CEEAC/S6/25/25/1

Constitution, Europe, External Affairs and Culture Committee
Thursday 2 October 2025
25th Meeting, 2025 (Session 6)

Transparency of Intergovernmental activity and its implications for parliamentary scrutiny

1. The Committee will start taking evidence this week in relation to its Transparency of Intergovernmental activity and its implications for parliamentary scrutiny inquiry.

2. A briefing from the Scottish Government is included at **Annexe A.**

3. SPICe have provided an analysis of responses to the call for views at **Annexe B,** an inquiry briefing at **Annexe C** and a witness paper at **Annexe D.**

4. Regarding the panel this weeks, written responses to the call for views were received from Professor Nicola McEwen, Dr Paul Anderson and FDF Scotland, and Professor Thomas Horsley has subsequently provided a written submission

Clerks, September 2025

Annexe A

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

Introduction

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

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

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

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

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

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

Question:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Transparency of formal intergovernmental structures and impact on scrutiny

Questions

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

2.1 Formal IGR structures set out by the Intergovernmental Relations Review

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

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

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

[2] Review of intergovernmental relations - GOV.UK

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

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

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

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

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

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

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

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

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

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

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

Questions:

- *How open intergovernmental activity falling outside of the formal structures (for example common frameworks) are and what this means for Parliamentary and stakeholder scrutiny.*

- *The potential consequences of insufficient scrutiny of intergovernmental activity, particularly considering arrangements such as common frameworks, the UK Internal Market Act 2020 and the potential for dynamic alignment with EU law as a result of new UK/EU agreements.*

- *What the evolving shared intergovernmental space means for parliamentary scrutiny and accountability, particularly in relation to legislative consent facilitated by the Sewel Convention, and the taking and exercise of delegated powers by UK Ministers in devolved areas.*

3.1 The UK Internal Market Act

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.2 Common Frameworks Evaluation

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

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

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

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

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

3.3 Sewel Convention

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

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

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

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

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

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

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

3.4 UK / EU negotiations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- For primary legislation, SG officials are engaging with their UKG counterparts to influence the Bill content, its design, powers, and Legislative Consent Memorandum arrangements with ministerial preference for legislation to include concurrent powers with statutory consent mechanisms.

- Associated secondary legislation is expected to be significant in volume. SG will centrally track these independent policy areas and anticipate secondary legislation in the following policy areas: Sanitary and Phytosanitary (SPS) measures, Emissions Trading Scheme (ETS), and electricity trading.

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

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

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

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

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

4. Conclusion

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

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

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

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

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

Annexe B

Constitution, Europe, External Affairs and Culture Committee
Thursday 2 October 2025
25 Meeting, 2025 (Session 6)

Transparency of intergovernmental activity and implications for parliamentary scrutiny inquiry: analysis of call for views

Background

The Committee launched its inquiry on the transparency of intergovernmental activity and implications for parliamentary scrutiny with a call for views on 24 June 2025. The call for views closed on 29 August 2025. The exact areas on which views were sought are listed at **Annexe 1**.

Responses to the call for views

The Committee received eight submissions to its call for views which have been published on the Scottish Parliament website. The responses included four submissions from academics; two from membership organisations; one from another legislature and one from an individual. Specifically, evidence was received from:

- Aberystwyth University (Dr Elin Royles, Centre for Welsh Politics and Society, Aberystwyth University, Dr Carolyn Rowe, Aston Centre for Europe, Aston University, Dr Rachel Minto, Wales Governance Centre, Cardiff University)
- Dr Paul Anderson
- Professor Nicola McEwen
- Dr Coree Brown Swan
- The House of Lords Constitution Committee
- Food and Drink Federation Scotland
- The Law Society of Scotland
- Mr G. Robertson

Professor McEwen and Dr Brown Swan have previously undertaken an independent review of the Written Agreement on IGR between the Scottish Parliament and the Scottish Government. The research was jointly commissioned by the Committee and the Scottish Government and resulted in the publication of the report: The Scottish Government-Scottish Parliament Written Agreement on Intergovernmental Relations: Still Fit for Purpose? in January 2025.

Terminology

'Intergovernmental activity' and 'intergovernmental relations' are often used interchangeably to refer to governments working together and can include discussions on areas of mutual interest, policy development, and policy implementation.

The Committee's inquiry uses the term 'intergovernmental activity' given that its scope is wider than considering only the work between governments through formal intergovernmental structures. The formal intergovernmental (IGR) structures in the UK have been in place since 2022 and are set out at **Annexe 2**.

Summary of submissions received

Transparency of formal structures of intergovernmental relations

The majority of respondents feel that IGR lacks adequate transparency.

Dr Brown Swan highlights the key findings of the report "The Scottish Government-Scottish Parliament Written Agreement on Intergovernmental Relations: Still Fit for Purpose?"[1] which included that "Transparency remains partial and inconsistent" and that "Formal communiqués, which have never been particularly detailed or substantive are sparse".

Highlighting the findings of the same report, Professor McEwen states that:

> "We found that the Scottish Government rarely reported on its activities in intergovernmental meetings. Even when reporting was undertaken, we found that members did not usually consider it to be useful to their scrutiny function."

Respondent Mr G. Robertson writes that "There is currently insufficient transparency in formal intergovernmental structures" and suggests that IGR "Remains largely opaque to public and parliamentary scrutiny".

Dr Anderson's view is that IGR "are characteristically opaque, presenting a significant challenge to effective parliamentary scrutiny". Dr Anderson highlights that:

> "Meetings typically take place behind closed doors, making it difficult for parliamentarians to understand and thus scrutinise the content of such meetings. This opacity undermines the principle of legislative oversight."

Dr Anderson also notes the 2022 review of IGR and its commitment to greater transparency, stating that

> "while we arguably have more insight into the content of these meetings than before, several shortcomings remain: notice of meetings is inconsistent, post-

[1] This report was commissioned jointly by the Committee and the Scottish Government and authored by Dr Brown Swan and Professor McEwen.

> meeting reporting is frequently delayed and communiqués tend to be vague and uninformative, generally only giving cursory summaries of the main topics discussed."

Professor McEwen also notes that "The formal structures of intergovernmental relations were overhauled in 2022 following a four-year review of intergovernmental principles, process and machinery". Professor McEwen's suggests that in relation to the Council; Interministerial Standing Committees and Interministerial Groups "there is some transparency about the remits and communiqués from meetings of these fora". Professor McEwen also notes that the previous UK Government published Annual Reports on intergovernmental activity, supplemented by quarterly reports and a transparency dashboard which listed interministerial meetings held (both within and outside formal IGR structures). In addition, the submission highlights that the present UK Government "has yet to issue quarterly or annual reports, and it is not clear whether it intends to do so."

The joint review of IGR, undertaken by the UK and devolved Governments in 2022, had Professor McEwen highlights, "committed to the establishment of a joint secretariat, and the expectation was that it would oversee joint reporting". Professor McEwen's submission argues, however, that whilst a secretariat is in place "there is no transparency on its composition or work" and states that:

> "Communiqués provide transparency over the fact that a meeting was held, and who was in attendance. They rarely provide any transparency over what was discussed, and by whom. Even rarer still would be any indication of any issues that emerged within the meetings, Thus, in their current form, they are of limited value to parliamentary scrutiny."

Dr Brown Swan also highlights that one of the key findings of the work previously carried out on the IGR written agreement for the Committee was that the "IGR secretariat which could be a key resource for those engaged in the scrutiny of IGR remains underdeveloped". Similarly, Dr Anderson's submission states that "all governments should work together to strengthen the visibility and accessibility of the Secretariat".

Dr Anderson's submission also suggests that "beyond the need for timelier publication" "more substantive communiqués and reports" are also needed, noting that this "is particularly important for effective parliamentary scrutiny".

Professor McEwen stresses that "communiqués represent text that has been jointly agreed between the participating administrations, often involving painstaking negotiation".

The House of Lords Constitution Committee notes its work since 2022 on IGR, highlighting its conclusion that "the new structures still lack sufficient transparency" and its recommendation that:

> "agendas and minutes of all formal IGR meetings should be published routinely, with appropriate redactions where necessary, and that all four governments should ensure transparency reporting is timely and sufficiently detailed to facilitate effective scrutiny."

The joint submission from Dr Elin Royles, Dr Carolyn Rowe and Dr Rachel Minto ("the Aberystwyth University submission") focuses specifically on IGR in relation to the UK-EU relationship through the Interministerial Group on UK-EU relations (IMG UK-EU). The submission notes that transparency of the group was based on "two elements": the publication of Terms of Reference for IMG UK-EU and communiqués issued following IMG UK-EU meetings. On publication of communiqués the submission highlights that:

> "Six meetings were held between February 2022 up to early March 2024, but the UK Government did not release communiqués in relation to these meetings retrospectively. Consequently, only two communiqués have been issued in relation to this IMG, 6 March 2024 and 3 December 2024…The lack of regularised timelines in issuing communiqués on this group, the main ministerial-level forum for discussions between central and devolved governments regarding UK-EU relationships, creates an information gap and limits parliamentary scrutiny."

The Aberystwyth University submission suggests that meeting dates should be shared on the UK Government website, arguing that "Releasing information on the dates of meetings is important to assess the timeframe between holding meetings and key UK-EU meetings."

The Law Society of Scotland (LSoS) highlights that communiqués for meetings of the Council which took place in October 2024 and May 2025 "are not detailed and yet contain references to the general headings of discussion which indicate that matters of importance were discussed". The LSoS suggests that governments "should consider applying the desire for transparency to these meetings and adopting an extended communiqué model for future meetings" of the Council as well as bringing back annual reports on intergovernmental activity.

Professor McEwen's submission also suggests that "The lack of transparency in IGR makes it difficult to examine competing claims" when Governments appear to disagree.

Openness of intergovernmental activity outside formal intergovernmental structures

The submissions all suggest that there is limited transparency around intergovernmental activity outside of formal IGR structures.

Dr Brown Swan and Professor McEwen both note that a significant amount of intergovernmental engagement takes place outside the formal IGR mechanisms. Dr Brown Swan highlights that in spite of this "these activities are not systematically reported". Professor McEwen argues that:

> "The Written Agreement [between the Scottish Parliament and Scottish Government] was always intended to cover all formal inter-ministerial engagement, but the Scottish Government's reporting, including inter-ministerial correspondence, has mainly been limited to the formal three-tier structure."

Professor McEwen also notes that discussion on common frameworks "is usually conducted amongst officials rather than ministers, and there are no reporting requirements for these meetings" and states that the lack of transparency "can have a significant impact on parliamentary scrutiny and generate considerable confusion and uncertainty among stakeholders".

The Food and Drink Federation (FDF) Scotland suggests that "The mechanisms for inter-governmental dialogue seem unclear to business". The submission notes that "The common frameworks system could be improved to make it more transparent to business" and that there is "little insight or communication as to what potential upcoming legislation is being considered". The submission continues:

> "When issues do emerge out of these discussions, as is the case with the Deposit Return System, then it can appear unclear why and what decision-making and evidence has led to this outcome. In addition, with the example again of Deposit Return, this was very late in the implementation of legal requirement. This does not build confidence, ensure business impact is considered nor allow businesses to plan strategically."

Dr Anderson notes the value of informal intergovernmental activity, stating that:

> "…for some participants involved in IGR, informal interactions are seen as more effective, particularly in terms of time efficiency and building trust between those involved."

The submission goes on to highlight the challenge for parliamentary scrutiny with Dr Anderson writing:

> "informal engagement presents a particular challenge for parliamentary scrutiny, not only regarding the substance of discussions, but even in establishing that such meetings have taken place."

An individual responding to the call for views, Mr G. Robertson, holds the view that:

> "Activity beyond formal structures, such as the development and operation of Common Frameworks, is even less transparent."

The House of Lords Constitution Committee notes the work of the Lords Committee on Common Frameworks Scrutiny, and its view that frameworks "have singular potential to strengthen cooperation between the administrations".

The LSoS submission states that "Common frameworks are part of the UK's intergovernmental relations structure overseen by the Interministerial Standing Committee" with frameworks reporting into relevant interministerial groups and encouraged "all the administrations in the UK to enhance parliamentary accountability not only of Common Frameworks but of all aspects of intergovernmental relations."

The Aberystwyth University submission, focusing on IGR as it relates to the UK-EU relationship, argues that:

> "…there is a lack of clarity and transparency regarding the relative status of various intergovernmental statements in determining the way in which IGR functions in the context of the UK-EU relationship including the Trade and Cooperation Agreement (TCA) structures."

It continues "emerging evidence suggests that the official-level arrangements for devolved input into the TCA committees are working relatively well, also facilitated by general alignment on policy preferences between devolved and central government".

The submission indicates that clarification is important on the "relative status of various guiding documents on intergovernmental relations: the Memorandum of Understanding which includes the Concordat on Co-ordination of European Union Policy Issues, the Review of Intergovernmental relations and Lord Frost's May 2021 letter as the three lead to potentially different decisions by the UK Government on engaging devolved governments in UK-EU issues".

Progress on the UK Government's "reset" of intergovernmental relations

Respondents generally note a shift in tone in intergovernmental relations since the 2024 "reset" but some observed less of an impact in practice.

Dr Anderson notes that the core objective of the reset "focused on developing and maintaining a more constrictive and collaborative approach to devolved-UK relations" and states that "in the early months of the new administration, the Prime Minister made visible efforts to engage with the First Ministers as well as England's metro mayors, signalling a commitment to the reset".

The establishment of the Council of the Nations and Regions is seen by Dr Anderson as marking "a tangible step towards more constructive and inclusive intergovernmental engagement". The submission also states that "underpinning these new intergovernmental forums in statute would help embed a more meaningful culture of partnership between the UK and devolved governments".

Professor McEwen's submission states that:

> "The main focus of the IGR reset has been cultural. This is not insignificant. There is now greater willingness to engage with the devolved governments, and a culture of openness and constructive cooperation in their interactions…In a departure from practice under the previous administration, UK Government officials are encouraged by their ministers to reach out to, and cooperate with, their devolved counterparts."

Despite this, Professor McEwen also notes that "competing perspectives and tensions have re-emerged in recent months". The submission highlights that whilst the previous Secretary of State for Scotland had stated in June that "The relationship has been reset rather than is resetting", Scottish Ministers have "pointed to recent strains in the relationship, for example, in the context of an agreement reached between the UK Government and the EU, which reportedly did not engage devolved governments to the extent that they expected."

Professor McEwen suggests that “resetting intergovernmental relationships is a process not an event” but argues that:

> “Without a shared perspective on the role of the devolved institutions in policy areas that interact with devolution, and legislative or procedural reforms that restore the authority of the devolved institutions, tensions in IGR are likely to resurface.”

Dr Brown Swan observes that “progress has been most noticeable in terms of tone, rather than substantive change to how IGR takes place.” The submission also raises the question of “whether the new culture of IGR can be sustained in the run-up to the [Scottish election] campaign and in light of a number of difficult policy decisions facing governments at all levels”.

The Aberystwyth University submission similarly highlights a change in tone. It indicates that UK Government and devolved government officials (interviewed as part of the semi-structured interviews on which their submission is based) “noted that Labour in government changed the tone of the conversation and increased the potential for more open dialogue regarding the EU”. The submission also states that the meetings between the UK Minister for Constitution and European Union Relations and devolved counterparts “were viewed as demonstrating a greater willingness to engage with devolved governments” but notes that the first IMG UK-EU after the 2024 general election took place in December (2024) and the second on 12 May 2025 “a week prior to the UK-EU Summit”.

The submission also notes that whilst IGR may be “moving in the direction of becoming a mechanism by which to maintain and improve relationships” there is also “the potential variability of intergovernmental relations…particularly given the top-down dynamic of intergovernmental relations in the UK case and the impact of party politics on the operation of these mechanisms”.

The LSoS submission notes the recommendation from the Smith Commission that intergovernmental arrangements to support further devolution “be underpinned by much stronger and more transparent parliamentary scrutiny” and argues that “It is most important for the purposes of democratic accountability that the Parliament and the other legislatures have a formal role in the oversight of the development of reset intergovernmental relations”.

Consequences of insufficient scrutiny of intergovernmental activity

Respondents who provided views on this theme noted the risk of a lack of certainty for stakeholders and business as well as a potential lack of accountability.

Dr Anderson states that although IGR “by their nature are executive-dominated” it is “important that parliaments have a role in scrutinising intergovernmental activity” even though it is an “indisputable challenge”. In Dr Anderson’s view, “An inability to do so would result in a serious democratic deficit, including the potential for an erosion of trust between parliament and government, as well as with the electorate.”

In relation to the effect of new constitutional arrangements on intergovernmental activity, Dr Anderson notes that:

> "…scrutiny of these frameworks has been largely limited to their development rather than functioning. The introduction of frameworks, the Internal Market Act, and the increased use of delegated legislation, has made effective parliamentary scrutiny both more essential and more challenging."

The submission from FDF Scotland states that "There is significant risk of insufficient scrutiny" given some of the transparency challenges around common frameworks. FDF Scotland state:

> "We support the UK Internal Market Act, but more could be done to provide greater transparency and a clearer sense of timing in the process. That is why we have welcomed the recent publication of the UK Government's response to the review of this Act and want to see more clarity around decision-making and timetabling of relevant legislation across the four UK nations."

Professor McEwen highlights the "considerable uncertainty for business and stakeholders" created where the Parliament has not "always been kept informed of what legislation may require an exclusion from the IMA [Internal Market Act], or of the status of exclusion negotiations."

The LSoS writes that:

> "Insufficient scrutiny of intergovernmental activity has a number of negative impacts on the governance of the UK and the devolved administrations. These include lack of opportunity to oversee the work of Government, exclusion from offering suggestions on how to approach intergovernmental relations, lack of ministerial engagement."

The submission from the LSoS also notes the lack of reporting on intergovernmental activity under the Scottish Parliament/Scottish Government Written Agreement, stating that "These failings result in an overall lack of scrutiny of the activities of the Scottish Government which is contrary to the principles of transparency and accountability which the original Agreement sought to establish".

The Aberystwyth University submission notes that "Efforts to make the IMG [UK-EU] a more robust forum for IGR, one with a regular calendar of meetings, would allow for more parliamentary oversight and greater transparency overall of IGR in practice."

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What increased intergovernmental activity means for parliamentary scrutiny and accountability – including in relation to legislative consent facilitated by the Sewel Convention, and the taking and exercise of delegated powers by UK Ministers in devolved areas

The House of Lords Constitution Committee submission indicates that the "Sewel Convention is an ongoing area of interest for us including as part of our legislative scrutiny function" and notes that it expects a new Memorandum of Understanding to be published "later this year".

The House of Lords Committee does not favour Sewel being placed on a statutory footing, believing this to be "excessively rigid". The submission does note their Lordships suggestion that the UK Government provide a memorandum to the House on introduction of a Bill which engages the Sewel Convention. The suggestion is that the memorandum explains any "devolution implication" and "what related engagement has taken place".

The submission also notes the principle of positive engagement" favoured by their Lordships which "should include an expectation that the UK Government and the devolved governments engage proactively on legislative proposals that impact upon one another's areas of legislative competence to, where possible, reach consensus".

The submission from Dr Anderson notes that "The process of exiting the European Union was the main catalyst for the erosion of the Sewel Convention" and highlights that "Since Labour came to power in 2024, there have been no instances of the UK Government breaching the Sewel Convention". Dr Anderson states that:

> "While the new MoU has yet to be published, the disregard shown for the Sewel Convention in recent years strengthens the case for reforming the Convention. There is an argument that to underline its importance, the Convention should be placed on a statutory footing."

Dr Anderson suggests that reform of the Convention could also be clarifying what the meaning of "not normally" is, but could also be pursued through parliamentary procedures:

> "In this sense, when legislative consent is required, the UK government must detail in Parliament the steps it has taken to work with the devolved government(s) in seeking consent. This would have the added benefit of ensuring that ministers consider the implications of legislation for the devolved institutions in the early stages of law-making rather than an inconvenient add on, as well as offer an early opportunity to address concerns and head off potential disputes."

The submission from Dr Anderson also states that "When consent is withheld, there needs to be a clear and transparent process within Parliament to debate whether proceeding without consent is the right thing to do."

Dr Brown Swan argues that:

> "Post-Brexit governance has led to a blurring of lines between reserved and devolved competence, with a greater number of overlapping spheres. This expansion necessitates more active and effective IGR, but also makes scrutiny of decision-making more complex".

Dr Brown Swan goes on to suggest that this more complex IGR space "may entail greater use of the Sewel Convention, or seeking devolved parliamentary consent for UK legislation which impinges on devolved competences."

The submission received from Professor McEwen similarly notes the increased complexity of the devolved settlement and states that:

> "The increased use of delegated powers by both UK and Scottish ministers can also make regulatory change less transparent. This is especially the case where UK ministers are exercising delegated powers in areas of devolved competence, not subject to the Sewel convention."

The submission from Dr Brown Swan also highlights that "A greater use of Sewel places further workload pressures on parliamentary committees, coupled with an absence of transparency on negotiations that preceded a legislative consent motion".

On delegated powers, the House of Lords Constitution Committee notes that:

> "We continue to recommend that formal engagement with the devolved administrations on the use of delegated powers in areas of devolved competence should be a requirement."

Their Lordships are also of the view that:

> "The UK Government should develop, and publish, a clear set of criteria regarding the appropriate use of delegated powers in areas of devolved competence."

Professor McEwen's response notes the "challenges that governments face, from climate change to poverty, economic growth to security" which "span devolved and reserved constitutional responsibilities". Given that, Professor McEwen's view is that Governments "…have to find ways to collaborate if they are to confront these challenges effectively". The submission also states that:

> "…increased intergovernmental collaboration without increased transparency can have a detrimental impact on democratic accountability. Unless parliaments and the public can ascertain which government is (mainly) responsible for which decision or action, accountability may be blurred by blame-shifting and competing claims of governments when things are perceived to go wrong."

The submission received from Mr G. Robertson also picks up on a lack of clarity around responsibility, stating that:

> "The shared space has created ambiguity around who holds power, and on whose behalf, decisions are made."

Dr Brown Swan highlights that stronger reporting duties may be required to aid scrutiny, writing:

> "Whilst Scottish Ministers are accountable to the Scottish Parliament for their participation in IGR, there is no parallel mechanism to engage with UK Government ministers. While this would not be within the remit of the Scottish Parliament, stronger reporting duties on both governments (perhaps a coordinated call across parliaments) could help committees scrutinise legislation and agreements made in this increasingly complex space."

Improvements to intergovernmental working which respect the authority of each government and legislature

Many of the observations made by respondents again highlight the lack of transparency and set timeframes in IGR working. Respondents also note the challenges in joint working in a system of multi-level governance where there may be competing priorities and political views.

Dr Brown Swan notes that "Joint working has expanded – in the form of Common and Fiscal Frameworks, and IGR structures – but processes for documenting joint working fall short of expectations around transparency". The submission suggests that "more formalised and transparent processes for information-sharing and forward planning could strengthen the ability of parliament to scrutinise this joint working" something which "requires the participation of the Scottish Government."

Mr G. Robertson's submission states that joint mechanisms "must respect the democratic mandates of both UK and devolved parliaments" and "include conflict resolution processes that are independently arbitrated, not dictated by either government". The submission suggests "joint scrutiny committees involving MPs and MSPs" and "Clear public reporting of obligations on joint projects and outcomes".

Dr Paul Anderson also suggests that "There is clear merit in exploring whether more joint working could be developed between government (and parliaments)". The submission notes:

> "In many decentralised/federal states (e.g. Germany), joint working between different spheres of government is a routine and well-established practice. As the UK's devolution settlement has evolved in recent years, the number of overlapping policy jurisdictions has grown, resulting in greater interdependence between different governments. In this context, working together is not only a matter of good governance, but often a practical necessity."

The submission from Professor McEwen highlights that "Every multi-level system of governance requires a balance between self rule and shared rule" and that "The legitimate interest of devolved institutions in some areas of reserved policy was recognised in the original MoU", but that "there remains a difference in perceptions

between the UK and devolved governments about the appropriate level of engagement and practical cooperation over reserved matters…that interact with and have an impact upon devolved matters". Given that, Professor McEwen suggests that:

> "…while there is certainly scope for more practical cooperation and resource sharing between administrations, the different perceptions of their appropriate role is likely to remain a barrier to joint working."

In its submission the LSoS states that "First and foremost, the existing statutory framework is the primary safeguard of each Government and Legislature", but that "there is no reason (other than political differences of view) to prevent" the model of joint working established through common frameworks "from being extended to other aspects of governmental activity" where there is a "shared interest".

The Aberystwyth University submission again highlighted "the lack of a fixed timetable and a regular schedule of meetings" within the UK IGR structures. The authors observe that:

> "This complicates both the effective participation of devolved governments and the parliamentary scrutiny of such activity. Setting a future calendar of meetings would both enhance devolved participation in these structures, and offer scope for more parliamentary involvement."

The submission also suggests that "IMGs can be a listening space for the UK Government providing clarity on respective government positions, particularly if shared in advance" and notes that "Some devolved government interviewees were keen for IMG meetings to identify agreed ways forward and UK-wide positions as opposed to a UK Government position".

FDF Scotland is of the view that "Resource sharing and practical cooperation should be actively encouraged to deliver better and more consistent outcomes".

Improving parliamentary scrutiny of intergovernmental activity

Professor McEwen and Dr Brown Swan both point to the recommendations made in their report for the Committee and the Scottish Government on the written agreement on IGR. Professor McEwen's submission highlights that:

> "In addition to procedural reforms, we also recommended regular informal engagement between committees and ministers, supported by relationship-building between clerks and relevant civil service teams."

The LSoS also notes the work of Professor McEwen and Dr Brown Swan on the written agreement on IGR between the Scottish Parliament and the Scottish Government, highlighting in particular the lack of clarity and detail in communiqués and suggesting that "more transparency in the flow of information from the three-tier structure would enhance parliamentary scrutiny".

Dr Anderson argues that “Committees should continue to conduct inquiries into IGR on a more regular basis” suggesting that “More regular IGR evidence gathering sessions would reinforce the importance of IGR itself and the need for transparent reporting”.

Strengthening reporting requirements including minutes and communiqués are also important strands of work to improve parliamentary scrutiny of intergovernmental activity according to Dr Anderson. An additional suggestion made is the establishment of an IGR committee:

> “Across the different parliaments in the UK, there remain questions of capacity and remit for committees to engage in scrutinising IGR. In this respect, parliamentary scrutiny of IGR would be enhanced via the establishment of a dedicated IGR committee. Other committees would still be able to explore specific areas relevant to their remits, but a dedicated committee would certainly increase scrutiny.”

The submission from Mr G. Robertson states that “Scrutiny must be strengthened” and suggests “Statutory obligations for both governments to publish agendas, decisions and minutes of intergovernmental meetings” as well as “Mandatory consultation periods for framework agreements and memoranda”.

The role of interparliamentary working in scrutinising intergovernmental activity

The respondents who gave views on this topic generally saw a role for interparliamentary work and acknowledged the importance of parliamentary oversight of IGR and the potential for ‘collective scrutiny’.

The LSoS is of the view that “The Interparliamentary Forum is a mechanism which can provide an opportunity to re-enforce the need for transparency and accountability in intergovernmental relations”. Noting what has been discussed at recent meetings of the Interparliamentary Forum the LSoS comments that:

> “These insights into the concerns of the Forum show how important hearing the Parliamentary voice is when it comes to determining a properly functioning, transparent and accountable system of intergovernmental relations.”

Professor McEwen is of the view that interparliamentary working “may be of some value, particularly with the other devolved legislatures” but notes 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.”

It is Professor McEwen’s view that “transparency and accountability can be best increased by strengthening the requirements upon the Scottish Government to report on its activity in IGR”.

Dr Brown Swan suggests that “Regular dialogue between committees in Holyrood, the Senedd, Stormont and Westminster could help identify cross-cutting issues and strengthen collective scrutiny”. Dr Brown Swan also suggests that legislatures could “jointly call for a more transparent Secretariat” and that “A coordinated approach ensures that no single government can exploit asymmetries in information, enhancing accountability across the UK”.

In Dr Anderson’s view “interparliamentary relations have been a somewhat neglected dimension in the UK’s territorial structures” with them being “largely ad hoc and informal”. The Interparliamentary Forum and the Interparliamentary Finance Committee Forum do, in Dr Anderson’s view, “demonstrate the political willingness to institutionalise more IPR”.

Sarah McKay, senior researcher, SPICe

Date: 24/09/2025

Annexe 1: Areas on which views were sought

- The extent of transparency of formal structures of intergovernmental relations and whether transparency could be improved.

- How open intergovernmental activity falling outside of the formal structures (for example common frameworks) are and what this means for Parliamentary and stakeholder scrutiny.

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

- The potential consequences of insufficient scrutiny of intergovernmental activity, particularly considering arrangements such as common frameworks, the UK Internal Market Act 2020 and the potential for dynamic alignment with EU law as a result of new UK/EU agreements.

- What the evolving shared intergovernmental space means for parliamentary scrutiny and accountability, particularly in relation to legislative consent facilitated by the Sewel Convention, and the taking and exercise of delegated powers by UK Ministers in devolved areas.

- Whether procedures and mechanisms for joint working between governments could be developed and/or improved to ensure practical cooperation and resource sharing whilst safeguarding the powers of each government and the Scottish Parliament.

- If parliamentary scrutiny of intergovernmental activity can be improved and, if so, how.

- How inter-parliamentary work can aid the scrutiny of intergovernmental activity and lead to an increase in transparency and accountability. What level of information should be provided by governments in order to facilitate transparency.

Annexe 2: formal IGR structures in places in the UK since 2022

What do intergovernmental relations look like?

Top tier:

The Council

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

Middle tier:

Standing committees

The Interministerial Standing Committee (IMSC)

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

The Finance Interministerial Standing Committee (F:ISC)

This committee comprises Finance Ministers and considers finance and funding matters.

Additional interministerial committees

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

Lowest tier:

Interministerial groups (IMGs) consider matters in specific policy areas such as transport or education.

Annexe C

Constitution, Europe, External Affairs and Culture Committee
Thursday 2 October 2025
25th Meeting, 2025 (Session 6)

Transparency of intergovernmental activity and implications for parliamentary scrutiny inquiry

Background

The Committee launched its inquiry on the transparency of intergovernmental activity and implications for parliamentary scrutiny with a call for views on 24 June 2025. The call for views closed on 29 August 2025. An analysis of the responses to the call for views has been provided to the Committee.

Intergovernmental activity, rather than intergovernmental relations, is used for the inquiry to indicate that its scope includes informal ways of governments working together, as well as formal interactions through set intergovernmental mechanisms.

The Committee agreed that the scope of the inquiry would broadly encompass:

- formal intergovernmental structures and how they are working, including how they facilitate parliamentary scrutiny of UK/EU relations in devolved areas
- the operation of common frameworks and the status of the common frameworks programme
- the UK Government's review of the UK Internal Market Act 2020
- progress on a new Memorandum of Understanding on the Sewel Convention, and
- the taking and exercise of delegated powers by UK Ministers in devolved areas.

These are all matters which the Committee has raised concerns about in previous reports, including The Impact of Brexit on Devolution (February 2022), How Devolution is Changing Post EU (October 2023), and most recently the Committee's submission to the UK Government review of the operation of the UK Internal Market Act.

The Scottish Government and Scottish Parliament reached an agreement in 2016 on the provision of information related to intergovernmental relations. This agreement has not been updated since the three-tier intergovernmental structure was agreed in 2022. The Committee and the Scottish Government jointly commissioned an independent review of the agreement which was undertaken by Professor McEwen and Dr Brown Swan. The review made 8 recommendations which are detailed at

Annexe 1. The Committee previously agreed to pause work on updating the written agreement until this inquiry had concluded.

The UK Government 'reset' with the devolved governments

At the UK 2024 General Election, the Labour Party said that it would "reset the UK Government's relationship with devolved Governments in Scotland, Wales, and Northern Ireland". The Labour Party manifesto made a number of specific commitments relating to the devolution settlement, including to:

- ensure the structures and institutions of intergovernmental working "improve relationships and collaboration on policy"
- strengthen the Sewel convention with "a new memorandum of understanding outlining how the nations will work together for the common good"
- "renew opportunities for the Prime Minister and Heads of devolved Governments to collaborate with each other", including establishing a new Council of the Nations and Regions
- ensure members of devolved legislatures have the same free speech protections enjoyed by MPs at Westminster
- ensure that UK-wide bodies are "more representative" of the UK's nations and regions
- "restore decision-making over the allocation of structural funds[2] to the representatives" of Scotland, Wales, and Northern Ireland.

Specific commitments relating to Scottish devolution included to:

- "protect and respect devolution and reset relations" between the UK and Scottish Governments
- ensure the devolution settlement for Scotland "enables collaboration on Labour's national missions for government"
- adopt "a more collaborative approach" by the UK to the Scottish Government's international engagement, including to "support the Scottish Government to partner with international bodies where relevant and appropriate".

The visual below has been prepared by SPICe. It shows (using a RAG rating) progress to date on the UK Government key intergovernmental 'reset' commitments.

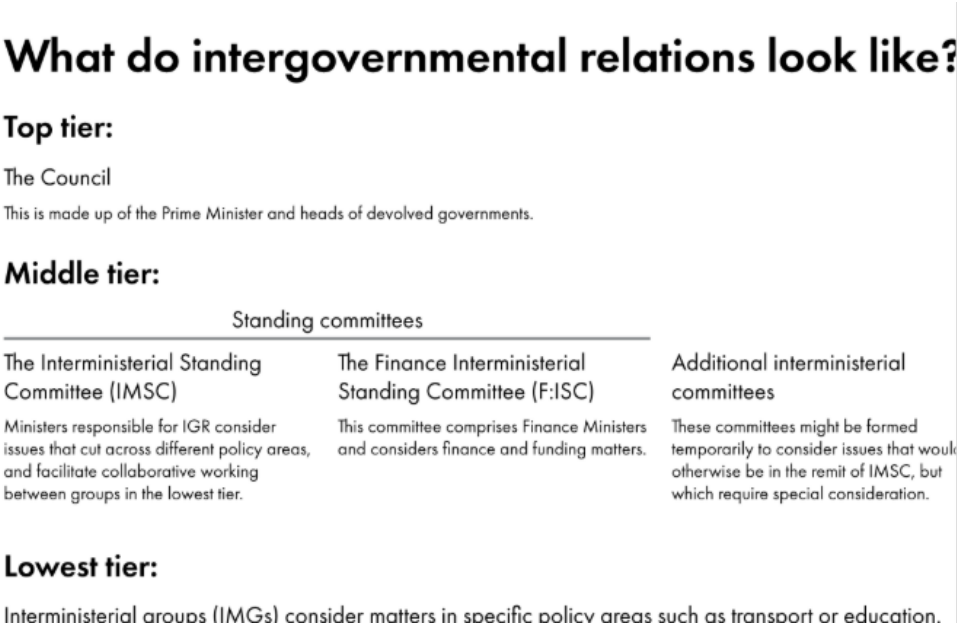
[2] Although the wording is "structural funds", SPICe believes this refers to the Shared Prosperity Fund.

UK Government Commitment	When	Status	Detail
Establish a new Council of the Nations and Regions and renew opportunities for the Prime Minister and Heads of devolved Governments to collaborate	June 2024 (manifesto)		The Council of the Nations and Regions and the Prime Minister and Heads of Devolved Governments Council have both met twice, with further regular meetings expected
Review the operation of the UK Internal Market Act 2020, aiming to complete the review by summer 2025	December 2024		The review was launched in January 2025 and the outcome was published in July 2025. However, the Scottish Government criticised the decision not to consider repealing the Act
Ensure the structures and institutions of intergovernmental working improve relationships and collaboration on policy	June 2024 (manifesto)		Use of IMGs has continued on a similar basis to before July 2024, though with some groups meeting for the first time in a year or more
Strengthen the Sewel Convention with a new Memorandum of Understanding	June 2024 (manifesto)		Discussions between the UK and devolved Governments have begun, but the timeline and scope remains unclear
Restore decision-making over the allocation of structural funds to representatives of the devolved nations	June 2024 (manifesto)		Allocations from a new Local Growth Fund will be determined by the UK Government "working in partnership" with the devolved governments and local stakeholders
Finalise the Common Frameworks programme, aiming to do so by Easter 2025	December 2024		No provisional Frameworks applicable to Scotland have been finalised, and no unpublished Frameworks applicable to Scotland have been published in either draft or final form
Extend free speech protections to the devolved legislatures	June 2024 (manifesto)		There is no publicly available evidence of progress against this commitment

Scottish Parliament Information Centre

Formal intergovernmental structures

Formal intergovernmental interactions, involving Ministers and/or officials from the UK Government and each of the devolved Governments, take place under the following structure, which was established in January 2022.



What do intergovernmental relations look like?

Top tier:

The Council

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

Middle tier:

Standing committees

The Interministerial Standing Committee (IMSC)	The Finance Interministerial Standing Committee (F:ISC)	Additional interministerial committees
Ministers responsible for IGR consider issues that cut across different policy areas, and facilitate collaborative working between groups in the lowest tier.	This committee comprises Finance Ministers and considers finance and funding matters.	These committees might be formed temporarily to consider issues that would otherwise be in the remit of IMSC, but which require special consideration.

Lowest tier:

Interministerial groups (IMGs) consider matters in specific policy areas such as transport or education.

The 2022 reforms committed the UK Government and devolved governments to increased transparency, which had long been noted as an area of concern. Whereas before the review little information on intergovernmental activity was publicly available, minutes of most interministerial groups are now routinely published.

The 2022 reforms also included a revised dispute resolution process. The process sets out a central role for an independent IGR Secretariat as it, not governments involved in a disagreement, decides whether a disagreement is to enter the formal dispute resolution process. The new process also includes more extensive reporting requirements.

The structure introduced in 2022 was designed to provide “a positive basis for productive relations”, and support “ambitious and effective” intergovernmental working between the UK Government, the Scottish and Welsh Governments, and the Northern Ireland Executive[3].

Top tier activity

The October 2024 meeting of the Prime Minister and Heads of Devolved Governments Council, the 'top tier' of the formal IGR structures, was the first meeting of this group since November 2022. The UK Government indicated in March 2025 that the Council of the Nations and Regions and the Prime Minister and Heads of Devolved Governments Council will continue to meet on the same day in future, to avoid duplication and ensure efficient intergovernmental relations. The Council of Nations and Regions is due to meet biannually. It is likely therefore that the Council will also meet twice per year in future.

[3] The Review of Intergovernmental Relations, 2022

Middle tier activity

The communiqué from the February 2025 meeting of the Interministerial Standing Committee stated that the Ministers in attendance (including the Deputy First Minister, Kate Forbes MSP) "agreed plans to update understanding of current activity of Interministerial Groups, with a view to ensuring that inter-ministerial engagement operates efficiently and effectively within appropriate structures."

The IMSC also met on 26 June 2025. The Deputy First Minister of Scotland, Kate Forbes MSP, chaired the meeting. The communiqué indicates that topics of discussion included:

- industrial strategies, and joint working to support the implementation of the UK Government's Industrial Strategy
- the statutory review of the UK Internal Market Act 2020 and its interaction with common frameworks
- the "recent experience of UK legislation and UK Government plans to strengthen the Sewel Convention"
- current affairs, including the situation in the Middle East and the shared risk of further civil disorder in the UK.

The IMSC is due to meet again in autumn 2025 where the Welsh Government will Chair.

Lowest tier activity

Since the July 2024 general election, there have been at least 25 meetings held under the formal intergovernmental relations (IGR) structures. A breakdown of the number of meetings known to have taken place per group (that is, meetings for which a communiqué has been published) is set out in the table below[4].

Interministerial meetings under IGR structures since July 2024

Group name	Number of meetings since July 2024
Prime Minister and Heads of Devolved Governments Council	2
Interministeral Standing Committee	3
Finance: Interministerial Standing Committee	3
Interministerial Group for Business and Industry	2
Interministerial Group for Elections and Registration	1
Interministerial Group for Environment, Food and Rural Affairs	3
Interministerial Group for Health and Social Care	2
Interministerial Group for Housing, Communities and Local Government	1
Interministerial Group for Net Zero, Energy and Climate Change	3
Interministerial Group for Safety, Security and Migration	1
Interministerial Group for Trade	1
Interministerial Group for Transport Matters	2
Interministerial Group on UK-EU Relations	1

[4] This information is based on, and is an accurate reflection of, the communiqués published on the UK Government's website as of 31 July 2025.

The 25 meetings held under the formal IGR structures over the 12-month period from July 2024 to July 2025 compares to a total of 23 meetings held between January and December 2022, and 35 meetings between January and December 2023. Based on the published communiqués available on the UK Government website, 13 meetings were also held in the six months between January and June 2024. It is not therefore clear whether IGR structures are being used more frequently by the present UK Government than by the previous administration.

The activity of some interministerial groups (IMGs) since July 2024 continues a pattern of regular meetings that was already in place under the previous UK Government. The IMGs for Environment, Food and Rural Affairs and for Net Zero, Energy and Climate Change, for example, both met five times during 2023.

Some IMGs that have met since July 2024 had not previously met for an extended period. For example, the IMG for Business and Industry had last met in January 2023 and the IMG for Safety, Security and Migration had last met in July 2023.

Other IMGs listed on the UK Government website do not appear to have met since July 2024[5]. These include the IMG for Culture and Creative Industries (which last met in May 2024); the IMG for Education (last met June 2023); the IMG for Justice (last met January 2024); and the IMG for Tourism (last met November 2021).

Updated terms of reference have also been published for a number of IMGs since July 2024, including for the IMG for UK-EU Relations.

Meetings outside of formal IGR structure

The table above does not include some meetings which fall outside of the formal IGR three-tier structure. This includes, for example, two meetings of the Council of Nations and Regions and at least one meeting, in November 2024, of the UK Government-Scottish Government Joint Ministerial Working Group on Welfare.

Bilateral and informal meetings between UK and Scottish Ministers have also taken place in addition to those set out in the table above. These include bilateral meetings between the First Minister and Prime Minister in October 2024 and in May 2025 (the same days as the Council of the Nations and Regions met). The former Secretary of State for Scotland, Rt Hon Ian Murray MP, stated in November 2024 that he had already met with the First Minister four times, and the Deputy First Minister five times; while the First Minister was quoted in December 2024 as saying that he had had "a number of one-to-one meetings" with the Prime Minister over the previous six months.

For comparison, the UK Government's IGR Annual Report for 2023 (i.e. under the previous administration) states that 63 bilateral meetings took place between UK and Scottish Ministers that year.

[5] Correct as of 31 July 2025

The Council of Nations and Regions

In September 2024, it was confirmed that the Prime Minister would establish a Council of the Nations and Regions where he and the Heads of devolved Governments "can look at challenges and opportunities together". The Cabinet Secretary for Constitution, External Affairs and Culture, Angus Robertson MSP, reacted positively to the Council's creation, saying that the Scottish Government would “welcome the opportunity for a reset" in intergovernmental relations, and was "ready to work with the new UK Government to agree a collaborative, co-operative approach to intergovernmental relations, which respects devolution and all of the powers of the Scottish Parliament".

The first meeting of the new Council was held in Edinburgh in October 2024. According to the communiqué published after the meeting, attendees discussed "opportunities for attracting long-term inward investment", and "confirmed their commitment to working together to leverage maximum investment to all parts of the nations and regions and support economic growth".

The terms of reference for the Council were also published alongside the October 2024 meeting communiqué. These stated that the Council will meet biannually. They state that the objectives of the Council are to:

- provide regular, sustained, engagement to ensure that governments and authorities with devolved responsibilities are working together to deliver on people’s priorities across the UK, ensuring the voices of the nations and regions are brought to bear on issues affecting the whole country
- facilitate collaboration and consider shared opportunities on cross-cutting challenges, identifying barriers that can be unblocked
- share lessons and best practice on approaches being taken across the UK.

The Council of Nations and Regions also met in May 2025. A communiqué has not been published for this meeting. The Welsh Government indicated in a written statement on 9 June 2025 that a communiqué was expected to be published “in the near future” and that:

> “The discussion focused on developments in international trade, and opportunities arising from artificial intelligence for economic growth and public services.”

In a report published in May 2025, the Bennett Institute for Public Policy and PolicyWISE stated that the Council was "a potentially landmark innovation in the UK's model of territorial government", with "real potential" to improve intergovernmental relations. The report suggested however that the Council "needs a more clearly defined purpose", as well as recognition of the "significant differences between the constitutional standing and capacities" of the devolved Governments compared to English regional mayors. It also called for greater clarity on how the new Council fits into the UK's existing intergovernmental relations architecture.

Using IGR structures for liaising on UK/EU future relationship

In August 2024 UK Government Minister for the Constitution and EU Relations, Rt Hon Nick Thomas-Symonds MP, wrote to the Committee acknowledging that the UK Government's relationship with the EU has both constitutional and practical implications for devolution. The Minister stated that this was "one of many reasons it is important that we reset relations between the four governments within the UK", indicating that "my approach to UK-EU relations will always respect the role of devolved Governments and legislatures".

At a summit on 19 May 2025, the UK Government and the European Union finalised a Common Understanding which included a commitment to work towards a sanitary and phytosanitary agreement by "establishing a Common Sanitary and Phytosanitary Area". An agreement on fisheries was also reached. The Common Understanding also proposed working towards the formal linking of the Emissions Trading Schemes (ETS) of the UK and the EU.

The Common Understanding included a commitment that both the SPS and ETS agreements would involve the UK agreeing to abide by (i.e. align with) EU law and rules in all areas within the scope of the agreements. Both an SPS and ETS agreement would include an opportunity for the UK to contribute to the decision shaping process as EU law in these areas is developed.

Given that both SPS and ETS are largely devolved areas, the Scottish Parliament and the Scottish Government have a significant interest in the shape of any final agreement and in ongoing policy developments in these areas. A key question then is how they can influence the single UK position which the UK Government will be responsible for communicating with the EU.

Within the three-tiered IGR machinery there is an Interministerial Group on UK-EU Relations. It is likely that this IMG, chaired by a UK Minister, could provide the forum for the UK Government to work with the devolved administrations on the UK approach to shaping EU policy on SPS and ETS.

The terms of reference for the Interministerial Group on UK-EU Relations (IMG UK EU) state that:

> "The Interministerial Group (IMG) on UK-EU Relations provides a ministerial forum to discuss matters relating to the UK's withdrawal and trade and cooperation deals with the European Union. The IMG aims to support constructive intergovernmental discussions on these matters between governments representing all four nations of the UK, with membership ('the Members') consisting of the UK government (UKG), the Scottish Government (SG), the Welsh Government (WG) and the Northern Ireland Executive (NIE)."

The IMG UK EU is set to meet approximately three times a year and has met twice since March 2024 (on 6 March 2024 and 3 December 2024).

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No IMG UK EU was held in the lead up to the UK EU summit on 19 May 2025. At that summit commitments were made to developing the UK-EU relationship. The lack of UK Government engagement with the Scottish Government was raised by the Cabinet Secretary for Constitution, External Affairs and Culture in a letter to the Committee (dated16 June 2025) which read:

> "Regrettably, the extent the UK Government involved the Devolved Governments in the negotiations leading up to the summit was very disappointing – notably, for example, on the agreement on fisheries...
>
> One reason you will appreciate that UK Government must include Devolved Governments closely withing the negotiations is that the summit agreements will require us here to establish in both the Scottish Government and the Scottish Parliament new process both of policy development and of subsequent legislative scrutiny and implementation...
>
> The Scottish Government continues to seek a principled and pragmatic approach to engagement with the UK Government…we expect the UK Government to work with us in a way that reflects our respective responsibilities, and those of our respective legislatures."

In the same letter the Cabinet Secretary also indicated that "the First Minister received assurances from the UK Prime Minister at the Council of Nations and Regions on 23 May [2025] that UK Government would work with Scottish Government on each of the policy areas signalled at the Summit".

The Cabinet Secretary provided more information when giving evidence to the Committee on 19 June 2025. On the intergovernmental process ahead of the summit, the Cabinet Secretary told the Committee that whilst he had met the UK Minister (Rt Hon Nick Thomas-Symonds MP) twice in the lead up to the summit, the Scottish Government had not been fully appraised of the details of the UK-EU negotiations or of the UK position ahead of the May summit. The Cabinet Secretary told the Committee that "The process is not working properly", adding "It is important that we understand both those things in order to ensure, when things are perhaps more challenging, that the process is robust enough to get us through all that."

The Cabinet Secretary also indicated that the UK Government had cancelled meetings and failed to share documents, asserting that "if the situation does not improve, there will not have been a reset, because what is happening now is the same as what happened under the previous UK Government".

The Scottish Government's position on its involvement ahead of future negotiations was set out by the Cabinet Secretary who indicated, that:

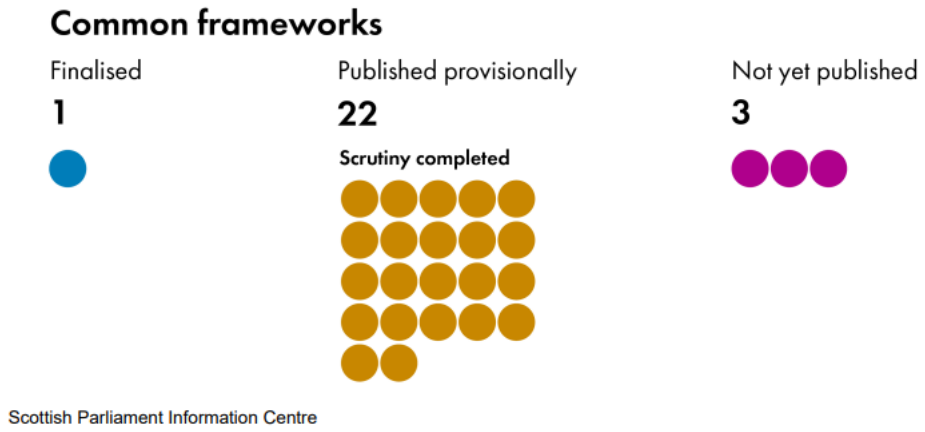
> "We need the UK Government to better engage with Scottish interests and the Scottish Government [...] Given the sheer number of devolved responsibilities involved, the Scottish Government must be more closely involved and included in forthcoming talks, not least to protect the role of the Scottish Parliament. The intergovernmental structures must be tested this year, and they must be tested through their continuous operation and by meaningful engagement."

The UK Government has said that the Scottish Government were "fully informed all the way through" the negotiation process[6].

Common frameworks

Common frameworks are intergovernmental agreements which set out how the UK Government and devolved Governments will work together to make decisions in certain devolved policy areas. Common frameworks were originally intended to be used to consider matters which were former EU competences. However, some also state that they may be used to consider related matters within the wider policy area.

One common framework that applies in Scotland has been finalised, a further twenty-two have been provisionally published and are operational, while three more planned Frameworks that will apply in Scotland remain unpublished. A further six frameworks apply only to the UK Government and the Northern Ireland Executive.



In a written statement to the House of Commons in December 2024, the UK Government announced that it was "committed to finishing the Common Frameworks programme as soon as possible" and would aim to do so by Easter 2025. However, as the RAG rating earlier in this briefing shows, there appears to have been no progress on common frameworks since July 2024 with no additional frameworks finalised and no further frameworks published. It is understood that the Review of the UK Internal Market Act 2020 delayed progress with the common frameworks programme.

In its May 2025 submission to the UK Government's review of the UK Internal Market Act, the Committee recommended that the review should address what it concluded was a "lack of clarity" around "the purpose of UKIMA in relation to the operation of Common Frameworks", as well as "the purpose of Common Frameworks given there is little evidence that they are delivering common goals, maximum or minimum standards or harmonisation as initially intended".

In July 2025, the UK Government published what it described as an "in-house process evaluation" of Common Frameworks, which it had carried out between early 2023 and February 2024. The Review was principally based on data provided by officials from the UK and devolved Governments. The evaluation did not assess the

[6] EU deal gives '12 years of certainty' to Scottish fishermen, says Murray | The Herald

impact of frameworks but considered how they are working in practice. Findings from the evaluation process included:

- a sense that it was too early to judge how effectively frameworks were working, but that they were helpful in formalising joint working between Governments, and had led to greater information sharing and joint working "at least to some extent"

- political differences between Governments can make official-level working within frameworks "more challenging", even if relationships between officials are strong

- the UK Government tended to be viewed as having "more weight" in Framework discussions, with most meetings across frameworks chaired by the UK Government who would also take the lead in setting the agenda

- the ability of the frameworks process to handle divergence was perceived not yet to have been fully tested, even within Frameworks where Governments had been considering different policy approaches

- there had not yet been much use of the formal dispute resolution processes within frameworks, but officials were broadly confident in those processes.

The evaluation concluded that "there could be greater clarity on how these processes should be used", in particular regarding the distinction between formal and informal disagreements.

The evaluation also identified "six key factors to maximise the effectiveness" of the common frameworks programme in future:

- increased sharing of good practice across frameworks

- increasing co-ordination across frameworks

- effective levels of stakeholder engagement

- increasing wider knowledge and awareness of frameworks within governments

- central guidance and monitoring of key framework processes; and

- further evaluation of frameworks in the future.

The Scottish Government set out its view on common frameworks in its April 2025 position paper on the UK Internal Market Act 2020, which stated:

> “The Scottish Government welcomes, and shares, the UK Government’s ambition that Common Frameworks act as the key mechanism for managing policy divergence and ensuring regulatory co-operation.”

The Scottish Government also stated in that paper that:

> "The UK Government must adhere to the Common Frameworks Statement of Principles. These principles offer a coherent conceptual model for the operation of an internal market regime that ensures a functioning market while respecting devolution."

The review of the UK Internal Market Act 2020

The UK Government announced a review of parts of the UK Internal Market Act 2020 on Friday 23 January 2025. Part of the review was a consultation which stakeholders were invited to respond to.

On 15 July 2025 the UK Government published its response to the review and Douglas Alexander, then Minister for State for Trade Policy and Economic Security, also lodged a written statement at the House of Commons to announce the publication.

What is the Internal Market Act 2020 and what was being reviewed?

The UK Internal Market Act 2020 (UKIMA) governs the trading relationship between the different nations of the UK for goods and services. The Act establishes two market access principles - mutual recognition and non-discrimination. The market access principles are intended to facilitate trade, the provision of services and recognition of professional qualifications across the UK.

A statutory review of three aspects of UKIMA was required by the Act itself by December 2025. The review duties in UKIMA are:

- the duty to review any use that has been made of the Part 1 amendment powers (powers to change what is excluded from the market access principles for goods) under section 13
- the duty to review any use that has been made of the Part 2 amendment powers (powers to change what is excluded from the market access principles for services) under section 22
- the duty to review arrangements for carrying out Part 4 functions (this relates, in particular, to the effectiveness of using Office for the Internal Market task groups to carry out the Competition and Markets Authority's functions under Part 4 of giving independent advice on and monitoring of the internal market) under section 44.

The UK Government set out its approach in a Ministerial statement on 12 December 2024 made by Douglas Alexander, then Minister for Trade Policy and Economic Security. The Minister stated that the review would also include

> "… inviting views on the process for considering exclusions from the Act, and the role and functions carried out by the Office for the Internal Market".

The review of UKIMA being wider than that required by law appeared to be part of the UK Government's 'reset of relations' with the devolved governments Making a statement on 12 December 2024, Mr Alexander, stated:

> "…we recognise that the operation of the UK Internal Market Act can be improved, including more certainty and clarity when considering proposals which remove areas of regulation from the scope of the market access principles. We believe that the UK Internal Market Act should complement Common Frameworks and support collaborative policy-making. To improve the management of the UK internal market, the Government will deliver an initial package of measures to demonstrate a more pragmatic approach."

Although the review was wider than required under UKIMA, the UK Government stated that the review would not consider whether to repeal UKIMA or any part of it, something which the Scottish Government was critical of. The Scottish Parliament agreed (passed by 73 votes to 47) a motion calling for the Act to be repealed on 19 February 2025. The motion stated:

> "That the Parliament notes the publication of the UK Government's consultation and review of the United Kingdom Internal Market Act 2020, which sets out that it will "not consider whether to repeal the UK Internal Market Act or any part of it"; recalls that both the Scottish Parliament and Welsh Senedd refused to give the Act legislative consent; notes the position of the Welsh Government, which opposes the Act, believing it to be "an unwarranted attack on devolution"; reaffirms its decision regarding the Act on 3 October 2023, and calls for it to be repealed."

In addition, the review did not consider the UK Government's power to provide financial assistance throughout the UK and subsidy control.

Committee short inquiry and submission

The Committee launched a short inquiry linked to the UKIMA review in February 2025. The inquiry's purpose was to inform the Committee's submission to the review which concluded that:

> "…the starting point for this reset should be a recognition that devolution looks very different outside of the EU compared to when the UK was a Member State. The key difference is how the regulatory environment within the UK is managed compared to how it was managed within the EU. Critically this is a shared space which requires much more intergovernmental working than previously when the UK was in the EU.
>
> While a number of mechanisms and ways of working, including UKIMA, have been developed to manage the shared space, there remains a lack of consensus about how the regulatory environment should be managed. There is also a lack of clarity and certainty around mechanisms, such as the exclusions process, which are key to how the regulatory environment is now managed. Our view is that the review of UKIMA should address this lack of clarity, consensus and certainty…"

A SPICe paper provided to the CEEAC Committee for its inquiry on the review includes detailed background on what was required to be reviewed by law, how the UK Government approach to the review widened its scope, and how the issues raised in the review linked to the Committee's previous work around transparency and accountability of intergovernmental decision making.

The review outcomes

The UK Government's response to the review was published on 15 July 2025 and was accompanied by a Ministerial Statement laid in the UK Parliament.

The outcomes of the review do not propose changes to UKIMA itself; the market access principles of mutual recognition and non-discrimination still apply and no changes to the Act are proposed.

The review outcomes are a series of commitments to try to address some of the concerns raised by those who responded to the consultation held as part of the review. The changes are, therefore, a commitment to better intergovernmental working which include:

- An agreement to consider environmental protection and public health, alongside economic impacts, in UKIMA exclusions.
- A commitment to implement any UKIMA exclusions that have been agreed by all governments within a Common Framework.
- A Minimum Economic Impact (MEI) process for considering exclusions with an economic impact of less than £10 million a year, and a commitment by the UK Government to implement them where all governments agree the exclusion has minimum economic impact.
- A "reserve" exclusions process for instances where it has not been possible for all four governments to reach agreement on an exclusion through either the common framework or MEI process.
- Work to improve the transparency of common frameworks by the governments working to agree processes for how to engage with businesses and other stakeholders on matters being discussed in frameworks.
- A commitment that the UK Government will work with the devolved governments to agree a process for all four governments to jointly refer UK internal market matters for advice to the Office for the Internal Market.

Consideration of environmental protection and public health in UKIMA exclusions

The market access principles of UKIMA allow for very little divergence between regulatory requirements for goods and services in different parts of the UK. The principles apply unless there is an exclusion. There are some exclusions set out in the Act with exclusions for goods listed in Schedule 1 and exclusions for services

listed in Schedule 2 of the Act. In addition, existing regulations (i.e., those in force on 30th December 2020) are broadly excluded from the market access principles for goods and those which have not been substantively changed are broadly excluded from the market access principles for services. New exclusions can also be created by UK Ministers. In the main, matters such as environmental protection and public health are not excluded from the market access principles of UKIMA.

Although environmental protection and public health were not specifically included in the existing exclusions process, this does not mean that evidence on these impacts could not be considered. That said, because of the lack of transparency around how common frameworks and the exclusions process operates it's been largely unclear how decisions on exclusions have been reached to date.

Paragraph 37 of the UK Government's response to the review specifically states that evidence relating to environmental protections and public health will now be considered alongside economic impact when exclusions from the market access principles are being discussed:

> "Environmental and public health matters are key devolved policy areas that may have an interaction with the UKIM Act. We believe that, by taking those into account in the consideration of a UKIM Act exclusion, we will ensure the right balance between encouraging innovation and solutions that meet local needs; and preserving the integrity of the UK internal market. We encourage devolved governments also to consider environmental protection and public health factors in any exclusion proposal."

It is important to note, however, that the processes for considering exclusions are intergovernmental and not legally binding. The addition of environmental protection and public health as areas where evidence should be considered does not in itself change the application of the market access principles in these policy areas. It may, however, mean that exclusions in those areas are more likely to be agreed where there is a compelling environmental or public health interest.

Exclusions to the market access principles

Under sections 10 and 18 of UKIMA, UK Ministers may make regulations which change what is excluded from the application of the Act's market access principles. The consent of the devolved Ministers must be sought for any regulations made under these sections, but their consent is not required. UKIMA specifies that if consent is not given within one month of it being sought, the regulations can be made without it. This means that UK Ministers can change the exclusions to the market access principles even where the devolved administrations disagree.

Although only UK Ministers have the power to make changes, the UK and devolved governments have previously agreed a process for the consideration of exclusions in areas covered by common frameworks. That process was light on the detail of how exactly it operates in practice and there was no mechanism built into it to allow the Parliament or other stakeholders to have a voice in it.

To date a single exclusions process has existed and has been used to agree an exclusion in relation to single use plastics, but a proposed exclusion relating to the

Deposit Return Scheme for Scotland was rejected leading to significant tension between the UK and Scottish Governments. The process was also used in relation to rodent glue traps, even though the policy did not fall within a common framework area.

The UK Government response to the Review suggests three distinct exclusion processes, with discussion and agreement through common frameworks being favoured.

Implementation of exclusions agreed by all governments in common framework areas

The first 'exclusions process' facilitates discussion of proposed exclusions through common frameworks (intergovernmental groups of officials). In its response to the Review the UK Government states that:

> "The UK government confirms it will discuss proposed UKIM exclusions in Common Framework meetings, and will implement all exclusions that have been agreed by all governments through a Common Framework. UK government intends to use Common Framework meetings to ensure interoperable policy solutions across the UK, as far as that is reasonably possible, but also to seek to reach agreement with all governments where an exclusion is suitable and necessary."

The process proposed by the review is based on the existing exclusions process and doesn't add significantly to the detail of how it should operate. The table at **Annexe 3** provides a comparison of the existing process for considering exclusions and the process proposed by the review.

There is also an explicit commitment from the UK Government to implement "all exclusions that have been agreed by all governments through a Common Framework". The Scottish Government has indicated in relation to the exclusion on the deposit return scheme that the previous UK Government had not followed the exclusions process, which required discussions through common frameworks rather than formal ministerial requests.

Nevertheless, the common frameworks exclusions process now explicitly favours common approaches rather than regulatory divergence. This is demonstrated by the inclusion in the process of a new step which states "Once all avenues to explore similar policy approaches have been pursued within the common framework" an exclusion can be sought.

A similar phrase is already included in the individual dispute resolution mechanisms of some common framework agreements, for example that of the Animal Health and Welfare common framework which states:

> "The disagreement/dispute avoidance and resolution processes should only be engaged once all routine avenues to try and resolve the disagreement have been exhausted."

This perhaps underlines the intention that the exclusions process through frameworks is to be founded on consensus. Nevertheless, the requirement for consensus in common frameworks could mean that the exclusions process is drawn out, and it would appear to be open to parties deliberately frustrating the process to delay a decision on an exclusion.

Paragraph 26 of the UK Government's response also states that:

> "The UK government believes that, within Common Framework discussions, all governments should be seeking opportunities to align their approaches where appropriate and, as a minimum, look to achieve interoperability of policy across the different parts of the UK."

There appears, therefore, to be a tension then with paragraphs 52 and 53 of the UK Government's response to the Review which are said to relate to "Getting the right balance between the potential for local regulatory innovations in sectors and UK-wide alignment". This section of the UK Government's response suggests that it wants to "enable innovation", noting that it and stakeholders were supportive of "devolved governments' ability to launch local innovative initiatives" and indicating that "Common Frameworks are the right place to discuss the potential for policy innovation."

Minimum Economic Impact process

The review sought views on whether all proposed exclusions should be handled in the same way regardless of their estimated economic impact. The review considered this in light of the Scottish Government's proposed exclusion in relation to rodent glue traps which was rejected in March 2024 by the previous UK Government, but agreed to by the present UK Government which stated that it "recognises this proposal has a minimal economic impact on trade within the UK".

The UK Government's response to the review notes that respondents generally supported the "UK government running a lighter touch exclusions process where there is clear evidence to show minimal economic impacts on the UK internal market." As such a Minimal Economic Impact (MEI) exclusion process is to be introduced where the economic impact of the proposed exclusion is no greater than £10 million each year in Equivalent Annual Net Direct Costs to Business. The process is more streamlined, requiring that:

- the proposing government demonstrates that the economic impact does not exceed the £10 million annual threshold
- other governments have no objections based on minimum economic impact having been demonstrated
- the UK Government implements legislation and commits to doing so as soon as reasonably practicable.

Reserve exclusions process

A reserve exclusions process is to be introduced for proposed exclusions which fall neither within a common framework area nor within the MEI exclusions process. The reserve exclusions process will also be used should agreement not be reached on an exclusion proposed through either the common frameworks or the MEI process.

The reserve process means that the administration seeking an exclusion can write to the relevant UK Minister, detailing the proposal and indicating they wish to use the reserve exclusion process to propose the exclusion.

The reserve process appears to be based solely on a review of the proposal by the UK Minister responsible for the relevant policy area. It is noted that decisions under the reserve process, as with the exclusions process through common frameworks, will consider evidence in relation to direct and indirect economic impact, environmental protection and public health. The response to the review states:

> "Exclusion proposals under this process will be acknowledged in writing by the relevant UK government minister within one month, and should receive a published, ministerial response from UK government within six months of the proposal being made. If a decision has not been reached in this timeframe – for example, if the evidence provided is insufficient to make a decision - the response should explain why this has not been possible and commit to a new timeframe. This should be published to extend transparency to businesses and Common Frameworks."

Areas where further work is needed

The UK Government's response indicated two areas where more intergovernmental work is required to address issues raised in the review. The first is to ensure better "transparency and communication" with stakeholders on the common frameworks programme overall and on individual frameworks.

The second is to agree a process by which joint referrals to the Office for the Internal Market (OIM) can be made "where potential UKIM impacts are identified in Common Framework discussions".

Scottish and Welsh Government reaction

The Scottish Government published a position paper on UKIMA in April 2025. That paper set out the Scottish Government's response to the review and:

- recognised stakeholders' concerns over the visibility and transparency of Common Frameworks stating that "the imposition of the Act, without consent, has greatly impeded both the technical operation of Common Frameworks and the principle of respect for devolution on which they are founded."

- Called for repeal of UKIMA "with an equitable, co-designed system built around the Common Frameworks approach" and "full restoration of the powers of the Scottish Parliament.

- Indicated that "The unilaterally determined terms of the statutory review are unlikely, in the Scottish Government's view, to deliver the change necessary."

Following the outcomes of the review, Cabinet Secretary for Constitution, External Affairs and Culture, Angus Robertson MSP, was quoted as saying that the UK Government's response to the Review "falls well short" of the Scottish Government's stated position of repeal of UKIMA "and indeed short of the legislative change required to mitigate the most damaging aspects of the operation of the IMA."

Mr Robertson noted that although the Scottish Government welcomed the UK Government addressing "some of the most egregious issues with the function of the IMA exclusions process", Scottish Ministers "remain concerned that there is no clear vehicle to give meaningful effect to these changes, which work against our shared interests to promote growth, protect jobs and ensure seamless trade across the UK nations".

The Scottish Government hasn't, however, published a full response to the review to date. The Welsh Government's written statement on the review outcomes was published on 17 July 2025. The Welsh Government broadly welcomed the outcomes of the Review, stating:

> "We need an approach to governing the UK internal market which works with the grain of devolution and respects our democratic mandate…The commitments made by the UK Government following the review are a good start towards this goal."

The Welsh Government was particularly welcoming of the commitment to implement exclusions agreed in common frameworks given that "The Common Frameworks operate on a clear set of principles which fully respect devolution and include dispute resolution mechanisms."

The statement also noted that work remains to be done to ensure that the reserve exclusions process (discussed in more detail below) is "objective and transparent in the same way as the Common Frameworks processes."

The Welsh Government did not move from its position that UKIMA should be repealed, stating:

> "However, it is our long-standing and consistent view that the Act should be repealed and replaced with a system, underpinned by legislation, designed around the Common Frameworks and which maintains the safeguards necessary to support the Windsor Framework…
>
> We will continue to make the case for statutory changes to the Act to prevent its misuse and improve its functioning alongside the devolution settlements. The non-statutory commitments made by the UK Government are welcome, but they do not prevent the misuse of the Act by future UK Governments to enforce English policy preferences in affected devolved policy."

Key take aways from the outcome of the UK Government review

- Common frameworks are confirmed as the vehicle through which much of the day-to-day discussion about policy direction in areas affected by UKIMA will be done. Nevertheless, UKIMA remains as the legislative underpinning of the UK's internal market and its market access principles remain unchanged. As such, the UK Government continues to be the final decision maker in whether an exclusion is given effect as only UK Ministers can make changes to UKIMA.

- The new three-tier exclusions process may help to streamline some exclusion requests, particularly those with MEI.

- There remains a lack of clarity on how the exclusions process routed through common frameworks operates in terms of the evidence which should be presented when making an exclusion request.

- Whilst the UK Government has given a clear commitment to implement exclusions agreed through common frameworks and recognises the possible benefits of "local need", there appears to be a greater focus on UK wide approaches and aligned regulations in the text of the exclusions process routed through common frameworks.

- Although transparency concerns raised through the review have been noted, there is nothing agreed on how to improve that for legislatures and stakeholders. More work between the governments on how to improve this is promised. The pace of that work, if the common frameworks programme is the benchmark, is likely to be slow. That may continue to frustrate stakeholders who seek to be involved in policy discussions as well as the Scottish Parliament and other legislatures responsible for scrutinising government decision making.

- All of the proposed changes are made through political commitments. This means that future UK Governments may take a different approach to the management of the UK internal market through the operation of UKIMA and the way in which discussion about exclusions to its market access principles take place.

Memorandum of Understanding on the Sewel Convention

The Committee noted in its 2023 Report on How Devolution is Changing Post-EU that, prior to EU exit, the "Sewel Convention worked well" but that since 2016 "there has subsequently been considerable and continuing disagreement between the UK Government and the devolved governments and parliaments regarding its effectiveness." The Committee also stated that the "level of disagreement on a fundamental constitutional matter is not sustainable particularly within the context of an increasing shared space at an intergovernmental level."

The Labour Party's 2024 UK General Election manifesto included a commitment to “strengthen the Sewel Convention by setting out a new Memorandum of Understanding outlining how the nations will work together for the common good”.

In a letter to the Committee in August 2024, the UK Government Minister for the Constitution and EU Relations, Rt Hon Nick Thomas-Symonds MP, confirmed that:

> "the Sewel Convention and the way the UK Government legislates is certainly a priority area and we are intending to strengthen the Sewel Convention with a new memorandum of understanding."

In November 2024 the UK Government published its response to a House of Lords Constitution Committee report. That response indicated that the Memorandum of Understanding would "establish a mutual baseline for engagement, and the importance of good policy outcomes as the main objective of legislation UK-wide".

In evidence to the House of Commons Scottish Affairs Committee (also November 2024), the UK Government Advocate General for Scotland, Baroness Smith of Cluny KC, stated that the drafting of the memorandum was "already underway and is quite well advanced". Baroness Smith described it as "a principles document", which was "seeking to entrench a lot of what already goes on in practice".

The then Secretary of State for Scotland, Rt Hon Ian Murray MP, confirmed in February 2025 in a letter to the Scottish Affairs Select Committee that initial conversations between officials in the UK and devolved Governments relating to the memorandum's development had taken place towards the end of 2024, and would be continuing "soon" – though he also emphasised his view that "it is important that we take the time to ensure that this new Memorandum achieves its purpose". The letter also noted that “Principles of cooperation and collaboration are central” to the work and that “prioritising positive intergovernmental relations is essential for this Government” and highlighted that:

> “With regard to the operation of the Convention since the General Election, we are pleased with the positive engagement between the four governments regarding various UK Government bills. At the time of writing, the Scottish Government has tabled seven legislative consent memorandums for UK Government bills and passed legislative consent motions for two of those already including for the Great British Energy Bill.”

Based on data available on the Scottish Parliament website as at end July 2025, there were 14 UK Parliament Bills since the UK Labour Government took office in July 2024 in relation to which the Scottish Government has submitted legislative consent memorandums to the Scottish Parliament. The Scottish Government has recommended at least partial consent for all 14 Bills, and the Scottish Parliament voted to grant at least partial consent for all 12 Bills it had considered prior to the summer recess.

In a letter to the Conveners of the Public Audit Committee and the Finance and Public Administration Committee following the February 2025 meeting of the Interministerial Standing Committee, Deputy First Minister Kate Forbes MSP said that, at the meeting, she had stated that the Scottish Government was "ready to

assist with the development" of the new memorandum, and that she had emphasised that "the scope of the renewal should be done in collaboration and agreement with the devolved Governments". The letter also stated that the Deputy First Minister had “reflected on recent positive examples" of the UK Government's approach to legislative consent”.

The taking and exercise of delegated powers by UK Ministers in devolved areas

Since 2016 primary legislation passed by the UK Parliament (including legislation for which the Scottish Parliament has withheld consent), has increasingly given UK Ministers powers to act in devolved areas. To date, it appears that the current UK Government is also open to taking delegated powers in devolved areas, albeit it the present administration has agreed to the inclusion of statutory consent requirements (i.e. a requirement to gain the consent of Scottish Ministers) in UK Bills which grant UK Ministers powers in devolved areas. Examples include the Product Regulation and Metrology Act 2025, the Tobacco and Vapes Bill, and the Animal Welfare (Import of Dogs, Cats and Ferrets) Bill.

In its report on How Devolution is Changing Post-EU, the Committee noted that its adviser Dr McCorkindale, had highlighted the “ad hoc and inconsistent development of UK Ministers taking powers to act in devolved areas has been accompanied by ad hoc and inconsistent consent mechanisms.”

The report stated that Dr McCorkindale had set out “consent, sometimes:

• must be obtained or it must be sought or consultation is enough;

• requirements are imposed on the UK authorities or on the devolved authorities;

• must be sought of legislatures or of ministers;

• is a decision or it is merely a view;

• is a creature of statute or it is a creature of convention or it sits awkwardly between; protects devolved autonomy and sometimes inhibits it;

• means something close to a veto or appears to be little more than a courtesy;

• is not required at all.”

Where powers require statutory consultation with Scottish Ministers, rather than consent, this is an intergovernmental process. As such the Sottish Parliament is not given a role in considering proposed regulations or scrutinising UKSIs. The Committee has recognised the implications of UK Ministers having delegated powers in devolved areas for the devolution settlement and the Scottish Parliament’s ability to scrutinise devolved law, noting concern around the taking and exercise of delegated powers by UK Ministers in devolved areas in its report ‘How is Devolution Changing Post EU’ which stated that:

> "The extent of UK Ministers' new delegated powers in devolved areas amounts to a significant constitutional change. We have considerable concerns that this has happened and is continuing to happen on an ad hoc and iterative basis without any overarching consideration of the impact on how devolution works."

And concluded that there was:

> "a significant risk that laws made at a UK level in devolved areas will lessen the accountability of the Scottish Ministers to the Scottish Parliament and the opportunities for the public and stakeholders to engage at a devolved level."

The Committee has called for "A recognition of the constitutional principle that devolved Ministers are accountable to their respective legislatures for the use of powers within devolved competence" and has stated that "The Scottish Parliament should have the opportunity to effectively scrutinise the exercise of all legislative powers within devolved competence", a position which the Delegated Powers and Law Reform Committee also agreed with. The Committee called for the UK and devolved Governments to reach an agreement on the use of delegated powers by UK Ministers in devolved areas which recognises that they are accountable to their respective legislatures for the use of powers within devolved competence.

In relation to UK Statutory Instruments (UKSIs), the Parliament is notified when Scottish Ministers plan to consent to the making of some UKSIs in devolved areas. This process is governed by the Statutory Instrument Protocol (SIP) agreed between the Scottish Government and the Scottish Parliament in August 2018 with a revision in June 2021.

SIP applies only in limited instances. Crucially it applies only to UKSIs in subject areas that were within the EU's competence before the UK left the EU but more and more powers have been conferred on UK Ministers within devolved areas that are not within former EU subject areas, for example under the Energy Act 2023. The Scottish Government has not been open to extending SIP's application except for powers in former EU subject areas (for example where UK Ministers exercise powers in devolved areas under the Retained EU Law (Revocation and Reform) Act 2023)[7]. The process by which the Scottish Parliament scrutinises SIP notifications is set out at **Annexe 2**.

As stated above, an example of where UK Ministers have powers in devolved areas is in relation to the reform of Assimilated Law (previously Retained EU Law). The Retained EU Law (Revocation and Reform) Act 2023, and other primary legislation passed by the UK Parliament, has given both UK and Scottish Ministers new powers to reform assimilated law in devolved areas.

In a letter to the Committee with the most recent REUL Act report (4 September 2025) the Cabinet Secretary stated:

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[7] Letter from the Delegated Powers and Law Reform Committee dated 19 December 2024 and Letter from Cabinet Secretary Constitution, External Affairs and Culture to the Delegated Powers and Law Reform Committee, 24 January 2025.

> "…in 2024 UK Ministers committed on a non-statutory basis to seeking consent to UK Statutory Instruments containing devolved provision, and more generally committed to common frameworks as the most important tool for finding shared approaches and managing divergence."

The Report noted:

> "It remains the position that the Scottish Government considers that any case for reforming devolved assimilated law is best progressed through the ordinary Scottish Parliament legislative processes. But the Government also recognises that UK Parliament legislative vehicles may from time to time be acceptable, and compatible with the alignment policy, in particular instances where proposals are consented to by the Scottish Government and the Scottish Parliament has due time for policy consideration and scrutiny. The Scottish Government continues to recognise the value of Common Frameworks as intergovernmental mechanisms for collaboration and co-operation on regulatory policy in a devolved UK, in a manner that respects devolution."

Scottish Ministers have raised concerns about proposals to grant UK Ministers new powers to make regulations in devolved areas – for example, in relation to the Product Regulation and Metrology Bill (now the Product Regulation and Metrology Act 2025). That said, the Scottish Government recommended that the Parliament consent to the Bill once a consent mechanism was included for the powers. This is, however, a requirement that UK Ministers gain the consent of Scottish Ministers (not the Scottish Parliament) before exercising their powers under the Act. The Scottish Government's second supplementary Legislative Consent Memorandum (29 May 2025) noted that:

> "The Scottish Government still has concerns around some aspects of the Bill and the UK Government's handling of the legislative consent process. Despite extensive engagement, it remains unclear why the UK Government requires powers over certain areas of devolved competence. It is also disappointing that the UK Government has not agreed to provide the Scottish Government with similar powers to take action in devolved areas in this Bill. However, it remains that the amendment represents a significant improvement on the Bill as introduced and that it addresses the Scottish Government's primary concern regarding the Bill.
>
> In view of this fact, the Scottish Government has included in this Memorandum a draft Motion on Legislative Consent to recommend consent to all of the relevant provisions in the Bill."

Interparliamentary working

The Committee indicated in its How Devolution is Changing Post-EU report (October 2023) that it intends "to pursue the issues in this report at an interparliamentary level through the Interparliamentary Forum". The Interparliamentary Forum brings together representatives from the House of Commons, House of Lords, Scottish Parliament, Senedd Cymru and the Northern Ireland Assembly.

The Interparliamentary Forum (IPF) met for the seventh time on 25 June 2025 and heard "updates from each legislature and discussed issues of common interest including intergovernmental relations, the nature of devolution and the legislative consent process." The Convener and former Deputy Convener attended the meeting on behalf of the Committee.

Implications for transparency and accountability at the Scottish Parliament

The commitment to a 'reset' of intergovernmental relations, has the potential to lead to increased joint working in the shared intergovernmental space. In this space significant policy decisions are taken, for example on exclusions to the market access principles of the UK Internal Market Act. Increased and closer joint working between governments has the potential to increase the concerns previously articulated by the Committee around the transparency and accountability of that shared space.

The Committee has itself previously raised concerns about the potential impact of closer intergovernmental working on the scrutiny role of the Parliament. In its October 2023 report 'How Devolution is Changing Post-EU', it stated that:

> "Even where there is consensus at an intergovernmental level there remains a risk that the Scottish Parliament's core functions are diluted. As we have noted previously the increased significance of intergovernmental relations within a shared governance space raises substantial challenges for parliamentary scrutiny […] This is primarily because the management of the regulatory environment across the UK is now dependent on effective intergovernmental relations which could involve a significant increase in UK-wide legislation in devolved areas."

A July 2024 SPICe blog discussing the implications of the UK General Election result for the Scottish Parliament likewise observed that: "closer co-operation at intergovernmental level may present challenges for the Scottish Parliament from a transparency and scrutiny perspective". Professor Thomas Horsley, Professor of Law at the University of Liverpool, has similarly argued in a blog for the Constitutional Law Association (September 2024) that:

> "Intergovernmental cooperation on regulatory standards poses its own challenges to devolution. In particular, the shifting of decision-making to the intergovernmental space makes it harder for the devolved legislatures to scrutinise, not to mention shape, policy in devolved areas."

In terms of the implications of closer intergovernmental working for the powers of the Parliament, there is the possibility of increased use of UK Statutory Instruments (UKSIs), rather than Scottish Statutory Instruments (SSIs), to deliver reform of devolved law including, for example, Assimilated Law. Again, this seems more likely given the present UK Government's position on assimilated law reform is closer to that of the Scottish Government.

As noted above, the Scottish Parliament cannot scrutinise secondary legislation laid at the UK Parliament, even where the proposed changes to the law are in devolved areas. As such, delivering devolved law reform through UKSIs, rather than SSIs, removes the Scottish Parliament's formal role in scrutinising these reforms.

It is crucial that the granting of any new powers to UK Ministers in devolved areas is thoroughly scrutinised by the committees of the Parliament when considering legislative consent memorandums through the Sewel process.

To date, the UK Government led by Prime Minister Keir Starmer MP has not enacted a UK Bill where the Scottish Parliament has withheld its consent under the Sewel Convention. As discussed earlier in this paper, in the case of the Product Regulation and Metrology Bill a consent mechanism for Scottish Ministers was written into the Bill. Nevertheless, this consent mechanism does not give the Scottish Parliament a voice.

Sarah McKay, Senior Researcher, SPICe

Date: 22/09/2005

Annexe 1: Recommendations from the review of the Scottish Parliament Scottish Government written agreement on intergovernmental relations

Recommendation 1: We propose replacing the requirement for advance notice of individual meetings with a more flexible intention to notify committees of upcoming meetings at the earliest opportunity. We hope that the new secretariat will assume responsibility for providing advanced notice of meetings as part of its duties, in which case the Agreement should be updated to remove this obligation from the Scottish Government, as meeting notifications would already be in the public domain and accessible to committees.

Recommendation 2: Reporting requirements should cover all formal bilateral and multilateral ministerial engagement, as originally intended, rather than be limited to the new Interministerial Groups or Interministerial Standing Committees, as has been current practice.

Recommendation 3: The Written Agreement should be revised to include an explicit commitment to provide a written summary, in the form of ministerial correspondence, outlining the positions and priorities that the Scottish Government took to interministerial meetings. These should refer back to the issues and priorities raised under recommendation 6 below. Where appropriate, this reporting may be in person rather than in writing.

Recommendation 4: We recommend that the Written Agreement be revised to include the breadth of agreements that fall within its scope, with sufficient flexibility to accommodate new forms of agreement that may emerge. The text of the Written Agreement should also be expanded to include a default commitment to keep the relevant committee informed during the process of negotiating Agreements, unless there is strong evidence to suggest doing so would undermine negotiating objectives.

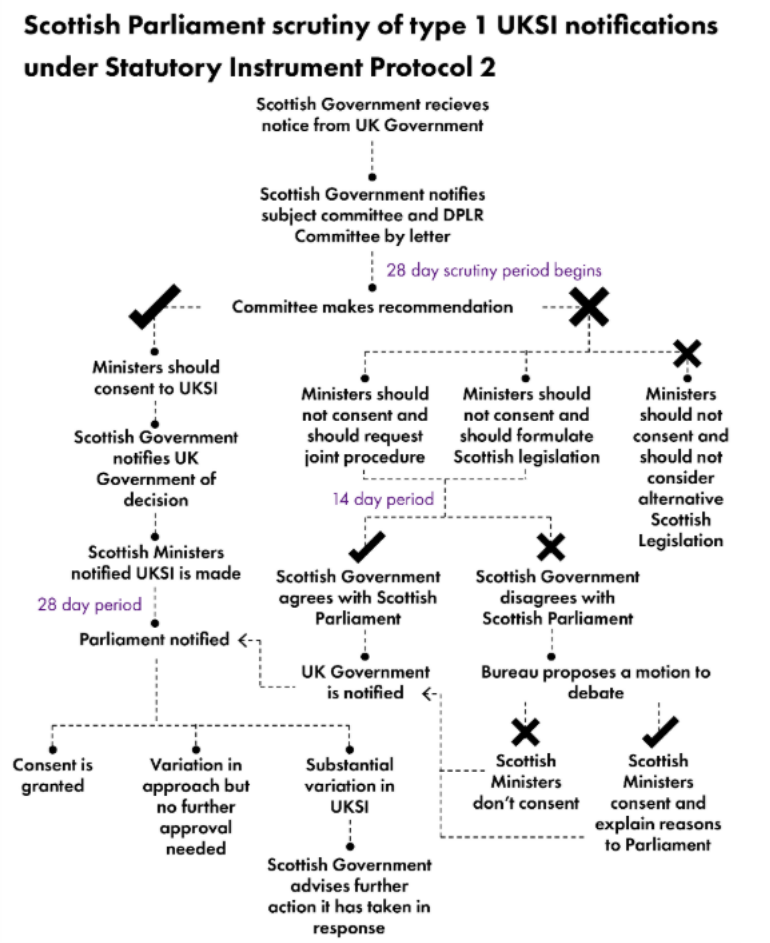
Recommendation 5: The commitment to Annual Reporting should be removed from the Written Agreement. However, we suggest that the Scottish Government consider establishing an intergovernmental hub on its website, where intergovernmental agreements, IGR-related ministerial correspondence and meeting summaries can be uploaded on an ongoing basis. Such a repository would be an additional aid to transparency and, as one small added step to existing routines of producing, publishing and sharing materials by portfolio-based teams, it should avoid an onerous trawl through activities by the Constitution and UK Relations team.

Recommendation 6: We recommend a meeting at the start of each term between relevant Cabinet Secretaries and relevant committees to provide a forward look at the priorities and ambitions for their intergovernmental engagement during the coming term. This should include key issues on the Scottish Government's intergovernmental agenda to enable committees to track issues when undertaking scrutiny.

Recommendation 7: We also recommend supplementing the yearly Programme for Government with an assessment of the elements of that programme that interact with, or may be affected by, Common Frameworks, the United Kingdom Internal Market Act, EU alignment, or other executive, legislative, fiscal or constitutional factors that will necessitate cooperation between governments.

Recommendation 8: The Scottish Government should commit to enhanced reporting to relevant committees during the process of seeking an exclusion from the market access principles of the UK Internal Market Act, in recognition of its significant impact on Parliament's law-making function. At a minimum, this should include: (i) an explicit statement within Policy Memoranda accompanying Government Bills as to whether the proposed legislation interacts with the IMA (or other post-Brexit complexities), alongside a copy of the published BRIA; (ii) notification when an exclusion request is initiated or first discussed, the scope of the request, and the relevant Common Framework and IMG that are discussing the request; (iii) notification of when the 7 intergovernmental phase of the exclusion process has been concluded, with an update on progress; and (iv) the outcome of the process, following the UK Government's decision. This commitment should not be contingent on reform of the IMA or the Exclusion process.

Annexe 2: The process for scrutiny of UKSI notifications under the Statutory Instrument Protocol



Annexe 3: Comparison of the existing process for considering exclusions to the market access principles of the UK Internal Market Act 2020 and the new process for considering exclusions through common frameworks proposed by the review

Existing exclusions process	New exclusions process proposed in review
The exclusion seeking party should set out the scope and rationale for the proposed exclusion; and consideration of the proposal, associated evidence and potential impact should be taken forward consistent with the established processes as set out in the relevant Common Framework, including an assessment of direct and indirect economic impacts.	Exclusions shall be proposed in writing to all relevant Ministers in UK government and devolved governments, who shall confirm receipt of the proposal.
It is recognised that all parties will have their own processes for considering policy proposals. Administrations should consult and seek agreement internally on their position before seeking to formally agree the position within the relevant Common Frameworks forum.	Whenever any party is proposing an amendment to Schedules 1 or 2 of the Act by a Common Framework: a. Once all avenues to explore similar policy approaches have been pursued within the Common Framework, the exclusion-seeking party should set out the scope and rationale for the proposed exclusion; and provide evidence – including input from affected businesses and any OIM evidence that has been sought. b. Consideration of the proposal, associated evidence and potential impact should be taken forward consistent with the established processes as set out in the relevant Common Framework. Exclusion proposals will consider evidence in particular of the following: i. direct and indirect economic impacts (including costs to businesses); ii. environmental protection; and

	iii. public health.
Where policy divergence has been agreed through a Common Framework this should be confirmed in the relevant Common Framework forum. This includes any agreement to create or amend an exclusion to the UKIM Act 2020's market access principles.	It is recognised that all parties will have their own processes for considering policy proposals, before seeking to formally agree the position within the relevant Common Frameworks. It is also recognised that substantive policy change to an exclusion proposal that occurs during discussions may require further / new agreement between parties.
Evidence of the final position of each party regarding any exclusion and whether an agreement has been reached should be recorded in all cases. This could take the form of an exchange of letters between appropriate UK Government and Devolved Administration ministers and include confirmation of the mandated consent period for Devolved Administration ministers regarding changes to exclusions within the Act.	Where policy divergence has been agreed by all governments through a Common Framework, this should be confirmed in the relevant Common Framework. This includes any agreement to create or amend an exclusion to the UKIM Act Market Access Principles.
Parties remain able to engage the dispute resolution mechanism within the appropriate Common Framework if desired.	Evidence of the final position of each party regarding any exclusion, and the fact that an agreement has been reached, should be recorded in all cases. This could take the form of an exchange of letters between appropriate UK government and devolved government ministers.
Under section 10 or section 18 of the UK Internal Market Act 2020 amendments to the schedules containing exclusions from the application of the market access principles require the approval of both Houses of the UK Parliament through the affirmative resolution procedure. Where agreement to such an exclusion is reached within a Common	Parties remain able to engage the dispute resolution mechanism within the appropriate Common Framework, if desired. The need for seeking an exclusion does not automatically mean there is a dispute to resolve.

Framework, the Secretary of State for the UK Government department named in the Framework is responsible for ensuring that a draft statutory instrument is put before the UK Parliament.	
	The UK government will commit to implement all exclusions that have been formally agreed by all governments within a Common Framework.

Annexe D

Constitution, Europe, External Affairs and Culture Committee
Thursday 2 October 2025
25 Meeting, 2025 (Session 6)

Transparency of intergovernmental activity and implications for parliamentary scrutiny inquiry

This short paper provides details of the witnesses on today's panel and outlines areas which the Committee may wish to discuss with them. A briefing for the inquiry has been provided as has an analysis of the evidence received through the Committee's call for views.

The Committee will hear from:

- **Professor Thomas Horsley**, Liverpool University. Professor Horsley specialises in constitutional law with a particular focus on the UK and EU legal systems and the UK Internal Market Act 2020.

- **Professor Nicola McEwen**, Professor of Public Policy and Governance, University of Glasgow. Professor McEwen is an expert in intergovernmental relations and has previously undertaken an independent review of the written agreement on intergovernmental relations between the Scottish Parliament and the Scottish Government.

- **Professor Colin Reid**, University of Dundee. Professor Reid's main areas of interest are public law and environmental law. Professor Reid is also adviser to the Net Zero Energy and Transport Committee.

- **David Thomson**, Chief Executive, Food and Drink Federation (FDF) Scotland. David joined FDF Scotland as its CEO in December 2015 and is part of the senior FDF management team. FDF Scotland represents the views and concerns of its members to Scottish and UK Governments, policy makers, politicians and the media.

- **Dr Paul Anderson**, Liverpool John Moores University. Dr Anderson is senior lecturer in politics whose research interests focus on comparative territorial politics, including intergovernmental relations.

The Committee may find it helpful to discuss:

- How the landscape of devolution has changed the transparency challenge around intergovernmental activity and what the key areas of concern for parliamentary scrutiny are.

- The outcomes of the UK Government review of the UK Internal Market Act 2020 and whether they are likely to have a positive effect on intergovernmental working, particularly in relation to exclusion requests.

- Whether there is likely to be further evolution of the intergovernmental space in light of the UKIMA review outcomes and, if so, what this may mean for transparency and thus stakeholder engagement and parliamentary scrutiny.

- The potential consequences of insufficient scrutiny of intergovernmental activity, considering the complex intergovernmental space with arrangements such as:

    - common frameworks,

    - the UK Internal Market Act 2020 exclusions processes

    - UK-EU agreements including the potential for dynamic alignment with EU law as a result of these.

- What the shared intergovernmental space means for parliamentary scrutiny and accountability, including how intergovernmental decision making may affect the legislative consent process facilitated through the Sewel Convention. An example of this could be legislative consent memorandums simply reflecting the outcomes of intergovernmental discussions.

- If closer intergovernmental working is likely to affect the taking and exercise of delegated powers by UK Ministers in devolved areas, which has been observed with increased frequency since 2016 in areas of former EU competence and areas not previously within EU competence. The implications of any change in this area for parliamentary scrutiny and accountability.

- What can be done to improve transparency of intergovernmental activity to support stakeholder involvement, parliamentary scrutiny and public understanding of decision making.

- How parliamentary scrutiny of intergovernmental activity can be improved to:

    - ensure that the Parliament is able to maintain oversight of government decisions in an increasingly broad and complex shared intergovernmental space

    - guarantee that the Parliament is able to fully understand how decisions taken at an intergovernmental level affect legislative proposals before it.

Sarah McKay, senior researcher, SPICe
24/09/2025