



Rt Hon David Lidington MP  
Chancellor of the Duchy of Lancaster  
70 Whitehall  
London

29 October 2018

Dear Mr Lidington,

### **Meeting of the Interparliamentary Forum on Brexit – 25 October**

We, the members of the Interparliamentary Forum on Brexit, agreed at our meeting in Cardiff on 25 October to write to you, both to report the work the Forum has done in the last year, and to draw your attention to some of the key conclusions and recommendations made by the committees represented in the Forum on intergovernmental relations and interparliamentary relations.

The Interparliamentary Forum on Brexit was established following a recommendation made by the House of Lords European Union Committee in its report *Brexit: devolution*, that the structures of the interparliamentary dialogue within the UK should be strengthened.<sup>1</sup> The Forum brings together chairs and convenors of the Committees scrutinising Brexit-related issues in the Scottish Parliament, National Assembly for Wales, House of Commons and House of Lords. Representatives of the Northern Ireland Assembly have been unable to attend while the Power-Sharing executive in Northern Ireland has been suspended and the Assembly is not sitting, though officials from the Assembly have been in attendance as observers.

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<sup>1</sup> [Fourth Report of the House of Lords European Union Committee of Session 2017–19](#), *Brexit: devolution*, HL 9, 19 July 2017, para 297-8

The Forum has met five times.

- 12 October 2017 at the House of Lords
- 18 January 2018 at the House of Lords
- 26 March 2018 at the Scottish Parliament
- 21 June 2018 at the House of Commons
- 25 October 2018 at the National Assembly for Wales

The meetings of the Forum have focused in particular on the implications for the devolution settlements of the European Union (Withdrawal) Act 2018, the progress of Article 50 negotiations and on the current state of intergovernmental and interparliamentary relations in the UK political system.

Annexed to this letter is a summary of conclusions and recommendations on these issues made by the committees of the House of Lords, National Assembly for Wales, Scottish Parliament and House of Commons that are represented in the Forum. These issues continue to be examined by committees.

We are copying this letter to the Cabinet Secretary for Government Business and Constitutional Relations in the Scottish Government and Cabinet Secretary for Finance in the Welsh Government, who we also urge to take note of this summary and engage in dialogue with the Forum.

From this summary there is a clear view among the committees that the Joint Ministerial Committee (JMC) mechanism is not fit for purpose. Members of the Forum are heartened that the Prime Minister and the first ministers of Wales and Scotland recognised this at the JMC (Plenary) on 14 March 2018, and we welcome the review of the JMC structures and Memorandum of Understanding that is being undertaken. The Forum is clear that this review must take into account the views and recommendations of the various Committees and we invite you to engage in a dialogue with us. We note that some Committees continue to examine these issues as part of their ongoing scrutiny work and that they may publish further recommendations, which should also be considered as part of the review. We look to this review to bring about an overhaul of the JMC structures.

We note that several committees represented within the Forum have recommended that the structure for intergovernmental relations within the UK should be put on a statutory basis. Some committees have also called for proper resourcing (including a permanent secretariat) and a commitment to meetings at least twice a year of the JMC (plenary). The review should take these recommendations carefully into account.

We note also that leaving the European Union will lead to a significant increase in the number of areas in which common UK positions and frameworks are required. It is important that there should be clearly-defined structures and processes for taking decisions on common frameworks in the years to come. More effective intergovernmental and interparliamentary mechanisms are required to examine this and the wider implications of UK withdrawal from the EU for the devolution settlement and other issues of common concern.

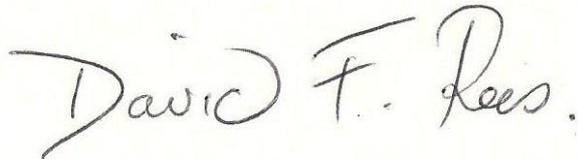
Establishing a structure for such intergovernmental dialogue that commands the trust of all parts of the UK will require significant investment of resources. It will also require a system of democratic, parliamentary oversight. We are therefore encouraged by the Government's statement, in its response to the Public Administration and Constitutional Affairs Committee's report on [\*Devolution and Exiting the EU: reconciling differences and building strong relationships\*](#), that "The UK Government welcomes the scrutiny of the UK Parliament and the devolved legislatures in relation to the ongoing work on common frameworks." It's now time to translate that welcome into action: as parliamentarians, we urge our respective Governments, and the authorities in the legislatures of the United Kingdom, to work closely with committees in developing a system of democratic oversight of intergovernmental relations fit for the post-Brexit United Kingdom.

The next meeting of the Forum is scheduled for the week commencing 14 January 2019. We would be grateful for a response to this letter ahead of that meeting.

Yours sincerely,

A handwritten signature in black ink that reads "Mick Antoniw". The signature is written in a cursive style with a horizontal line underneath the name.

Mick Antoniw AM, Chair of the Constitutional and Legislative Affairs Committee

A handwritten signature in black ink that reads "David F. Rees.". The signature is written in a cursive style.

David Rees AM, Chair of the External Affairs and Additional Legislation Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

# Members in attendance at the Forum

## House of Commons

**Sir Bernard Jenkin MP**, Chair of the Public Administration and Constitution Committee

**Hywel Williams MP**, Member of the Exiting the European Union Committee

**Anna McMorrin MP**, Member of the Welsh Affairs Committee

## House of Lords

**Lord McFall of Alcluith**, Senior Deputy Speaker

**Lord Boswell of Aynho**, Chair of the EU Select Committee

**Lord Wallace of Tankerness**, Member of the Constitution Committee

**Lord Thomas of Gresford**, Member of the Delegated Powers and Regulatory Reform Committee

**Lord Kirkwood of Kirkhope**, Member of the Secondary Legislation Scrutiny Committee

## National Assembly for Wales

**Elin Jones AM**, Llywydd (Presiding Officer)

**Mick Antoniw AM**, Chair of the Constitutional and Legislative Affairs Committee

**David Rees AM**, Chair of the External Affairs and Additional Legislation Committee

## Scottish Parliament

**Bruce Crawford MSP**, Convenor of the Finance and Constitution Committee

**Adam Tomkins MSP**, Deputy Convenor of the Finance and Constitution Committee

**Graham Simpson MSP**, Convenor, of the Delegated Powers and Law Reform Committee

# Annex: Conclusions and recommendations of committees

## House of Lords EU Select Committee

The House of Lords EU Select Committee considered intergovernmental relations issues in its 2017 inquiry into Brexit: devolution.<sup>2</sup> Chapter 7 of the final report, published in July 2017, focuses on ‘engagement with the devolved administrations’. It summarises evidence collected on the operation of the JMC and, more particularly given the report’s focus on Brexit, of the Joint Ministerial Committee (EU Negotiations) (JMC (EN)). Evidence to the Committee from the Scottish Government, Welsh Government and academic experts all suggested that the JMC (EN) had not been operating effectively. With regards to possible ways of improving intergovernmental relations the Committee recommended –

- The Joint Ministerial Committee has been re-energised by Brexit, and we also welcome the establishment of the Joint Ministerial Committee (European Negotiations). We note, however, the concerns expressed by the Scottish and Welsh Ministers that the JMC (EN) is not fulfilling its terms of reference, and it is clear that at a basic level its meetings are not being treated with respect or organised efficiently. This needs to change: if the UK Government wishes the JMC (EN) to make a useful contribution, it must give it appropriate support, both in political and resource terms.<sup>3</sup>
- More generally, we note that the JMC and the JMC (EN) are not decision-making bodies, and that there is a perception in some quarters that they are used to

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<sup>2</sup> Fourth Report of the House of Lords European Union Committee of Session 2017–19, Brexit: devolution, HL 9, 19 July 2017

<sup>3</sup> Fourth Report of the House of Lords European Union Committee of Session 2017–19, Brexit: devolution, HL 9, 19 July 2017, para 291

manage disagreements, rather than to engage with issues and find solutions. This is exacerbated by the perception that the participants are not doing so on equal terms.<sup>4</sup>

- We therefore endorse the view of most of our witnesses that the UK Government needs to raise its game to make the JMC (EN) effective. This means better preparation, including bilateral discussions ahead of meetings, a structured work programme, greater transparency, and a willingness to accept that the JMC (EN), even if not a formal decision-making body, is more than a talking-shop—that it should be authorised to agree common positions on key matters affecting devolved competences in time to inform the UK Government’s negotiating position.<sup>5</sup>
- Given the four-week negotiating cycle structure announced for the Brexit negotiations, we further recommend that a long-term programme of meetings of the JMC (EN) should be adopted, with the meetings coinciding with the fourth week in each cycle. This would enable the Government both to report on progress in the preceding cycle, and to identify and agree common positions on devolved issues arising in the forthcoming cycle.<sup>6</sup>
- We note the suggestion by the Governments of Wales and Scotland that they should have a seat at the negotiating table with the EU when devolved matters are being discussed, and that they should be ‘in the room’ throughout. We call on the UK Government to respond to this suggestion as a matter of urgency, and at all events before the negotiations turn to the future relationship

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<sup>4</sup> [Fourth Report of the House of Lords European Union Committee of Session 2017–19](#), Brexit: devolution, HL 9, 19 July 2017, 292

<sup>5</sup> [Fourth Report of the House of Lords European Union Committee of Session 2017–19](#), Brexit: devolution, HL 9, 19 July 2017, para 293

<sup>6</sup> [Fourth Report of the House of Lords European Union Committee of Session 2017–19](#), Brexit: devolution, HL 9, 19 July 2017, para 294

between the UK and the EU, where issues of strong devolved interest, such as fisheries, are likely to arise.<sup>7</sup>

- The devolved governments, and some of our witnesses, have also argued that fundamental reform is needed to give the devolved institutions a more formal role in UK decision-making post-Brexit, analogous to that of regions and states in federal systems. While there may be merit in such proposals, this would be a far-reaching constitutional reform, which falls outside the scope of this report and the remit of this Committee.<sup>8</sup>

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<sup>7</sup> Fourth Report of the House of Lords European Union Committee of Session 2017–19, Brexit: devolution, HL 9, 19 July 2017, para 295

<sup>8</sup> Fourth Report of the House of Lords European Union Committee of Session 2017–19, Brexit: devolution, HL 9, 19 July 2017, 296

## House of Lords Constitution Committee

The House of Lords Constitution Committee published its report *Inter-governmental relations in the United Kingdom* in 2015.<sup>9</sup> The committee made several conclusions and recommendations on the overall state of inter-governmental relations parliamentary scrutiny of the existing mechanisms in the report. It made the following recommendations regarding the JMC structure:

- We recommend that the Cabinet Office, as part of its current review of intergovernmental structures, consider and report on how a revised Joint Ministerial Committee structure might best be used to facilitate joint policymaking and co-ordination. Provision should be made to ensure that policy initiatives can come from the devolved administrations, as well as from the UK Government.<sup>10</sup>
- The Government should consider whether the framework of intergovernmental relations should be set out in statute. Such a statute could set out the existence and membership of the Joint Ministerial Committee and its core sub-committees, along with the core principles governing relations between administrations. This legislation could provide a basic framework, within which the Memorandum of Understanding and departmental concordats would continue to detail how inter-governmental interactions would function in practice.<sup>11</sup>

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<sup>9</sup> [Eleventh Report of the House of Lords Constitution Committee of Session 2014–15](#), Inter-governmental relations in the United Kingdom, HL146, 27 March 2015

<sup>10</sup> [Eleventh Report of the House of Lords Constitution Committee of Session 2014–15](#), Inter-governmental relations in the United Kingdom, HL146, 27 March 2015, para 70

<sup>11</sup> [Eleventh Report of the House of Lords Constitution Committee of Session 2014–15](#), Inter-governmental relations in the United Kingdom, HL146, 27 March 2015, para 86

- Greater transparency around the Joint Ministerial Committee is vital. A balance needs to be maintained between confidentiality and openness, but the current lack of information is not acceptable. We recommend that the dates, venues and headline agenda items of Joint Ministerial Committee meetings be announced further in advance.<sup>12</sup>
- Were the Joint Ministerial Committee framework to be placed on a statutory footing, Parliament should ensure that the legislation requires adequate information to be published to enable effective parliamentary scrutiny of inter-governmental relations.<sup>13</sup>

The Constitution Committee returned to this issue in its report *The Union and Devolution*. Where it made the following recommendations:

- The stability of the Union requires careful management of the balance between unity and diversity. The development of devolution in recent decades, and the emerging ‘devolution deals’ in England, have accentuated diversity in the Union. A counter-balancing effort to support and promote unity is now required. The Government should set out a strategy for taking this work forward.<sup>14</sup>
- We reiterate the conclusions from our 2015 report on intergovernmental relations. The formal structures of inter-governmental relations—in particular, the JMC—must not be allowed to degenerate into a forum for grandstanding and gesture politics which emphasise differences, conflict and division. Instead, the JMC should be reformed to promote and manage

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<sup>12</sup> [Eleventh Report of the House of Lords Constitution Committee of Session 2014–15](#), Inter-governmental relations in the United Kingdom, HL146, 27 March 2015, para 184

<sup>13</sup> [Eleventh Report of the House of Lords Constitution Committee of Session 2014–15](#), Inter-governmental relations in the United Kingdom, HL146, 27 March 2015, para 186

<sup>14</sup> [Tenth Report of the House of Lords Constitution Committee of Session 2015–16](#), *The Union and Devolution*, HL 149, 25 May 2016, para 283

co-operation and coordination between the UK Government and the devolved administrations.<sup>15</sup>

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<sup>15</sup> Tenth Report of the House of Lords Constitution Committee of Session 2015–16, The Union and Devolution, HL 149, 25 May 2016, para 291

# National Assembly for Wales Constitutional and Legislative Affairs Committee

The National Assembly for Wales' Constitutional and Legislative Affairs Committee ('the CLA Committee') published a report on UK Governance post-Brexit in February 2018.<sup>16</sup> The report addresses current inter-governmental arrangements, reforming inter-governmental relations, and the understanding of devolution by Whitehall civil servants. The Committee also exchanged correspondence with the UK Minister for the Constitution regarding the latter point.<sup>17</sup>

One of the main recommendations of the report is the need for a Speakers' conference to assess current intergovernmental relations arrangements with a view to help building consensus on reform.<sup>18</sup> The report also envisaged the conference considering how the Interparliamentary Forum on Brexit could be strengthened to ensure that inter-parliamentary dialogue is maintained post-Brexit.

With regards to possible ways of improving intergovernmental relations the Committee recommend that: –

- In the short-term the JMC is strengthened by: ensuring that the JMC(P) fulfils the functions of an annual Heads of Government Summit, as suggested in 2016 by the House of Commons PACAC; adding new committees to the

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<sup>16</sup> National Assembly for Wales Constitutional and Legislative Affairs Committee, [UK Governance post Brexit](#), February 2018

<sup>17</sup> [Correspondence with Chloe Smith MP, Minister for the Constitution](#)

<sup>18</sup> National Assembly for Wales Constitutional and Legislative Affairs Committee, [UK Governance post Brexit](#), February 2018, Recommendation 5

existing JMC format to cover the single market and trade, and in particular to agree on common frameworks.<sup>19</sup>

- Post-Brexit, the JMC is subject to fundamental reform so that it becomes a UK Council that: is a decision-making body; has an independent dispute resolution, arbitration and adjudication mechanism; is transparent and accountable in all of its functions and operations, in particular, in its decision-making.<sup>20</sup>
- The UK Government place inter-governmental relations on a statutory footing as suggested in 2015 by the House of Lords Constitution Committee and in 2017 by the House of Common Public Administration and Constitutional Affairs Committee.<sup>21</sup>
- The MoU (subject to the UK Government's response to recommendation 2) and DGNs should: be subject to a thorough overhaul involving collaboration between all governments of the UK with the aim of establishing shared governance around the machinery that supports the delivery of effective and fair inter-governmental relations; as part of that overhaul, be subject to full public consultation, enabling scrutiny by parliamentary committees across the UK...; be reviewed on a regular basis thereafter.<sup>22</sup>

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<sup>19</sup> National Assembly for Wales Constitutional and Legislative Affairs Committee, [UK Governance post Brexit](#), February 2018, Recommendation 1

<sup>20</sup> National Assembly for Wales Constitutional and Legislative Affairs Committee, [UK Governance post Brexit](#), February 2018, Recommendation 3

<sup>21</sup> National Assembly for Wales Constitutional and Legislative Affairs Committee, [UK Governance post Brexit](#), February 2018, Recommendation 2

<sup>22</sup> National Assembly for Wales Constitutional and Legislative Affairs Committee, [UK Governance post Brexit](#), February 2018, Recommendation 4

# National Assembly for Wales External Affairs and Additional Legislation Committee

The External Affairs and Additional Legislation Committee ('the EAAL Committee') has considered intra-UK intergovernmental and interparliamentary relations, insofar as they relate to the UK exiting the European Union.

In its first report, *Implications for Wales of leaving the European Union* ('the *Implications for Wales* report'),<sup>23</sup> the EAAL Committee drew a range of conclusions that are relevant.

Aspects of its subsequent reports are also relevant, including its work on the European Union (Withdrawal) Act 2018 and the associated development of common UK policy frameworks.

## *Involvement in the Article 50 negotiations*

In terms of the Article 50 negotiations, the EAAL Committee recommended that the Welsh Government should seek full involvement in shaping the UK Government's negotiating position and direct participation in those negotiations which involve devolved areas of responsibility (or matters that affect devolved areas of responsibility) using the model of the devolved administrations' participation in the Council of Ministers through the Joint Ministerial Committee ('the JMC') Europe.<sup>24</sup>

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<sup>23</sup> National Assembly for Wales External Affairs and Additional Legislation Committee, [Implications for Wales of leaving the European Union](#), January 2017

<sup>24</sup> National Assembly for Wales External Affairs and Additional Legislation Committee, [Implications for Wales of leaving the European Union](#), January 2017, Recommendation 6

### *Reform of the JMC structures*

On the JMC intergovernmental structures, the EAAL Committee expressed reservations about the JMC structure.<sup>25</sup>

The EAAL Committee believes that there is a need for a more equitable arrangement for facilitating intergovernmental relations within the UK and that there is a case to be made for reform of the JMC so that it becomes a UK Council of Ministers based on the principles of partnership and equality.<sup>26</sup>

When subsequently reporting on the European Union (Withdrawal) Bill White Paper, the EAAL Committee concluded that:

“It is concerning that we are entering into a period of intense negotiation on the future of the United Kingdom apparently without a shared understanding of the law as it exists or the way in which future constitutional relationships within a United Kingdom outside the European Union should be conducted.”<sup>27</sup>

The EAAL Committee made a similar recommendation in its report on ‘Future of regional policy in Wales’ and called on the Welsh Government to continue to press the UK Government on the need to bring forward proposals for a formal intergovernmental structure for agreeing funding allocations and resolving conflict along the lines of a UK ‘Council of Ministers’.

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<sup>25</sup> National Assembly for Wales External Affairs and Additional Legislation Committee, [Implications for Wales of leaving the European Union](#), January 2017, paragraph 220

<sup>26</sup> National Assembly for Wales External Affairs and Additional Legislation Committee, [Implications for Wales of leaving the European Union](#), January 2017, paragraph 220

<sup>27</sup> National Assembly for Wales External Affairs and Additional Legislation Committee, [The Great Repeal Bill White Paper: Implications for Wales](#), June 2017, conclusion 39

### *Interparliamentary relations*

The EAAL Committee has been involved in a range of inter-parliamentary initiatives and has a direct and formal inter-parliamentary relationship with the UK Parliament's European committees in relation to subsidiarity monitoring.<sup>28</sup>

In its *Implications for Wales* report, the EAAL Committee recognised the need for a more co-ordinated approach to scrutinising intergovernmental relations and, particularly, the JMC(EN).<sup>29</sup>

The EAAL Committee also endorsed and encouraged the development of relationships between the Assembly and all the UK legislatures.<sup>30</sup>

In reporting on the new legislative consent arrangements to be established under the (then) European Union (Withdrawal) Bill, the EAAL Committee concluded that Assembly Committees, through established interparliamentary links, should seek to establish more formalised arrangements for the sharing of information between legislatures.<sup>31</sup>

Further, the EAAL Committee concluded that good interparliamentary communication could ensure that this new aspect of the legislative consent convention, a parliamentary convention, need not rest solely on the opinions of governments.<sup>32</sup>

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<sup>28</sup> [National Assembly for Wales Standing Orders 21.9](#)

<sup>29</sup> National Assembly for Wales External Affairs and Additional Legislation Committee, [Implications for Wales of leaving the European Union](#), January 2017, paragraph 283

<sup>30</sup> National Assembly for Wales External Affairs and Additional Legislation Committee, [Implications for Wales of leaving the European Union](#), January 2017, paragraph 285

<sup>31</sup> National Assembly for Wales External Affairs and Additional Legislation Committee, European Union (Withdrawal) Bill: Progress towards delivering our six objectives, May 2018, conclusion 5

<sup>32</sup> National Assembly for Wales External Affairs and Additional Legislation Committee, European Union (Withdrawal) Bill: Progress towards delivering our six objectives, May 2018, conclusion 5

In the same report, the EAAL Committee included a chapter on inter-parliamentary relations. In broad terms, it concluded that:

“Working with committees in the other legislatures of the UK has been a longstanding aspect of European scrutiny. Considering the implications of Brexit has intensified and broadened the level of engagement between legislatures. There is an opportunity to build on existing relationships to co-ordinate scrutiny of common UK policy frameworks, to the benefit of all the constituent parts of the United Kingdom.”

### *The legislative consent convention*

In its *Implications for Wales* report, the EAAL Committee concluded that:

“We believe that this [legislative consent] convention should be extended to require the consent of devolved legislatures in circumstances where devolved competence is affected by non-legislative means, for example in relation to international trade treaties. This would, of course, include those relating to the European Union.”<sup>33</sup>

### *The principle of subsidiarity*

In addition to considering the structure of the relationship between the governments and legislatures of the UK., the EAAL Committee had given some preliminary thought to the underpinning principles that could govern post-Brexit relationships.

Due to its responsibility for subsidiarity monitoring in the Assembly, the EAAL Committee has taken some evidence on the loss of the subsidiarity principle on exit from the European Union.

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<sup>33</sup> National Assembly for Wales External Affairs and Additional Legislation Committee, [Implications for Wales of leaving the European Union](#), January 2017, paragraph 314

The EAAL Committee has concluded that adopting subsidiarity as an underpinning principle for intra-UK relations post-Brexit merits further consideration.<sup>34</sup> It intends to consider this further in its current inquiry into *EU Law in Wales: What happens during the Brexit transition?*<sup>35</sup>

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<sup>34</sup> National Assembly for Wales External Affairs and Additional Legislation Committee, [Implications for Wales of leaving the European Union](#), January 2017, paragraph 260

<sup>35</sup> See the inquiry webpage for more information: [EU Law in Wales: What happens during the Brexit transition?](#)

# Scottish Parliament Finance and Constitution Committee

The Scottish Parliament's Finance and Constitution Committee considered intergovernmental relations as part of its work on the EU (Withdrawal) Bill. In its interim report on the LCM for the Bill the Committee recognised that the structure of intergovernmental relations has been widely recognised as not fit for purpose.<sup>36</sup>

The Committee noted the proposals set out by the Welsh Government for a UK Council of Ministers which could potentially be established on a statutory basis and organised along lines similar to the EU Council of Ministers. This would include an independent adjudication mechanism and be supported by an independent secretariat.

The Committee also heard from the Minister for UK Negotiations on Scotland's Place in Europe who placed an emphasis on co-decision making and suggested there may be a range of solutions. With regard to the Welsh Government's proposals he indicated that a system of qualified majority voting "might work on occasion; it might be too complex on others."

The Committee recommended that a new structure of intergovernmental relations requires to be placed on a statutory basis including establishing a process for joint decision making and that this new structure is supported by an independent secretariat and provide a mechanism for independent dispute resolution.

The Committee also recommended that inter-parliamentary co-operation is a key component of scrutiny of the Brexit process and considers that the Inter-parliamentary Forum on Brexit will form a central part of this process.

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<sup>36</sup> Scottish Parliament Finance and Constitution Committee, Interim Report on the EU (Withdrawal) Bill LCM, 9 January 2018

# Scottish Parliament Delegated Powers and Law Reform Committee

The importance of joint parliamentary working and the specific contribution of the Inter-parliamentary Forum on Brexit was highlighted by the Delegated Powers and Law Reform Committee in its report on the supplementary LCM on the EU (Withdrawal) Bill. The DPLR Committee also said that given the expected challenging and complex programme of secondary legislation, it was essential for Governments to work together co-operatively to deliver that programme.

## Scottish Parliament Culture, Tourism, Europe and External Relations Committee

The Culture, Tourism, Europe and External relations Committee considered intergovernmental relations issues as part of its 2017 report on Determining Scotland's future relationship with the EU.<sup>37</sup> The Committee noted that the Scottish Government has always, to some degree, been involved alongside UK Government ministers in negotiations with their counterparts in other Member States in meetings of the Council of Ministers. Scottish Ministers have participated in negotiations following the prior agreement of a UK negotiating line and set of priorities. The Committee recommended that this principle should apply to the withdrawal agreement and any new free trade agreements.

The Committee also recommended that once the UK has agreed its negotiating position and Article 50 has been triggered, we recommend that ways are found to involve the Scottish Government and its officials in the negotiations that follow with the EU, both at the high-level and on the technical detail. Such involvement has been commonplace in the past in areas such as fisheries, agriculture, regional development, judicial co-operation etc. in the Council of Ministers and various working groups. Brexit should be no different.

The Committee also recommended that a means is found to involve the Scottish Government in bilateral and quadrilateral discussions on future trade deals. This could include the creation of a Joint Ministerial Committee on International Trade. This could also include government officials and organisations such as Scottish Development International meeting regularly with their UK counterparts.

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<sup>37</sup> Fourth Report of the Scottish Parliament Culture, Tourism, Europe and External Affairs Committee 2017 (Session 5), [Determining Scotland's future relationship with the European Union](#), SP 99.1, 5 March 2017

Finally, in relation to parliamentary scrutiny and accountability, the Committee believes that it is important that the recently established Written Agreement is augmented to ensure the flow of appropriate information from the Scottish Government to this and other parliamentary committees once Article 50 is triggered and also in relation to discussions on future free trade agreements.

## Scottish Parliament Devolution (Further Powers) Committee (Session 4)

In a report published in October 2015 the Scottish Parliament's Devolution (Further Powers) Committee focused on parliamentary scrutiny of intergovernmental relations.<sup>38</sup> In considering the role of legislatures in considering in scrutinising intergovernmental relations the Committee sought to learn from the experience of federal and quasi-federal systems. The Committee commissioned external research on the legislative oversight of intergovernmental relations in Belgium, Canada, Germany, Spain, Switzerland and the USA. The research reached two broad conclusions as follows –

- In every country considered intergovernmental relations is dominated by executives, with relatively limited opportunities for parliaments and parliamentarians to engage in legislative oversight of processes, negotiations and agreements.
- In spite of this general constraint, in almost every country examined, the role of parliaments in scrutinising intergovernmental relations is greater than the role the UK's parliaments currently enjoy in the scrutiny of UK intergovernmental relations.

The Committee concluded that there is no ideal model of parliamentary scrutiny of intergovernmental relations to adopt from the countries which they examined. However, its consideration of practices in other jurisdictions reaffirmed its view that there is a need for improved scrutiny in this area and for specific structures and processes to facilitate this to be put in place.

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<sup>38</sup> Eighth Report of the Scottish Parliament Devolution (Further Powers) Committee, 2015 (Session 4), Changing Relationships: Parliamentary Scrutiny of Intergovernmental Relations, SP 809, 6 October 2015

In order to achieve this aim the Committee identified two key principles –

- Transparency – the revised structure of intergovernmental relations must be transparent and ensure that there is information about meetings, agendas, policy objectives and decision making in the public domain.
- Accountability – must be built into the revised intergovernmental relations structures and any agreements must be subject to parliamentary scrutiny.

The Committee recommended introducing a new Written Agreement on Parliamentary Oversight of intergovernmental relations between the Scottish Government and the Scottish Parliament. The Scottish Government accepted this recommendation.<sup>39</sup>

The Scottish Government has agreed to provide, as far as practicable, advance written notice at least one month prior to scheduled intergovernmental relations meetings which would allow the relevant committee to consider the agenda and take evidence from Ministers in advance of the meeting. After each meeting the Scottish Government has agreed to provide a written summary of the issues discussed.

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<sup>39</sup> INTER-GOVERNMENTAL RELATIONS WRITTEN AGREEMENT BETWEEN THE SCOTTISH PARLIAMENT AND SCOTTISH GOVERNMENT

## House of Commons Welsh Affairs Committee

In September 2017, the Committee launched an inquiry into Brexit: agriculture, trade and the repatriation of powers. The Committee published a Report, *Brexit: priorities for Welsh agriculture*, on 9 July 2018. The Report included a Chapter considering responsibility for agricultural policy, which included the following conclusions and recommendations on inter-governmental relations:

- We recognise the agreement between the UK and Welsh Governments on the approach of the European Union (Withdrawal) Bill to responsibility for areas of agricultural policy which will return to the UK post-Brexit. It is essential that any changes to the devolution settlement for Wales which result from Brexit are agreed with the Welsh Government, and not imposed by Westminster. It is regrettable that it took so long for this agreement to be reached.<sup>40</sup>
- It is clear that, post-Brexit, UK-wide common frameworks will be required in some areas of devolved policy, to ensure there are no barriers within the UK market, that the UK is in compliance with international obligations and that the UK's common resources are protected. We welcome the agreement between the UK Government and devolved administrations about the areas where these will be necessary.<sup>41</sup>
- UK-wide common frameworks could be established in a number of different ways, but it is still not clear where they will apply, what they will look like, how they will work, or how any disputes would be resolved. It is imperative that these frameworks are agreed mutually between the UK and devolved governments and ensure the unique issues that face each of the administrations are given due consideration. We believe that these

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<sup>40</sup> [Brexit, priorities for Welsh agriculture](#), para 33

<sup>41</sup> [Brexit, priorities for Welsh agriculture](#), para 39

frameworks will need to be supported by robust and transparent intergovernmental mechanisms. *We urge the UK Government to work with the Welsh Government to agree on the areas of agricultural policy to which common frameworks will need to apply, and to establish how these will work, and the mechanisms for their governance. This should be done ahead of the Agriculture Bill being introduced in the UK Parliament. The UK Government should keep us updated on the timeframes for the establishment of common frameworks, to ensure that we have an opportunity to scrutinise these arrangements before they come into effect.*<sup>42</sup>

- Post-Brexit the Welsh Government will have an increased interest in trade deals negotiated by the UK Government, and particularly their implications for devolved policy areas. Given the inter-dependencies between trade deals and devolved policy, there will need to be robust intergovernmental arrangements to ensure that Welsh interests, and the consequences of trade deals for devolved policy, are considered during negotiations. *We recommend that the UK Government agree with the Welsh Government arrangements for seeking the input and consent of the devolved institutions in Wales on trade deals.*<sup>43</sup>

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<sup>42</sup> [Brexit, priorities for Welsh agriculture](#), para 44

<sup>43</sup> [Brexit, priorities for Welsh agriculture](#), para 48

# House of Commons Northern Ireland Affairs Committee

In the absence of a Northern Ireland Executive, the Committee has focused on identifying the needs of Northern Ireland and how these can best be represented during the Brexit process. The Committee's most substantive piece of work on the implications of Brexit for Northern Ireland focused on the land border between Ireland and Northern Ireland, a [report](#) for which was published on 16 March 2018. The Committee also looked at Brexit in its [report](#), published on 22 May 2018, which considered the consequences of the lack of a devolved government in Northern Ireland. The Committee is also currently holding two inquiries investigating the implications of Brexit for [fisheries](#) and [agriculture](#) in Northern Ireland. Areas where the Committee has touched on intergovernmental relations – which have covered relations with the Republic of Ireland as well as relations between the UK Government and devolved institutions in NI – include:

- On NI–RoI relations (in the land border report): The importance of North–South cooperation, which is facilitated by shared regulatory frameworks and governance bodies.
- On UK–RoI relations (in report on the absence of the NI executive): Noting the ongoing need for relations with the RoI, as specified in the Belfast/Good Friday Agreement.
- The role of the NI civil services (in report on the absence of the NI executive and in fisheries evidence): That NI civil servants had been active at informing discussions about implications of Brexit for devolved policy areas, but that the absence of the Executive created challenges.
- On design of common frameworks (in fisheries and agriculture evidence): The possibility of the devolved administrations being involved in co–designing UK–wide common frameworks.

## House of Commons Exiting the EU Committee

In its report on the European Union (Withdrawal) Bill,<sup>44</sup> the Committee on Exiting the EU examined the implications of the Bill for the devolution settlements. In respect of inter-governmental relations, the Committee noted the evidence that its predecessor Committee had taken in the last Parliament that “the JMC (EN) meetings had not been effective from the point of view of the devolved administrations”.<sup>45</sup> The Committee went on to conclude that

*The future [inter-governmental] arrangements for the UK after leaving the EU will only be successful if they work for the whole of the UK. This will only be possible if there is mutual trust and cooperative, participative mechanisms for joint working between the UK Government and the devolved administrations. These mechanisms will be required not just to resolve issues relating to the repatriation of EU competencies, but also in the long term to ensure that devolved interests are properly considered when developing new international agreements.*

*We recommend that the JMC (EN) meets much more regularly and that it addresses the concerns expressed by the devolved administrations about the effectiveness of its operations. Government should also set out whether it is considering formal structures for inter-governmental relations, and its proposed arbitration system for disputes, so that the views of the devolved governments can be heard, including in any future trade agreements.*<sup>46</sup>

The Committee also published a report on Parliamentary scrutiny and approval of the Withdrawal Agreement and negotiations on a future relationship in which it examined provision for scrutiny of negotiations on the UK’s future relationship with the EU and also future agreements with non-EU states.<sup>47</sup> It concluded that

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<sup>44</sup> First Report, Session 2017-19, HC373

<sup>45</sup> Ibid. paragraph 78.

<sup>46</sup> Ibid. paragraphs 78-79.

<sup>47</sup> Sixth Report, Session 2017-19, HC1240.

*The UK's future trade agreement with the EU and negotiations on trade with non-EU states will have significant impacts on devolved policy areas and interests. As we said in our First Report, there needs to be cooperative, participative mechanisms for joint working between the UK Government and the devolved administrations to ensure that devolved interests are properly considered when entering into and developing new international agreements. We also asked the Government to set out whether it is considering formal structures for inter-governmental relations, including any arbitration system for disputes, so that the views of the devolved governments can be heard. The Government should set out in detail the processes by which the views of the devolved governments and parliaments will be fed into the negotiations on the UK's future relationship with the EU and on future trade agreements with non-EU states. The Government should also commit to seeking the views of the devolved parliaments as part of the process of seeking approval for the Withdrawal Agreement and Political Declaration.* <sup>48</sup>

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<sup>48</sup> Ibid. paragraph 107.

## House of Commons Scottish Affairs Committee

The Committee produced a Report *European Union (Withdrawal) Bill and its implications for devolution* in November 2017.<sup>49</sup> On intergovernmental relations, the report focused on arrangements for common frameworks, saying:

- That areas where common frameworks will apply should be agreed between the UK and Scottish Governments, based on the premise that all powers should be devolved unless there is good reason to reserve them.<sup>50</sup>
- That the content of any common frameworks for these areas be agreed with the devolved administrations, not imposed by Westminster.<sup>51</sup>
- That new intergovernmental machinery will be needed to support any common frameworks.<sup>52</sup>
- That the UK Government and devolved administrations should agree a mechanism by which disputes can be resolved in the event that common frameworks cannot be agreed.<sup>53</sup>

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<sup>49</sup> 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

<sup>50</sup> 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, para 17

<sup>51</sup> 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, para 22

<sup>52</sup> 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, para 22

<sup>53</sup> 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, para 22

# House of Commons Public Administration and Constitutional Affairs Committee

Public Administration and constitutional Affairs committee published its Report *Future of the Union part 2: inter-institutional relations in the UK* in December 2016.<sup>54</sup> In the report PACAC concluded that there is longstanding criticism of the ineffectiveness of the existing JMC structures and recommended that they be reformed, and the Memorandum of Understanding between the UK and devolved government reconsidered.<sup>55</sup> The committee recommended that there was an ideal opportunity at the end of 2016 for the formal machinery of intergovernmental relations in the UK to be imbued with a sense of purpose with a revitalised and reformed JMC.<sup>56</sup> The Committee recommended the creation of subcommittees in the areas of Agriculture, fisheries, and economic affairs.<sup>57</sup> PACAC also concluded that there were limits to the effect that intergovernmental machinery could have by itself and as the effectiveness of any model of intergovernmental relations rests on the ability of the four administrations to collectively develop an atmosphere of trust and goodwill. PACAC recommended that in order to develop such an atmosphere of trust and goodwill, the UK Government must show a

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<sup>54</sup> Sixth Report of the House of Common 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

<sup>55</sup> Sixth Report of the House of Common 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, para 48-50

<sup>56</sup> Sixth Report of the House of Common 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, para 65

<sup>57</sup> Sixth Report of the House of Common 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, para 66

genuine receptiveness to the concerns and suggestions put forward by the devolved administrations.<sup>58</sup>

PACAC returned to the issue of Intergovernmental relations in its report *Devolution and Exiting the EU: Reconciling Differences and Building Strong Relationships*. This report built on the previous recommendations and further recommended:

- Devolution is now an established and significant feature of the UK constitutional architecture and should be treated with respect to maintain the integrity of the United Kingdom. The Government needs to bring clarity to the situation by setting out, in response to this report, its Devolution Policy for the Union. A document setting out the Government's Devolution Policy for the Union should be issued at the start of every Parliament. This policy should outline where the constitutional architecture of devolution needs to be buttressed or amended and should, where necessary, provide justification for asymmetry within the devolution settlement. While we accept that asymmetry may be necessary and even preferable within the UK context, the Government should explicitly recognise and be held accountable for representational and institutional asymmetries within the UK political system.<sup>59</sup>
- the Government take the opportunity provided by Brexit to seek to develop, in conjunction with the devolved Administrations, a new system of inter-governmental machinery and ensure it is given a statutory footing. Doing this will make clear that inter-governmental relations are as important a

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<sup>58</sup> Sixth Report of the House of Common 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, para 67

<sup>59</sup> Eighth Report of the House of Common Public Administration and Constitutional Affairs Committee of Session 2017-19, [Devolution and Exiting the EU: Reconciling Differences and Building Strong Relationships](#), HL 1485, 31 July 2018, para 21

part of the devolution settlement as the powers held by the devolved institutions.<sup>60</sup>

- the JMC must be reformed. The new inter-governmental apparatus that emerges from this reform should ideally have an independent secretariat to schedule and organise intergovernmental meetings. The secretariat should also provide an independent conduit for discussions among administrations at official and ministerial level in between formal inter-governmental meetings.<sup>61</sup>
- It is important that inter-governmental relations mechanisms have a clearly defined purpose and are not just arrangements for the airing of grievances. Common Frameworks should if possible be agreed by consensus and, if a consensus cannot be reached, each government should report the reasons for the failure to agree to their respective legislatures.<sup>62</sup>
- that England should be better represented at inter-governmental meetings. In the short-term, the Government should develop proposals for including the metropolitan mayors and other local leaders in reformed inter-governmental mechanisms. For the long-term, the Government should consider establishing a committee which would represent English cities and

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<sup>60</sup> Eighth Report of the House of Common Public Administration and Constitutional Affairs Committee of Session 2017-19, **Devolution and Exiting the EU: Reconciling Differences and Building Strong Relationships**, HL 1485, 31 July2018, para 132

<sup>61</sup> Eighth Report of the House of Common Public Administration and Constitutional Affairs Committee of Session 2017-19, **Devolution and Exiting the EU: Reconciling Differences and Building Strong Relationships**, HL 1485, 31 July2018, para 133

<sup>62</sup> Eighth Report of the House of Common Public Administration and Constitutional Affairs Committee of Session 2017-19, **Devolution and Exiting the EU: Reconciling Differences and Building Strong Relationships**, HL 1485, 31 July2018, para 135

counties and would have representation on JMCs (or their replacement) to advocate the interests of all parts of England.<sup>63</sup>

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<sup>63</sup> Eighth Report of the House of Common Public Administration and Constitutional Affairs Committee of Session 2017-19, [Devolution and Exiting the EU: Reconciling Differences and Building Strong Relationships](#), HL 1485, 31 July 2018, para 137