



The Scottish Parliament
Pàrlamaid na h-Alba

Rt. Hon. David Lidington MP
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By email

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Dear Minister,

I write in response to the discussion held with the Chloe Smith MP, Minister for the Constitution at the Interparliamentary Forum on Brexit on 17 January 2019. This discussion followed on from the Forum's letter of 29 October 2018 which sets out the report recommendations on intergovernmental and interparliamentary relations made by each relevant Committee in order to inform the ongoing review of Intergovernmental Relations initiated by JMC(P).

During our discussion on 17 January 2019 the Minister for the Constitution explained that it was for the UK and Devolved Parliaments to bring forward proposals for a future structure for interparliamentary dialogue and scrutiny of intergovernmental relations (IGR) post-Brexit, and that if they did so, the Government would be supportive. Subsequently on 6 February 2019, you responded to a question from Public Administration and Constitutional Affairs Committee (PACAC) Chair Sir Bernard Jenkin, committing to support and resource proposals jointly put forward by the UK legislatures.

This letter identifies those areas where Committees from the Scottish Parliament, National Assembly of Wales and the UK Parliament¹ have expressed similar conclusions and recommendations on Parliamentary scrutiny of IGR² and complements our letter of 29 October which highlighted our Committees key conclusions and recommendations on IGR. Given the Minister's supportive comments at our meeting on 17 January, and your commitment, we look forward to seeing our recommendations below made manifest in the final outcome of the IGR review and any subsequent intergovernmental agreement.

Across the Parliaments' Committees it was recognised that there is a need for confidential discussions between Governments. It was however also agreed that the current IGR arrangements are not transparent, for example, the PACAC called them "insufficient" whilst the National Assembly for Wales Constitutional and Legislative Affairs Committee (CLAC) called for the IGR Memorandum of Understanding to be

¹ The Northern Ireland Assembly is not presently sitting

² A list of the Committee reports considered is annexed to this letter.

overhauled in the interests of transparency, accountability and good governance. The House of Lords Constitution Committee along with Committees from the House of Commons, the National Assembly for Wales and the Scottish Parliament all recommended that a range of information about IGR be provided to Parliaments to enhance transparency including the timely provision of information about meetings, any decisions taken and the text of agreements reached.

Committees from each Parliament also recommended that IGR becomes more accountable. Parliamentary scrutiny of IGR is essential in order to deliver accountability and to ensure that there is clarity around the basis for agreements reached by governments and any decisions made.

All recommended that the current IGR agreement between the Scottish Parliament and Scottish Government be replicated across all Parliaments. This agreement, reached in 2016, sets out the agreed position of the Scottish Parliament and Scottish Government on the information that the Scottish Government will, where appropriate, provide the Scottish Parliament with regard to its own participation in formal, ministerial level inter-governmental meetings, concordats, agreements and memorandums of understanding. It recognises three principles which govern the relationship between the Scottish Parliament and Scottish Government with regard to IGR. These are:

- Transparency
- Accountability
- Respect for the confidentiality of discussions between governments

A similar agreement, reached in January 2019, exists between the Welsh Government and the National Assembly of Wales.

Given the shared conclusions and recommendations made by Committees in each Parliament we recommend that any final IGR agreement explicitly recognises the core principles of respect for confidentiality, transparency and accountability with regard to the role of the UK and Devolved Parliaments in IGR.

We also recommend that the final IGR agreement also explicitly commits to providing timely information to the UK and Devolved Parliaments on IGR meetings, decisions and the content of agreements. A starting point is that this information should be no less detailed than that currently provided for by the agreement between the Scottish Parliament and Scottish Government and should apply to all forums of IGR (for example Ministerial Quadrilaterals, JMC meetings).

Common frameworks are an emerging area of intergovernmental relations whereby shared approaches to policy making in some areas are being agreed between the UK and Devolved Governments. As the UK Government's second report on Common Frameworks notes, close working relationships and collaboration between the UK and Devolved Governments has enabled significant progress to be made. That report also makes clear that most Common Frameworks will be non-legislative (such as concordats or Memorandums of Understanding) with some 24 policy areas likely to require legislative elements in part or in whole. Whilst legislative frameworks will require Parliamentary scrutiny and approval, currently the UK and Devolved Parliaments will not have a similar role in relation to non-legislative frameworks.

Committees in all Parliaments have recommended that Parliament should have a scrutiny role in relation to all frameworks with PACAC explaining that such scrutiny is necessary “to prevent a democratic deficit” whilst the National Assembly of Wales External Affairs and Additional Legislation Committee called for “Decisions about future UK-wide policy frameworks must be agreed between the UK Government and the Devolved governments and legislatures.” The Scottish Parliament’s Finance and Constitution Committee agreed that the process for agreeing common frameworks and their content must be arrived at “through agreement and not imposed.”

Given this we recommend that each Parliament is given sufficient opportunity to scrutinise and approve common frameworks (legislative and non-legislative).

A response to the above recommendations would be most welcome by 7 June 2019 in order that it can be considered by the next meeting of the Interparliamentary Forum on Brexit. This letter has also been copied to Kevin Foster MP, Minister to the Cabinet, Michael Russell, Cabinet Secretary for Government Business and Constitutional Relations, and Jeremy Miles AM, Minister for Brexit.

We also look forward to the outcome of the IGR review and invite you to speak with the IPF at its conclusion.

Yours sincerely,



Bruce Crawford MSP, Convener of the Finance and Constitution Committee

Other members in attendance:

Adam Tomkins MSP, Deputy Convener, Finance and Constitution Committee, Scottish Parliament
Joan McAlpine MSP, Convener, Culture, Tourism, Europe and External Affairs Committee, Scottish Parliament
Mick Antoniw AM, Chair, Constitutional and Legislative Affairs Committee, National Assembly for Wales
David Rees AM, Chair, External Affairs and Additional Legislation Committee, National Assembly for Wales
Lord McFall of Alcluith, Senior Deputy Speaker, House of Lords
Lord Dunlop, member, Constitution Committee, House of Lords
The Earl of Kinnoull, member, Lords European Union Select Committee, House of Lords
Sir Bernard Jenkin MP, Chair, Public Administration and Constitutional Affairs Committee, House of Commons
Ronnie Cowan MP, member, Public Administration and Constitutional Affairs Committee, House of Commons
Peter Grant MP, member, Exiting the European Union Committee, House of Commons

Annexe: Parliamentary Committee reports:

Ninth Report of the House of Lords Constitution Committee of Session 2017-19, European Union (Withdrawal) Bill, HL Paper 69, 29 January 2018

Fourth report of the House of Lords European Union Committee of Session 2017-19, Brexit: devolution, HL9, 19 July 2017

Tenth Report of the House of Lords Constitution Committee of Session 2015-16, The Union and Devolution, HL149, 25 March 2016

Eleventh Report of the House of Lords Constitution Committee of Session 2014-15, Intergovernmental relations in the United Kingdom, HL146, 27 March 2015

National Assembly for Wales Constitutional and Legislative Affairs Committee, UK Governance post Brexit, February 2018

National Assembly for Wales Constitutional and Legislative Affairs Committee (The Welsh Government's LCM on the EUWB) December 2017

National Assembly for Wales External Affairs and Additional Legislation Committee, Implications for Wales of leaving the European Union, January 2017

National Assembly for Wales External Affairs and Additional Legislation Committee (The Great Repeal Bill White Paper: Implications for Wales) June 2017

Eighth Report of the Scottish Parliament Devolution (Further Powers) Committee, 2015, Changing Relationships: Parliamentary Scrutiny of Intergovernmental Relations, SP 809, 6 October 2015

Sixth Report of the Scottish Parliament Finance and Constitution Committee, 2018, Report of the European Union (withdrawal) Bill Supplementary LCM, SP 316, 10 May 2018

First Report of the Scottish Parliament Finance and Constitution Committee, 2018, European Union (Withdrawal) Bill - Interim Report, SP 255, 1 January 2018

Fourth Report of the Culture, Tourism, Europe and External Relations Committee, 2017, Determining Scotland's future relationship with the European Union, SP Paper 99.1, 5 March 2007

First report of the House of Commons Scottish Affairs Committee of Session 2017-19, European Union (Withdrawal) Bill and its implications for devolution, HC 375, 19 November 2017

Sixth Report of the House of Commons Public Administration and Constitutional Affairs Committee of Session 2016-17, The Future of the Union, part two: interinstitutional relations in the UK, HC 839, 8 December 2016

Eighth Report of the House of Commons Public Administration and Constitutional Affairs Committee of Session 2017-19, Devolution and Exiting the EU: Reconciling Differences and Building Strong Relationships, HC1485, 31 July 2018