Annex A

[ITEM 1]

What	Meeting of the House of Commons, Scottish Affairs Committee (SAC)
When	Monday, 11 March 2024, 09.45am. The session is expected to run from 10am until 11.30am and you will be invited to give brief opening remarks of 2-3 minutes.
Where	Royal Society of Edinburgh – Welcome West Room – George Street, Edinburgh The Cabinet Secretary will be met at the reception of the Royal Society at 9:45 by a Committee staff member who will take him up to a waiting area, for when the Committee is ready to start the public meeting at 10am (or earlier, if all present and ready). Committee contact on the day is Brad Arlow, Committee Clerk, on 07932750191
Who	Membership of SAC: Pete Wishart MP (SNP) (Chair); Alan Brown MP (SNP); Wendy Chamberlain MP (LIB DEM); Alberto Costa MP (CON); David Duguid MP (CON); Sally-Ann Hart MP (CON); Christine Jardine MP (Lib Dem); Mark Menzies MP (CON); Ms Anum Qaisar MP (SNP); Douglas Ross MP (CON); Michael Shanks MP (Lab) Note: We have been informed by clerks that Alberto Costa WILL NOT be in attendance. All other committee members will be present**.**

Why	SAC is undertaking an Inquiry into *Intergovernmental Relations: 25 years since the Scotland Act 1998.* You submitted written evidence on 20 September and a copy is attached separately. Terms of reference for the Inquiry are: 1. How did the 1998 Scotland Act and subsequent intergovernmental bodies envisage the operational relationship between the UK Government and Scottish Executive? 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? 3. How effectively has the new intergovernmental relations framework operated since January 2022? 4. To what extent has the new intergovernmental relations framework been fully implemented? 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? 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?
Official Support	Donald Cameron, Deputy Director, Constitution & UK Relations [Redacted], Head of UK Frameworks Unit, CUKR Ewan Crawford, Special Adviser
Media	TBC
Briefing Contents	Annex A…… Opening Remarks Annex B…... Summary of Top Lines Annex C .....Summary of Evidence Submitted to the Inquiry Annex D .....SAC Previous SG Engagement Annex E ..... Examples of Positive Collaboration Between the Governments (including information about the Fiscal Framework) Annex F..... IGR Review Sitrep Annex G……Restoration of the Northern Ireland Executive and Implications for Scotland Annex H.....Background on the Final Report by The Independent Commission on the Constitutional Future of Wales Annex I…… Westminster Sovereignty and Sewel Convention Annex J……. Internal Market Act and Common Frameworks Annex K..... Deposit Return Scheme Annex L…....Gender Recognition Reform Bill Section 35 Order

	Annex M .....Top Lines on Levelling-Up Annex N…….IGR Finance Annex O…….Role of the Law Officers Annex P…....Building a New Scotland Series & Propriety issues [Redacted]

ANNEX A
SPEAKING REMARKS

- I welcome the opportunity to talk to the Committee today about these important matters.

- Let me address head on the question of how the relationship between the UK Government and the Scottish Government was originally envisaged – the answer is plain – not like this.

- While there are good examples of collaboration, the simple reality is that the actions of the UK Government, since 2016 have caused significant damage to the devolution settlement established with overwhelming public support in 1998.

- It has not always been so. In the period before Brexit, IGR was underpinned by a common understanding where successive UK governments generally (and rightly) recognised that devolved matters were the responsibility of devolved institutions, operating under the common framework provided by EU structures and law.

- IGR arrangements and relationships were able to deal effectively with significant political, legislative, and administrative challenges in the period up to 2016 which included reaching the Edinburgh Agreement in 2012.

- However, the position has deteriorated badly since 2016 as a consequence of Brexit. So much so that the very existence of devolved government is under threat as never before.

- This threat is not confined to Scottish devolution. The Constitutional Commission of Wales concluded that the 'current settlement cannot be taken for granted and is at risk of gradual attrition if steps are not taken to secure it – and that without urgent action there will be no viable settlement to protect.

- Since 2016 we have seen an increasingly interventionist approach into devolved policy matters and the erosion of the protections provided to devolved institutions – none more so than the hollowing of the Sewel Convention and the Internal Market Act.

- The Internal Market Act, imposed on the Scottish Parliament despite a refusal of consent, embodies the challenge we face in establishing more equitable and sustainable relationships between governments – not least because it fundamentally undermines the Common Frameworks programme which is the result of good collaboration between governments.

- Incidentally, if you want an example of effective working between Ministers, Chloe Smith's brief involvement and the relationship we were able to establish was key to progress being made on frameworks.

- However, the Internal Market Act cuts right across frameworks, and has been used by UK Ministers to overrule and frustrate devolved decision making most prominently with the Deposit Return Scheme.

- But despite all of this I want to emphasise the importance of good intergovernmental relations – and the Scottish Government's commitment to playing its part as an equal partner.

- Our objective for IGR is simple. We want the best possible outcomes for Scotland, working constructively with partners across these islands, including with the UK Government.

- Our approach will continue to be to collaborate where our interests align – and where there is proper respect for devolved powers and responsibilities.

- However, despite examples of good collaboration, the effect of the UK Government's actions is to constrain the powers and responsibilities of devolved institutions. Ultimately, this approach frustrates the very purpose and operation of devolution.

- Previous experience shows that it does not have to be like this, even under our current constitutional arrangements which relies on expected standards of behaviour rather than enforceable rules.

- The new improved IGR structures and principles lay the foundation for good inter-governmental working. Experience so far suggests that procedures and processes, however well designed, can only be effective if they are applied with good faith and integrity by all parties. The Scottish Government is committed to playing its part.

ANNEX B
Summary of Top Lines

IGR Sitrep

- The Scottish Government remains committed to fostering a relationship with the UK Government based on mutual respect.
- We have our own Programme for Government to deliver, and we have to respond where policies and proposals from the UK Government impact on devolved matters.
- Our focus remains on securing the best outcomes for the people of Scotland and that will at times require engagement with the UK Government.
- There have been some recent examples of practical and constructive engagement between the Scottish and UK Governments, for example on UKG initiatives such as free ports and investment zones; supporting displaced Ukrainians and the agreement reached to update the Fiscal Framework in 2023.

Actions of UK Government

- However, actions of the UK Government, since 2016 in particular, have resulted in significant damage to the devolution settlement established with overwhelming public support in 1998.
- This is not just the view of the Scottish Government. I participated in a Scottish Parliament debate in January based on the SP's Constitution Committee's October report on *Devolution since EU Exit*. The report, which is unanimous, reflects many of the Scottish Government's long-standing concerns regarding the erosion of the devolution settlement since Brexit.
- And in Wales, Jeremy Miles MS, Welsh Counsel General told the Senedd: *"the tone of inter-governmental relations has deteriorated due largely to a series of aggressive intrusions by the UK Government into areas of devolved competence."*
- The Independent Commission on the Constitutional Future of Wales also published its final report in late January which stated in relation to protecting devolution that the current settlement cannot be taken for granted and is at '*risk of gradual attrition if steps are not taken to secure it'. The report says "'no change' should be an option for citizens, but without urgent action there will be no viable settlement to protect."*

New IGR framework in place since January 2022

- The IGR Review contains some practical improvements to the structures and processes that support IGR for example; an independent Secretariat and provision for more regular and frequent meetings, with built in escalation route.
- However, the arrangements still need time to bed in, after having been disrupted by various events, such as the absence of Ministers in Northern Ireland since 2022 – only recently restored.
- Although the IGR proposals deliver many elements of what we set out to achieve from the review and offer the prospect of improvements to current processes, these proposals alone will not deliver the step change in attitude and behaviour from the UK Government that is needed if there is to be a genuine improvement in intergovernmental relations.
- The real test will be whether the UK Government is capable of delivering the goodwill and trust for improved intergovernmental relations and that the proposed arrangements lead to more meaningful engagement with productive outcomes. The evidence so far suggest that procedures and processes, however well designed, can only be effective if they are applied with good faith and integrity by all parties.

IGR dispute resolution

- The Scottish Government is committed to the principles set out in the IGR Review, including the dispute avoidance and resolution principles. It is too early to tell how effective these arrangements will be.
- They operate as part of the wider system of IGR which is predicated on all parties acting in good faith and in accordance with the principles set out within the review.
- However, the UKG have not routinely been involving the devolved governments in their decision making processes, for example in relation to the Deposit Return Scheme, which means we have been unable to follow the process to resolve disagreements because we were not aware there was a disagreement in view until it was too late.
- This demonstrates that the system only works when those party to it operate in good faith, and no dispute resolution mechanism will be able to address a lack of respect of devolution.

IGR transparency and parliamentary scrutiny

- The proposals under the IGR Review strike the right balance between the need to support transparency and the scrutiny function of legislatures; while at the same time, respecting the confidential nature of discussions between governments.
- Within this framework, the Scottish Government is committed to report to the Scottish Parliament on both the extent and quality of its IGR activity.
- Officials from the Scottish Government and the Scottish Parliament are working on improving processes for regular and timely reporting on formal IGR meetings and specific matters such as work in Common Frameworks.

Sewel Convention

- The Sewel Convention had been followed scrupulously by successive UK Governments of different parties until the EU (Withdrawal) Bill 2018. Since then there have been 11 breaches.
- A convention which can be observed or not by the UK Government, as it chooses, cannot provide any security to the Scottish Parliament.
- At the very least, the Sewel Convention should be put on a proper statutory footing to provide some guarantee that the UK Government cannot change the content and operation of the Convention as it chooses.

Internal Market Act/Common Frameworks

- The Act continues to represent the most the most significant threat to devolution since the establishment of the Scottish Parliament a quarter of a century ago.
- As Professor Hugh Rawlings noted in his evidence to the Scottish Parliament's Constitution Committee, the Act cuts across the common frameworks approach of managing the practical regulatory consequences of EU exit in a collaborative way.
- First Minister of Wales, Mark Drakeford has also described the UK Internal Market Act as "*stealing money and powers from Wales*".

Deposit Return Scheme

- The Scottish Government remains committed to the delivery of a successful DRS to ensure we realise the environmental and economic benefits which it will bring and are pushing the UK Government to set out how this can be delivered across the UK.
- We have been left with no other option than to reset the timescale of the Deposit Return Scheme (DRS). This is a result of the UK Government's intervention at the 11th hour, when conditions such as the removal of glass and alignment with other UK DRS schemes were imposed.
- The onus is now on DEFRA to work with the devolved nations, industry and wider stakeholders to ensure this scheme is launched successfully and on time.

Section 35 Gender Reform Recognition Bill

- The Bill was passed by an overwhelming majority of the Scottish Parliament with support from members of every party.
- The use of Section 35 order by the UK Government represents an unprecedented challenge to the Scottish Parliament's ability to legislate on devolved matters.
- The UKG did not follow the agreed procedures set out in the Memorandum of Understanding between governments by raising their reasons for the Order during its progress through Holyrood. The MOU makes clear that governments should work to avoid this situation, and that section 35 should only be a last resort.
- On the UKG's use of Section 35 of the Scotland Act in respect of the Gender Reform Recognition Bill, FM Wales said: "*I think the UK Government's decision to use powers that have never been used in the whole history of devolution is a very dangerous moment, and I agree with the First Minister of Scotland that this could be a very slippery slope indeed. The reason why I say that is because, I'm afraid, we have the precedent of what has happened to the Sewel convention in front of us…. Now, that just tells you that, once you've done this once, using it again becomes easier, and the second time leads to the third time very rapidly.*"

Role of the Scotland Office

- The role of the Secretary of State for Scotland is - of course - a matter for the UK Government.
- However, the reality of inter-governmental relations is that formal mechanisms (including both the IGR Review and British Irish Council) are delivered most effectively by the UKG Minister responsible for intergovernmental relations, Michael Gove. Most policy-specific engagement tends to take place directly between relevant Whitehall departments and their Scottish Government counterparts.
- [Redacted]
- The Scottish Government's preference remains that we normally raise issues directly with relevant UK departments (where we have often established good working relationships) - and our experience suggests that most UK departments prefer coming direct to relevant parts of the Scottish Government.

Role of the Law Officers

- The Scotland Act emphasises the Law Officers' independence from any other person as they undertake their prosecutorial and investigation of deaths functions, a principle they uphold in everything they do, in an objective and professional manner. Any proposed changes must continue to preserve the independence of the Law Officers.
- We have commissioned an expert report, which will provide a detailed baseline understanding of the many distinct roles and functions of the Law Officers, and will provide information on how the functions of Law Officers operate in other countries.
- We will be considering the options for proceeding with this work when we receive a final version of the report.
- [Redacted]

ANNEX C
Summary of Evidence Submitted to the Inquiry

The Committee has already published written evidence related to the inquiry and has held five oral evidence sessions in November and December 2023 and February 2024. A total of 14 written submissions were received. Eleven witnesses have taken part in the five previous oral evidence sessions, including the Former First Minister Alex Salmond and three former secretaries of state for Scotland in a panel session, Douglas Alexander, Des Browne and Helen Liddell. Academics including Prof Jim Gallagher, Prof Nicola McEwan and Prof Ciaran

Martin have also provided evidence. Former First Minister Nicola Sturgeon is due to give evidence on 29 April.

Overall themes from evidence sessions

A more detailed summary of written and overal evidence will be sent under separate cover.

ANNEX D

Scottish Affairs Committee: Previous SG Engagement

Lines on FM Being Unable to Attend Scottish Affairs Committee

- Mr Yousaf has not been able to accept an invitation to give evidence to the Committee because of his extensive commitments as First Minister.
- The First Minister is accountable to the Scottish Parliament for the decisions and actions of the Scottish Government.
- Sessions such as the weekly First Minister's Questions and twice yearly evidence sessions with the Scottish Parliament' Conveners Group are an important feature of the First Minister's commitment to ensuring that the Scottish Parliament can fully discharge its essential scrutiny function.

[Background - FM is travelling to London start of this week (11/12 March) to undertake a range of engagements in order to promote Scotland's future economic potential following the UK Government's Budget, focussing on key themes of investment, enterprise and innovation.]

Alex Salmond's Comments on Committee Attendance
committees.parliament.uk/oralevidence/14304/pdf/

"I am delighted to be here. I was checking the record, and I gave evidence to this Committee in 2010—over 10 years ago.

"Look, you would not expect the First Minister to appear before a Westminster Committee every two weeks—that would be ridiculous—but once a year would not be a problem. I do not see that you are diminishing your key responsibility. If a political leader goes to address the European Parliament, of course it doesn't diminish his accountability or his responsibility to his home Parliament. As long as they are not unreasonable demands—as long as the First Minister is not summoned every time there is a crisis—I don't see any difficulty".

Past Attendance by First Ministers

Alex Salmond
- 20 February 2024 - Intergovernmental relations: 25 years since the Scotland Act 1998
- 12 January 2010 – Scotland and the UK: Cooperation and Communication Between Governments

Jack McConnell
- 05 February 2019 - The relationship between the UK and Scottish Governments inquiry

Scottish Government's Ministerial Attendance at SAC

Date	Minister	Topic
26 February 2024	Mr Dey	Science and Scotland
20 March 2023	Mr Robertson	Promoting Scotland Internationally
16 January 2023	Mr Matheson	Hydrogen and Carbon Capture in Scotland
31 October 2022	Mr Brown	Firearms Licensing Regulations in Scotland
05 September 2022	Mr McKee	Defence in Scotland
12 July 2022	Mr McKee	Defence in Scotland
27 June 2022	Ms Forbes	Fiscal Outlook for Scotland
07 March 2022	Mr Brown	Defence in Scotland
06 September 2021	Ms Forbes	City Region and Growth Deals
04 March 2021	Mr McKee	Scotland and the Shared Prosperity Fund
28 January 2021	Mr Lochhead	Universities and Scotland
18 November 2020	Mr Russell	UK Internal Market Bill
11 June 2020	Ms Freeman	Coronavirus and Scotland
25 January 2016	Mr Swinney	Revising Scotland's Fiscal Framework

Current Westminster Committees' Inquiries

- The Scottish Affairs Committee has announced that it is also conducting an inquiry to examine the role of the civil service in supporting the work of both the UK and the Scottish Government and relations between them. It will also consider challenges posed by the governments' policy and constitutional agenda divergence; and the extent a unified civil service assists intergovernmental relations. There hasn't been any involvement by the Scottish Government in this inquiry yet.

- The House of Lords Constitution Committee is conducting an inquiry, The Governance of the Union: Consultation, Co-operation and Legislative Consent. The Committee will consider relations between the national and devolved administrations" and focus on co-operation via the new intergovernmental relations arrangements in place since January 2022, consultation by the UK Government with the devolved administrations; and respect for the Sewel Convention. You have been invited to provide evidence along with the Permanent Secretary on 24 April.

- The Public Administration and Constitutional Affairs Committee is undertaking a new inquiry to examine How well does Whitehall understand the implications of the devolution settlements and maintain the skills and knowledge necessary to deliver for every part of the UK. A panel involving DG SEA, the Welsh Government Permanent Secretary and the Head of the NI Civil Service is due to take place later in the year.

Recently Concluded Inquires

- The Scottish Parliament's Constitution, Europe, External Affairs and Culture Committee has recently concluded an inquiry into How devolution is changing post

EU. The Committee's aim was to facilitate a public debate on how devolution is changing and how it should evolve post EU exit.

- The Lords Constitution Committee has concluded its inquiry into the "Appointment and dismissal of permanent secretaries and other senior civil servants in October 2023". Report commented on the role of civil servants in devolved administrations in reserved matters and further guidance on these matters. The UK Government response to these recommendations was:

60. The Government agrees with the Committee that the principle of a single Civil Service across England, Scotland and Wales must be maintained. The Government recognises the strength of the argument that further guidance to tighten up best practice is required and is in the process of considering how such guidance would support civil servants working in the devolved administrations on areas that may relate to reserved matters and help ensure the Civil Service Code is always maintained.

ANNEX E

Examples of Positive Collaboration between the Governments (including Fiscal Framework)

There are several recent examples where we have achieved positive outcomes in negotiations with the UK Government. These include: settlement of the longstanding personal allowance spillover dispute, which resulted in an additional £375 million of funding for the 2022-23 Scottish Budget; increased borrowing and reserve flexibility secured as part of the fiscal framework review in 2023.

The Scottish Government has also worked in collaboration on UK Government initiatives such as free ports and investment zones, designing a Scotland specific offer that aligned with our own objectives for example on Green Freeports, and securing £360 million over ten years for two investment zones in Scotland, selected through jointly agreed methodology.

There are also examples within UK legislation where the Scottish Government's willingness to negotiate in spite of principled objections has led to us securing policy outcomes (for example, amendments to procurement legislation in the Trade (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) Bill, and the Energy Bill).

Whilst the Scottish Government may not have fully achieved all of its desired policy outcomes in these examples they do highlight successes in IGR – where we were able to influence and negotiate effectively to secure outcomes in the current unfavourable circumstances. Although very different policy areas, these examples of positive IGR have some common themes that demonstrate what a principled and pragmatic approach looks like in practice:

- Strong working relationships at working level to allow for information exchange and intelligence sharing in a safe space;

- Alignment with Welsh Government and the Northern Ireland Executive where applicable/ appropriate to magnify SG asks;

- Understanding what UK Government had to gain from the negotiations and a focus on practical outcomes to find the 'win-wins', and understanding the stakes in practical terms if the UK Government were to walk away from negotiations;

- Seeking agreement on core principles that will underpin and allow for a joint approach, and understanding timescales and processes on both sides at the outset to ensure a common understanding;

- Seeing the bigger picture and exercising flexibility in asks to make trade-offs in negotiations – not letting the perfect be the enemy of the good;

- A willingness to move first, think creatively, and make concessions where necessary to unlock concessions on the other side and build goodwill.

[Redacted]

INCOME TAX PERFORMANCE
Despite the economic challenges, Income Tax is forecast to make a record contribution to Scottish Government funding in 2024-25.

- The SFC forecast that Income Tax will raise £18.8 billion in 2024-25, this is £1.8 billion more than they forecast in May.
- The improvements in the Income Tax net position are largely driven by strong outturn and in-year tax data covering the period 2021-22 to 2023-24.
- The current high inflation environment – alongside stronger fiscal drag and higher earnings growth in Scotland than in the rest of the UK - have also contributed to Scotland's improved net position.
- The SFC note that forecast revisions for 2024-25 are driven by new data and that they have [QUOTE]: *"no strong reasons to believe it is either significantly under or over-estimating Scottish tax revenues".*

Earnings in Scotland grew by 8% in 2023, faster than any other part of the UK. This means that the gap in economic performance with the rest of the UK is forecast to be almost eliminated next year.

(TO NOTE – IT net position in 2024-25 is £1,412 million while policy forecast to raise £1,454 million, a gap of only £42 million)

- Our Income Tax performance in the early years of tax devolution was constrained due to the combined impacts of a slowdown in earnings growth in the northeast of Scotland, and very strong growth in financial services in the South East of England.
- There are signs that this gap has almost closed, with earnings in Scotland growing by 8% in 2023, faster than any other part of the UK.
- Last year, the SFC forecast that the gap in Income Tax receipts caused by economic underperformance was £1 billion. They are now forecasting this to fall to just £42 million in 2024-25 – an almost £1 billion improvement.

ANNEX F
IGR Review Sitrep

The IGR review was commissioned in March 2018 when Heads of Government agreed that officials should review and report on the existing intergovernmental structures, to ensure they were fit for purpose in light of the UK's exit from the EU. It was published in January 2022 by the UK Government, with all three devolved governments agreeing to use this as the basis for engagement, provided it was kept under review.

It sets out principles for collaborative working which, if adequately observed, lay the foundations for good intergovernmental working and as such, they will continue to guide our engagement and be the parameters against which we will assess the quality and effectiveness of intergovernmental relations. These principles are:

- maintaining positive and constructive relations, based on mutual respect for the responsibilities of the governments and their shared role in the governance of the UK;
- building and maintaining trust, based on effective communication;
- sharing information and respecting confidentiality;
- promoting understanding of, and accountability for, their intergovernmental activity;
- and resolving disputes according to a clear and agreed process.

The conclusions of the Review also contained some ostensible practical improvements to the structures and processes that support IGR that are intended to create the conditions for constructive collaboration on common challenges in a way that is more respectful of reserved/devolved responsibilities. These include:-

- a fairer dispute resolution process;
- an impartial Secretariat staffed from across the governments;
- provision for more regular and frequent meetings with a built in oversight and escalation route and more transparent arrangements for formal intergovernmental meetings – with shared responsibility for agenda setting and chairing meetings.

As noted in the written evidence to the Committee, implementation of the proposals set out in the IGR Review have been disrupted by various events, such as the absence of Ministers in Northern Ireland since 2022, and reshuffles in the UK Government in summer and autumn 2022.

It is the view of the Scottish Government that more time is needed to bed in the new machinery in the IGR Review, including a more regular pattern of ministerial and official level engagement, so they can be reviewed as appropriate.

Although the IGR proposals deliver many elements of what we set out to achieve from the review and offer the prospect of improvements to current processes, these proposals alone will not deliver the step change in attitude and behaviour from the UK Government that is needed if there is to be a genuine improvement in intergovernmental relations.

As also highlighted in the written evidence, the UK Government handling of Brexit, and imposition of the UK Internal Market Act 2020, despite explicit refusal of consent under the Sewel convention, show that procedural improvements alone are not enough to reset the relationship.

The real test will be whether the UK Government is capable of delivering the goodwill and trust for improved intergovernmental relations and that the proposed arrangements lead to more meaningful engagement with productive outcomes. The evidence so far suggest that

procedures and processes, however well designed, can only be effective if they are applied with good faith and integrity by all parties.

Since the written evidence was submitted in September 2023, there have been additional IMSC and F:ISC meetings. The total so far is 5 meetings of IMSC and 6 meetings of F:ISC to date. There are dates in the diary for further IMSCs – including a rescheduled meeting due to take place on 12 March.

There has still been no date scheduled for the second meeting of the Prime Minister and Heads of Devolved Governments Council – the top tier of the IGR Review arrangements (the first meeting took place in the margins of BIC in November 2022). Unlike other meetings in the IGR Review, this meeting is exclusively chaired by the PM. [Redacted]

It remains a mixed picture for meetings of Interministerial Groups. The following IMGs were set up as a result of the IGR Review

- Business and Industry IMG (BEIS – maybe now DBT but discussions ongoing, hasn't met since Jan 2023)
- Net Zero IMG (BEIS – now DESNZ)
- Ministerial Covenant and Veterans Board (CO/MOD)
- IMG for Sport (DCMS)
- Tourism IMG (DCMS)
- Culture IMG (DCMS)
- EFRA IMG (DEFRA)
- UK Education Ministers Council (DfE)
- Transport IMG (DfT)
- Health IMG (DHSC)
- Trade IMG (DIT – now DBT)
- Elections and Registration (DLUHC)
- UK/EU Relations IMG (FCDO)
- UK Education Ministers Council (DfE)*
- Safety, Security & Migration IMG (HO)*
- Justice IMG (MoJ)*
- DLUHC IMG (DLUHC)*

While Ministerial and official level engagement had already been taking place in some areas, the last 4 IMGs marked by an asterisk were newly established since the IGRR (UK Education Ministers Council; DLUHC IMG; Safety, Security and Migration IMG; Justice IMG.)

You may want to reflect on your own experiences of the IMG on EU relations.

- This IMG has met 5 times; the first two meetings (February and July 2022) were attended by Mr Gray. Subsequent meetings (March and June 2023 and March 2024) were attended by Mr Robertson.
- [Redacted]
- SG raised that the approach being taken by UKG was not consistent with the principles of the Intergovernmental Relations Review, nor did it not offer a meaningful basis for engagement on UK-EU Relations.
- The most recent two meetings have had a marked improvement; the lead in time is longer and (specifically at our request) there are now papers shared in advance that allow for a more meaningful discussion. There is still headroom for improvement,

notably in the frequency of meetings, the power to call them resting with all members, and holding them face to face.

In relation to other fora, we understand that the F:ISC is working relatively well, laregly as a result of the personal contribution of then Chief Secreatry to the Treasury, John Glen. We are still assessing the impact of a new CST in post, Laura Trott, on how the FISC operates.

The EFRA IMG is a longstanding group with a joint secretariat and well-established Senior Officials Programme Board. The meeting was seen as an example of best practice in IMGs, however since September 2022 there have been 3 different Environment Secretaries and a decrease in the quality of engagement, with meetings postponed or delegated to those without authority to take key decisions on items such as DRS.

In relation to culture, since Mr Robertson's appointment as Cabinet Secretary in 2021 there have been 4 different Secretaries of State at DCMS. Mr Robertson has contacted each of them to welcome them into their roles and also on particular issues. Constructive and professional relationships with the UK Government, and the other devolved administrations, are vital to addressing the serious and common challenges that the culture sector has experienced in recent years. However, counterparts in DCMS have not always engaged with the Scottish Government in the manner and to the extent we would hope and this churn of ministers does not help.

An example is in the establishment of a Culture Inter-Ministerial Group as was proposed under the Review of Intergovernmental Relations in 2022. In spite of more than two years having past, the group has still not had its first meeting. DCMS has not, so far, engaged in the IMG process in a timely and constructive manner. When it was apparent that DCMS were not progressing the Culture IMG with the necessary resolve, the Scottish Government took it upon ourselves to draft and agree with other governments the terms of reference for the group. Those were agreed by all governments in March 2023 yet DCMS, which took responsibility for arranging that first meeting, has not managed to do so. Meetings have been arranged and then consistently postoned, and Devolved Administrations have not been given sufficient notice of when meetings would take place to ensure full attendance.

Briefing on international issues will be sent separately. From the IGR Review perspective, IMSC is the only forum for formalised and regular engagement on international matters given the lack of a dedicated International IMG, which SG and WG both pushed for during negotiations for the Intergovernmental Relations Review but UKG did not agree.

There are many issues of an international nature which the devolved governments will wish to be briefed on, comment on, and feed into decision-making where there is overlap with our devolved responsibilities (e.g. the situation in Israel/ Gaza).

We have seen with many topics that the current lack of space for issues to be discussed risks impeding the delivery of business which is unhelpful for both the devolved governments and UKG. Examples of issues which could be considered by an international IMG include:

- International treaties and agreements (full, formal and early involvement in development and negotiation of positions in devolved areas);
- International conferences and negotiations – including, but not limited to, WTO Ministerial, World Health Assembly;
- Promoting the Devolved Nations Internationally – how the UKG promotes the DGs in devolved policy space overseas;

- Cooperation and working arrangements between devolved governments and UKG staff in British Embassies and permanent delegations.

Lines on meetings with Foreign Secretary

- The Cabinet Secretary met with former Foreign Secretary James Cleverley MP on 16th November 2022. The discussion covered operational relations between the UK Government (UKG) and Scottish Government (SG) in international contexts, China, Ukraine and the Northern Ireland Protocol.
- [Redacted]
- The Scottish Government believes in working in partnership and collaboration with both the UK Government and international partners on shared interests. Scottish Government Ministers and officials adhere to long-standing, mutually agreed ways of working in international fora, which explicity encourages bilateral and multilateral engagement by devolved governments.

Dispute Resolution

- The efficacy of the new dispute resolution mechanism also still remains to be seen. Dispute resolution, like IGR generally, needs good faith actors to operate, as evidenced by the experience of the Deposit Return Scheme.

- The DAR mechanism is part of the wider system of IGR which is predicated on all parties acting in good faith and in accordance with the principles set out within the review.

- However, the UKG have not routinely been involving the devolved governments in their decision making processes which means we have been unable to follow the process to resolve disagreements because we were not aware there was a disagreement in view until it was too late.

- This demonstrates that the system only works when those party to it operate in good faith, and no dispute resolution mechanism will be able to address a lack of respect of devolution.

Transparency and Parliamentary Scrutiny post-IGR Review

Issue: SAC is interested to explore the degree to which the new IGR framework provides sufficient transparency and opportunity for parliamentary scrutiny, and how does this compare to previous arrangements.

Lines to take

- The proposals under the IGR Review strike the right balance between the need to support transparency and the scrutiny function of legislatures; while at the same time, respecting the confidential nature of discussions between governments.
- Within this framework, the Scottish Government is committed to report to the Scottish Parliament on both the extent and quality of its IGR activity.

- Officials from the Scottish Government and the Scottish Parliament are working on improving processes for regular and timely reporting on formal IGR meetings and specific matters such as work in Common Frameworks.
- As part of this, work is underway to re-set our Annual Report on IGR to the Scottish Parliament, complementing any future annual report by the IGR Secretariat.
- We have already included details about EU alignment impacts in relevant accompanying documents for legislation and have worked closely with parliament to provide detailed annual reporting on how EU alignment is being considered and implemented so parliament is able to fulfil its role of holding government to account.
- The Scottish Government is developing new processes to ensure that IMA threats to devolved legislation are identified as early as possible in the pre-legislative process, with consideration of mitigations. Going forward we also aim to have fuller and more consistent consideration of IMA impacts in the policy memorandums that accompany Bills.

Background

IGR Review – Transparency & Parliamentary Scrutiny

In the IGR Review, all governments committed to increased transparency of intergovernmental relations through enhanced reporting to their respective legislatures. The proposed measures were intended to complement, and not duplicate, arrangements which individual governments have with their respective legislatures. The key measures include:

- an encouragement to publish communiqués on IGR meetings;
- compilation of annual reports on IGR activity to be shared with all governments; and
- a requirement for governments party to a dispute to report on the outcome of formal disputes to their respective legislatures.

As a result of the IGR Review, the UK Government now publishes quarterly reports on Intergovernmental Relations. The UK Government website also hosts the publication of communiqués of formal, Ministerial IGR meetings.

The IGR Secretariat has yet to publish their first annual report, as prioritisation is being given to consolidating the structures and processes emerging from the IGR Review. The proposal for mainstreaming Parliamentary scrutiny into the dispute resolution process has yet to be used, as the dispute avoidance and resolution mechanism has not been invoked by any government to date.

Written Agreement between the SP and the SG on IGR Reporting

The Scottish Government has a Written Agreement with the Scottish Parliament on the reporting of Intergovernmental Relations, which has been in place since 2016.

The Written Agreement needs to be renewed to reflect changes introduced by the IGR Review. The renewal of the Written Agreement is part of the wider discussions with the Scottish Parliament on post-Brexit parliamentary scrutiny arrangements. In the meantime, policy areas have been encouraged to continue to report to relevant subject Committees in line with provisions under the written agreement or to agree with their relevant parliamentary clerks the best way to share information with their committees.

ANNEX G

Restoration of Northern Ireland Executive and Implications for Scotland

On 31 January, UKG published its Command Paper, 'Safeguarding the Union', setting out the terms of its deal with the Democratic Unionist Party, including:

- no routine checks on goods moving within a new 'UK internal market system' between GB and NI (Border Control Post at Cairnryan not now required), plus a 'guarantee' that 80% of GB-NI goods movements will be under this system (this replaces the previous 'green lane' system, but retains 'red lane' checks on goods at risk of moving on to the wider EU single market);

- legislating to "end…the automatic pipeline of EU law" in NI (i.e. establishing the 'Stormont Brake' into law);

- confirming 'not for EU' labelling will apply to agrifood products UK-wide, including on goods not moving into NI;

- screening new UK legislation for impact on trade between NI and GB;

- establishing new bodies ("Intertrade UK" and a "UK East-West Council") aimed at promoting intra-UK trade and cooperation; and

- funding an 'Enhanced Investment Zone' in NI (with potential inclusion of the Stranraer/ Cairnryan area).

SG received no advance copy of the Command Paper or the statutory instruments, and there was no pre-briefing at Ministerial or official level. Officials are undertaking priority work to assess the implications of the deal for Scottish businesses, implications for Cairnryan and biosecurity issues, and compliance with international obligations, including World Trade Organisation rules.

Key Lines on the Command Paper

- While we warmly welcome the restoration of the Assembly and Executive in Northern Ireland, SG received no advance copy of the Command Paper, and there was no pre-briefing at Ministerial or official level, despite significant implications for devolved responsibilities.

- SG officials are continuing to assess the detail, including potential consequences for Scotland of changes to the UK Internal Market Act; implications relating to Alignment policy, BTOM, Cairnryan and biosecurity; as well as ongoing concerns about the planned UK-wide 'not-for-EU' labelling requirements.

Short update on the Northern Ireland Financial Package

On 13 February, the UK Government formally announced the £3.3 billion financial package it had trailed prior to the restoration of the devolved institutions.

The key points are:

- Providing a 24% needs-based factor in the Barnett formula for Northern Ireland from 2024-25. This is expected to generate £785 million over the next 5 years. UKG will also open discussions with NIE on a new Fiscal Framework for Northern Ireland.
- £584 million to provide public sector pay awards for 2023-24.
- Pausing NIE repayments of up to £559 million from 2022-23 and 2023-24 to stabilise finances, conditional on implementing a sustainability plan.
- Requiring NIE to raise a minimum of £113 million through locally generated income to deliver a balanced budget in 2024-25.
- £34 million in 2024-25 to tackle hospital waiting lists
- £520 million a year in 2024-25 and 2025-26 to address pressures in funding public services.
- £708 million of increased spending power for the NIE over 5 years (made up of £623 million of reallocated UKG funding and £85 million of new funding). £285 million of this will be ring-fenced for public service transformation.
- UKG will create an Enhanced Investment Zone worth around £150 million.
- NIE annual capital borrowing limit will increase, initially by 10% and then annually by inflation. Cumulatively this will provide up to £135 million by 2028-29.

[Redacted]

ANNEX H

BACKGROUND ON FINAL REPORT BY THE INDEPENDENT COMMISSION ON THE CONSTITUTIONAL FUTURE OF WALES

Last month (18 January) the Welsh Government published the final report by the Independent Commission on the Constitutional Future of Wales, which was established in November 2021.

As was the case with the commission's interim report published in December 2022, there is a great deal of overlap in the Scottish Government's analysis of the current state of devolution and the one offered by the Commission in its final report.

One of the strongest messages the Commission received was that many citizens feel they have no influence over the actions of government. In contrast to public opinion in Scotland, the report highlights that devolution does not yet enjoy citizens' full confidence and it recommends actions to address this.

The report makes recommendations on measures to strengthen Welsh democracy and to protect devolution. The Commission notes that since Brexit the Westminster Parliament and the UK Government have overridden the conventions (Sewel) designed to protect devolution 11 times.

On strengthening Welsh democracy, the report makes three recommendations:

- Democratic innovation: for the Welsh Government to strengthen capacity for democratic innovation and inclusive community engagement through establishing an expert panel to consider strategies for civic education.
- Constitution principles: the Welsh Government should lead a project to engage citizens in drafting a statement of constitutional and governance principles for the country.

- Senedd reform: recommends that the planned review be resourced to ensure a robust and evidence based analysis of the impact of changes.

Protecting devolution: the report states that the current settlement cannot be taken for granted and is at 'risk of gradual attrition if steps are not taken to secure it'. The report says "'no change' should be an option for citizens, but without urgent action there will be no viable settlement to protect." It recommends:

- Legislate for inter-governmental mechanism: Welsh Government should propose to UK Government and other devolved governments that the Westminster Parliament should legislate for inter-governmental mechanisms so as to secure a duty of co-operation and parity of esteem
- Sewel convention: Welsh Government should press UK Government to present legislation to specify that the consent of the devolved institutions is required for any change of devolved powers, with a few exceptions such as international obligations, defence and national security.
- Financial management: calls for UK Government to remove constraints on Welsh Government budget management, except where there are macroeconomic implications.

There are further recommendations made in the report on the further devolution of: justice and policing; and rail services and infrastructure. There are also recommendations on how the devolution settlement and inter-governmental engagement in relation to energy policy – the report calls to the Welsh and UK Governments to establish an expert group to advise urgently on this and options for devolution of the Crown Estate, as is currently the situation in Scotland. There is also a call for a stronger voice for Wales on broadcasting policy and for work to continue on potential routes to devolution of that policy.

The report considers options for the future governance of Wales. It presents the three options presented in its interim report published in December 2022: enhanced devolution; a federal structure; and an independent Wales.

The report makes no recommendation on each of these options, it finds each option is viable, each offers strengths and weaknesses, as well as risks and opportunities. The commission leaves any judgement on these options to be made by political parties and individual citizens, but does say that "there should be a constructive debate focused on what is best for Wales, based on the best evidence and analysis available so that people can make an informed and thoughtful choice".

Response from the Welsh Government to the report

FM Mark Drakeford gave a statement to the Senedd on Tuesday (30 January) on the final report of the Independent Commission on the Constitutional Future of Wales (ICCFW). Mr Drakeford's statement thanked the commission for their work. He spoke of the need to entrench devolution and said the commission's work "*advances a set of measures that can entrench and enhance the current settlement, making it less vulnerable to attacks from a hostile administration in Westminster. And, as well as deepening the roots of devolution in that way, the report explores the case for widening the responsibilities of this Senedd…"*.

He said the report was the basis for further discussion and debate – work that he says he wants to continue. There was no announcement or actions announced on the recommendations in the report itself. One member of parliament criticized the report as costing an estimated £1.5m so far.

Response from the UK Government to the report

Michael Gove said: *"People and businesses in Wales want to see all tiers of government working effectively together to tackle the issues that matter to them: addressing the cost of living, growing the economy and delivering effective public services. Now is not the time to talk about constitutional changes, but working together effectively as one United Kingdom on the issues that matter most to communities across the country.*

"Delivering on what matters to people and communities is exactly what the UK Government is focused on doing, whether through City and Growth Deals, delivering Freeports and Investment Zones in partnership with Welsh Government and working to develop a sustainable future for the steel sector in Wales."

Secretary of State for Wales David TC Davies said: *"The Labour Welsh Government's commissioned report was only ever going to reach one conclusion.*

"It's a national scandal that, whilst Wales suffers the worst PISA and waiting lists in Britain, the Labour Welsh Government is wasting time and taxpayers' money in wanting more powers and Senedd Members.

"Their focus should be firmly on helping the 27,000 people who have been languishing on an NHS waiting list for over two years and improving children's education.

"Wales needs more nurses and teachers, not more politicians and powers."

ANNEX I

Westminster Sovereignty and Sewel Convention

- The outdated doctrine of Westminster's unlimited Parliamentary sovereignty remains a barrier to guaranteed and secure self-government for Scotland within the UK.
- While the doctrine persists, no legislation passed by Westminster can guarantee the powers or indeed existence of the Scottish Parliament.
- We are therefore dependent on the UK Government and Westminster exercising self-restraint in the use of its powers.
- Events since the Brexit referendum have illustrated how flimsy this "decent chap" model of government is, especially – but not only - for devolved institutions.
- But no UK government of either of the two main UK political parties has shown any appetite for fundamental reform of the doctrine of Westminster sovereignty.

Sewel Convention - Top Lines

- The actions of the UK Government have undermined the Sewel Convention. A convention which can be observed or not by the UK Government, as it chooses, cannot provide any security to the Scottish Parliament.
- It is crucial to emphasise that the convention has been set aside in areas where there are disagreements between the Scottish Parliament and the UK Government, and where powers are being taken away from here.

- These are precisely the circumstances in which the convention was intended to protect devolution. A convention that is only observed when there is agreement is of absolutely no use at all.
- This approach is an example where the UK Government has unilaterally changed the rules of the UK's constitutional arrangements and the devolution settlement in line with its own views.
- The UK's constitution relies on the UK Government and Parliament abiding by a "self-denying ordinance".
- The Scottish Government is firmly of the view that experience over the last few years demonstrates conclusively that these safeguards are not sufficient to protect Scottish democratic self-government.
- At the very least, the Sewel Convention should be put on a proper statutory footing to provide some guarantee that the UK Government cannot change the content and operation of the Convention as it chooses.
- We can have little to no confidence that any non-statutory measures would be respected any more than the convention is now.
- Especially as it is clear that the UK Government does not believe there are any problems with the Sewel Convention and that it is operating properly

Background - Breaches of the Sewel Convention

The Sewel Convention had been followed scrupulously by successive UK Governments of different parties until the EU (Withdrawal) Bill 2018 (there was an inadvertent breach in 2004 which was remedied). In 2018 when the UK Government overruled the Scottish Parliament for the first time ever (to give UK Ministers a power to change the power of the Parliament unilaterally, and by secondary legislation).

The UK Government has now failed to respect the views of the Scottish Parliament on legislative consent on a total of 11 occasions:

Name of Act	Date of Royal Assent	Full breach	Did UKG request consent
European Union (Withdrawal) Act 2018	26/06/2018	Full breach	Yes
EU (Withdrawal Agreement) Act 2020	23/01/2020	Full breach	Yes
UK Internal Market Act 2020	17/12/2020	Full breach	Yes
EU Withdrawal (Future Relationship) Act 2020	31/12/2020	Full breach	Yes
Professional Qualifications Act 2022	28/04/2022	Full breach	Yes
Nationality and Borders Act 2022	04/05/2022	Consent not sought	No
Subsidy Control Act 2022	05/05/2022	Full breach	Yes
Trade (Australia and New Zealand) Act 2023	22/03/2023	Full breach	Yes

Genetic Technology (Precision Breeding) Act 2023	23/03/2023	Consent not sought	No
Retained EU Law (Revocation and Reform) Act 2023	29/06/2023	Full breach	Yes
Northern Ireland Troubles (Legacy and Reconciliation) Act 2023	18/09/2023	Full breach	Yes

Consent to the Procurement Act 2023 and the Levelling Up and Regeneration Act 2023 was given in part and withheld in part. For the latter, the UK Government did not seek consent to the part of the bill for which consent was withheld.

SEWEL CONVENTION

DEFINITION OF "NOT NORMALLY"

The statutory provision (s28(8)) in the Scotland Act echoes the words of Lord Sewel in 1998:

"the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament."

No definition of "not normally" was produced or indeed needed prior to the European Union (Withdrawal) Act 2016. The Convention was scrupulously observed, and no circumstances arose between 1999 to 2018 that were considered not normal by the UK Government.

Since then the UK Government has proceeded without consent on 11 occasions so far. Again, no overall definition of "not normally" has been offered, but we have seen various justifications offered by the UK Government.

For the European Union (Withdrawal) Act 2018, the first time the Convention was breached, the then Secretary of State for Scotland, David Mundell, said that the circumstances of the UK leaving the EU were not normal. He also claimed that:

"While the devolution settlements did not predict EU exit, they did explicitly provide that in situations of disagreement the UK Parliament may be required to legislate without the consent of devolved legislatures."

As Ian Blackford said in response:

"[T]he statement …offers a wholly new interpretation—and, indeed, inversion—of the constitutional arrangements. Section 28(7) of the Scotland Act 1998 confirms that Westminster retains its unlimited sovereignty, and arguably it can never relinquish that, but the devolution settlement provides through the Sewel convention that the legislative power will not be used if there is disagreement and the devolved legislatures do not give consent. Today's statement effectively turns Sewel on its head by saying that, if there is disagreement—that is, no consent on a legislative consent motion—the UK Government can proceed to legislate. This is an extremely serious development in UK Government thinking, and it risks the security of the devolution settlement."

It is essential for the effectiveness of the Convention that it is scrupulously observed where there are disagreements between the Scottish and UK Governments.

The opposite has in fact occurred, with the Convention being set aside in areas where there are differences between the Scottish and UK Governments, and the powers and responsibilities of the Scottish Parliament are being adversely affected, notably the Internal Market Act.

These are precisely the circumstances in which the Convention was intended as a safeguard for devolution.

As well as EU exit, the UK Government has claimed that it can proceed without consent where international policy is involved, for example, the Trade (Australia and New Zealand) Act 2023. However, the Scotland Act explicitly sets out that the implementation of international obligations is devolved.

More generally, the UK Government has advanced a claim that "it is sometimes necessary for the UK Government to act in its role as the government for the whole of the UK and introduce legislation that works to ensure coherence across the UK".

As the Scottish Government has set out, UK Government does not have the role it claims in devolved areas. The devolution settlement effectively transferred all executive functions in devolved matters to the Scottish Government, accountable to the Scottish Parliament.

There is no category of UK legislation identified in agreed guidance, such as the Memorandum of Understanding or Devolution Guidance Note 10 that matches the UK Government's description, which is clearly different from the "not normally" circumstances set out in the Scotland Act.

So the current situation is that the UK Government is claiming to unilaterally judge when circumstances are not normal, even when it has already sought the consent of the Scottish Parliament – if it does not like its view.

It is also claiming it can assert it is acting as the government of the whole UK – whether a matter is reserved or devolved – and again legislate without consent, a principle unknown to the devolution settlement.

It is clear that the Sewel Convention, operated in this way, provides no guaranteed protection to Scotland's democratic self-government, set out in the devolution settlement, and supported by the people of Scotland by way of referendum.

[If required]

Some have proposed that a definition of "not normally" is set out in legislation or by agreement between the governments. In theory such an approach could avoid the unilateral decision taken by the UK Government in recent years.

However, the Scottish Government is sceptical of such an approach. The UK Government is unlikely ever to agree to any binding restriction of its freedom of manoeuvre.

Second, the purpose of the Sewel Convention is not to set out circumstances in which consent is not required. It is to require the UK Government to seek that consent before legislating.

ANNEX J
Internal Market Act and Common Frameworks

Internal Market Act – Top Lines

- The Act continues to represent the most the most significant threat to devolution since the establishment of the Scottish Parliament a quarter of a century ago.
- As Professor Hugh Rawlings noted in his evidence to the Scottish Parliament's Constitution Committee, the Act cuts across the common frameworks approach of managing the practical regulatory consequences of EU exit in a collaborative way.
- The unanimous view of the Scottish Parliament's Constitution Committee is that the Act can automatically disapply devolved legislation.
- The way the Act operates is very different from how a well-designed internal market regime does. It replaces broad legal principles of mutual recognition and non-discrimination with rigid statutory requirements that apply in almost every case. It has no proportionality principle and none of the protections of the rights and powers of the other UK legislatures.
- This lack of proportionality and balance, far from helping ensure a functioning domestic market, is a recipe for confusion and uncertainty.
- This is a feature, not a bug – the Act is in reality a crude, clumsy and undemocratic attempt to constrain devolution, one that masquerades as an internal market regime.
- The UKG's behaviour over DRS is impossible to reconcile with assurances offered by UK ministers in December 2000, where there was a clear commitment to let the common frameworks reach agreement on exclusions and UK ministers UK ministers expected to give effect to that decision almost automatically.
- DRS has illustrated perfectly what the IMA is and does, and the threat it poses to devolution and the powers of this parliament.
- Scotland was taken out of the EU against the wishes of the people of Scotland. Among other things, this meant leaving the shared framework of EU law which applied symmetrically to all parts of the UK.
- Common Frameworks were the agreed means to manage regulatory divergence in a post-EU context: intergovernmental mechanisms based on collaboration and mutual respect, which balance market efficiencies with respect for devolution.
- Effective internal markets are based on the principles of proportionality and subsidiary – factors completely lacking from the unworkably rigid IMA. They are based on clear and agreed rules, with legal protections for the rights and autonomy for its territories – again none of this exists with the IMA, where the UK Government simply makes and enforces the rules.
- And internal markets are designed and implemented on the basis of co-decision and agreement. It is quite extraordinary for an internal market regime to simply be imposed on its constituent territories without their consent.
- I challenge the committee to name a single other democratic system where this would be acceptable.

Common Frameworks – Top Lines

- After the Deposit Return Scheme there is – clearly – a need to look again at how Common Frameworks are operating, and, crucially, at how all parties respect the Common Frameworks exclusions process and represent it accurately.
- It is also clear that we need to look at how frameworks are properly integrated into policy-making on all sides – which includes notification and consideration of planned policy divergence at the earliest opportunity. The agreed principles on which

common frameworks have been developed must be observed by all sides, including respect for devolution, and that devolved policy which has a market impact is entirely legitimate.

- The DRS episode has demonstrated the challenges in ensuring transparency and consistency in the common frameworks process, including the exclusions process. Transparency is difficult if not impossible unless all sides agree to observe the rules. The delays, second guessing and misrepresentation we saw with DRS make transparency very challenging.
- I know that there have been productive meetings between Scottish Government and parliamentary officials to consider the complex new scrutiny landscape in which the Parliament is operating, which is addressing, among other questions, how to ensure timely and accurate updates on the operation of common frameworks and related exclusions processes. This is a matter that will also be of interest I'm sure to this, and other Westminster Committees.
- As I have said, effective Parliamentary scrutiny is made much more challenging where there is so little transparency and predictability in how the system currently operates. I accept that new systems and ways of working take time to bed in, but the issues here are as much about a shared commitment to overarching principles of respecting devolution.
- Common frameworks continue to offer a viable model for better, more collaborative co-operation on managing some of the regulatory challenges thrown up by Brexit.
- The 2017 Frameworks statement of principles, which acknowledge the legitimacy of policy that carries a market impact, and the need to respect devolution, offer an alternative to the IMA, which imposes an unworkable rigidity and lack of proportionality and balance.
- Frameworks are however under strain, as can be seen from the DRS episode, where the work of the Resources and Waste framework was largely set aside, with UK ministers assuming complete discretion over an effective veto of the policy and a right to impose whatever conditions they saw fit.

[Redacted]

ANNEX K
Deposit Return Scheme

- *DRS – Dispute Resolution.* In the case of DRS, the fundamental point is that there was no dispute. All parties agreed through the Resources and Waste Common Frameworks that an IMA exclusion was necessary in order for Scotland's DRS to be viable.

- The Process for securing an exclusion was followed to the letter by the Scottish Government, as set out in our published correspondence and timeline (to date UKG has not disputed any element of that timeline).

- Regrettably, UK Government Ministers decided to misrepresent the process and to make unfounded claims that the Scottish Government had somehow failed to make a timely case for an IMA exclusion.

- Dispute mechanisms can work where there is a substantive disagreement, and all parties are prepared to follow the rules in seeking a resolution. They cannot work where one party is content to make up the rules as it goes along.

LATEST POSITION ON DRS - WORKING ACROSS THE FOUR NATIONS

- We remain committed to inter-operable DRS schemes across the UK provided that we can work in a spirit of collaboration not imposition.
- We said from day one that we recognise the need for alignment, for schemes across the UK to work in tandem and we designed our scheme in good faith that they would be aligned.
- Since last summer officials from across all administrations have been collaborating to ensure we are delivering a DRS which is simple and efficient for industry and consumers across the UK.
- However, alignment does not mean imposing England's scheme on everyone else.
- A joint policy paper will be published in 2024 setting out the four-nation approach to DRS. [UKG leading on timescales for publication.]

DRS MATERIAL SCOPE (GLASS)

- We believe that including glass in DRS is the best way to achieve our 90% target glass recycling rate, as demonstrated by successful international schemes, where 45 of the 51 schemes around the world include glass.
- Evidence also shows there is a compelling environmental and economic business case for an 'all-in' scheme.
- However, the UK's decision to remove glass from its own scheme and refusal to agree a full Internal Market Act exclusion means that we are currently unable to launch our DRS with glass as planned.

- The Scottish Government remains committed to launching a successful DRS and continues to work closely with the UK government to define next steps for DRS implementation across the country which will include consideration of material scope in Scotland.

ANNEX L

Gender Recognition Reform Bill and the Section 35 Order

Issue: In line with the Inquiry's Terms of Reference, the Committee may ask the extent to which the Gender Recognition Bill case could have been avoided through an effective use of the dispute resolution mechanism under the IGR arrangements or greater dialogue and cooperation between both governments more generally.

Lines to take

- We remain committed to the Gender Recognition Reform (Scotland) Bill which aims to remove barriers to trans people's enjoyment of their human rights.
- The Bill was passed by an overwhelming majority of the Scottish Parliament with support from members of every party.
- The use of Section 35 order by the UK Government represents an unprecedented challenge to the Scottish Parliament's ability to legislate on devolved matters.
- The UKG did not follow the agreed procedures set out in the Memorandum of Understanding between governments by raising their reasons for the Order during its progress through Holyrood. The MOU makes clear that governments should work to avoid this situation, and that section 35 should only be a last resort.
- On the UKG's use of Section 35 of the Scotland Act in respect of the Gender Reform Recognition Bill, FM Wales said: "*I think the UK Government's decision to use powers that have never been used in the whole history of devolution is a very dangerous moment, and I agree with the First Minister of Scotland that this could be a very slippery slope indeed. The reason why I say that is because, I'm afraid, we have the precedent of what has happened to the Sewel convention in front of us…. Now, that just tells you that, once you've done this once, using it again becomes easier, and the second time leads to the third time very rapidly."*

Alternatives to the Legal Challenge

- The UKG did not ask for any amendments to the Bill to address their reasons for making the section 35 Order, nor did they raise the possibility of such an Order.
- In fact, the UKG proposed similar reforms themselves and in their 2018 consultation said that Scotland can have its own system for gender recognition and committed to working with us on implementation.
- While the UKG subsequently reversed their policy, regular engagement between officials continued to take place including work towards a section 104 order which is the usual mechanism for the UK and Scottish Governments to work together to make consequential changes following an Act of the Scottish Parliament.
- The Memorandum of Understanding between the UKG and the devolved Governments (agreed in 1999 and updated in 2013) makes clear that the use of section 35 should be a matter of last resort.
- This is now an emerging pattern of interference in devolved matters by the UKG.

Current Position

- The decision not to appeal Lady Haldane's ruling in the Outer House of the Court of Session was not an easy one. We recognise that many trans people were disappointed by this.
- The UK Government's intervention means the Bill cannot proceed to Royal Assent. It remains a Bill passed by the majority of the Scottish Parliament and we will not be withdrawing it.
- The judgment from the Court of Session relates solely to use of the section 35 power, and was not about the merits of the Bill.

- The ruling states "*Others may have reached a different conclusion on the same material. This is plainly a situation where another decision might have been made with equal propriety, and its predictive nature means that there is possibly no single right answer."*
- Devolution is fundamentally flawed if the UK Government is able to override the democratic wishes of the Scottish Parliament in this way.

Costs

- The costs incurred relate to protecting the powers of the Scottish Parliament.
- We have already published our costs up to the end of the substantive hearing. Full costs will be published when available.

Legal Advice

- All Governments need to be able to rely on confidential and candid legal advice and therefore you will appreciate I cannot comment on legal advice.
- By long-standing convention, accepted by Governments across the UK, and as codified in the Scottish Ministerial Code, I cannot divulge either who provided legal advice or its contents.

ANNEX M

Top Lines on Levelling-up

- A suite of announcements were made in UKGs Autumn Statement on 22 November relevant to SG, including 4 Levelling Up Partnerships (LUPs). It also includes the extension of reserved tax reliefs for Green Freeports and Investment Zones, from 5 to 10 years.

- In the Spring Budget UKG was able to confirm SG's agreement to match the UKG extension for Green Freeports in respect of devolved tax reliefs. In the case of Investment Zones, UKG have agreed to reimburse SG for relevant devolved tax reliefs; funding increases from £80m to £160m.

- Results of Levelling Up Round 3 were made prior to budget, with no role for SG or Scottish Ministers in the decision or delivery of the Fund (as has been the case in all past Levelling Up Funds).

- Whilst these direct funding announcements will be welcomed by local authorities, officials are concerned by the raft of UKG interventions delivering devolved activity. Whilst officials work to ensure alignment, increasing SG budget and resource is absorbed in delivering UKG policies. Due to direct funding, SG are being circumvented, entailing a relative decrease in Barnett share – restricting SG budget to deliver SG policy.

- Levelling Up Partnerships exemplify this; providing analytical local "deep dives" to identify and fund up to £20m in priority projects, possibly in devolved matters (which SG have no budget to match). Officials from both Governments have agreed an evidence led place selection methodology for LUPs.

- The methodology offers a spread across remote, rural and urban areas, taking account of similar interventions, and greatest impact. LUPs will be announced for Western Isles, Argyll & Bute, Scottish Borders and Dundee.

- The Long-Term Plan for Towns will also fund projects in the devolved space, with UKG imposing their own priorities and structures which do not take account of the Scottish approach. The Spring Budget on March 6 2024 contained two new towns to include in this: Peterhead and Arbroath.

ANNEX N

IGR: Finance

[Redacted]

The Block Grant remains the largest source of funding for the Scottish Budget. It is updated each year in line with the Barnett Formula, which ties funding levels to UK Government spending plans for other parts of the UK on areas that have been devolved to Scotland.

The majority of SG funding is therefore shaped by UK Government decision-making that can be based on very different context, principles, and policy perspectives – such as universal provision, size of public sector, spending priorities, and productivity performance. However, under current arrangements the Scottish Government has no influence over the timing of UK

Government spending decisions (including Spending Review exercises) which in turn impacts Scottish Government planning horizons, especially for capital budgets.

Historically under the Barnett formula, Scottish Government funding per person has been relatively higher than other parts of the UK (over time it has been estimated by the UK Government, and independent institutions such as the Institute for Government, that Scotland receives around 20 per cent to 30 per cent more comparative Block Grant funding per head relative to elsewhere in the UK).

The rate of population growth (specifically Scotland's population as a proportion of England or England and Wales) is also an important factor in determining funding through the Barnett Formula. 38. As long as Scottish and rest of the UK populations grow at the same rate, Scottish funding per head should slowly converge towards rest of the UK levels over time (usually referenced as the "Barnett Squeeze"). However, this has not actually occurred, in large part because Scotland's population growth has been significantly slower on average which has offset this "Barnett Squeeze" effect and kept relative funding levels per person higher in Scotland than elsewhere in the UK.

The UK and Welsh Governments have expressed interest in reviewing the Barnett Formula and potentially moving to funding arrangements linked to an assessment of need, implying that the UK Government would seek to bring per capita funding for Scotland more in line with other parts of the UK. The Scottish Government's policy has been to resist this change, not least as the Smith Commission was clear that Barnett should continue to underpin the Scottish Fiscal Framework.

There are several other areas of Scottish Government Fiscal and Finance policy which require UK Government involvement or are heavily influenced by UK Government decision-making. For example, changes to reserved tax policy can also impact on devolved tax revenues and funding for the Scottish Budget.

Under the Fiscal Framework, HMT has to approve any new taxes that the Scottish Government may wish to introduce, and consultation is now live on the Building Safety Levy which we need to contribute to the costs of Cladding remediation going forward.

In providing benchmarks or otherwise setting expectations, UK Pay Review Bodies can also affect pay negotiations in devolved areas and drive the agenda with Trade Unions, albeit acknowledging that decisions on pay are entirely for Scottish Ministers to make.

It is also important to recognise that there are system dependencies between the Scottish and UK Government: HMRC still administers and collects income tax on behalf of SG (as a partially devolved tax) and Department of Work and Pensions currently administers some devolved social security benefits through agency agreements.

Scotland is also still tied to the UK Government fiscal regime, including UK parliamentary processes which can be unpredictable and introduce uncertainty – for example the UK's 'Spring' supplementary estimates timetable often moves and makes in-year management far less predictable each year.

The UK Government has announced several funding streams in devolved areas under the broad heading of levelling up, totalling an estimated £647.5 million of lost consequentials for SG to determine the use of in devolved areas. This includes the Levelling Up Fund (single

year rounds), the UK Shared Prosperity Fund (over three years), and the Community Ownership Fund (over four years).

ANNEX O

SG Plans for Consultation on the Role of the Law Officers

Issue: Alex Salmond noted in his session at SAC that he removed law officers from Cabinet and that he did not understand why that was reversed after he left office. He also said he approved of reform of the roles of the law officers.

SG has a commitment to consult on the role of the Law Officers following a manifesto commitment in 2021. As a first step a baseline research report was commissioned in autumn 2022 and a draft of that report is now being considered by officials before advice is provided to Ministers on the next steps.

Lines to take (if required)

- The Scotland Act emphasises the Law Officers' independence from any other person as they undertake their prosecutorial and investigation of deaths functions, a principle they uphold in everything they do, in an objective and professional manner. Any proposed changes must continue to preserve the independence of the Law Officers.

- We have commissioned an expert report, which will provide a detailed baseline understanding of the many distinct roles and functions of the Law Officers, and will provide information on how the functions of Law Officers operate in other countries.

- We will be considering the options for proceeding with this work when we receive a final version of the report.
- [In relation to Alex Salmond's comments about removing Law Officers from Cabinet]. There has been no change to the position. Cabinet is the main decision making body of the SG and comprises the First Minister and all Cabinet Secretaries. Law Officers attend Cabinet when business requires, reflecting the extent to which legal issues arise in the course of Government business. In his appointment letter to Lord Advocate Mulholland in 2011 the Former First Minister Alex Salmond agreed that the Lord Advocate would attend Cabinet when required in order to provide legal advice and to represent his own Ministerial interest, and Lord Advocate Mulholland frequently did so.

Background

On 9 February the Secretary of State for Scotland wrote to the First Minister asking about progress on SG's work on this issue. Media reporting of this letter indicated that the S of S favoured reform of the roles, although the UKG has not officially adopted such a position. The Cabinet Secretary for Justice and Home Affairs replied to the S of S on 29 February setting out the position as in the lines above.

There is continuing political interest in this subject at both Holyrood and Westminster, including a proposed backbench bill from Joanna Cherry KC MP to devolve full powers for reform to Holyrood (as aspects of the law officers' roles are reserved). We are not aware of the detail of Ms Cherry's proposals since no Bill has been published.

The Scotland Act emphasises the Law Officers' complete independence from any other person as they undertake their prosecutorial and investigation of deaths functions – a principle they uphold in everything they do in an objective and professional manner. Any changes in proposed legislation must continue to allow the Law Officers to operate independently.

ANNEX P

Building a New Scotland (BANS) Series & Propriety Issues

Issue: The Scottish Affairs Committee has launched an inquiry into the role of the (Unified) Civil Service, the relationship between the UK Government and the Scottish Government and how the emerging divergence between both governments is affecting official impartiality and adherence to the Civil Service Code. The propriety of BANS work has been called into question by opposition parties in Holyrood, the media and at UK level. Lord Foulkes, member of the Constitution Committee, has been leading on this criticism in Westminster.

Lines to take

- The Scottish Government has a clear mandate to provide the people of Scotland with the information they need to make an informed choice about their future and has committed to doing so in its Programme for Government.
- It is the role of the Civil Service to support the elected government of the day in developing and implementing its policies. This is the case for constitutional policy as it is for other areas.
- The Permanent Secretary to the Scottish Government is accountable to the FM and to the Scottish Parliament on these matters.
- He is assured, in line with advice taken, that civil service work in the SG on constitutional reform is consistent with the Scotland Act, the Constitutional Reform and Governance Act and the Civil Service Code.
- He has set out, including publicly at a Scottish Parliament Committee, the proper, lawful and regular basis on which Civil Servants are doing this work, within the requirements of the Civil Service Code.
- Work by Ministers and officials in the Scottish administration which contributes to commentary on reserved matters has taken place over successive administrations. It contributes to discussions between the governments on areas where there is a close relationship between devolved and reserved responsibilities, or proposals for change, as well as public and Parliamentary debates on these matters.
- Of course, UK Ministers and officials undertake similar work to comment on devolved matters.

Civil Service Code

- If there is any concern that SG activities are inconsistent with the CS Code as presently drafted, the process for addressing this is set out in the Code itself, with decision-making ultimately resting with the Civil Service Commissioners.

- If the suggestion is that the Code requires to be supplemented or adjusted, a process is set out in section 5 of the Constitutional Reform and Governance Act for adjusting the Code issued to CS who support Scottish Ministers, including consultation with the FM.

- Relevant lines of responsibility and accountability are governed by existing schemes and statutes, and there is no provision for additional guidance to be provided about the interpretation or application of the Code to particular circumstances.

Scottish Affairs Committee Inquiry into the civil service (announced 29 Feb 24)

- We note the planned Parliamentary inquiry into the role of the civil service in supporting both the UK and Scottish governments and will engage positively with the Committee during its deliberations.

[ITEM 2]

Cabinet Secretary for Constitution, External Affairs

and Culture

Angus Robertson MSP

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Pete Wishart MP
Chair
Scottish Affairs Committee
House of Commons
Westminster
London
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20 September 2023

Dear Pete

Further to the letter sent by the First Minister on 1 August 2023, please find attached as an annex the Scottish Government's response to the Scottish Affairs Committee's inquiry: 'Intergovernmental relations – 25 years since the Scotland Act 1998'.

You might also find helpful some material previously published by the Scottish Government. On 14 June 2023 we set out in detail how the actions of the UK Government in recent years have eroded the devolution settlement and responsibilities and powers of the Scottish Parliament and Government: Devolution since the Brexit referendum. This builds on an earlier publication which sets out how devolution has benefitted Scotland, allowing decisions that matter to people in Scotland to be taken here, and how developments since the 2016 EU Exit vote have put this at risk: After Brexit: The UK Internal Market Act & Devolution.

The Scottish Parliament's Constitution, Europe, External Affairs and Culture (CEEAC) Committee have also been undertaking their own inquiry into devolution post EU Exit and my written evidence to that Inquiry can be found here: How is Devolution Changing Outside the EU.

The current position is best summarised by my remarks to the CEEAC's evidence session on 29 June 2023:

"At the heart of things, there needs to be an understanding that devolution is about being able to make different policy choices. It is about divergence. That does not need to be a bad thing. That was possible in the European Union, but it is now increasingly not possible in the United Kingdom."[1]

[1] Angus Robertson evidence session to CEEAC on 29 June 2023

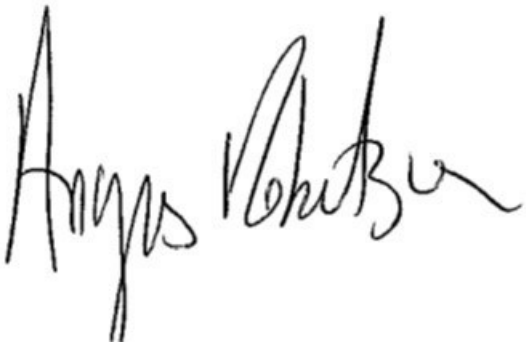
The CEEAC Committee's Inquiry follows their report published in September 2022, The Impact of Brexit on Devolution, which concluded that there are fundamental concerns that need to be addressed in relation to how devolution works outside the EU.

I share those concerns. The UK Government's continued attempts to undermine devolution since 2016 and its continued disrespect as evidenced in the papers referred to above, both for the Scottish Government and for the Scottish Parliament, presents an existential risk to the concept of self-government which was supported by an overwhelming majority of the people of Scotland in the 1997 referendum.

Developments since 2016 have also illustrated that fundamental features of the UK's constitutional system – particularly the doctrine of Westminster supremacy – mean that Scottish democratic self-government will always remain at risk. In Renewing Democracy Through Independence, the second paper of the Building a New Scotland series, the Scottish Government sets out its view, and the evidence supporting it, that independence is the only realistic way to renew Scotland's democratic institutions, respect the voice of the people of Scotland, and secure Scotland's democratic future. Paper 4 in the series – Creating a Modern Constitution for an Independent Scotland - sets out the Scottish Government's vision for a modern constitution in an independent Scotland that would put rights and equality at the heart of Scotland's democracy-and ensure that the people of Scotland decide who governs their nation and how.

I hope this is of assistance to the Committee.

Yours aye



ANGUS ROBERTSON

Annex – Scottish Government's response to the Scottish Affairs Committee's inquiry: Intergovernmental relations – 25 years since the Scotland Act 1998

Public administration in Scotland has long been distinctive, with many institutions being, or remaining, independently run from those in the rest of the United Kingdom, for example, health, education and justice.

Devolution in Scotland has its basis in the Scotland Act 1998, as amended (most extensively by the Scotland Acts 2012 and 2016). The Act followed a referendum in 1997, in which devolution was endorsed with overwhelming support by the people of Scotland. The Scottish Parliament was established in 1999, and addressed a "democratic deficit": governments at Westminster without popular support from the electorate in Scotland making decisions for Scotland. The Scottish Parliament better reflects the views of the people of Scotland in making choices on key issues such as health, education, justice and the environment.

The devolution settlement preserved the sovereignty of the Westminster Parliament over the Scottish Parliament, but it did not create a parallel hierarchy of governments. In 1999 governmental functions and funding in devolved areas transferred to the Scottish Government, which has the experience, knowledge and responsibility for developing policy and allocating funding for devolved matters. The Scottish Government is accountable to the Scottish Parliament and people for these functions, not to the UK Government or Westminster Parliament. The UK Government had no continuing role or powers over devolved matters (with some limited exceptions).

Principles for relations between the governments were set out in 1999 in an agreement known as the Memorandum of Understanding (or MOU). The MOU contained arrangements for intergovernmental relations (IGR) to be conducted through the Joint Ministerial Committee (JMC) and related structures. However, these protections were not legally binding and depended on adherence to agreements and conventions, conducted in good faith. The most significant was the Sewel Convention: that the

UK Parliament will "not normally legislate with regard to devolved matters without the consent" of the devolved legislatures.

The UK Government also published a series of Devolution Guidance Notes to "set out advice on working arrangements between the UK government and the devolved administrations" and provide an "introduction to the main principles involved in the managing of the devolution settlements, bilateral relations, correspondence, parliamentary business, legislation and concordats."

The JMC Plenary was supposed to meet at least once every year, but no meetings occurred at all between 2002 and 2008. It has been suggested that since in the early years of devolution, the same party, Labour, was in government in Westminster, Cardiff Bay and Holyrood that "this meant that intergovernmental communication was conducted through informal channels and there was little perceived need for formal summits between the four governments."[1]

The election of the first minority SNP Scottish Government in 2007, and the subsequent election of the coalition UK Government in 2010, brought the liaison between the UK Government and Scottish Government back into the channels created by the MOU. In this

period the mechanisms envisaged in the MOU were maintained and worked up to a point, though effective IGR relied then, and since, on informal bilateral contact.

The IGR arrangements and relationships were able to deal effectively with significant political, legislative and administrative challenges. These included reaching the Edinburgh Agreement of 2012 following a strong electoral mandate for an SNP government in Scotland in 2011, which paved the way for the referendum on independence in 2014, and successfully negotiated the Scotland Acts of 2012 and 2016 and their accompanying fiscal arrangements, enabling the Scottish Parliament to give its legislative consent to those bills.

The effective conduct of IGR in this period was underpinned by common understandings, for example UK governments generally leaving devolved matters to devolved institutions, as well as the common framework of EU structures and law in areas of EU competence.

However, the position has deteriorated from 2016, as a consequence of Brexit and the opportunity the UK Government clearly believed it presented to pursue what has been called "muscular Unionism", its increasing intervention in devolved policy matters, and the erosion of the protections provided to devolved institutions, especially the Sewel Convention.[2]

This approach was not an inevitable consequence of Brexit. The Common Frameworks programme shows that there is an entirely practicable way for the governments to manage policy divergence in devolved matters on the basis of agreement. Indeed, Common

[1] Devolution: Joint Ministerial Committee – Institute for Government

[2] The Scottish Government has set out the detail of UK Government actions in Devolution since the Brexit Referendum (June 2023).

Frameworks are an example of new intergovernmental mechanisms which could help embed better ways of working between the four governments, as they are underpinned by principles including respect for devolution, observing the Sewel Convention and acknowledging the legitimacy of policy divergence. However, the Common Frameworks programme has been put under strain by the unilateral - and wholly unnecessary - imposition of the Internal Market Act in 2020, and then by UK Ministers' failure to honour assurances offered in both Houses of Parliament to follow agreed processes, and allow policy divergence agreed through a Common Framework to be excluded from the Act's effects.[3]

The Internal Market Act 2020 embodies many of the wider challenges we face in establishing more equitable and sustainable IGR: it was developed internally by the UK Government without the involvement of devolved governments; it was imposed after the Scottish Parliament and Welsh Senedd had explicitly refused legislative consent, in breach of the Sewel Convention; it undermined preceding collaborative efforts to establish agreed ways of working through common frameworks; and it has been deployed by UK Ministers to undermine agreed processes, as with the Deposit Return Scheme.

There has been some recent examples of practical and constructive engagement and joint working between the Scottish and UK Governments, for example on Covid, supporting displaced Ukrainians and the agreement reached to update the Fiscal Framework. In her letter to the Finance and Public Administration Committee[4], the Deputy First Minister wrote: "The updated agreement (Fiscal Framework 2023) recognises changed circumstances since 2016 and contains greater budget flexibility and borrowing powers for Scotland. These

outcomes are the result of collaborative working between the Scottish and UK Governments and a willingness to compromise on both sides."

Whilst these are some examples of what can be achieved when parties adhere to the principles set out in the IGR Review, overall the Scottish Government is very concerned by developments since 2016. These concerns are also shared by the Welsh Government: for example Jeremy Miles MS has told the Senedd: "the tone of inter-governmental relations has deteriorated due largely to a series of aggressive intrusions by the UK Government into areas of devolved competence."[5]

The effect of the UK Government's actions is to constrain the powers and responsibilities of the Scottish Government and Parliament, imposing decisions of the UK Government in devolved areas, and undermining some of the protections provided to the Scottish Parliament. Ultimately these developments frustrate the purpose of devolution and risk making the settlement practically unworkable. Previous experience demonstrates this does not have to be the case, even under the UK's current constitutional system, which relies on expected standards of behaviour rather than enforceable legal rules. Both reforms and cultural changes are necessary to rebuild trust and confidence in the IGR system.

[3] United Kingdom Internal Market Bill – Volume 686 Debated 16 December 2020
[4] Letter to the Finance and Public Administration Committee
[5] Written Statement: Review of Intergovernmental Relations (24 March 2021) | GOV.WALES

The Review of Intergovernmental Relations (IGR review)

As noted above, the JMC was established in 1999 as the formal machinery for how IGR would operate in the UK and was intended to provide central coordination of the overall relationship between the UK Government and devolved governments.

The IGR review was commissioned in March 2018 when Heads of Government agreed that officials should review and report on the existing intergovernmental structures, to ensure they were fit for purpose in light of the UK's exit from the EU. It was published in January 2022 by the UK Government, with all three devolved governments agreeing to use this as the basis for engagement, provided it was kept under review. The principles set out in the IGR Review lay the foundations for good intergovernmental working in the same way that the principles did in the original MoU. These are:

- maintaining positive and constructive relations, based on mutual respect for the responsibilities of the governments and their shared role in the governance of the UK;
- building and maintaining trust, based on effective communication;
- sharing information and respecting confidentiality;
- promoting understanding of, and accountability for, their intergovernmental activity; □ resolving disputes according to a clear and agreed process.

The conclusions of the Review contained some ostensible practical improvements to the structures and processes that support IGR that are intended to create the conditions for constructive collaboration on common challenges in a way that is more respectful of reserved/devolved responsibilities such as:

- a fairer dispute resolution process – which includes, for the first time, the principle that no government can be both party to, and arbiter of a dispute; and recourse to independent advice;

- an independent Secretariat staffed from across the governments which will oversee machinery and the dispute resolution process;
- provision for more regular and frequent meetings with a built in oversight and escalation route; and
- more transparent arrangements for formal intergovernmental meetings – with shared responsibility for agenda setting and chairing meetings.

To date there has been one meeting of the Prime Minister and Heads of Devolved Governments Council (November 2022, in the margins of the British Irish Council Summit). This meeting discussed the economic outlook and cost of living, including rising inflation, and shared challenges in supporting the NHS. There have also been four meetings of the Interministerial Standing Committee (IMSC) where agendas covered topics such as the Sewel Convention, Ukraine, the UK legislative programme, Common Frameworks, the cost of living, and Investment Zones. There have also been five meetings of the Finance: Interministerial Standing Committee (F:ISC) which has provided an opportunity to discuss issues

around cost of living support, energy security and net zero, budget flexibility and replacement EU funding.

There have also been a series of meetings at portfolio level (Interministerial Groups – IMGs), including new IMGs that did not exist prior to the Review such as the Housing, Communities and Local Government IMG and Safety, Security and Migration IMG.

It should be noted that neither the new structures set out here in the IGR review, nor the JMC structure that preceded it, were intended to be the only conduits for intergovernmental working. On the contrary, the high-level formal structures have always been the complement to extensive bilateral and multilateral engagement and co-operation, formal and informal, between the Scottish and UK Governments.

Implementation of the proposals set out in the IGR Review have been disrupted by various events, such as the absence of Ministers in Northern Ireland since 2022, and reshuffles in the UK Government in summer and autumn 2022. More time is therefore needed to bed in the new machinery, including a more regular pattern of the Interministerial Standing Committee (IMSC) meetings. There has also not yet been a date secured for the second meeting of the Heads of Government Council, despite the Terms of Reference stipulating that the Council meets annually, though ad hoc meetings can be arranged according to need. There has also not yet been an opportunity to test the concept of time-limited Interministerial Committee (ICs) for looking at a specific topical issue.

There has been progress on the IGR Secretariat, with a Head of Secretariat taking up post in May 2023 and discussions are ongoing to bring the Secretariat to full complement. Duties for the logistics of IGR meetings are currently being handed over from the interim arrangement of IGR officials in the respective governments to the Head of Secretariat.

The new dispute resolution process has not yet been fully tested. Issues that have developed on the IGR landscape have so far been dealt with through the principle of dispute avoidance where possible and have gone through informal escalation channels, including official level engagement.

Therefore, the efficacy of the new dispute resolution mechanism remains to be seen. However, there are some crucial elements which would constitute improvements over the previous process.

a. A disagreement will be assessed by the secretariat against a set of standards, jointly agreed criteria to assess if it qualifies as a dispute. Once confirmed as a dispute, the relevant parties must engage with the process fully.
b. The dispute will be chaired by an independent party – who is not involved in the dispute. This could be a representative of a government not party to the dispute or an independent representative, but in either case the chair must be agreed by all parties to the dispute.
c. There is a presumption of third-party advice being taken unless there is unanimous agreement not to seek this. The scope and provision of advice

will be jointly agreed, and the relevant criteria for appointment are set out in the IGR review.

d. There is also a presumption of escalation to the next stage if resolution is not found, avoiding a deadlock, and allowing escalation all the way to Heads of Government level (which cannot be delegated). There are set timescales for each stage, which can only be extended by agreement from all parties to the dispute.
e. The outcome of disputes will be reported to the respective legislatures, including any third-party advice received, thus increasing public scrutiny.

The IGR review aims to increase transparency and Parliamentary accountability through measures intended to complement, and not duplicate, arrangements that individual governments have with their respective legislatures. This includes encouraging publication of communiques of IGR meetings, and the IGR Secretariat duties including an annual report of intergovernmental activity. Transparency and Parliamentary scrutiny is also mainstreamed into the dispute process, with governments party to a dispute being required to report on the outcome of formal disputes to their respective legislatures.

Although the IGR proposals deliver many elements of what we set out to achieve from the review and offer the prospect of improvements to current processes, these proposals alone will not deliver the step change in attitude and behaviour from the UK Government that is needed if there is to be a genuine improvement in intergovernmental relations. As highlighted above, the UK Government handling of Brexit, and imposition of the UK Internal Market Act 2020, despite explicit refusal of consent under the Sewel convention, show that procedural improvements alone are not enough to reset the relationship.

The real test will be whether the UK Government is capable of delivering the goodwill and trust for improved intergovernmental relations and that the proposed arrangements lead to more meaningful engagement with productive outcomes. The evidence so far suggest that procedures and processes, however well designed, can only be effective if they are applied with good faith and integrity by all parties.

[ITEM 3]

Summary of oral evidence sessions		
Date	**Name and Themes**	**Summary**
20 Feb	**Alex Salmond** (FM 07-14) **Themes**: International relations	Evidence contrasted that of the previous day with former Secretary of States for Scotland. AS questioned that disputes between UKG and the then Scottish Executive were resolved informally and through 'cosy' chats: "There were many, many disputes going back years…whatever the cosy chats were doing, they weren't resolving disputes." He was critical of David Cameron's letter on FM's meeting with Erdogan - "if things are working, people don't publish public rebuttals". He said he was very struck by DC's letter on FM's Erdogan meeting, describing it as out of character and "such a ridiculous proposition". He provided an example from 2013 that demonstrated the benefits of effective collaboration between SG and UKG on international engagement where SG had helped UKG build its relationship with China following DC and Nick Clegg's meeting with the Dalia Lama.
	IGR relations and structures	He was asked about international relations, inc Gaza – he said foreign leaders are able to understand devolved leaders may have different positions to the UKG and that we should be much more relaxed about people having different positions. He defended SG's international offices and talked positively about their work to promote trade and inward investment.
	Fiscal framework	AS acknowledged the advantages of existing personal relationships when it came to IGR and negotiations, but he said those relationships could never replace a proper system or IGR structure being in place.
	Civil service	When asked why IGR was not working effectively at the moment, AS pointed to the stress and strains of Brexit and covid. He said that the generation of devolved parliament Ministers that were familiar with HoCs and Whitehall had also passed.
	Record of SG	Michael Shanks asked if AS' successors always worked to make devolutions work? He said he could not conceive that any FM of Scotland would not want to do their absolute best in terms of IGR in the best interests of Scotland.
	Law officers	He criticised the fiscal framework and expressed surprise that it had been agreed to, he felt it disadvantaged Scotland.

	Covid FM or other Ministers appearing at SAC	AS described former Scottish Executive/Government Perm Secs Sir John Elvidge and Peter Housden as powerful, said they sought parity of esteem for SG and wanted IGR to be carried out in that basis. His impression of the UK civil service was their forgetfulness – "they forget about Scottish implications of what they are doing…the JMC's resumption was important to stop the absent mindedness of Whitehall departments". Douglas Ross questioned AS' record in office, focusing on ferry contracts, education and drug deaths. AS said that he wasn't involved in the ferry contracts and pushed DR to acknowledge he was incorrect. Douglas Ross asked for AS' view of the dual role of the Lord Advocate. AS said he removed law officers from Cabinet and that he did not understand why that was reversed after he left office. He said he approved of separating the role…there are many reasons why that would be a good idea. There were questions on covid and record keeping, including references to messages from the Covid Inquiry. He was critical of Liz Lloyd as an adviser. He said: there was no policy in his administration of the deletion of messages. AS was asked if it was his opinion that JS and NS lied under oath regarding the Covid Inquiry and the deletion of messages policy. He refused to be drawn into that and said it was a matter for the covid enquiry. Anneliese Dodds raised that FFM and FM had not agree to appear in front of SAC. AS said he didn't see any difficulty in Scottish Ministers or FMs appearing in front of SAC or other committees providing requests are reasonable.
19 Feb	Former Labour SoS for Scotland: **Douglas Alexander** (06-07); **Lord Des Browne** (07-08); and **Baroness Helen Liddell** (01-03)	Across the session there was a view that IGR worked well between the two administrations due to the frequent use of informal networks to discuss issues at Ministerial level and this was why formal structures were not as necessary. Both HL and DB commented on international relations/foreign affairs and this was prompted by a question on the Scottish Parliament taking a different position on the Iraq war. HL said: "There is also the fact that this relationship between what is reserved and what is devolved keeps being muddled up. We have to be very careful, particularly as things exist at the moment, where we have two wars going on, that we do not give our enemies the opportunity to drive us apart... These are extremely difficult times, so it is quite important not to exacerbate the differences between the two on, for example, foreign affairs,

	International relations	because that is one of the key issues that could affect all our futures." LB spoke about Gaza: "…there is a particular problem at the moment because there is a part of our politics now that wants to take one of these wars and overlay it on our domestic politics, which is very damaging to many things, to this country and unfortunately, in my view, to the actual war that I am talking about. If anybody is in any doubt about what I am talking about, I am talking about what is happening in Gaza and Israel at the moment. There is a constant desire in certain places to overlay this on our politics for partisan purposes, and it is terrifying." Douglas Ross asked for views on FM's position on Gaza and funding for Gaza. HL said: "I must admit, as somebody who has been a diplomat, that I think the discussion with the Prime Minister of Turkey was bizarre, and it should not have happened. If it did happen, there should have been an official from the Foreign Office present. There is a war going on; you do not muck about when there is a war going on."
	Scotland Office	
	Section 35	DB said he was going to deliberately duck that question while DA described the humanitarian crisis in Gaza and said: "…I will resist the opportunity—which in other forums is taken— to seek to establish any kind of political advantage, whether I agree with the First Minister or not." After further questions from Douglas Ross on SG funding, DA expressed the need to be: "…extraordinarily careful about how that money is being deployed particularly in the circumstances of a conflict. I would want and hope that all actions necessary are being taken to ensure that money is being used effectively and reaching those most in need and is not vulnerable to being misused. That is incredibly challenging in a conflict zone."
	Law officers	Christine Jardine asked whether SoS for Scotland was still appropriate as devolution has evolved and whether it should be a Minister of State for the nations and regions, etc? DB felt the role of SoS was important for the devolved nations. HL felt it was very important to have a voice at the Cabinet table.
	BaNS	
	IGR structures	DA said he believe in solidarity and in co-operation and that there continued to be a case for making sure that Scotland's voice is heard at the highest levels in the UK and that the UK Government works effectively and constructively with the Scottish Government. Douglas Ross asked whether there were ever points each SoS considered using section 35?

	Sewel	HL said she never paid any attention to section 35 until it was used. DA said it was included in the Scotland Act as a safety value, but did not have reason to use it. DA also said: "I think it is deeply regrettable that relations between the Scottish Government and the UK Government deteriorated to a point where, instead of the kind of collaboration that characterised our time in office, we have seen recourse to the courts." Douglas Ross asked about the role of the law officers. DB's view was that the role of the law officer as the chief prosecutor of a country needs to be taken out of politics. Douglas Ross asked whether it was right that tax payers money was being spent on a Minister for independence? They would not be drawn on that question. Sally-Ann Hart asked if there was anything they would do differently to foster more collaboration with IGR structures? DA said: "I would come back to politics and not structures. I would not have undertaken Brexit. I would not have watched the misgovernance that we have seen in recent years. And I would have hoped that we could have developed a different character of politics over those years…Leadership matters. Politics matters. A commitment to good will rather than to accentuating conflict matters. Those are not within the gift of structures to deliver. They are within the gift of political parties and securing the consent of the public to deliver." When asked on Sewel, HL could not think of a time where it was a problem. DA spoke about personal relationships and informal networks being used and described "two Governments that were pulling in the same direction" so there was policy alignment.
18 Dec	**Prof Nicola McEwan, Glasgow Uni and Dr Coree Brown Swan, British politics lecturer Stirling Uni**	On IGR relationships and Structures, NM said there is a lot of distrust and that it's not all about the constitution. She said it would be wrong to conclude that no positive working is taking place. There is still a lot of positive working among and between officials and at the ministerial level. Sally-Ann Hart asked if the success of IGR structures relied on political tolerance – "the SNP has a drive towards independence. Is that a block to constructive relations no matter which party is in Government in the UK?" CS disagreed, "Arguably the intergovernmental relations that underpinned the Edinburgh agreement, which made an independence referendum possible, were between two parties

		very much opposed to each other on the question of independence, yet we saw quite productive and solid working." NM also disagreed: "I often hear it said that because the SNP Administration is pro-independence, it does not want intergovernmental relations to work, but I do not think that is the case. I don't think that the SNP Administration invests as much in the system as the Welsh Government does, because the Welsh Labour Government needs intergovernmental relations to work, but certainly a wise administration—pro-independence or not—would invest in making the system work because there is an in-built dependence there. The devolved Governments need IGR more than the UK Government needs IGR because they are dependent for resources and information flow and they are trying
	Section 35 and DRS	to influence decisions that will have an impact on their own responsibilities and roles." NM said it was important that the PM attends the Prime Minister of the UK and Heads of Devolved Governments Council – "The current Prime Minister had one meeting quite early on in his premiership and that was received very positively within the devolved institutions, but it has not happened again…Boris Johnson described it as optically wrong for the UK's Prime Minister to hold regular meetings with the devolved
	BaNS and civil service	Administrations' First Ministers. It was clearly something that he felt was inappropriate, which, putting the UK into a comparative context, looks quite unusual…"
	IMA	Douglas Ross asked for a view on the first usage of section 35 on GRR and work across govts on the Deposit Return Scheme. NM said there seemed to be quite a lot of collaboration again with DEFRA and SG throughout the process, as part of their regular engagement. She said that she has heard a lot of frustration from officials in devolved administrations – "they are wanting a response and they have to wait on an issue going through the
	Sewel	Whitehall machine; then, once positions are taken at the collective ministerial responsibility level, you cannot really change them. All of that tells me that there is some need and opportunity to have engagement much earlier on in the process with all of those who will be the relevant players." Douglas Ross asked for NM and CS to comment on media coverage of a tweet from @ScotGov relating to BaNS work and both would not be drawn into commentating on it. NM spoke about the IMA policy lab that she recently held and said that "one of the fundamental problems around the UKIM Act was that it reshaped devolution in quite fundamental ways without the

		consent of the devolved institutions. It was not a good starting point in that sense, but we also took into that session an understanding that the issue was real, that leaving the European Union created new challenges around how you balance political autonomy with a domestic market and market unity, because that issue is also very important." On IMA BS added: "When we think about the importance of goodwill and trust, I think the process by which that (IMA) was passed had a negative impact on that sense of goodwill and trust." On Sewel. NS said "we have to find ways to restore confidence in the Sewel convention. I do not think it is dead in the water in that it is still used routinely, but it has lost its power." She added "there is a job of work to be done in the House of Commons in particular but in the Lords, too, to think through procedurally what the responsibility of the UK Parliament is when consent is withheld. How do you want to introduce, implement and observe the Sewel convention? Is there a willingness to revisit the legislation, or to carve out areas, or to work together with the devolved institutions, to try to get towards a position where, whatever the stumbling blocks are, they can be amended and addressed to secure consent…I think it is not beyond the wit of us to design some sort of procedural process to try to give it meaning and restore its authority, where withholding consent is meaningful again."
13 Nov	**Lord Andrew Dunlop; Lord Jim Wallace; Lord George Robertson** Themes IGR Brexit FMs at SAC Law officers	In describing his review of UK Government Union capability, LD concluded that there was an assumption that when the devolution settlements were established, that these would be consensual relationships due to Labour led govts in . Edinburgh, Cardiff and London and the use informal party channels. He said by 2007 you had two Governments who, instead of being collaborative, were in competition with each other. The structures that had been anticipated had probably, over time, atrophied; by 2007, they had probably fallen into disrepair and weren't fit for purpose. LD said David Cameron had a good working relationship with both of the FMs he worked with and that was demonstrated by the delivery of the Edinburgh agreement. LW said that Brexit put a strain on IGR and that was unexpected and something the system was not prepared for. Douglas Ross raised that SAC was not able to get former and current FM's to appear at SAC. Douglas Ross raised the role of the dual role of the Lord Advocate. LR would not be drawn on it. LW said: "I think there is an advantage in having a split in responsibility between the prosecutorial role, and arguably the one

	Relationship w/ PM GRR	for the investigation of fatal accidents and deaths, and the political role. I think that they are distinctive, and although I don't think that any of the holders of the office have abused it, perceptions are important too. I don't have a problem with the Government's principal legal adviser having a party affiliation, but that is not necessarily a good thing if you are the head of the prosecution because it could give the wrong impression. LD said that during covid, the relationship ebbed and flowed due to the number of PMs. He did not think it was a good thing that Liz Truss did not pick up call the leaders of the devolved Governments when she became PM. He said he would expect Rishi Sunak to hold the Prime Minister and Heads of Devolved Governments Council at least one a year. LW said that UKG were absolutely right on GRR as it "crossed a line in terms of the Equality Act". LD said he would have preferred that the two govts came to an agreement in advance of section 35 being used.
13 Nov	**Prof Ciaran Martin Prof Jim Gallagher** Muscular unionism Section 35 Sewel	Both CM and JG start the session in agreement that Brexit has put the biggest strain on IGR and even a well-managed Brexit would have strained IGR. CM says there have been three shocks to IGR: Brexit; covid; and the 2014 referendum. JG said "There is far too much muscle, but there is muscle on both sides…What the Scottish people clearly express is a desire for autonomy, but not separation... We need to find a more collaborative approach across all this stuff. If you were to ask me whether I am in favour of muscular Unionism, I would say certainly not, but you cannot look at it in isolation." CM said: "As a feature of Government policy, it is sometimes present, but I think it can be overdone… the Brexit process were pretty muscular, whereas I would not myself take the view that the invocation of section 35 of the Scotland Act 1998 for the first time was muscular Unionism. …it is a design feature of the devolution settlement, whether you like it or not, and there is nothing untoward or improper about its use under lawful circumstances, which are now being tested." JG said "the UK's systematic habit of breaching the Sewel convention is deeply unhelpful. If we say to the people of Scotland, "You've got a legislature and we won't interfere with it unless there's some exceptional circumstance, and perhaps not even then," and then, apparently routinely, cease to follow that

		convention, I think there is a thing to be done. Conversely—because it takes two to tango all the time in this—there is a tendency towards autarky in St Andrew's House, and poor preparation of legislation material, which gets you into the kind of fankle that requires Governments to use section 35. Both sides need to contribute to that process of rebuilding their relations."

Summary of written evidence	
UK Government	In discussing the effectiveness of the new IGR mechanisms, the UK Government's submission to the Committee states that: *"*All four governments are jointly responsible for upholding the spirit and content of the IGR structures and ensuring productive intergovernmental relations. The continued success of intergovernmental meetings is therefore dependent on all parties remaining fully engaged and involved in the process." [Redacted]
Scottish Parliament: Constitution, Europe & External Affairs Committee	The view of the CEEAC Committee is in line with their 'How Devolution is Changing Post-EU' report (October 2023). On Common Frameworks and the Internal Market Act the Committee said: "The Committee's view is that there needs to be much greater clarity around how regulatory divergence will be managed through the Common Frameworks programme. In particular, there needs to be clarity around how the market access principles are intended to work in those circumstances." (page 6) "The Committee's view is that there is, therefore, a need to rearticulate the definition and principles of frameworks both in the light of experience to date and the new constitutional landscape." [particularly in light of the UKIMA 2020 and Retained EU Law (Revocation and Reform) Act 2023] (page 6) In relation to Common Frameworks and their scrutiny, the Committee also notes the importance that Parliament must be involved at appropriate points in order to facilitate policy making and robust scrutiny. The Committee highlights the "fundamental difference of viewpoint" between the UKG and the DGs with regards to how the Sewel convention has been operating since EU exit**,** arguing that the position is "not sustainable". The Committee also notes the following: "Our view is that the Sewel convention is "under strain" following the UK's departure from the EU**.** Although the Scotland Act 2016 gave statutory recognition to the convention, this did not alter its status and it did not become judicially enforceable. There continues to be considerable debate as to whether it should be strengthened in law and subject to judicial review or whether it can be strengthened on a non statutory basis or whether no strengthening is required." (page 7) The Committee believes that the extent of UK Ministers' new delegated powers in devolved areas amounts to a significant constitutional change. The Committee recommends that, similar to the proposed supplementary agreement on Common Frameworks "there should also be a

	supplementary agreement on the use of delegated powers by UK ministers in devolved areas". (page 8)
Tony Blair	Reflecting on whether intergovernmental structures worked he noted: "My recollection is that the structures in place were broadly fine. Of course, as the MoUs show, there was need for refinement but overall, I have no direct recollection of feeling there was a problem in intergovernmental relations. Of course, issues arise in these inter-governmental relationships but, from my experience, come down in the end to the ability of the two leaders, the two governments, to work those through. A lot of that is about personal relationships, wider political dynamics, rather than structure." [Redacted]
David Cameron	He stated that at the beginning of his premiership (2010), the "devolution settlements seemed to have created a never-ending grievance culture" (extract from his "For the Record" book). To address this, he had made an emphasis on putting in place "formal, official channels of communication" and increasing engagement at Ministerial and official level. He said: "I stipulated that the Prime Minister and First Minister should meet regularly, as should Secretaries of State and their counterparts in Holyrood. There would be a lot more official to official contact too, and if reasonable approaches were made to UK Ministers, I said that they should appear before Scottish Parliamentary committees. I also made an offer to appear once as year as Prime Minister before the Scottish Parliament. Although that offer was not taken up, I believed that the overall engagement vastly improved and, above all, allowed us to deliver a better deal for Scotland." Reflecting on the Edinburgh Agreement, he noted: "Today, many independent observers hold that Edinburgh Agreement up as a gold standard of how administrations can work together." (page 2). He described other milestones during his premiership (e.g. the Smith Commission and an update of the Memorandum of Understanding on devolution, and City and Growth deals) which made the "relationship between Westminster and Holyrood more respectful, collaborate, effective and efficient..." Lord Cameron also pointed out that: "during my period in office, there were 24 legislative consent motions – the Scottish Government giving their approval to laws the UK Parliament was enacting – and only one was refused." [Redacted]
The Constitution Society	Dr Dexter Govan, Director of Research, submitted evidence on behalf of the Constitution Society. Whilst many witnesses recognise that it may still be too early to fully assess the effectiveness of the IGR mechanisms, Dr Govan observes:

	"The clearest example of where more must be done to effectively implement the framework is in its objective to resolve "disputes according to a clear and agreed process. "Since the beginning of 2023 two distinct disagreements have particularly impacted the Holyrood/Westminster relationship. The first is over the Gender Recognition Reform (Scotland) Bill, 2022, and the second over Scotland's Deposit Return Scheme. The first of these led the Secretary of State for Scotland to make an order under section 35 of the Scotland Act to prevent the Bill receiving Royal Assent. "Without speaking to the issues contained within the Bill, that a section 35 order was made must be seen as a failure of both the formal and informal dispute resolution mechanisms of the framework. Similarly, that the UK Government was not able to extend an exclusion under the UK Internal Market Act 2020 to glass within the Deposit Return Scheme is a failure of the new framework to prevent such acrimonious disputes arising in the first place. "These disputes and the inability to resolve them mean intergovernmental relations between the Scottish and UK governments are in a worse position today than they were a decade ago. It is extremely disappointing that the framework has been unable to prevent this deterioration. That said, it would not be fair to attribute this deterioration to the framework itself."
Prof Jim Gallagher	Prof Gallagher fed into the written submission from the Royal Society of Edinburgh and also provided a short submission of his own highlighting some underlying issues and making some concrete proposals. Professor Gallagher's main points are that the "present system needs a radical reset". In light of this, he proposes: • that intergovernmental structures should have statutory basis; • that there should be a broadly drafted legal obligation of what the EU calls "sincere cooperation"; • that the UK should also enact a statutory constitutional principle of subsidiarity to guide the allocation of powers and responsibilities; and • for the Governments to share legislative programmes in advance with each other with a view to identifying competence issues which might arise (this should operate in both directions). [**Note:** Prof Gallagher also provided oral evidence, alongside Ciaran Martin – see above summary on 13 November]
Prof James Mitchell	In his submission, Prof Mitchell reflected on interdependencies and the need for collaboration between central government and devolved governments to tackle 'wicked problems': "Tackling 'wicked problems' eg poverty, demographic challenges, the range of environmental challenges….require constructive engagement and not only between

	Scottish and UK Governments but local authorities, third and private sectors, communities and citizens. In essence, an old fashioned institutionalist approach encourages blame games and cannot hope to tackle deeply entrenched social and economic challenges." He adds: "Some commentary has seen IGR operating in the 'shadow of hierarchy' ie where the centre asserts its dominance. But there is a much broader problem arising from the tendency for everyday issues to be 'constitutionalised'. This reduces, if not removes, appreciation of common interests and heightens awareness of conflicting interests."
The Royal Society of Edinburgh	The RSE has previously published papers on related topics including 'Future Governance of the UK' in 2021. On IGR over the last 25 years, they commented: "Despite devolution to Scotland, Wales, and Northern Ireland, the UK remains one of the most centralised advanced democracies because England is still substantially run from London. This asymmetry makes IGR between the UK Government and the devolved administrations challenging, and since 1999, relations have tended to be ad hoc. Further devolution of powers over taxation and welfare, and the establishment of common frameworks for the UK post-Brexit, mean that decision-making has become increasingly interdependent across the UK, and the need for effective IGR has increased. Ironically, post-Brexit UK…has adopted key features of the EU model of IGR…Yet it lacks key elements of the EU model and the safeguards built into that system, notably the principle of subsidiarity and proportionality. Consequently, <u>the UK System operates in a 'shadow of hierarchy' with the UK Government always able to prevail, even though it does not in practice always impose its will unilaterally</u>." On Covid, RSE said: "The pandemic exposed the case not only for better working relationships between the different nations of the UK, but amongst all the different governments within it. However, formal mechanisms for IGR, such as the JMC, were sidelined."

[ITEM 4]

<u>International Engagement</u>

In March 2023, FCDO unilaterally issued guidance to UK Heads of Mission overseas instructing Ambassadors to take a more interventionist stance to Scottish Government activities. This has led to a marked change in approach by UK Missions, though this has manifested in different ways at different locations – due in large part to the differing approaches and attitudes of UK Ambassadors.

James Cleverly and Lord Cameron have separately threatened to withdraw support for ministerial visits and to close down the Scottish Government's overseas network, following meetings between the First Minister and foreign leaders without the presence of a UK Government official.

Despite this more politically challenging context, Scottish Ministers continue to adopt a pragmatic posture when travelling overseas. The Cabinet Secretary for Constitution, External Affairs and Culture has been clear that a request for UK Government attendance at overseas Ministerial meetings is generally acceptable though will be considered on a case-by-case basis.

It is accepted that there may be occasions where having a senior UK Government official supporting a meeting is in Scotland's interests, both in a practical and an optical sense or where there will be a sensitive foreign policy interest. In other cases, there may be no such benefit or justification, for example where the subject matter is entirely devolved or there are no UK Government led 'negotiating' interests at play; or there are pre-existing personal relationships.

At large, fast-paced international events, practicalities may mean it is simply not possible to include a UK official at a last-minute meeting. There should be no assumption of UK Government attendance as a default, as is implied in the FCDO guidance, but equally the risks should always be weighed.

Beyond the issue of ministerial visits - in relation to devolved or mixed matters, such as education, culture, energy, agriculture and food and drink - SG will continue to insist that where the UK Government is concluding bilateral and multilateral agreements, the devolved governments should have the opportunity to be involved in their development and implementation. In these situations, Scottish Ministers maintain that the UK Government department concerned should not purport to represent all four nations unless the devolved governments have expressly agreed it can do so.

There might also be wider opportunities in the international sphere, within devolved competence, that the Scottish Government can develop more informally, for example with bodies such as the OECD, the European Forestry Network, and the UN Food and Agriculture Office

[ITEM 5]

Lead Ministers	Angus Robertson, Cabinet Secretary for the Constitution, External Affairs and Culture Kaukab Stewart, Minister for Culture, Europe and International Development
Related Documents	• MoU between UKG and the Devolved Governments • The Concordat on International Relations
Background	*Review of Intergovernmental Relations* The January 2022 Review of Intergovernmental Relations established a new system for relations between the devolved and UK Governments, replacing the previous Joint Ministerial Committee (JMC) system which had been in place since the beginning of Devolution. While the JMC system has been replaced by the new IGR arrangements in practice, the Concordat on International Relations, which sets out how the UK Government and Scottish Ministers should cooperate with

<table>
<tr><td></td><td>respect to international relations, has not been updated and is still in place. More information on this can be found in the below section on the Concordat.

COVID-19 Pandemic Arrangements

During the initial stages of the COVID-19 Pandemic in 2020, the UKG established four Ministerial Implementation Groups (MIGs), one of which covered International Issues. This was the only MIG to which Ministers from the Devolved Governments were not invited – the UKG asserted that international relations are entirely reserved, despite clear policy interactions with devolved responsibilities.
Instead, Devolved Government Ministers received regular updates from the FCDO on the matters discussed at the International MIG. The four COVID MIGs were stood down in May 2020 in favour of two UKG Cabinet Committees (C-19 Strategy and C-19 Operations).</td></tr>
<tr><td>Structure of committees</td><td>Context

The Committees which compose the new IGR structures are as follows in order of descending seniority:

• The Prime Minister and Heads of Devolved Governments Council (“the Council”)
• The Interministerial Standing Committee (IMSC) for cross-cutting topics; and Finance Interministerial Standing Committee (FISC) for Finance issues.
• Portfolio-level Interministerial Groups (IMGs)

Cross-cutting issues which would normally fall within the remit of the IMSC can also be discussed in isolation from other subjects by a “time-limited Interministerial Committee” (ICs) if agreed by all governments.

Committees which consider International/EU issues

The Interministerial Standing Committee (IMSC) has overall responsibility for considering wider strategic issues and provides oversight of all IMGs. FCDO Ministers will be invited as necessary.
The IMSC is complimented by two internationally focussed IMGS, the Trade IMG and an IMG for the EU-UK Trade and Cooperation Agreement. Departmental IMGs will also consider international engagement and agreements where devolved competence is being considered.
These forums supplement departmental IMGs which consider “international engagement and agreements where devolved competence is being considered”.</td></tr>
<tr><td>Meetings relevant to International/EU Issues</td><td>
<table>
<tr><th>Date</th><th>Committee</th><th>Comment</th></tr>
<tr><td>17/02/2022</td><td>UK-EU Relations IMG</td><td>Further info held by EU Secretariat</td></tr>
<tr><td>29/06/2022</td><td>IMSC</td><td>Chaired by SG DFM.</td></tr>
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			Neither International nor EU specific issues mentioned, other than calls from DFM and the WG for UKG to develop a more constructive relationship with the EU in the context of Brexit negatively contributing to the cost-of-living crisis.
	04/07/2022	UK-EU Relations IMG	Further info held by EU Secretariat
	01/02/2023	IMG Safety, Security and Migration	Inaugural Home Office meeting, Mr Gray participated for SG.
	19/10/2023	IMSC	DFM chaired this online meeting of the IMSC. FCDO Ministers provided updates on the current situation in Gaza and discussed matters relating to the UK Government's International Development White Paper. An action was agreed for the IMSC to consider how best to ensure international matters are appropriately considered in the IGR system, including through ministerial level engagement, and that the IMSC would return to this issue at a future meeting. On legislation, DFM recorded the Scottish Government's continued concern about the UKG approach to legislative consent issues, and also highlighted the Scottish Parliament's views, including those set out in the CEEA Committee's recent report on 'How Devolution is changing Post-EU'.
	20/02/2024	IMSC	Agreed Agenda: • Update on Actions • Legislation • Community Cohesion • Final Report of the Independent Commission on the Constitutional Future of Wales • AoB Meeting was cancelled, currently in the process of being rearranged.
	April tbc	IMSC	
Concordat on International Relations	The Concordat on International Relations, a supplementary agreement to the MoU, sets out how the United Kingdom Government and Scottish Ministers will co-operate with respect to international relations, as well as common arrangements agreed between UKG and the Devolved		

	Governments. The document is not legally enforceable and is intended to be binding in honour only. The common arrangements between UKG and the DGs cover: • exchange of information • formulation of UK policy and conduct of international negotiations • implementation of international obligations • co-operation over legal proceedings • representation overseas • secondments and training co-operation • visits • public diplomacy, the British Council and BBC World Service • trade and investment promotion • diplomatic and consular relations. The FCDO and DGs agree to exchange information – the FCDO to provide information to the DGs on international developments that touch on devolved matters (including non-devolved matters that touch on devolved areas), and the DGs to provide information to the FCDO on developments that may affect their responsibilities or be relevant to their interests – this includes information on contacts and discussions with foreign national or sub-national governments or counterparts in international organisations. Regarding the formulation of UK policy and conduct of international negotiations, the FCDO (or other lead UKG Department) agrees to consult (in a timely fashion) the DGs about the formulation of the UKG position where negotiations touch on devolved matters. This section also provides for the Devolved Governments to hold working-level discussions on devolved matters with foreign national or sub-national governments or counterparts in international organisations and, in cooperation with the FCDO, to facilitate cooperation between the DG and foreign actors (as above) on devolved matters – provided the arrangement or agreement does not purport to bind the UK in international law, affect the conduct of international relations or prejudice UK interests. Finally, this section provides that Ministers from the DGs may form part of the UK negotiating team in support of a single UK negotiating line. Regarding implementation of international obligations, the DGs are responsible for observing and implementing international obligations (including those under “informal instruments”) which relate to devolved matters.

[ITEM 6]

21 Feb: Lord Foulkes' Herald article on 'cross-party group of peers' (Wallace & Goldie also) critical of SG spending on 'overseas "embassies"', pushing for a UKG spending review on devolved competencies.
4 Feb: Mail on Sunday reports on publication of SG International Strategy, quoting Donald Cameron who accuses Ministers of "straying into a reserved policy areas" and that FM "ignored established protocols" on the Erdogan meeting. SG spokesperson response that all DGs maintain international offices and that the work of our offices is consistent with the Scotland Act.
19 Jan: Times reports that FM was offered a "new year phone call" with Erdoğan - SG referred to the FCDO who set conditions that FCDO must be on the call and must brief FM in advance.
18 Jan: Herald reports 'Diplomatic row as Yousaf invites Erdoğan to Scotland', following FOI release of readout of the meeting at COP28.
10 Jan 24: Herald reports 'Diplomatic row over Erdoğan meeting escalates', citing an FOI which noted timelines for arranging the meeting and that FM was briefed orally.
15 Dec: Cab Sec CEAC responds to Foreign Secretary letter, stressing SG desire to work in partnership with UKG and international partners on shared interests and notes the UKG cancellation of a bilateral meeting in London
10 Dec: Foreign Secretary Cameron writes to Cab Sec Robertson regarding FM meeting with the Turkish President at COP28, threatening support for Scotland and the future of our international network.
16 Oct: Foreign Secretary Cleverly writes to Cabinet Secretary External Affairs, claiming that UKG official was "blocked" from attending a meeting between FM and Icelandic Prime Minister Jakobsdóttir at New York Climate Week in Sept.

- Cab Sec responded on 27 Oct, explaining that UK officials were not blocked but rather not invited to the meeting which was hosted by Iceland.

13 Apr: FCDO issues staff guidance on overseas visits by Ministers from all Devolved Governments (DG). This asks Heads of Mission to clear all visits by DG Ministers through the Foreign Secretary.

- Cab Sec External Affairs wrote to Foreign Secretary on 1 May asking that the guidance be withdrawn. Response received 22 May.

<u>Scottish Ministers undertake overseas visits in support of Scotland's economy and wider interests, promoting Scotland as the best place to live, work, study, visit or do business.</u>

- The Scottish Government is internationalist to its core and Scotland has a contribution to make to global issues: whether that is tackling climate change, international development, advancing equalities around the world, the treatment of those fleeing war and oppression and many other topics where the UK government also has relevant responsibilities.
- We cannot be expected to, and we will not, turn our back on our core national values.

The work of Scotland's international network delivers tangible benefits to our people, businesses and institutions.

- Our recently published annual report outlines the work our international offices to engage with the rest of the world on a wide range of devolved policy areas
- Overseas offices also work to improve the key international factors that will deliver for Scotland's economy – growing exports, delivering investment, creating and securing jobs in Scotland, and helping realise a just transition to a fairer, greener, growing economy.
- Angus Robertson is on record praising the "strong working relationships" between Scottish and FCDO officials at post. These relationships have created excellent opportunities to showcase Scotland to our international partners and thereby promote wider UK interests.

Scotland's international network supports the growth of our economy:

- £275m forecast export sales supported by Scottish Development International and the SG Office in Washington DC;
- £320m forecast international export sales in European markets supported by SG and SDI teams in Ireland, France, Belgium, Germany and the Nordics; and
- 1,000 planned real living wage jobs associated with investment supported by SDI and the Scottish Government Office Washington DC.

Nothing in the Scotland Act precludes Scottish Ministers from discussing any issue with other governments provided they don't purport to represent the views of the UK.

- [Redacted] Explanatory Notes to the Scotland Act 1998 clearly state that *"the reservation of international relations does not have the effect of precluding the Scottish Ministers and officials from communicating with other countries, regions, or international or European institutions".*
- The UK Government has made no attempt to agree their so-called 'protocols' and guidance with the Scottish Government.
- Meetings at international events are often arranged at short notice, making the protocols frequently unworkable in practice. It is not uncommon for Ministers to receive oral briefings in advance of these meetings.

[Redacted]

- Scottish Government and Foreign Office officials regularly work together to advance Scotland's interests overseas.
- They have enjoyed constructive, professional working relationships and it is entirely inappropriate and damaging to Scotland's interests to suggest otherwise.

Scotland enjoys strong relationships with partners around the world who are keen to discuss shared interests.

- Some of these partners will ask Scottish Ministers about Scotland's future.
- [Redacted]
- The views of Scottish Ministers will not surprise anyone with even a cursory knowledge of UK and Scottish affairs. [Redacted]

The decisions and approaches taken and reinforced by successive UK administrations are damaging the UK's reputation and Scotland's interests.

- [Redacted] People and businesses the length and breadth of Scotland are suffering the consequences every day.
- [Redacted]

[ITEM 7]

IMPACT OF FCDO GUIDANCE ON OVERSEAS VISITS AND ENGAGEMENT
EXAMPLES

DATE	AREA	RAG	Description [and indicate whether explicit reference to guidance]	Risks	Strategic Significance/Options for Response
[Redacted]	[Redacted]		[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]

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[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]

[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]

[ITEM 8]

TOP

BACKGROUND

22 December 2023 – Ms Somerville wrote to the Home Secretary, James Cleverly, to raise concerns about the recently announced changes to the immigration rules and requested a meeting to discuss Scotland's distinct needs.

- 11 February 2024 – Tom Pursglove, appointed Minister of State at the Home Office on 7 December 2023, replied to Ms Somerville dismissing the ask for meeting.
- 25 February 2024 – Ms Somerville wrote to the Home Secretary in relation to misleading comments made by the UK Government in relation to Scotland's support for asylum seekers and reiterated her request for a meeting to discuss migration issues.

1 February 2023 – The inaugural Home Office Interministerial Group (IMG) for Safety, Security and Migration met via videoconference.

- The second IMG was held via videoconference on 11 July 2023. At both meetings, Ministers discussed issues relating to the three core themes.
- The third meeting of the Group was due to take place on 5 February 2024 however this was postponed at the request of Home Office Ministers in order to review the agenda. No new date has been set but officials are exploring dates towards the end of March 2024.
- [Redacted]

LINES

- Immigration is a cross-cutting policy with significant impact on areas of devolved responsibility such as the economy, education, housing, healthcare and public service delivery.
- It is crucial that there is regular and meaningful engagement with Devolved Governments about the ongoing impact of immigration policy and prior to any decisions about the immigration system.
- Both our governments have a shared understanding that migration is one of many levers that will need to be utilised to address the economic and demographic challenges we face.
- Engagement with the Scottish Government has been sporadic and tokenistic and is particularly detrimental in light of the recent changes to the immigration system.
- These changes will cause irreparable damage to vital sectors of our economy such as higher education, health and social care, construction and hospitality. It is already apparent that the impact on families and our communities will be devastating.
- Migration makes a real difference in key sectors of our economy by strengthening and supplementing local skills, as well as by taking up jobs in regional economies that are otherwise hard to fill and support the sustention and growth of rural communities.

RURAL VISA PILOT

- The Scottish Government previously submitted proposals for a rural visa pilot to Home Office Ministers and the Migration Advisory Committee (MAC).
- This pilot aims to facilitate migration to these rural and island areas in Scotland through a community-driven approach to migration, based on genuine employment opportunities that have the best fit for the specific needs of each area.
- In its 2022 Annual Report, the MAC described the proposal as *'sensible and clear in both scale and deliverability'* and stated that it is in the UK Government's interest to trial the proposed scheme.
- Despite presenting the proposals over a year ago there has been no meaningful engagement from the Home Office to date.
- It is unacceptable that while the Scottish Government is seeking engagement on proposals that might better meet Scotland's needs, the UK Government has failed to consult or collaborate constructively with the Devolved Governments on the distinct needs of all parts of the UK.
- The current immigration system is not meeting the needs of Scotland. At the moment it is not meeting the needs of sectors across the UK.
- This position is not sustainable and I would ask you to work with us to urgently develop and implement change. I would welcome an immediate discussion on these proposals.

Annex B

Section 28(1)- relations within the UK

An exemption under section 28(1) of FOISA (relations within the UK) applies to some of the information requested. This exemption applies because disclosure would, or would be likely to, prejudice substantially relations between the Scottish Government and the UK Government or other devolved administrations. It is essential for the effective administration of the UK as a whole that there should be regular, and often private, communications between the Scottish Government, the UK Government and the other devolved administrations. The release of these communications about intergovernmental relations will mean that the UK Government and devolved administrations are likely to be more reluctant to share such information with the Scottish Government in future, which would reduce both the frequency and openness of communications between the Scottish Government and other UK administrations.

This exemption is subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exemption. We have found that, on balance, the public interest lies in favour of upholding the exemption. We recognise that there is a public interest in disclosing information as part of open, transparent and accountable government, and to inform public debate. However, there is a greater public interest in maintaining good relations between the Scottish Government and the UK Government, and in protecting the free exchange of information between the administrations to ensure that we keep each other fully and regularly informed about matters of mutual interest, such as intergovernmental relations. There is no public interest in disclosing information when that will damage relationships and disrupt future communications.

Section 30(b)(i) – free and frank provision of advice

An exemption under section 30(b)(i) of FOISA (free and frank provision of advice) applies to some of the information requested. This exemption applies because disclosure would, or would be likely to, inhibit substantially the free and frank provision of advice. This exemption recognises the need for officials to have a private space within which to provide free and frank advice to Ministers before the Scottish Government reaches a settled public view. Disclosing the content of free and frank advice on the Scottish Affairs Committee will substantially inhibit the provision of such advice in the future, particularly because these discussions are still ongoing and decisions have not been taken.

This exemption is subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exemption. We have found that, on balance, the public interest lies in favour of upholding the exemption. We recognise that there is a public interest in disclosing information as part of open, transparent and accountable government, and to inform public debate. However, there is a greater public interest in allowing a private space within which officials can provide full and frank advice to Ministers, as part of the process of exploring and refining the Government's position, until the Government as a whole can adopt a policy that is sound and likely to be effective. This private thinking space is essential to enable all options to be properly considered, based on the best available advice, so that good policy decisions can be taken. Premature disclosure is likely to undermine the full and frank discussion of issues between Ministers and officials, which in turn will undermine the quality of the policy making process, which would not be in the public interest.

Section 38(1)(b) - Personal Information

An exemption under section 38(1)(b) of FOISA (personal information) applies to some of the information requested because it is personal data of a third party, eg names/contact details of individuals below the Senior Civil Service, and disclosing it would contravene the data protection principles in Article 5(1) of the General Data Protection Regulation and in section 34(1) of the Data Protection Act 2018. This exemption is not subject to the 'public interest test', so we are not required to consider if the public interest in disclosing the information outweighs the public interest in applying the exemption.