

Agenda – External Affairs and Additional Legislation Committee

Meeting Venue:

Committee Room 2 – Senedd

Meeting date: 13 May 2019

Meeting time: 14.00

For further information contact:

Rhys Morgan

Committee Clerk

0300 200 6565

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Private pre-meeting

(13.45–14.00)

1 Motion under Standing Order 17.22 to elect a temporary Chair

(14.00)

2 Introductions, apologies, substitutions and declarations of interest

(14.00)

3 Changes to freedom of movement after Brexit: the implications for Wales – scene-setting session with academics

(14.00–15.00)

(Pages 1 – 25)

Jonathan Portes, King’s College London

Break (15.00–15.05)

4 Changes to freedom of movement after Brexit: the implications for Wales – scene-setting session with academics

(15.05–16.05)

Marley Morris, Institute for Public Policy Research

Victoria Winckler, Bevan Foundation

Madeline Sumption, The Migration Observatory, Oxford University



5 Paper(s) to note

(16.05–16.10)

5.1 Paper to note 1: Correspondence from Oliver Dowden MP to the Chair regarding the agreement on Government procurement – 3 April 2019

(Page 26)

<https://www.gov.uk/government/publications/government-procurement-agreement-uk-participation-after-eu-exit/bidding-for-government-contracts-overseas-in-a-no-deal-brexite>

5.2 Paper to note 2: Correspondence from Bruce Crawford MSP to David Lidington MP regarding intergovernmental relations – 26 April 2019

(Pages 27 – 30)

5.3 Paper to note 3: Correspondence from David Lidington MP to the Chair regarding intergovernmental relations – 3 May 2019

(Pages 31 – 34)

5.4 Paper to note 4: Correspondence from the Brexit Minister and Counsel General to the Chair regarding a meeting of the Joint Ministerial Committee (European Negotiations) – 9 May 2019

(Page 35)

6 Motion under Standing Order 17.42(vi) to resolve to exclude the public from the remainder of the meeting

(16.10)

7 Changes to freedom of movement after Brexit: the implications for Wales – consideration of evidence

(16.10–16.25)

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Agenda Item 5.1



Oliver Dowden CBE MP
Minister for Implementation
Cabinet Office
70 Whitehall London SW1A 2AS

Our ref: PS/0879

Mr David Rees AM
Chair of the External Affairs and Additional Legislation Committee
National Assembly for Wales
Cardiff, CF99 1NA

3rd April 2019

Dear David,

Agreement on Government Procurement (the GPA)

Thank you for your letter dated 21 March seeking clarification on the potential impact a gap in GPA membership could have on UK (including Welsh) suppliers.

As you say, during a gap, as a matter of international law, UK suppliers will not have guaranteed access to government procurements, and associated rights and remedies as provided for in the GPA.

In practice, during a short gap, we anticipate UK suppliers will still have access and be entitled to bid for procurement opportunities in the majority of those GPA jurisdictions which are the most important for UK suppliers. This is because UK suppliers will continue to have access to markets under the domestic laws or policies in those jurisdictions. GPA jurisdictions will not have the necessary time to amend their laws or policies as this would take longer than the gap, and would be of no benefit to them. They would also have to immediately unpick those amendments to grant the UK guaranteed access once the UK accedes as an independent party.

Therefore the impact of a short gap is likely to be marginal. Officials continue to work on mitigations to address this. In addition, guidance has been published for UK businesses. This will be updated as necessary before exit day. For further information please follow this link: <https://www.gov.uk/government/publications/government-procurement-agreement-uk-participation-after-eu-exit/bidding-for-government-contracts-overseas-in-a-no-deal-brex>

Thank you for signalling that our engagement with you on the GPA has improved. I can assure you we will continue to engage fully on matters relating to the GPA, including on the process of updating the lists of entities in the UK's schedules to the GPA following accession.

Yours sincerely,

Oliver Dowden CBE MP

Agenda Item 5.2



The Scottish Parliament
Pàrlamaid na h-Alba

Rt. Hon. David Lidington MP
Minister for the Cabinet Office
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SW1A 2AS

The Scottish Parliament
Edinburgh
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By email

26 April 2019

Dear Minister,

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

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

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

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

¹ The Northern Ireland Assembly is not presently sitting

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

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

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

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

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

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

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

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

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


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

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

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

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

Yours sincerely,



Bruce Crawford MSP, Convener of the Finance and Constitution Committee

Other members in attendance:

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

Annexe: Parliamentary Committee reports:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



Our Ref: CDL/2963

David Rees AM
National Assembly for Wales
Chair, External Affairs and Additional Legislation
Cardiff Bay
CF99 1NA

3 May 2019

Dear David,

I believe that the regular and ongoing engagement between the four UK administrations is vital for effective intergovernmental working. I am pleased to provide an overview of the recent Ministerial engagement with the devolved administrations and an update on the review of intergovernmental relations.

Review of intergovernmental relations

At the Joint Ministerial Committee (Plenary) on 14 March 2018, Ministers from the UK Government and devolved administrations agreed to review the existing intergovernmental structures. The review of intergovernmental relations is a joint review between all four administrations, with leads from each administration charged with taking forward each of the five thematic workstreams.

On 19 December 2018, the Joint Ministerial Committee (Plenary) reviewed the progress made so far on the review. They remitted work back to officials from the four administrations to make progress against the five workstreams. It was agreed that the governments will continue to work together to:

1. Develop a set of **principles** to provide the context for future relations, which in turn will continue to shape the work of the review;
2. Ensure that the **governance of common frameworks** is being developed to ensure they can function effectively. Governance structures are being designed to facilitate agreement and provide clarity on the roles and responsibilities of each party, and to strengthen intergovernmental working on a substantial number of policy areas;
3. Ensure that the existing **dispute resolution** mechanism in the overarching MoU on Devolution is adapted to manage the range of policy differences that may arise as the UK leaves the EU, including those involving third parties. The majority of our differences are

resolved through dialogue rather than detailed procedures, which we believe is the best way to conduct effective intergovernmental relations. We expect the principle of dispute avoidance to remain central to managing disputes in the future and we are supporting common frameworks teams to bolster their dispute avoidance processes.

4. Maintain and build upon existing **machinery**, including the Joint Ministerial Committees, reflecting the range of views on the effectiveness of the current arrangements. We are considering the machinery required in relation to:
 - a. The coordination of relevant domestic issues, particularly the governance of future common frameworks;
 - b. Ongoing EU business and the UK's future partnership with the EU; and
 - c. The UK's wider international interests.
5. Ensure that there are effective arrangements for **engagement on international matters**. This work continues to be informed by further thinking on the machinery and principles for effective intergovernmental working.

This is a live body of work that has many interdependencies. In many areas, the four administrations are already taking significant steps to outline new processes for the devolved administrations, such as the enhanced role of the devolved administrations in the next phase of EU negotiations and the work on establishing common frameworks. The revised version of the frameworks analysis published on 4 April 2019 demonstrates the significant progress made jointly by the four administrations on common frameworks. As mentioned above, this joint work includes the arrangements needed to govern common frameworks in the future to facilitate agreement and promote effective intergovernmental working.

Joint Ministerial Committee (EU Negotiations)

The Joint Ministerial Committee (EU Negotiations) (JMC(EN)) has met once since our last correspondence for the sixteenth time, on 7 February 2019. At the meeting, the Secretary of State for Exiting the European Union provided an update on the progress of the EU exit negotiations as well as developments in Parliament. The Committee also discussed domestic issues, including updates on operational readiness, the EU (Withdrawal Agreement) Bill and common frameworks. They also noted the publication of the second EU Withdrawal Act and Common Frameworks report.

The next meeting of JMC(EN) is currently being organised. As well as the formal JMC(EN) meeting, the Chancellor of the Duchy of Lancaster has also kept in close contact with his counterparts in the devolved administrations to keep them updated on the latest EU exit developments.

Joint Ministerial Committee (Europe)

The Joint Ministerial Committee (Europe) (JMC(E)) has continued to meet quarterly, mainly ahead of European Council meetings. The meetings are chaired by the DExEU Minister of State, Lord Callanan, and provide an opportunity for ministers from the devolved administrations to provide

input on UK positions on ongoing EU business. There have been two meetings since our last letter.

A meeting was held on 28 January 2019 where the Chair gave an update on the December European Council, and the Committee was joined by Her Majesty's Ambassador to Romania for a discussion on priorities for the Romanian Presidency. Ministers also discussed a paper on Blue Growth as well as the role of the forum during the Implementation Period. In line with this and in preparation for the March meeting, the Committee commissioned officials to jointly develop a Common Priorities Framework that could be used to identify shared priority areas with the intention of developing joint campaigns to informally influence the EU once the UK is no longer a Member State.

The most recent meeting of JMC(E) took place on 18 March 2019. As well as the standing agenda item of the UK's priorities for the European Council, the forum also received an update on the Multiannual Financial Framework from a representative from Her Majesty's Treasury. The Committee also discussed preparations for the UK being a third country, in addition to the work commissioned at the January JMC(E) on developing a Common Priorities Framework. The next JMC(E) is due to take place in early June and will consider the progress on this work as well as the priorities for the Finnish Presidency.

Ministerial Forum (EU Negotiations)

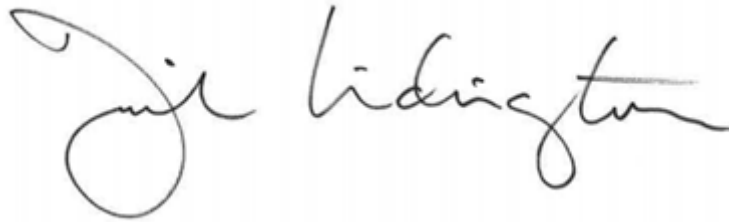
The Ministerial Forum (EU Negotiations) (MF(EN)), co-chaired by the Parliamentary Under Secretary of State at the Department for Exiting the European Union, Robin Walker MP, and the Minister for the Constitution, Chloe Smith MP, has now met eight times since it was established in May 2018. Since our last correspondence, there have been two further meetings of MF(EN), on 31 January and 25 February 2019.

On 31 January, MF(EN) met in Edinburgh to discuss the UK Government's proposal for a future security partnership, led by Kwasi Kwarteng MP from the Department for Exiting the European Union; internal security, led by Nick Hurd MP from the Home Office; and civil judicial cooperation, led by Lucy Frazer MP from the Ministry of Justice. This followed Minister Walker's regular update on negotiations in Brussels. In addition to the regular ministerial attendees from the devolved administrations, Graeme Dey MSP, Minister for Parliamentary Business and Veterans for the Scottish Government and Jeremy Miles AM, Counsel General and Brexit Minister for the Welsh Government, Ash Denham MSP, Minister for Community Safety for the Scottish Government, was also in attendance. Senior officials from the Northern Ireland Civil Service attended in the continued absence of a Northern Ireland Executive.

MF(EN) also met on 25 February in Cardiff to discuss data protection in the context of our future relationship with the EU, led by Margot James MP from the Department for Digital, Culture, Media and Sport. Ministers also discussed a review of the work of the Forum to date and the role of the devolved administrations in the next phase of negotiations, following the commitment the Prime Minister made in the House of Commons on 21 January 2019 to an enhanced role for the devolved administrations in the next phase.

Underpinning this ministerial engagement, there is ongoing official-level engagement to discuss the policy detail behind topics relating to the future relationship with the EU; there have been over 30 such meetings to date. These discussions continue to highlight policy areas and issues for discussion at future meetings of MF(EN).

We hope that this provides a useful summary of recent engagement with the devolved administrations.

A handwritten signature in black ink, reading "David Lidington". The signature is written in a cursive style with a large initial 'D'.

Rt Hon David Lidington CBE MP

Jeremy Miles AC/AM
Y Cwnsler Cyffredinol a Gweinidog Brexit
Counsel General and Brexit Minister

Agenda Item 5.4



Llywodraeth Cymru
Welsh Government

David Rees AM
Chair, External Affairs and Additional Legislation Committee
National Assembly for Wales
Cardiff
CF99 1NA

09 May 2019

Dear David,

I am writing to inform you that the Joint Ministerial Committee (European Negotiations) will meet in London on 9 May.

The agenda will cover the negotiations with the EU on the UK's exit, the role of the devolved administrations and progress on Common Frameworks.

I will report to the Committee on the outcome of the meeting.

Yours sincerely,



Jeremy Miles AM
Y Cwnsler Cyffredinol a Gweinidog Brexit
Counsel General and Brexit Minister

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.