space in which to formulate and make policy, but I still think that things could be done earlier. For example, some outcomes of the internal market review, and the process of making more use of common frameworks, provide points of opportunity for sharing matters with the committee when the Scottish Government is taking them through that process. I do not see any reason why there could not be more transparency at those points; it would not undermine any negotiation tactic that the Government might have.

Professor Horsley: I agree with Professor McEwen. I am not suggesting that I agree with them, or otherwise, but I add that there is potential to take steps that have been mooted in other devolved Parliaments. Nicola is absolutely right that one of those is about getting the timing right, so that things are done at the earliest point.

When I was thinking about these issues, and when I talked to other people about them, an example that came up involved thinking about the standing orders at the point when bills are

introduced. You already have to provide a policy memorandum with impact assessments and other material. One idea that struck me—I mentioned it in my submission, too—is that you could reform rule 9.3 of standing orders so that when a bill was introduced there would be a requirement to make a statement about the likelihood of engagement with IGR processes, and in particular the common frameworks. You would then have an alert built into the legislative process. That already happens for matters involving the Human Rights Act 1998 and various other factors. Such an approach could be limited to internal market act matters—that would work nicely—but it could also be broader. You could say, “There is an anticipation that, in order to get this legislation through, or to develop it, we expect to engage through IGR processes.” That would at least put everybody, including the industry, on alert, so that they would know that that was coming. As Nicola said, timing is essential when we are talking about scrutiny of IGR.

Dr Anderson: I agree with Thomas Horsley and Nicola McEwen on the importance of timing. I will highlight other structures beyond that, which are also important. The first is that the committee should continue to investigate and examine intergovernmental relations. As we said earlier, the fact that forums and meetings are taking place raises the salience of how important intergovernmental relations are, but so too does parliamentary scrutiny on intergovernmental forums or specific issues.

I will pick up on Mr Bibby’s point about the Opposition not necessarily knowing what is going on. There is occasionally an issue with confidentiality. For example, last year, I gave evidence to the Senedd’s Finance Committee on intergovernmental relations regarding finance. As we know, spending reviews are hugely important, but there are confidentiality issues around those, whether they involve Opposition parties or otherwise. It is hugely important to build up trust and perhaps even, for example, explore opportunities for having closed-shop meetings with Government ministers.

There are two other aspects there. The first is that building good relations with respective ministers is extremely important. Looking across the parliamentary committees, there are quite significant differences in how ministers report to them on intergovernmental relations. Sometimes there is quite a formal process whereby ministers send the committee a detailed letter of two, three or four pages that lay out what was discussed in certain forums. That is an example of good practice. However, picking up on the informal stuff that I mentioned earlier, there is nothing to prevent the committee from having an informal meeting

with a minister to find out what was discussed. That is where we get to the crux of the issue.

To pick up on another point that was made earlier, there is an incentive to think more deeply about interparliamentary relations. As members of this committee—and every other one—will know, in reality it is very difficult to get a UK Government minister to come before you. Often the idea is dismissed simply for timing reasons—it is said that the minister or the secretary of state does not have the time. If committees from the House of Commons, Stormont, the Senedd and the Scottish Parliament were to come together, the minister would have just one engagement with various committees. They might not want to do that, but I feel that there would be merit in exploring whether Parliaments could work together better, horizontally, to hold Governments to account on intergovernmental relations.

10:15

David Thomson: To go back to my earlier points, and to echo what others have said, I, too, emphasise the importance of clarity and timing. If there is anything that Scottish Parliament committees can do it is to ensure that, when there is an interplay—in particular, on internal market act aspects—the timing and implementation aspects are clear and understood, as much as possible, from day 1. That would give businesses confidence.

The deposit return scheme situation is something of a poster child for the internal market act, but it is also completely the wrong example to use here, because that interaction with regulation was already in train. If you were to be presented with such a situation now—one would imagine that it will happen more often in future—you will be scrutinising and testing the Scottish Government on its proposals about interaction with the internal market act, on the timing of the decision-making process and then on the implementation of the whole act, which will be a really important addition to the scrutiny of such constitutional issues.

Professor Reid: This discussion has put me in mind of a wider one that the Delegated Powers and Law Reform Committee had on framework legislation, and about the best stage for the Parliament to get involved. When such a bill goes through the Parliament it is like an open book, so you cannot really go into detail. By the time that the legislation comes through at the end, all the discussions have been had and all the policy decisions have been made, but there is a gap in the middle. That has a parallel with what we are talking about here. Where the parliament perhaps needs to get more involved is as policy is being shaped. The challenge will lie in finding the opportunity and the means to do that before

decisions are more or less set in stone and very hard to change.

Neil Bibby: I do not have a further question, but I would like to thank our witnesses for their answers because the issue clearly presents a challenge for us. There are other policy areas, outside intergovernmental relations, when the Parliament needs to fight for transparency. Parliamentarians and committees need to be quite tenacious about those things. There is a role for us to ask more questions about what is coming through so that we can get the timing and clarity that you have mentioned.

Jamie Halcro Johnston (Highlands and Islands) (Con): Good morning. I want to look at some of the practical aspects. We have just been discussing some of the suggestions that have come up. I had an angle that I was going to look at, but some of our witnesses' contributions have sent me off in different directions so I hope that I will be able to bring some focus to my questioning.

I will come to Professor McEwen first. We have just been discussing timings, transparency and awareness. I am not aware whether the Scottish Government has to publish a list of meetings that ministers will have each week. Are you aware of anything like that? I am imagining something almost like a court circular, which says, "The Minister for X will be meeting Y."

Professor McEwen: No. The written agreement commits to reporting on formal intergovernmental meetings, which they have interpreted as being those held within the formal structures. However, as we know, that is not where most such meetings take place. One of our recommendations that was that all the formal intergovernmental engagement should be included within the reporting requirement to aid scrutiny. However, that is only one step, so that in itself is not will tell you very much.

Jamie Halcro Johnston: Is that reporting done ahead of meetings or after they have been held?

Professor McEwen: The written agreement commits to both, but in the evaluation that Dr Coree Brown Swan and I conducted we found that there is rarely advance reporting, partly because things often happen at the last minute. Much of the scheduling and so on is not within the gift of the Scottish Government. The expectation is that the independent secretariat will take on some of the more routine reporting of what is taking place and when. Ideally, you would want that basic level of information to be handled in that way. What would be more useful for the Parliament would be getting a little more of the meatiness, such as what the meeting is for, what the issues at stake are and what the outcomes were.

Reporting afterwards, usually in the form of a letter from the relevant minister to the committee, has been done a bit better in some respects. The Senedd's Finance Committee is probably a good example of where that has worked quite well. The informal relationship between the committee and the ministerial team, which Paul Anderson mentioned, is really helpful in that respect. There are lessons to be learned from that, for sure.

Jamie Halcro Johnston: As an MSP, I am notified if a minister visits my region. Sometimes that happens a long time ahead of the visit and at other times it happens the day before. I understand that ministerial diaries change and that, as you have just highlighted, decisions on when such meetings take place are not always within the gift of the Scottish Government. Is there an aspiration to have meetings notified as soon as details are available, and then perhaps to have a follow-up? There could be a statutory duty to report on the details of those meetings where possible. From what Dr Anderson said, I understand that certain areas cannot be covered because of confidentiality, but would that approach be helpful in providing the transparency that we need and that we do not currently have?

Professor McEwen: That is already in the written agreement, but I suppose the question is why it is not happening. One answer is that the burden of gathering that information and deciding who reports it lies on officials. The Scottish Government is a big organisation, but there might be a small team of two, let us say, doing that sort of reporting. Although it sounds like a really small thing, in administrative terms it is probably quite a task. I suppose you have to question whether it is a valuable addition to what you currently have. It would certainly help to know when things are taking place to enable you to ask what happened. By itself, I do not think that it will take you very far, but there is certainly no harm in it.

Jamie Halcro Johnston: We sometimes see that an organisation determines that a freedom of information request is too expensive to respond to, or that a response would take too much time. If there is a similar level of practical flexibility here, such that we are not getting reporting information back, is there a risk that the Government might not provide the full details because delivering them is seen as too great an administrative task?

Professor McEwen: I guess so, but it is still important for committees to know the details of the engagement that is taking place, to enable their scrutiny function.

I was just trying to find our recommendations among my papers. One of our suggestions was that a lot of the detail should be put online routinely, so that you are not then relying on a small team of officials trying to ask their

colleagues in another bit of the Government, “When did you meet? What is coming up?” There are other ways around that if the internal processes facilitate easy reporting, which might be more accessible.

Jamie Halcro Johnston: I was wondering whether a process was already in place whereby, once a meeting was proposed or confirmed, the details went online and there was a duty to provide the relevant information and the minutes.

That moves me on to another point about concerns over the recording of what actually happens. The panel has said that what is published or provided is not always particularly detailed. Do we know whether that information is recorded in detail, but we are seeing only a small part of it? In some cases is there a concern that the focus on providing full information is perhaps not being undertaken?

Professor McEwen: We do not know for sure, but I suspect that there is a fuller minute somewhere.

The first incarnation of the joint exchequer committee that met for a while and then did not—at the time of the 2016 act—produced quite full minutes. Those were really interesting for me, as an academic, because they gave insight into what the issues were and the reason why that committee stopped meeting, which was because they were not able to resolve the issues in that forum. The roof did not fall in when those minutes were published, and I see no reason why you could not air more of the content of discussion. I am sure that it is appropriate for Governments to keep some things confidential, but they could give more than they currently do.

Jamie Halcro Johnston: So, essentially, the aim of Government should be to publish what is available, except perhaps under exceptional circumstances.

Professor McEwen: Yes. A good way to look at it would be to have the default position of being transparent unless there was good reason not to be.

Jamie Halcro Johnston: Thank you very much. Dr Anderson, do you want to come in on that?

Dr Anderson: Like Nicola McEwen, my assumption is that minutes are taken at such meetings. I do not think it likely that they will ever be published in online, especially given the issues of confidentiality. However, I do not see why there could not be an agreement that parliamentary committees scrutinising specific policy areas or intergovernmental relations in general should have access to them.

If we turn to communiqués, it is interesting that there is a difference with those. Generally,

communiqués coming from, for example, interministerial groups say, for example, “Here are the representatives who attended the meeting, and here are three things that were discussed.” The interministerial group for the environment, food and rural affairs—which seems to be the leading one for best practice—normally provides fairly detailed summaries of what it has discussed. That includes agreements by ministers on action points and plans for future discussion. I have not seen that happening in any other forum. It is a good example, because summary will say, “We discussed this, the secretary of state agreed that they would go away and look at it, and that means that at the next meeting we can ask the secretary of state for an update on this.” There is not a level playing field across what we are seeing, but there is potential.

Earlier we talked about democratic deficits. I do not think that many members of the public read communiques on intergovernmental relations—it will be academics and parliamentarians who do so—but it is important that there is a detailed record, particularly because, as Nicola McEwen mentioned, we are still waiting for reports on intergovernmental relations from a couple of years ago. There should be a duty and an obligation to say more in those communiques or reports about what has been discussed.

Jamie Halcro Johnston: You mentioned consistency. There is a lack of consistency among the various groups. Something that lays out a timeline in more detail would be helpful.

Convener, I do not want to deny Stephen Kerr the 100 questions that he still has to go.

The Convener: I might.

Jamie Halcro Johnston: That was really just giving the convener an opportunity to manage expectations.

We talked briefly about the civil service and having a neutral secretariat. I hope that the civil service provides that anyway.

One aspect that I want to explore is the role of the civil service. We have talked about the lack of consistency in how information is provided. Is there a concern that, once a Government has been in place for quite a long time—as we saw with the last UK Government being in for 14 years and the current Scottish Government being in for 18 years—the civil service becomes more tied to the Government of the day and, therefore, the independence of the civil service is impacted in some way?

I will come to Dr Anderson first, and then to whoever else might want to comment on that.

Dr Anderson: In truth, I do not have an answer on the independence of the civil service. My hunch

is that the civil service operates independently, but that does not mean that staff do not get used to a Government's or a certain minister's ways of working. When looking at intergovernmental relations the important point is to recognise that political tensions can play out in the media, or in social media, or wherever else we see them. Intergovernmental relations happen every day, behind the scenes, and it is officials who keep them going.

10:30

I mentioned that, in the analysis of IGR, academics see civil servants as being the oil and glue in the system. We have a unified civil service in which good relations are built up. Those relations, and the trust involved, are so important, but they are greatly underestimated. Where you might have mistrust between different political parties in power, that does not necessarily trickle down to the civil service, which has to keep things ticking along no matter what. The civil service plays a huge role in keeping things going when there are political tensions. Those informal relations and the building of trust are important for keeping intergovernmental relations developing.

Jamie Halcro Johnston: The day-to-day work—the bread and butter of IGR—is probably happening in a better way than we can see. From our point of view, as parliamentarians, the issue is that we are not seeing enough of it, or enough of the decision-making processes at the front of it all.

Dr Anderson: Yes, exactly. We get communiqués from the political discussions of politicians who have met. With common frameworks, it is mostly officials who are negotiating or working through those, but officials are reporting on them. There is no obligation for that—and I am not saying that there should be—but that stuff ticks along anyway. It is officials behind the scenes who keep things moving. Reports or intergovernmental detailed minutes and so on are made of the political discussions, but official-to-official discussions happen every day, notwithstanding party political differences or tensions over policy or other issues.

Jamie Halcro Johnston: Thank you. Do any of the other panellists want to comment?

Professor McEwen: Just a quick clarification. The impartiality of the independent secretariat comes from the fact that it is made up of people from each of the Administrations, but who do not act for them, so they work as a collective that serves all the Administrations together. That is what I meant by impartiality in that case.

Jamie Halcro Johnston: Thank you. That is helpful.

The Convener: Before I give members an opportunity to ask final questions, I return to the issue of dynamic alignment. Northern Ireland has to have hard dynamic alignment with the Good Friday agreement, but the Welsh and Scottish Governments both have a commitment to keeping pace powers. Are the challenges of dynamic alignment across the UK significantly different, given those different situations? Mr Thomson, I will come to you first.

David Thomson: At the moment, there is not fundamentally a difference because we have not really seen action based on keeping pace with the regulations. Certainly, that has not been the case in our space. Despite there having been multiple regulations at European level, they have not come here for various reasons, some of which are political and some of which are practical. In such cases, I do not see there being a difference. Before Brexit, we had to implement European regulations; it is just that we had an opportunity to influence them.

I do not see a particular difference in different parts of the UK, although there are a couple of areas where the issue has been more pronounced. For example, the UK Government wished to pursue genetic modification, but the Scottish Government did not. There are those points of tension, but they have been quite limited since we left the European Union.

Professor Reid: This is, again, partly due to the timing issue. The timing of the European elections meant that there was a rush of stuff that was agreed just before they took place, but the implementation periods have not bitten yet, so we are still in that gap. The fact that any bit of the UK has or has not gone into alignment does not mean that we are rubbing up against EU law. However, there are only so many months left until the time by which all the member states should have the laws in place, and we are still in that period. I think that, in the next couple of years, if nothing happens in any part of the UK, you will suddenly find that you are more out of step than you are now and in quite a rush.

Professor McEwen: I think that there is a difference. The keeping pace commitment was just that—it was a commitment, or a choice. Dynamic alignment will take place somewhere else, probably through lots of secondary legislation that the UK Government may lead on in devolved areas. Your example of Northern Ireland is really interesting, convener. There is a lot to learn from how it has operated in Northern Ireland, where there is a quite significant democratic deficit in the role of the Northern Ireland Assembly in this space. I cannot remember the detail—Thomas Horsley will probably remember more than me—but there is an opportunity, as a last resort, for the

Assembly to block, but that would undermine and jeopardise the whole agreement, so it is very unlikely that it would do that. There is quite a profound feeling of a democratic deficit, and it is something to be mindful of.

With learning from Northern Ireland and some of the horizontal co-operation that Paul Anderson talked about with the Senedd, it might be appropriate to try to get ahead of the game and think about what the process might look like from a devolution perspective and make sure that there is a role for the devolved legislatures in there.

Professor Horsley: The context of Northern Ireland experience is useful, but it is one of those examples where we are dealing with the asymmetry of devolution. The particular process that Nicola McEwen referred to has its context in Northern Ireland and it will not be addressed here. The broader point is that things will shift from a system of optionality and voluntary keeping pace as a commitment, which this Parliament could overturn should it so wish, to something around an obligation to adopt, which we mentioned earlier. I think that asymmetry plays quite a part if we using Northern Ireland as a comparison.

Stephen Kerr: I am going to shock my colleagues by reading the room and asking only one question—I will leave my 99 other questions for another occasion. My question is quite broad and revisits UKIMA. The committee has talked about UKIMA several times previously, but given what I have heard the witnesses say about UKIMA today, I wonder whether you expect there to be any change at all in the legislation—in the act itself. Alternatively, do you think that any changes will be around the ad hocery that we discussed earlier—how people speak about and signal to one another how issues that might arise should be dealt with? I will come to Professor Horsley first. You have written a bit about this, have you not?

Professor Horsley: The text of UKIMA as it currently stands references the common frameworks as an intergovernmental space. From what we have seen, and based on the UK Government's current proposals, there is not a revision of the legal text but a revision of the intergovernmental space. I do not think that changing the actual text is necessary to implement what the UK Government is proposing, and I suspect that there may not be changes to the text. It looks like everything will take place in the intergovernmental space through, principally, a revision to the common frameworks, agreement on loosening some of the constraints there and improving, although not necessarily perfecting, some of the timing and evidence issues that have been raised.

Stephen Kerr: So, no legislative change, but—

Professor Horsley: It is possible, but it is not necessary to implement what has been proposed.

Stephen Kerr: And that is more to do with the things that we talked about at the outset of the session.

Professor Horsley: It is possible, but not necessary.

Stephen Kerr: Okay. Does anyone want to add anything?

Professor McEwen: I would not necessarily say that that means that it is “ad hocery”.

Stephen Kerr: I was being dismissive.

Professor McEwen: I know.

You can have an intergovernmental space that is clear and institutionalised and that has a set of processes that everybody understands and everyone goes by.

Stephen Kerr: It would be non-statutory, though.

Professor McEwen: It could be statutory but it is probably more likely to be non-statutory. The problem that I have at the moment with the outcome of the review of the United Kingdom Internal Market Act 2020 is that we still do not really understand how it will operate. We know, for example, that a broader set of issues will be considered when in thinking about exclusions. Beyond just economic impact, the UK Government is now open to considering an environmental impact, a public health impact and some of the other things that might be seen as legitimate policy objections and reasons for divergence. We do not know who will do that evaluation or what the evidence base will be. There is always a trade-off, and we do not know how you would trade off the economic impact against the public health impact. There is nothing about that in the review document as it stands.

From this committee's perspective, you would want to push more on that. It is fine for things to be in the intergovernmental space, provided that there is transparency about how you do them, what the process is, what the rules are, what the timing is and so on.

Stephen Kerr: There is possibly a bigger role for the office for the internal market. That would be institutional almost, would it not?

Professor McEwen: I think that the office for the internal market will have a role in the economic impact bit, but is that the appropriate body to have a role in assessing the environmental impact or the public health impact? I am not sure that are areas in which the OIM has expertise. Who will do that, and where does power lie in determining

which bit of evidence and which impact outweighs another? There is a lot still to be clarified.

Stephen Kerr: That was very useful and very helpful.

Professor Reid: There is a separate issue about the act that may come into prominence in the future, which is the follow through, not the decision making. I give the example of glue traps, the sale of which was banned in Scotland. The former UK Government decided that it would not give an exemption. I believe that it was in December 2024 that the current Government in London said that it was happy to grant an exemption. However, there is no legislation yet, and I do not know why or what the delay is.

Stephen Kerr: Do you mean a delay in Scotland?

Professor Reid: No. There was a letter in December from the UK Government saying that it was now happy to grant an exemption, but that has not been carried through into legislation. I do not know what the hold-up is. Implementing that decision seems to be taking a very long time. If the process allows for more exemptions, the timescale for following through is another issue that will have to be addressed.

Stephen Kerr: Yes. How you get to the decision is one thing, and another is whether you do anything because you have made a decision.

David Thomson, I am sure that your view is that you want some clarity on getting into the room when it comes to common frameworks.

David Thomson: Yes, getting into the room would be lovely, although I understand the points that have been made. There is a need for Governments to talk to Governments directly, without an audience of stakeholders. What is discussed in those meetings, what decisions are made and what then follows is very important, and as much advance knowledge of that as possible is very important, too.

Stephen Kerr: That is excellent. Thank you.

Keith Brown: Mr Thomson talked earlier about the DRS—the law was made, people expected things to happen and then it was struck down. One of the concerns of this committee is the chilling effect that that has had on any proposals that the Government is considering, because people do not know whether or not they will be struck down. That chilling effect is quite profound. It will be interesting to see what impact that has on the parties' manifestos in the coming election.

I have two questions, but I still expect to take less time than Stephen Kerr did. The first one is for Professor McEwen. In your submission, you make the statement that

"The Westminster parliament, particularly the House of Commons, has less interest in IGR especially at the portfolio level, and has demonstrated less interest than the devolved legislatures in scrutinising the UK Government's intergovernmental activity."

That is followed by your statement that

"In my view, transparency and accountability can be best increased by strengthening the requirements upon the Scottish Government to report on its activity in IGR."

I am all for haranguing the Scottish Government to do more, and it could continually try to increase its transparency, but to what effect, when that level of apathy towards IGR is evident at Westminster?

10:45

Professor McEwen: I will qualify the first of those quotations. I do not think that that is true of the Constitution Committee in the Lords or the Public Administration and Constitutional Affairs Committee in the Commons—so, your equivalents. What I meant was that a committee that is looking at employment, energy or social security, for example, is principally concerned with what the UK Government is doing in that space, which is a natural thing for such a committee to do. I am not sure that it is necessarily on the radar of those committees that devolution intersects with those issues. I am not sure that there is the awareness, or an interest in thinking that trying to get a handle on what the UK Government is doing in the IGR space is something that those committees should be doing. That may be where there is value in interparliamentary work, because you can raise awareness with your colleagues in the Westminster Parliament of why the intergovernmental space matters. There are definitely benefits in that.

However, the points that I made in my submission are two separate points. The point about the Scottish Government reporting on its activities is that that would enable the Scottish Parliament, this committee and other committees to do their job and scrutinise and try to get a better understanding of what the Scottish Government is taking to intergovernmental meetings. It came through really clearly in the interviews that we did with members that there was not enough understanding of what the Scottish Government was trying to get out of the relationship. I do not think that that was a party-political point; I think that it was just a frustration. More can be done to raise awareness among MSPs about where there are intersections with UK legislation, whether it is UKIMA or something else. Devolution has become a lot more complicated post Brexit and post the Scotland Act 2016, and that awareness would also give members a bit more insight into what matters to the Scottish Government in the intergovernmental space.

The Welsh Government has done more traditionally in that space than the Scottish Government has done. IGR may have been politically a bit more challenging for the Scottish Government, with its priority being self-government—having the space to exercise its own self-government and its own political autonomy. I think that the space has been a little bit more difficult for the Scottish Government, but it is now recognised that there is a lot of complexity in the system, and members have to be able to navigate that.

Keith Brown: I remember when I changed my mind on the not proven verdict—it was when I found out that it was not possible for sheriffs or judges to explain to jurors what a not proven verdict meant as opposed to a not guilty verdict. I return to Stephen Kerr's point. I am not saying that the public want to know the detail of the internal machinations between Governments, but if there is no prospect of getting a reasonable understanding of a process that is so complex and so full of exceptions, with agreements and conventions that are not observed and all the rest of it, I think that you have to say that the system is not working. If the Westminster Parliament is apathetic, until it asserts its interest in IGR, we will continue to get what we are told elsewhere are decisions that are UK Government positions rather than the UK-wide positions that I think we all want to see.

On scrutinising the Scottish Government, I go back to a point that Jamie Halcro Johnston made. It relates to the idea that FOI is a vehicle. FOI has been abused so much that it has become discredited to some extent. Hundreds of FOI requests are put in by parliamentary researchers, which I think has undermined the process, plus it should not really be for individual MSPs to take the initiative and to ask for this information. I understand what you say about the time that FOI requests now take; one reason is that people put in hundreds. The cost is astronomical; it is about £120 an answer at least. The Scottish Government agreed to publish its ministers' diaries, which it does proactively because it saves on FOI requests coming in and people having to ask all the time. Surely that resource could be tweaked. If a minister met with a UK minister, that could be highlighted so that it could be extracted from the system, which could say, "These are the meetings that we are aware of that have taken place between ministers at an intergovernmental level". That would not be such an onerous thing to do.

Professor McEwen: I agree. Whatever is done, whether it is that suggestion or the website hub that we suggested, it is really important to be cognisant of the impact on officials. FOI has created challenges internally. That is not a

judgment on FOI, but you would want to avoid the administrative impact that it has.

The Convener: That exhausts the questions from the committee this morning. Thank you all for attending. It has been a very interesting session, as always. On that note, I close the meeting.

Meeting closed at 10:50.

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