

Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

General Comments

Questions

- 1. How did the 1998 Scotland Act and subsequent intergovernmental bodies envisage the operational relationship between the UK Government and Scottish Executive?**

Our Comments

In our answer to this question, we focus on the Scotland Act 1998 and the Memorandum of Understanding between the UK Government and the Devolved Administrations.

The Scotland Act 1998

The early House of Commons Library Paper [Scotland Act: Devolution and Scotland's Parliament](#) explains the original landscape of the Scotland Act 1998 set in the context of an examination of the bill which led to the Act and the White Paper, Scotland's Parliament (Cm 3658) which was published on 24 July 1997 and preceded the devolution referendum.

The Scotland Act 1998 gave effect to the White Paper's proposals and provided for the establishment of the Scottish Parliament on a reserved powers model, the Scottish Administration (provisions concerning the permanence of the Scottish Parliament and Government were inserted in the Act in 2016) and financial and taxation arrangements. The declaratory provision concerning the permanence of the Scottish Parliament and Government includes provision in section 63A(3) that "it is declared that the Scottish Parliament and the Scottish Government are not to be abolished except on the basis of a decision of the people of Scotland voting in a referendum."

The electoral system proposed in the White Paper was the Additional Member System. Part 1 of the Scotland Act 1998 sets out the process by which Members are elected to the Scottish Parliament. The [Registration of Political Parties Act 1998 \(legislation.gov.uk\)](#) provided for the registration of parties and subordinate legislation created the arrangements for electoral expenses and deposits. There have been significant changes in the composition of the electorate following the Scotland Act 2012 which empowered Scottish Ministers to make provision about elections and electors and which have brought into effect by the [Scottish Elections \(Reform\) Act 2020 \(legislation.gov.uk\)](#).

The majority of the Scottish government's [funding](#) comes from an annual block grant from the UK government, which is adjusted from year to year primarily on the basis of the [Barnett formula](#) which is not mentioned in the Scotland Act 1998. Those funding arrangements which have not changed substantially are detailed in section 64 of the Act which created the Scottish Consolidated Fund. Section 64A (which was added following the Scotland Act 2016) deals with assignment of VAT.

The Scottish government also receives income from those tax areas that are devolved. Some are collected directly by the Scottish government while others, including income tax revenue, are collected by HMRC and then allocated to Scotland: [Scottish parliament | Institute for Government](#).

Originally the Scotland Act provided for the Scottish Parliament to have a power to vary the basic rate of income tax by up to 3p. However, the Scotland Acts 2012 and 2016 made provision for a new Part 4A which confers on the Scottish Parliament power to set a rate or rates of income tax to be paid by Scottish taxpayers. The remaining Chapters make provision concerning taxes such as Land and Buildings Transaction Tax, Landfill and Aggregates Tax, Air Passenger duty and tax on wild fisheries about which the Scottish Parliament may make provision: [Scotland Act 1998 \(legislation.gov.uk\)](#).

The Scottish Parliament has legislative power over all devolved matters. Matters reserved to the UK Parliament are specified in Schedule 5 of the Scotland Act.

The Scotland Act as passed provided for a Scottish Executive (which was renamed the Scottish Government by section 12 of the Scotland Act 2012), headed by a First Minister, and executive functions were conferred on the Government in respect of devolved matters: see sections 52, 53 and 54 of the Scotland Act 1998.

There is provision in the Act for shared and joint powers between Ministers of the Crown and Scottish Ministers in sections 56 and 111, concurrent powers under sections 63, 89 and 111. Joint powers were the topic of controversy in the context of the European Union (Withdrawal) Act 2018 which gave powers to the UK Government (section 8(1)) and the devolved administrations (paragraph 1(1) of Schedule 2) to change retained EU law by secondary legislation.

Under section 8(8) this power expired on 31 December 2022. The power of UK Ministers under section 8(5) was extensive and extended to making any provisions ‘that could be made by an Act of Parliament’.

UK Ministers could also make regulations which applied in the UK as a whole or any part of it including on devolved matters. Regulations are not subject to the legislative consent convention see: Devolution Guidance Note 10: [Post-Devolution Primary Legislation affecting Scotland \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/672122/Post-Devolution_Primary_Legislation_affecting_Scotland.pdf).

In terms of primary legislation, the Scotland Act 1998, section 28 (7) provided that “This section does not affect the power of the Parliament of the United Kingdom to make laws for Scotland.” Accordingly, the principle of parliamentary sovereignty was preserved. However, following a statement made by Lord Sewel during the Committee Stage in the House of Lords on 21 July 1998 that: “Clause 27 [**now section 28(7)**] makes it clear that the devolution of legislative competence to the Scottish parliament does not affect the ability of Westminster to legislate for Scotland even in relation to devolved matters. Indeed, as paragraph 4.4 of the White Paper explained, we envisage that there could be instances where it would be more convenient for legislation on devolved matters to be passed by the United Kingdom Parliament. **However, ... we would expect a convention to be established that Westminster would not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish parliament.** [Emphasis added]. This was later explained in greater depth by Devolution Guidance Note 10: [Post-Devolution Primary Legislation affecting Scotland \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/672122/Post-Devolution_Primary_Legislation_affecting_Scotland.pdf).

The Sewel Convention (now referred to as the Legislative Consent Convention) represented one of the most significant elements of inter-governmental cooperation from the coming into effect of the Scotland Act until 2018. In previous times, the UK Government had been at pains not to impinge on devolved areas of law without an LCM having been passed. In the context of Brexit, however, the UK Government appeared to consider that the context was one which was not “normal” in terms of the application of the Convention. The House of Commons Library briefing [Devolution: The Sewel Convention \(parliament.uk\)](https://commonslibrary.parliament.uk/briefing-papers/cp100/) states, “Until 2018, it was highly unusual for a LCM to be rejected”. Another Institute for Government study in January 2018 identified only nine occasions on which a LCM had been wholly or partially rejected by a devolved legislature: seven in Wales and one each in Scotland and Northern Ireland): [Sewel convention | Institute for Government](https://www.instituteforgovernment.org.uk/sites/default/files/2018-01/Sewel%20convention%20-%20IforG%202018.pdf)

However the UK Supreme Court decision in *R (on the application of Miller and another) (Respondents) v Secretary of State for Exiting the European Union (Appellant) [2017] UKSC 5* confirmed that the Convention was political in nature and did not have legal consequence: “As to the application of the Sewel Convention to the decision to withdraw from the EU given the effect on the devolved competences, the Convention operates as a political constraint on the activity of the UK Parliament. It therefore plays an important role in the operation of the

UK constitution. But the policing of its scope and operation is not within the constitutional remit of the courts.”. Accordingly breach of the convention only has political consequences.

In that context, the fact that the Scottish Parliament voted to withhold consent in relation to the European Union (Withdrawal) Bill did not restrain the UK Government from proceeding with the bill and its ultimate passage into law: [Is Brexit eroding the Sewel convention? | Centre on Constitutional Change](#).

Since 2018 where the UK Government has sought consent, the Scottish Parliament has withheld it on the following bills:

- a. European Union (Withdrawal Agreement) Bill 2019-20
- b. United Kingdom Internal Market Bill
- c. European Union (Future Relationship) Bill
- d. The Professional Qualifications Bill

There are other Bills where the Scottish Parliament has refused consent but in the opinion of the UK Government, consent was required to certain provisions only for example the Retained EU Law (Revocation and Reform) Bill and the Northern Ireland Troubles (Legacy and Reconciliation) Bill.

The Memorandum of Understanding

The Memorandum of Understanding between the UK Government and the Devolved Administrations originally published on 1 October 1999 was revised most recently in 2012: [Devolution: memorandum of understanding and supplementary agreement - GOV.UK \(www.gov.uk\)](#). In this Memorandum the UK Government, the Scottish Ministers, the Welsh Assembly Government and the Northern Ireland Executive agreed a Memorandum of Understanding setting out the principles that underlie relations between them.

The Memorandum contains is supported by a number of Supplementary Agreements on topics such as the Joint Ministerial Committee and Concordats between the Administrations on co-ordination on European Union policy issues, Financial Assistance to Industry and International Relations. There are also 16 operative Devolution Guidance Notes covering a number of areas including common working arrangements, the role of the Secretary of State for Scotland and the other territorial Secretaries of State, post-devolution legislation (see the reference to Devolution Guidance Note 10 above), Use of Scotland Act Section 30(2) Orders and Scottish legislative proposals giving devolved powers and functions to UK bodies.

2. How effectively have processes for managing intergovernmental relations evolved to respond to various political developments since 1999, for example:

- The 2014 independence referendum;
- Changes in governing party in both Westminster and Edinburgh;

- The devolution of further powers to the Scottish Government; and
- The UK's exit from the EU?

Our Comments

The Memorandum of Understanding and Supplementary agreements referred to above provides the basis for intergovernmental relations from the inception of devolution to Scotland to the present day. It has provide that basis with relatively little revision over the past 24 years.

However, parallel political developments such as such as changes in UK and Scottish Governments, the referendum in 2014 and following the referendum in 2016, the withdrawal of the UK from the European Union have had consequential impact on the legal and constitutional framework. The framework has been affected by:

- a. the Commission on Scottish Devolution (chaired by Sir Kenneth Claman) which was created by the Scottish Parliament "To review the provisions of the Scotland Act 1998 in the light of experience and to recommend any changes to the present constitutional arrangements that would enable the Scottish Parliament to serve the people of Scotland better, improve the financial accountability of the Scottish Parliament and continue to secure the position of Scotland within the United Kingdom." resulted in a UK Government White Paper proposing further powers to be devolved to the Scottish Government contained in the [Scotland Act 2012 \(legislation.gov.uk\)](https://www.legislation.gov.uk).
- b. The Smith Commission (chaired by Lord Smith) which followed the independence referendum was established with the following terms of reference "To convene cross-party talks and facilitate an inclusive engagement process across Scotland to produce, by 30 November 2014, Heads of Agreement with recommendations for further devolution of powers to the Scottish Parliament. This process will be informed by a Command Paper, to be published by 31 October and will result in the publication of draft clauses by 25 January. The recommendations will deliver more financial, welfare and taxation powers, strengthening the Scottish Parliament within the United Kingdom.". The Commission achieved its aim by producing proposals for change which were incorporated in the [Scotland Act 2016 \(legislation.gov.uk\)](https://www.legislation.gov.uk).
- c. The withdrawal of the UK from the European Union was arguably the most significant policy and legal development since 1945. The amount of legislation and case law resulting from the withdrawal will have impact on all the legal systems of the UK for many years to come. The process of withdrawal has also impacted on the relationship between the UK Government and the Devolved Administrations.

Intergovernmental relations developed over this period in reaction to political events in the sense that both the Calman and Smith Commissions resulted in UK Government White Papers and UK legislation to increase the powers of the Parliament. However, as we examine above in connection the Legislative Consent Convention, the withdrawal of the UK from the EU has created tensions between the UK and Scottish Governments in relation to issues arising from Brexit albeit that those tensions relaxed over the initial approach to Covid-19.

Divergencies in approach is a natural consequence of devolution and should be expected when dealing with policy or legislation being developed within devolved matters as happened in response to Covid-19. That having been said there should be room for cooperation between governments to meet common challenges.

The Coronavirus: Action Plan (AP) was published on 3 March 2020 by the UK Department of Health and Social Care, the Scottish Government, the Department of Health for Northern Ireland and the Welsh Government. The AP recognised the respective roles and responsibilities of the UK Government and Devolved Administrations. The AP was a document which indicated a high level of cooperation and coordination between the four nations in respect of the initial phase of the crisis. The Cabinet Office guidance on responding to emergencies assumed that this would be the approach to be followed: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/192425/CONOPs_incl_revised_chapter_24_Apr-13.pdf

However, the Guidance evolved as the effect and understanding of the virus developed, and as Government priorities changed among the Four Nations and the Guidance each Government had issued diverged.

Consequently, the position emerged where the Guidance and the law are not the same in each part of the UK (indeed divergences in guidance may not be reflected in amendments to regulations). This is understandable, given that the virus may have spread in each jurisdiction at different times and rates, with each nation having its own institutions and capacities to address the problems as they arise.

3. How effectively has the new intergovernmental relations framework operated since January 2022?

Our Comments

The website [Intergovernmental relations - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/collections/intergovernmental-relations) contains details about the review of intergovernmental relations and various intergovernmental meetings including the Prime Minister and Heads of Devolved Governments Council (which met on 10 November 2022, its predecessor the Joint Ministerial Committee last met in January 2021), the Interministerial Standing Committee (which had its fourth meeting on 17 May 2023 and

brings together ministers from the UK and devolved governments with responsibility for intergovernmental relations), and 9 interministerial groups covering a variety of policy areas. Some of the groups have met recently such as Finance (July 2023), Trade, Transport and Education (all June 2023) others much longer ago such as Tourism (December 2021) or Net Zero, Energy, Climate Change (December 2022). We take the view that this recommendation has been implemented.

The Intergovernmental Relations Annual Report 2022 was published in March 2023 and confirms that there were 277 intergovernmental ministerial meetings in 2022 in addition to meetings between civil servants. In addition, the Report features the 38th British-Irish Council Summit since the establishment of the Council under the Belfast (Good Friday) Agreement. The Council is an important body for intergovernmental relations evidenced by its main theme this year which was the difficult financial situation faced by all the participating administrations. It considered other issues of importance to people living in Great Britain and Ireland including investment in business and education facilities around the UK. In 2023 it appears there has been only one Ministerial Meeting so far (dealing with creative industries) see: [Communiqués | British-Irish Council \(britishirishcouncil.org\)](https://www.britishirishcouncil.org/). The topic of this inquiry, intergovernmental relations might be an interesting future topic.

In the reporting year, the first meeting of the Islands Forum took place in 2022.

There are issues with effective intergovernmental co-operation. The number of occasions on which the devolved legislatures are refusing consent to UK legislation on devolved matters has increased very significantly over the past few years, and both the Scottish and Welsh Governments regularly complain about lack of timely consultation. Separately, on policy initiatives of the Scottish Government, high profile disputes have been evident between it and the UK Government, indicating that, one way or another, the administrations have not worked well together - e.g. the Deposit Return Scheme and the Gender Recognition Reform (Scotland) Bill – as the UK Government’s application of section 35 of the Scotland Act is currently sub judice we refrain from commenting further. Recently however although it is not strictly within the province of the Inquiry, the UK Government [Devolution of Drugs Policy - Hansard - UK Parliament](#), have made it clear in relation to the Scottish Government’s position on drug consumption rooms (DCRs) that “if the Scottish Government and the Lord Advocate decide to proceed with a pilot on DCRs, the UK Government will not intervene.”

The UK government publishes quarterly transparency reports on intergovernmental relations, but it is not clear how these new structures are working.

The House of Lords Constitution Committee

The House of Lords Constitution Committee examined the government’s response to the Dunlop review as part of its inquiry into the future governance of the UK. The committee

published its report [Respect and Co-operation: Building a Stronger Union for the 21st century \(parliament.uk\)](#) in January 2022.

The report includes a table showing the Dunlop review recommendations on intergovernmental relations and the outcome of the intergovernmental relations review side by side.

This table analysed the Dunlop recommendations and shows the extent to which they were accepted:

- a. the Prime Minister should hold a summit twice a year, based around meetings of the successor body to the JMC. However, the Intergovernmental Relations Review (the Review) concluded that the new council would meet at least annually but could meet more frequently.
- b. The new UKIC should look to take on a decision-making role via co-decision by consensus. However, the Review concluded that intergovernmental decisions will continue to be based on agreement by consensus. It continues to be case that a joint approach will not be taken in the absence of such consensus.
- c. The UKIC should be supported by an independent secretariat. However, the Council will be supported by a standing IGR Secretariat, consisting of officials from all governments. The Secretariat will be accountable to the Council rather than the sponsoring governments.
- d. UK Government ministers should make a statement to Parliament following each UKIC meeting. However, the Government has committed to making regular statements to Parliament on intergovernmental relations.

4. To what extent has the new intergovernmental relations framework been fully implemented?

Our Comments

We draw the Committee's attention to [Implementing the Dunlop review into the UK's union capability - House of Lords Library \(parliament.uk\)](#).

Lord Dunlop's Review

Lord Dunlop's Review of UK Government Union Capability was published by the UK Government on 24 March 2021: [Review of UK Government Union Capability \(publishing.service.gov.uk\)](#).

The question which the Review sought to answer was:

Within the context of the existing devolution settlements, how the UK Government can work to most effectively realise the benefits of being a United Kingdom and how institutional structures can be configured to strengthen the working of the Union?

The Review proposed changes “to guarantee that the union is a mainstream consideration embedded in policy development, decision-making and delivery”.

The Review included the following proposals:

- a. There should be a Secretary of State for Intergovernmental and Constitutional Affairs with a senior Cabinet position and “specific responsibility for the constitutional integrity and operation of the United Kingdom.”. The existing Secretaries of State for Scotland, Wales and Northern Ireland would remain, their influence reinforced by the new Secretary of State.
- b. To support the enhanced Secretary of State, a new Cabinet sub-committee would oversee the delivery and implementation of a set of strategic priorities and departments’ plans to support the UK Government’s Union agenda.
- c. A single Permanent Secretary would lead the three offices of the Secretaries of State for Scotland, Wales and Northern Ireland as well as the relevant Cabinet Office teams, supporting the new Secretary of State and the three existing Secretaries.
- d. Intergovernmental relations should be recalibrated, and the Joint Ministerial Council replaced by a UK Intergovernmental Council (UKIC) with a number of sub-committees. This should include a number of subcommittees, a standing independent secretariat and a clear dispute handling process. The Prime Minister should host a summit at least twice a year based around a meeting of the UKIC with the heads of each administration. The new UKIC should look to take on a decision-making role via co-decision by consensus. DIT and other UK Government departments should build on wider examples of technical engagement and explore establishing inter-ministerial groups.
The Secretary of State for Intergovernmental and Constitutional Affairs should oversee the appointments process to ensure that public bodies with a UK-wide remit are representative of the UK as a whole.
- e. A shared policy function for the Wales, Scotland and Northern Ireland Offices, based in the Cabinet Office. This would build on what the report saw as the success of the [UK Governance Group](#), a pool of civil service expertise on constitutional reform and devolution.

- f. Reforms to the civil service, including devolution teams within government departments located at the “heart” of policy development, more opportunities for loans and secondments between the four administrations and nominated departmental board members to lead on union strategy and devolution capability.
- g. HM Treasury should set up a fund to support UK-wide projects. Part of the fund would be used to incentivise and support projects that strengthen the Union. A second part would help to fund projects set up by the UK and devolved governments working in cooperation.
- h. An audit of public bodies should take place to ensure those with a UK-wide remit are representative of the UK as a whole.
- i. A Government communications strategy should be developed for Scotland, Wales and Northern Ireland, backed up by data about UK Government spending and activities in the devolved nations. UK Government departments should consult the Secretaries of State for Scotland, Wales, Northern Ireland, and Intergovernmental and Constitutional Affairs before making major announcements in respect of policies which apply in Scotland, Wales or Northern Ireland. The UK Government’s activities in Scotland, Wales and Northern Ireland should be clearly marked with UK Government branding. The Secretary of State for Intergovernmental and Constitutional Affairs should have oversight of all ministerial visits to Scotland, Wales and Northern Ireland, and all ministerial visits should be subject to an overall UK communications strategy. The UK Government should revise, update and adapt for contemporary circumstances the Scotland analysis programme documents it published in 2014 prior to the Scottish independence referendum. There should be similar programmes for Wales and Northern Ireland.

The UK Government’s response

Rt. Hon. Michael Gove MP, then Chancellor for the Duchy of Lancaster and Minister for the Cabinet Office, responded on 21 March 2021 behalf of the UK Government:

[L. Dunlop Letter.pdf \(publishing.service.gov.uk\)](#).

Mr Gove then outlined that in response to Lord Dunlop’s work, the Government have been:

- i. Working with the devolved administrations to establish new structures that maintain regular, meaningful and effective cooperation between the UK Government and the devolved administrations;*
- ii. Establishing and regularly convening the Union Strategy Committee, chaired by the Prime Minister which is supported by a Union Policy Implementation sub-committee.*

Our Comments

The latest list of Cabinet Committees does not include a Union Strategy Committee but does include the Domestic and Economic Affairs (Union) which has a remit to consider matters relating to the Union of the United Kingdom.: [List of Cabinet Committees and their membership - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/collections/list-of-cabinet-committees-and-their-membership). To that extent the letter of the proposal has not been fully implemented although it may have been in spirit.

iv. Making significant progress towards concluding the joint review on intergovernmental relations.

Our Comments

The final conclusions of the review of intergovernmental relations were published in January 2022: [Review of intergovernmental relations - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/collections/review-of-intergovernmental-relations).

The House of Lords Library Paper comments that the Review set out new working arrangements that all four administrations had agreed. The review confirmed that intergovernmental decisions would “continue to work on the basis of agreement by consensus”. It also set out a “clear and agreed” process for resolving disputes. It said the new structures and processes would be kept under review.

The new intergovernmental relations structure is made up of three tiers:

- Lowest tier: Interministerial groups (IMGs) on specific policy areas.
- Middle tier: the Interministerial Standing Committee (IMSC) which considers cross-cutting issues; the Finance Interministerial Standing Committee (FISC); and additional time-limited committees to be established by consensus if particular issues are identified as needing in-depth and focused consideration by ministers.
- Top tier: the Prime Minister and Heads of Devolved Governments Council (the council).

5. To what extent has the new intergovernmental framework succeeded in developing an effective dispute resolution mechanism to resolve or mitigate conflict between the UK and Scottish governments?

Our Comments

Lord Dunlop’s Review recommended a clear dispute handling process. The final conclusions of the review of intergovernmental relations were published in January 2022: [Review of intergovernmental relations - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/collections/review-of-intergovernmental-relations). The final conclusions included a reference to intergovernmental machinery promoting dispute avoidance by ensuring there are effective communication and governance structures at all levels and set out a “clear and agreed” process for resolving disputes. We should point out that the dispute resolution process is not identical for F:ISC disputes, Professor Nicola McEwen suggests that it is

weaker : [Worth the wait? Reforming Intergovernmental Relations | Centre on Constitutional Change](#).

Paragraph 21 of the final conclusions is devoted to this process:

“All governments are committed to promoting collaboration and the avoidance of disagreements, facilitated by the new intergovernmental machinery in which engagement will normally take place at the lowest appropriate level possible. Any government may refer a disagreement to the IGR Secretariat as a dispute. Escalation of a disagreement between governments as a dispute will only be considered after due and full consideration has been given at portfolio-level (including F:ISC regular engagement), where a disagreement cannot be resolved at portfolio level, and has significant implications for the relationship between two or more governments. This will include circumstances where governments disagree about the interpretation of, or actions taken in relation to, matters governed by intergovernmental agreements, rules or procedures (including Common Framework Agreements). This is without prejudice to the legal provisions within the devolution settlements which govern matters relating to legislative competence. The resolution process (set out in Annex D) should be seen as part of a much wider system of active IGR, and as a process of last resort.

Annex D details the Escalation stages in respect of a dispute:

Stage 1 - consideration of dispute by IGR Secretariat

Stage 2 - consideration by IMSC or F:ISC 5.

Stage 3 - consideration by the Prime Minister and Heads of Devolved Governments Council

Stage 1 - consideration of dispute by IGR Secretariat.

Stage 1 is the stage prior to escalation of a portfolio-level disagreement to a ‘dispute’ to the IMG or F:ISC. On referral, the IGR Secretariat (IGRS) provide impartial advice to governments about the nature of the dispute. The IGRS assess the disagreement on the following criteria:

- a. Has the disagreement been discussed extensively at senior civil servant level for the relevant portfolio or finance matter?
- b. Was a solution proposed at the senior civil servants discussion (that was not satisfactory to all parties to the disagreement)?
- c. Has the disagreement been discussed extensively by the relevant portfolio or Finance Ministers?
- d. Does the disagreement have implications beyond its policy area, impacting the wider

relationships between the parties involved?

If the dispute fulfils all the criteria, it is escalated as a dispute to either IMSC or F:ISC. If it does not, the IGR Secretariat will refer it back for consideration to an earlier stage of the process.

Ahead of the IMSC or F:ISC, there is a meeting of the Senior Officials' Group within 10 working days, unless all parties agree to an extension, to consider collective recommendations to ministers for resolution.

Stage 2 - consideration by IMSC or F:ISC

After the Senior Officials' Group have met, the Secretariat will convene a meeting of the relevant ministers within 10 working days, subject to a ministerially agreed extension.

The Secretariat then send the agenda to the relevant ministers and officials with a background note and the recommendations of the Senior Officials' Group. The chair of the meeting could be a minister from a government not party to the dispute or an independent third-party.

The IMSC or F:ISC will seek to resolve the dispute. If a resolution is not reached, it is escalated to the Council, unless all parties agree not to escalate and instead to report to legislatures on the outcome of the dispute.

Third-party (non-binding) advice or mediation should be sought at the F:ISC or before escalation to the Council unless the parties agree unanimously not to do so. Alternative means of resolution can also be sought should all parties agree.

A disagreement over the operating arrangements cannot prevent escalation to the Council. It is possible to take third-party advice.

Stage 3 - consideration by the Council

Following third-party advice, the dispute escalates to the Council for consideration of the dispute and the third-party advice within a month.

Any member of the Council may initiate a discussion about the status of an emerging or ongoing dispute. A decision will not be made on its resolution, however, until the dispute has been referred to the Council by the IGR Secretariat as a result of the earlier steps identified in the process, or if governments agree to reach a solution outside the process.

The IGR Secretariat will report on the outcome of the dispute at the final escalation stage. This report will be laid by each government before its legislature. If governments reach a

stage in the process where they are unable to reach a resolution and progress the dispute further, each government must make a statement to their respective legislatures setting out the circumstances for the failure to reach a solution.

6. How far does the new intergovernmental relations framework provide sufficient transparency and opportunity for parliamentary scrutiny, and how does this compare to previous arrangements?

Our Comments

See our comments about transparency above but in particular each of the inter-ministerial committees should publish full minutes within a reasonable time after the meeting. On the point of Parliamentary scrutiny there should be regular scheduled appearances by the relevant Ministers in the UK Government, the Scottish and Welsh Governments and the Northern Ireland Executive before the relevant committees in their respective legislatures to explain what aspects intergovernmental relations have worked, what have not worked and how improvements can be made.