



Missing Links

Past, present and future inter-parliamentary relations in the devolved UK

Research report by
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Foreword

The Institute of Welsh Affairs was established in 1987, partly to build the case for devolution and self-governance in Wales. Along with many others, we helped win the argument for the creation of what is now known as the Welsh Parliament / Senedd Cymru, and despite claims to the contrary, support for devolution in Wales has continued to grow ever since.

Supporting self-determination through a strong, confident democracy in Wales therefore was and is an absolutely foundational priority for the IWA.

We want to help ensure devolution continues to work better, as Wales' young democracy evolves, so that it impacts positively on the people of Wales. However, Wales and our fellow UK nations now face a new set of constitutional challenges as the UK works through the practical, political, and philosophical questions raised by the end of our EU membership. What kind of union are we to be, or will we be no union at all?

The latter question is out of the scope of this report, but unionists, federalists and those who support various forms of independence will all surely recognise that the fates of the four nations of the UK will always remain bound together at some level simply because of our geography. So whatever constitutional future we envisage, our governments – and therefore our parliaments – should be working constructively and transparently together in the shared interests of the people of our respective nations.

This report summarises research which was undertaken by Professor Margaret Arnott of the University of the West of Scotland. It originated from a gap in research identified by the IWA's Governance Policy Group, and was generously funded by the Legal Education Foundation. It is not a piece of work which is just about Wales, though clearly Wales is our focus.

We found that experts have been concerned about weak inter-parliamentary working almost since day one, and parliamentarians to whom we spoke also acknowledged the nature of the problem today, without exception.

There are few formal structures for inter-parliamentary working; the ones that do exist can be somewhat ad hoc, and rely too much on the commitment and interest levels of individual members. Opportunities to collaborate, share knowledge, increasing understanding and cooperation across party lines have long been missed.

Devolution is still young. So it was perhaps forgivable that, as our institutions grew and matured, members would focus on establishing the new parliaments, establishing ways of working, and delivering for the people of their respective nations.

When our EU membership bound the four nations of the UK to common frameworks for law and policy making, it was perhaps easy to view improving inter-parliamentary relations as a priority for another day. Something that was mostly of interest to those who take an above average interest in constitutional matters.

However, Brexit has brought into focus these long-acknowledged shortcomings of the structures for collaboration between the four parliaments. The governments of the UK are now negotiating between themselves, on an urgent timetable, the future of the UK's internal market, and our common frameworks.

There is no formal mechanism to ensure effective scrutiny of these intergovernmental negotiations and decisions by our elected representatives in the four parliaments. This means that major constitutional decisions with implications for decades to come are being made at pace, and our parliaments are not working together to ensure all parts of the UK have a voice in what happens next. At the time of writing, a furious row is building around the Internal Markets Bill – with contentious reforms again being rushed through without proper parliamentary scrutiny, and without consensus building.

When we first commissioned this work in mid-2019, we could scarcely have imagined the circumstances under which the findings would be published. The coronavirus pandemic has changed everything, including the profile and salience of devolution. Calls for a ‘four nation response’ to the pandemic quickly became a parting of ways, leading to confusion for the public trying to honestly navigate an already complicated set of public health regulations.

How much more confident could we have felt in our governments’ responses if we knew this policy divergence had gone through an already established, non-partisan process of collaborative parliamentary scrutiny? Sadly, it is too late for this particular crisis. But there will be others, and next time we should be ready.

Better inter-parliamentary relations will require new structures, more formal arrangements, and proper resourcing. Designing these structures was outside the scope of this research, and indeed we would argue that for them to be effective they should be co-designed by parliamentarians, officials, and the public they serve.

What our work has done is shine a light on a long-standing problem which has rapidly moved from esoteric to essential. Getting this right in future will take an acknowledgement of the problem, a commitment to experiment, learn from success and failure, be dynamic and to evolve.

The missing links between our parliaments need to be fixed. The first step is for parliamentarians to commit to playing their part in a stronger, more confident democracy in the devolved UK, and work together to achieve it.

September 2020



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IWA Director



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Executive summary

Summary of findings

Our research identified the following shortcomings of current inter-parliamentary relations in the devolved UK.

1. **Inter-parliamentary structures are often too informal and ad hoc**

The only ‘formal’ forum for inter-parliamentary working UK is the **British-Irish Parliamentary Assembly (BIPA)** which was established in 1990 as a link between the Houses of Parliament and the Houses of the Oireachtas. Over time it has expanded its membership to include representatives from the Scottish and Welsh parliaments, and from a number of self-governing crown dependencies.

One interviewee characterised the BIPA as ‘conference style rather than a scrutinizing body’, and observed that it has largely focussed on security issues and north/south relations, though it has the potential to look at wider issues.

Many politicians and officials we interviewed talked about the **Inter-parliamentary Forum on Brexit (IPFB)** as an example of good practice. This self-organised forum consists of members of those committees in the four parliaments with a remit related to Brexit. This forum has met fairly frequently, rotating its meetings across the four nations, but not on a regular timetable. It has no dedicated resource or secretariat, with officials in the host parliament being brought in to support meetings in their nation.

UK and other government ministers have attended the IPFB on a voluntary basis, but there is no detailed publicly available record of what has been discussed.

Both of these forums are spoken of positively in terms of collaboration and knowledge sharing, but as well as having no dedicated resource, they have no powers to compel witnesses to attend and be scrutinized on an inter-parliamentary basis.

Effective inter-parliamentary relations therefore currently happen in an ad hoc and informal way, because they rely on individual members and committees to drive them. The public should reasonably expect this collaboration to be a routine and consistent feature of how the UK works.

2. **Asymmetric devolution isn’t working for any of the four nations**

Devolution in the UK has not evolved according to any obvious template internationally, because there are no direct comparisons for the UK’s distinctive constitutional arrangement. The settlement is fundamentally asymmetric, with England clearly having a much larger population, and therefore significantly more MPs in Westminster, but no dedicated ‘English parliament’ of its own. Wales and Scotland, by contrast, have smaller parliaments with limited powers, but do at least have a layer of democratic accountability and delivery rooted in their nations.

There is also an inherent tension between the principle of parliamentary sovereignty, and devolved government. Westminster retains the right to legislate in areas of devolved competence, and conventions around ‘normally’ seeking legislative consent are not binding. There is a need for clarity on what ‘normally’ means in this context.

This led to particular frictions around the EU Withdrawal process, when all three devolved parliaments withheld legislative consent for the first time. It is worrying that this withholding of consent had no practical consequences.

3. This has led to a gap in democratic scrutiny

There is currently no formal role for the UK Parliament, Scottish Parliament, Welsh Parliament or the Northern Ireland Assembly in scrutinizing inter-governmental relations. This is a clear gap in democratic scrutiny which should be troubling at any time, but becomes particularly acute in the context of the fundamental and lasting changes being introduced now that the UK has left the EU.

Governments of all political colours, in all four nations, should welcome constructive and effective scrutiny, and recognise the democratic mandate of those parliaments.

What would a UK with improved inter-parliamentary relations look like?

- 1.** A **stronger democracy**, with the four parliaments better able to scrutinise the interactions between devolved and reserved policy
- 2.** Increased **public confidence** in all parts of the UK that there is proper scrutiny of inter-governmental decision making, particularly on essential frameworks underpinning the UK’s future post Brexit
- 3.** Greater **efficiency** and reduced duplication of the work of parliaments through improved knowledge sharing, and the potential for collaboration between committees, individual members, and officials
- 4.** Pooling sovereignty with legislatures in the devolved nations would provide a well functioning model for **further devolving decision making**, and potentially greater localism in England

Conclusions

Constitutional relations between nations and territories in the UK have evolved in an ad hoc and asymmetrical manner, with devolution settlements responding to administrative and political drivers for devolution of responsibilities and powers in nations and territories of the UK.

This has not resulted in a coherent and rational framework for devolution, and has led to a continuing need to tweak and amend the devolution ‘settlement’.

This ongoing process of constitutional reform has itself not been subject to adequate inter-parliamentary scrutiny.

Recommendations

We did not set out to make detailed recommendations for how inter-parliamentary relations should be improved. We believe that lasting reform should be led by the parliaments themselves, and will require consensus and buy in from individual parliamentarians.

However we recommend that reforms should follow these principles:

- 1.** Experiment, take risks, and learn by doing
- 2.** Formalise the role of all parliaments in scrutinising intergovernmental relations
- 3.** Strengthen the role of devolved parliaments in legislative consent
- 4.** Learn from existing best practice in inter-parliamentary working
- 5.** Improve public information about inter-parliamentary relations, and decision making.

See page 50 for more detail on our conclusions and recommendations.

Research report

1 Background and purpose



1

At a time of constitutional and political change, the IWA believes that a project on enhanced inter-parliamentary relations in the UK would be timely for contributing to on-going and future debates concerning the governance of the devolved UK.

This research was commissioned by IWA as scoping work in preparation for a substantive project proposal on UK inter-parliamentary relations. This scoping work comprised a rapid desk based review of existing inter-parliamentary literature and a series of stakeholder interviews to gather UK perspectives on inter-parliamentary.

For the scoping work, inter-parliamentary relations is understood to mean ‘the relationships and interactions between UK legislatures: the Houses of Parliament in Westminster, the Scottish Parliament, the Welsh Parliament / Senedd Cymru (formerly the National Assembly for Wales), and the Northern Ireland Assembly’.¹

The formal and informal mechanisms existing ‘at various levels of each institution, including between Speakers and Presiding Officers, Committees, and officials.’² have been critically investigated using a literature review of primary and secondary academic sources and interviews with key informants at official and political levels. Compared to the powers of the Scottish Parliament, since 1999 devolution in Wales involves more limited powers for the Welsh Parliament and also offered less capacity for scrutiny in terms of the number of Members of the Senedd.

Empirical analysis has been conducted of:

1. Existing formal and informal arrangements for inter-parliamentary relations;
2. The research problem:
‘The shifting complexity of devolution arrangements, the political incongruence of the four executives, and the very real consequences of insufficient scrutiny of shared policy areas all indicate that informal and ad hoc arrangements for inter-parliamentary relations are unsustainable.’³
3. The gap in research and academic attention to inter-parliamentary relations in the devolved UK both before and after Brexit.

2 A brief history of devolution in the UK



2

Overview

Below is a desk-based literature review (see section 3) undertaken to bring together the findings of existing studies into inter-parliamentary relations in the devolved UK and identify gaps in academic research and secondary academic sources. The review highlighted that there has in fact been very little academic research on this topic.⁴

Twenty years since the establishment of devolution, there is a significant gap in academic research addressing inter-parliamentary relations between the constituent parts of the UK. Devolution in the late 1990s began as a transition from existing administrative devolution to Northern Ireland, Scotland and Wales to establishing directly elected legislative and executive devolved administrations and legislatures in each territory. Devolution legislation in 1998 addressed the ‘legitimacy deficit’ in the territorial governance and politics of Scotland and Wales. The devolved legislatures are single chambers which arguably affects their capacity for scrutiny. Different types of devolution formed the basis of legislation to implement devolution in Northern Ireland, Scotland and Wales in 1998.

For Jeffrey and Wincott this is due to the devolved UK being:

‘... built on that territorial non-uniformity, embedding a number of idiosyncrasies into the devolved UK state: a lopsidedness that leaves the biggest and wealthiest part of the United Kingdom—England—governed centrally while the non-English nations have devolved government, devolved government arrangements for those nations that are markedly asymmetrical, and an underdeveloped system of inter-governmental relations connecting United Kingdom—level and devolved political arenas’.⁵

The uneven nature of devolution in the powers and responsibilities devolved in the UK sits uneasily with what Bogdanor calls the ‘myth’ of the UK as a unitary state where power is held at the centre by the UK legislature and UK government.⁶ In the various 1998 Acts introducing devolution legislation, different models were used for Scotland, Wales and Northern Ireland.

In Scotland and Northern Ireland, legislative devolution allowed their devolved legislatures law-making powers in areas that had not been reserved to the UK Parliament. In Wales, the ‘executive’ model of devolution was introduced. This allowed for more limited devolved powers than in the Scotland and Northern Ireland models. The conferred powers model introduced in the 1998 Wales Act ‘limit[ed] the competence of a devolved institution to those powers specifically granted to it in statute.’⁷

By contrast, in England, power remained highly centralised.⁸ In 1998 following a referendum on whether or not to create an elected non-legislative assembly of London, the London Assembly and

Mayor of London were established.⁹ This was the only directly elected assembly in England. In the 2004 referendum in the North of England on whether or not to set up an elected assembly of the region, devolution was rejected by 78% of those voting.¹⁰ The 2010-15 UK Conservative/Liberal Democrat Coalition introduced a series of measures to devolve and 'decentralise power' to local areas. In November 2014 the first 'devolution deal' was agreed between the UK Government and the Greater Manchester Combined Authority.¹¹ The unevenness of the powers devolved to the national territories in the UK reflected 'the original different unions [that formed the United Kingdom]'¹²

The territorial constitution in the UK has been contested since 1998.¹³ McHarg in 2019 argues that:

'... despite the extensive political powers enjoyed by, and the political importance of the Scottish Parliament and Government, the status of devolution within the UK's constitution is ambiguous and contested.'¹⁴

This ambiguity and the contested nature of the constitution can be explained by differing and contrasting principles of 'sovereignty'. For James Mitchell, the myth of the UK as a unitary state 'obscured the fact that there was a continuing and continuous renegotiation of [territorial] relationships [in the UK].'¹⁵ Further, Mitchell argues that 'constitutional ad hocery' (sic) has been evident in these relationships¹⁶.

Scotland

In the late 1980s, political debates about constitutional reforms claimed that there was a 'democratic deficit' in the governance of Scotland in the UK. There were calls for 'popular sovereignty' rather than parliamentary sovereignty. The 1990 Scottish Constitutional Convention Report 'The Claim of Right' stated:

'... our conviction that sovereignty rests with the Scottish people. The very existence of the Convention is a vote of no confidence in the system under which Scotland is presently governed. The concentration of power in Whitehall has created a system insensitive to Scotland's ambitions and hopes. The stubborn survival within Westminster of distinct Scottish legislation has led to frustration rather than strength. Legislation can on occasions be controlled by Ministers who use a safe Westminster majority to secure a programme, which has only minority support in Scotland.'¹⁷

There have been two coalition administrations, a minority administration, one majority executive and a return to minority administration in 2016 in the Scottish Parliament. The Scottish National Party have been in power in devolved government since 2007: first as a minority administration 2007-2011, then from May 2011-2016 as a majority government and since 2016 as a minority administration. The party's victory in May 2011 changed the political context of territorial politics and governance in the UK. It secured 69 of the parliament's 129 seats and made significant electoral gains across all regions of Scotland.

The SNP Government considered that its electoral success in the devolved 2011 election added legitimacy to its 'project' of securing both enhanced powers for the Scottish Parliament and also its wider goal of independence. This changing electoral dynamic between Scottish/UK wide parties led to 'enhanced devolution' in the Scotland Acts 2012 and 2016.

A referendum on independence was held in Scotland on 18 September 2014. A majority of voters (55.3%) were in favour of Scotland retaining its membership of the UK.¹⁸ On 19 September 2014, the

day following the referendum, the then UK Prime Minister David Cameron made commitments for further reforms to Scottish devolved powers ‘in tandem’ with reform on ‘English votes for English laws’ (known as EVEL) in the Commons.¹⁹ The UK Government established a commission on further devolved powers and appointed Lord Smith of Kelvin ‘to take forward the proposals made in a joint declaration by the three pro-union parties of more powers for the Scottish Parliament in the event of a ‘No’ vote’.

The Smith Commission was tasked with proposing recommendations to strengthen the Scottish Parliament in the UK. One of the most significant areas to emerge was in relation to ‘Principle five’, namely that post-referendum constitutional change should ‘not cause detriment to the UK as a whole nor to any of its constituent parts.’²⁰

The Smith Commission raised issues of transparency between legislatures and governments. The scrutiny function of inter-parliamentary relations was a key recommendation. A Scottish Parliament Briefing Paper summarized the Smith Commission agreement as having:

‘... considered the issue of inter-governmental relations in some detail. Amongst the recommendations of the Commission was that inter-governmental arrangements to support the devolution of further powers be “underpinned by much stronger and more transparent parliamentary scrutiny.”’²¹

With enhanced devolution since 1999, that inter-government relations should be transparent and accountable to devolved legislatures was recognized across the political spectrum.

Wales

For Wales the devolution settlements since 1998 have been contested. Rawlings argues in 2019 that ‘the constitutional journey’ for Wales:

‘... in recent years has been characterised by a convoluted and ongoing set of legislative transformations and by the emergence of a distinct policy approach not only for the sub-state policy itself but also under the banner of a ‘new Union’ for the United Kingdom as a whole.’²²

Over the twenty years since the Government Act of Wales in 1998, devolution has progressed from executive to conferred, to reserved powers models via four different Welsh devolution settlements²³:

‘... step by step the path to a reasonable and realistic form of representative government in Wales is travelled, but in an arduous and even painful, fashion’²⁴

McAllister has stressed the importance of multi level relationships in Welsh devolution. Critically both the ‘what’ and the ‘why’, that is the practical outcomes, of multi level relationships in the governance and policy management of Welsh devolution would add to our insight and understanding of the interplay between policy outputs and political infrastructure’.²⁵

McAllister argued in 2015 that studies to date:

‘... [had] overwhelmingly centred on the constitutional ‘journey’ (type I), rather than governing and policy management and generation (type II).’²⁶

The political capacity of the devolved administration and the National Assembly of Wales (as was) has been a recurrent theme of constitutional debates in Wales.’²⁷

The 2006 Government of Wales had been seen as a compromise response to the 2004 Richard Commission Report. Questions were asked at the time of the 2006 Act whether it could offer a lasting solution to the devolution settlement to Wales. That the devolution in Wales should be reformed from the conferred model to the reserved powers model was gaining agreement from across the political spectrum. In March 2011 a referendum vote on the law making powers to the then National Assembly for Wales secured a 63.49% of the Yes vote in support of more lawmaking powers for the Assembly in 20 subject areas.

The Richard Commission in 2004, the All Wales Commissions in 2009 and the Silk Commission in 2014 all noted the lack of clarity around legislative powers of the then National Assembly of Wales, as well as the ‘systematic capacity constraints’ of Welsh devolution.²⁸ The Silk Commission issued two reports. Its first report in 2012 set out recommendations for financial, fiscal and borrowing powers to be devolved to Wales. The second 2014 report discussed the legislative range and the capacity of the Assembly in its scrutiny role and also inter-parliamentary and inter-governmental relations. McAllister also argued that ‘Welsh devolution has “immature political relationships in the new, multi-tier UK”’.²⁹ The Silk Commission noted in March 2014 that the then devolved arrangements in Wales, due to the conferred powers model, were ‘more complex than those in Scotland and Northern Ireland’.³⁰ It recommended:

‘... political institutions that operate effectively and efficiently and work together in the interests of the people they serve’.³¹

In July 2014 the Assembly Constitutional and Legal Affairs Committee had also set out the core principles that should guide the drafting of the ‘reserved model’ of devolution in Wales as: subsidiarity; clarity, simplicity and workability.³²

The incoming UK Conservative Government in 2015 released a draft Wales Bill but this was withdrawn from the legislative timetable at the start of 2016 due to widespread criticism concerning the lack of clarity over the powers of the then National Assembly of Wales. The new draft Wales Bill was introduced in June 2016 and received Royal Assent in January 2017 to establish a reserved powers model of devolution in Wales.

Northern Ireland

Devolution in Northern Ireland was different to both Welsh and Scottish settlements. Northern Ireland was first granted devolution by the UK Parliament in the period 1921-1972. It had a bicameral Parliament.³³ From 1972 to 1999, there was ‘direct rule’ from Westminster: the UK Parliament passed legislation for Northern Ireland and the UK Government exercised executive powers via the Northern Ireland Office.³⁴

The Good Friday Agreement (GFA) 1998 set out an agreement with the UK Government and the Irish Government concerning ‘peace, political stability and reconciliation in Northern Ireland and the island of Ireland’.³⁵ It set out terms for the Northern Ireland Assembly and power sharing executive; the British-Irish Council; the British-Irish Inter-governmental Conference; the North/South Ministerial Council and six North/South Implementation Bodies.

In contrast to other devolved settlements in the UK, the GFA is a treaty between the UK and Irish Governments where they ‘agree to support and implement’ the GFA.³⁶ Legitimacy for the new devolved institutions and cross-border institutions was crucial in gaining trust across the sectarian divide.³⁷ In the early years of the GFA, 1999-2002, within the Northern Ireland Assembly and the devolved administration, Gormley-Heenan has characterised ‘power-sharing’ moving quickly to ‘practice of power-splitting’ without “any sense of collective Cabinet responsibility.”³⁸

In the twenty years since the passing of the GFA, the Northern Ireland Assembly and Northern Ireland Executive have collapsed on several occasions. The first suspension was for three months at the end of 1999. The two longest periods of suspension were 2002–2007 and 2017–2020. Therefore the devolved legislature and devolved administration were not functioning for significant periods from 1998. In the period of suspension 2017–2020, budgets of the Northern Ireland Executive were passed by the UK Parliament. Legislation was introduced to enable senior civil servants to take some decisions within the scope of policy direction set by the previous minister prior to the collapse of the Executive, via the Northern Ireland (Executive Formation) Act 2019.³⁹

The suspension of the Northern Ireland Assembly in 2017 had significant implications for the Brexit discussions across the UK devolved territories and UK legislatures concerning both policy competence and negotiations around the so-called Irish ‘backstop’.⁴⁰ In the 2016 EU Referendum, Northern Ireland voted to remain in the EU.⁴¹ There was a vacuum concerning the legislative place for Northern Ireland in these negotiations, given the absence of both its devolved executive and legislature from inter-governmental discussions on Brexit. Following the UK General Election in May 2017, the Democratic Unionist Party (DUP) agreed to support a ‘confidence and supply’ arrangement, allowing the Conservative and Unionist Party to gain a working majority in the House of Commons. As part of this agreement, Birrell and Heenan stated that the DUP agreed:

‘... to support the [UK] Government on legislation pertaining to the UK’s exit from the EU. It did not assert that DUP has a veto over UK Government policy, but it gives an implicit power to exercise such influence through the threat to abandon the agreement and leave the Conservative Government in a potentially unsustainable position.’⁴²

Tonge’s analysis of the 2017 Conservative Party-DUP confidence and supply agreement in the Commons stressed the ‘economic focus’ for the DUP for this deal.⁴³ Stormont would not have a formal political input, given the suspension of this devolved legislature, the Brexit Irish Border issue and devolved policy competences. Officials from the Northern Ireland Assembly attended UK inter-governmental meetings, British-Irish Parliamentary Assembly and also the Inter-parliamentary Forum on Brexit but when suspended there was no political representation from the Northern Ireland Assembly.

3 Inter-parliamentary relations and inter-governmental relations in the UK



3

Overview

Since the establishment of the UK devolved legislatures in 1998, there have been regular requests to develop and to strengthen further inter-parliamentary relations. Various commissions in the devolved nations and Committees of the UK Parliament and the devolved legislatures have recommended that scrutiny of inter-governmental relations in the devolved UK should be enhanced.⁴⁴

For example, in evidence to the Commission on Devolution in Wales (known as the Silk Commission), the Wales Study Group of the Study of Parliament Group regretted that there was ‘little formal opportunity’ for the exchange of views between legislatures and ‘inter-institutional dialogue’ – a proposal endorsed by the Commission.⁴⁵ The Silk Commission also proposed that Assembly Members in Wales should be given parliamentary passes for the UK Houses of Parliament.

The Commons Public Administration and Constitutional Affairs (PACA) Select Committee also set out in its 2016 Report on Inter-Institutional Relations in the UK that:

‘... inter-parliamentary relations in the UK are arguably the poorer and less well-developed relative of inter-governmental relations. At a formal level there is no direct parliamentary equivalent to the Joint Ministerial Committee (JMC).’⁴⁶

The PACA Committee inquiry on inter-institutional arrangements also found:

‘... general support for the principle of improving inter-parliamentary relations in the United Kingdom, but no consensus on how this might be best achieved.’⁴⁷

The Commission on Scottish Devolution (Calman Commission) had also made recommendations for strengthening inter-parliamentary relations in the devolved UK in 2009. These included setting up a joint liaison committee of the Scottish Parliament and UK Parliament to oversee relations and also to establish ad hoc subject specific committees to facilitate working together.⁴⁸

The devolution ‘settlements’ in the three nations have in fact been far from settled, but subject to regular changes since 1998.⁴⁹ These changes have gradually increased the powers of the devolved legislatures, though not uniformly.

However, there has been little reform to the working of UK Government departments in response to increased devolution. For each devolved nation in the UK, asymmetrical relations have developed to reflect ‘divergent constitutional narratives’ concerning their relations with the UK Parliament.⁵⁰

The Senedd's Constitutional and Legislative Affairs Committee report on 'UK Governance Post Brexit' in February 2018 also called for strengthened inter-parliamentary relations. This inquiry was able to draw on work by its predecessor committee, which recommended that inter-parliamentary relations be reviewed.⁵¹ The 2018 report stated:

'It is clear that there is a need to extend the engagement between committees, and between parliaments. If these parts of our democratic institutions work better together as part of a maturing family of nations, then there is a better chance that the voice of Wales will be heard across the UK, our collective views acted upon and the fabric of the UK constitution strengthened'.⁵²

The Committee's recommendations included the calling of a Speakers' Conference to discuss how best to develop UK inter-parliamentary relations and more 'interaction' between parliamentary committees across the legislatures in the devolved UK.

Inter-parliamentary relations and inter-governmental relations in the UK

The United Kingdom is a union of four nations, with increased devolution of decision making to a national level since the late nineties. Significant decisions affecting the lives of people in all four nations are made at Westminster level. Some of those decisions are made following negotiation at an inter-governmental level between Whitehall and the devolved governments in Cardiff, Edinburgh and Belfast.

The sudden change to the UK's constitution following Brexit means many of these major decisions are now being made in the absence of any formal mechanism for oversight and scrutiny by the four parliaments. This risks denying the people of the devolved nations a voice in major decisions, and reduces accountability for all governments concerned.

Therefore, the need to ensure robust and transparent scrutiny of inter-governmental relations and decisions reveals the need for effective inter-parliamentary relations within the UK. Reform will be key to changing the constitutional underpinnings of devolution and effective governance.⁵³

The focus of analysis of inter-institutional relations has been between the devolved and the UK Governments, with inter-parliamentary mechanisms neglected. Mechanisms for inter-governmental relations have evolved in an ad hoc way and arguably almost free of inter-parliamentary scrutiny.

Since 1998 there have been a variety of mechanisms for inter-governmental relations such as Memorandums of Understanding between the UK Government and the devolved administrations in Northern Ireland, Scotland and Wales and Joint Ministerial Council (JMC).⁵⁴ There is a significant gap in the scrutiny of JMCs via inter-parliamentary mechanisms.

Existing inter-parliamentary arrangements in the devolved UK

For inter-parliamentary mechanisms, there have been regular meetings between Presiding Officers and Speakers of the four legislatures. However, as expressed in a House of Commons Research Briefing Paper in 2018:

‘There is currently no formal role for the UK Parliament, Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly in scrutinizing inter-governmental relations.’⁵⁵

British-Irish Parliamentary Body (BIPA)

The British-Irish Parliamentary Body was the main forum for relations between legislatures. The Body was set up in 1990 as a link between the Houses of Parliament and Houses of the Oireachtas.⁵⁶ In its report on ‘The First Ten Years’ of the British-Irish Parliamentary Body, it argued that the inter-legislature body would reform its membership to include the Scottish Parliament, the then National Assembly of Wales, the States of Guernsey and Jersey and the High Court of Tynwald to reflect new devolved arrangements and British-Irish relations:

‘Thus far, the Body has proceeded cautiously and allow[ed] the new devolved institutions to establish themselves. But contacts have been made, and Members from the various devolved institutions and the Crown Dependencies have already attended recent plenaries as observers. For some time the future of the Body has been under consideration by a specially-convened working group; and the Body is in the process of evolving the appropriate mechanisms for bringing parliamentarians throughout the islands closer together’.⁵⁷

The devolved legislatures of the UK became members of the British-Irish Parliamentary Body in 2001. It was renamed the British-Irish Parliamentary Assembly in 2008. Non-legislative parliamentary matters are the focus of its activities.⁵⁸ Its sessions are bi-annual plenary meetings alternating in location between the UK and Ireland. Four committees meet regularly and take oral and written evidence on specific issues.⁵⁹

To date, there have been 58 plenary sessions of the British Irish Parliamentary Assembly. Plenary sessions have been subject-driven with environmental concerns, education and training, policing, health, tourism and trade among these subjects. Post 2016, the impact of Brexit on North/South relations and the border were considered by the British Irish Parliamentary Assembly and the focus of plenary sessions.

The third strand of Good Friday Agreement (GFA) sought to strengthen relations between Ireland and the UK through the establishment of the British-Irish Council and the British-Irish Inter-governmental Conference, which provides a statutory forum for North-South discussions for ‘co-operation and implementation for mutual benefit’ in 12 subject areas.⁶⁰ The statutory route to inter-governmental relations was a significant element of the Agreement.⁶¹ The formal mechanisms for relations between the UK and Irish Governments were established to foster principles of transparency and accountability.

Article 2 of the Good Friday Agreement set out the new institutions that would be established for the new constitutional relations between UK and Irish Governments:

‘The two Governments affirm their solemn commitment to support, and where appropriate implement, the provisions of the Multi-Party Agreement. In particular there shall be established in accordance with the provisions of the Multi-Party Agreement immediately on the entry into force of this Agreement, the following institutions:

- (i) a North / South Ministerial Council;
- (ii) the implementation bodies referred to in paragraph 9 (ii) of the section entitled ‘Strand Two’ of the Multi-Party Agreement;
- (iii) a British-Irish Council;
- (iv) a British-Irish Inter-governmental Conference.’⁶²

Members of the British-Irish Council are: Guernsey, Ireland, Isle of Man, Jersey, Northern Ireland, Scotland, UK, and Wales.

The British-Irish Council would provide a forum for its members ‘to come together to discuss and collaborate on matters of mutual interest.’⁶³

Inter-parliamentary relations: Scottish and UK legislatures post 2014

In 2015 the Scottish Parliament Devolution (Further Powers) Committee Report on *Changing Relationships: Parliamentary Scrutiny of Inter-governmental Relations* considered that:

‘The lack of effective scrutiny of inter-governmental relations by parliaments to date, including the Scottish Parliament, has been another recurring theme running through the evidence that the Committee has taken in this area. The Committee recognises the validity of this criticism and recognises the need to ensure that parliamentary scrutiny of inter-governmental relations is ‘scaled up’ to take account of the increased importance of inter-governmental relations as a consequence of the structure of shared powers contained within the Scotland Bill is essential.’⁶⁴

In its main Report, the Scottish Parliament Devolution (Further Powers) Committee stated that:

‘Despite the importance of the inter-governmental arrangements, the Scottish Parliament has not been an active player in agreeing how the Scottish Government should deal with other governments in the UK and how it is best held accountable for this. The original MoU and successive updates have received little if any scrutiny and, between times, the on-going relationship between the administrations and the agreements they reach across a whole range of policy matters are rarely questioned. This must change.’⁶⁵

The Committee recommended that a ‘revised structure’ of inter governmental relations:

‘... must be transparent ... [and] accountability must be built into the revised structure of inter-governmental relations. The agreements reached between Governments must be subject to scrutiny and therefore clear mechanisms require to be built into the revised MoU [*Memorandum of Understanding*], currently being negotiated, to ensure that the role of parliamentary scrutiny is facilitated.’⁶⁶

Following the Smith Commission in 2014 and the 2015 Scottish Parliament Devolution (Further Powers) Committee Report on *Changing the Relations: Parliamentary Scrutiny of Inter-governmental Relations*, the Scottish Parliament and Scottish Government reached a written agreement (*Inter-governmental Relations: Agreement between the Scottish Parliament and the Scottish Government*) regarding the scrutiny of inter-governmental relations.

The Agreement stated that its purpose:

‘... represents 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.’⁶⁷

The Agreement also noted that:

‘In reaching this Agreement, the Scottish Government recognises the Scottish Parliament’s primary purpose of scrutinising the activity of the Scottish Government within formal inter-governmental structures. The Scottish Parliament also recognises and respects the need for a shared, private space for inter-governmental discussion between the administrations within the United Kingdom, such as in situations where negotiations are on-going.’⁶⁸

It set out three main principles that would ‘govern’ relationships between the Scottish Parliament and the Scottish Government concerning inter-governmental relations:

- Transparency
- Accountability
- Respect for the confidentiality of discussions between governments.⁶⁹

Inter-parliamentary forum on Brexit

Weaknesses in inter-parliamentary relations and inter-governmental mechanisms have been evident from the early years of asymmetric devolution.⁷⁰ These weaknesses have become even more marked following the UK EU Referendum in June 2016.⁷¹ Liaison between the devolved legislatures and the UK Parliament has now also been recognised as a gap in the working of devolution.⁷² In its report on ‘*Devolution and Exiting the EU: reconciling differences and building strong relationship*’ (July 2018), the Commons Public Administration and Constitutional Affairs Committee argued that inter-parliamentary relations should be central to the reform of devolution following the UK’s exit from the EU:

‘One of the central constitutional roles of parliaments and assemblies in the UK political system is to scrutinize the work of government. With the increase in the extent of inter-governmental relations, which must inevitably follow the UK’s exit from the EU, it is imperative that mechanisms be developed to scrutinize properly the work done at the inter-governmental level. The importance of devolution within the UK’s constitutional architecture should be recognised by developing mechanisms and procedures for the different parliaments and assemblies of the UK to communicate formally with one another. This is essential in order to build understanding and friendships between parliamentarians from all UK legislatures, as well as strengthening public trust and confidence in the way that the four parliaments and assemblies can work together.’⁷³

The House of Lords European Union Committee recommended in its *Brexit: Devolution* Report in July 2017:

‘In the longer term, we also see a need for a strengthened forum for inter-parliamentary dialogue within the post-Brexit United Kingdom. The resourcing of this forum, and its relationship with existing bodies (notably the British-Irish Inter-parliamentary Assembly) will require careful consideration by the House and more widely.’⁷⁴

In its July 2017 Report on *Brexit and Devolution*, the House of Lords European Union Committee recommended that:

‘... the structures for inter-parliamentary dialogue and cooperation be strengthened, and invite the House to consider how this might be achieved. In the short term, the priority is to engage in closer inter-parliamentary dialogue regarding the Brexit negotiations themselves and the accompanying domestic legislation. We will therefore seek to develop and broaden our well-established mechanisms for collaboration with our colleagues in the devolved legislatures. Working in conjunction with other Committees of the House, we will propose more regular joint meetings with members of cognate Committees with responsibility for Brexit-related issues in the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly, and in the House of Commons, for the duration of the Brexit negotiations. These joint meetings could provide an opportunity to hear informally from UK and devolved government Ministers, and to discuss issues of mutual interest and concern.’⁷⁵

Following this recommendation, the Inter-parliamentary Forum on Brexit was established in October 2017. Its aim was to facilitate scrutiny of the UK government and the Brexit process.⁷⁶ A UK government minister would attend to provide informal evidence. The Forum’s membership consisted of committees in the legislatures of the devolved UK (House of Commons, House of Lords, Scottish Parliament, the Senedd, and, when restored in Northern Ireland, the Northern Ireland Assembly) scrutinizing Brexit-related issues. Attendance at the Forum meetings varied, with parliamentarians of the Commons attending less frequently than parliamentarians from the Lords and also the devolved legislatures.⁷⁷ The House of Lords, the Senedd, and the Scottish Parliament tended to have regular attendees, while the House of Commons Committees’ attendance was less regular. The Chair of the Public Administration and Constitutional Affairs committee attended all Forum meetings.

After each Forum meeting a written statement was agreed. Following the first meeting on 12 October 2017, the written statement set out objectives for ‘co-operation’ between the legislatures:

‘Today has been an opportunity to learn about the work that each of our committees and legislatures is undertaking; to share information and experiences; and to consider how we can best work together in the months to come as the Brexit process moves forward.’⁷⁸

There have been eight meetings of the Forum since its establishment in October 2017. Its written statement following the April 2018 meeting noted that:

‘Notwithstanding our differing political positions on Brexit, our respective committees remain committed to working collaboratively to ensure effective scrutiny of the impact of Brexit across the UK. That is demonstrated by our shared and agreed recommendations to the Minister for the Cabinet Office on ensuring that a role for the UK and devolved parliaments in scrutinizing inter-governmental relations is recognized by the JMC review currently underway.’⁷⁹

Co-operation between the participants of the Inter-parliamentary Forum on Brexit resulted in a joint letter to David Lidington MP, Minister for the Cabinet Office:

‘... the current inter-governmental 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 inter-governmental Memorandum of Understanding to be 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 inter-governmental relations 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 inter-governmental relations become more accountable. Parliamentary scrutiny of inter-governmental relations 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.’⁸⁰

Future of the union inquiry

The House of Commons Public Administration and Constitutional Affairs Select Committee *Report on The Future of the Union, part two: Inter-institutional relations in the UK* recommended:

‘... that the UK Government agrees to provide the House of Commons and House of Lords with similar transparency to that found between the Scottish Government and Parliament.

PACAC and the House of Lords Constitution Committee should have advance written notice, and written summaries, of inter-governmental meetings. This commitment should replicate the lines of the agreement reached between the Scottish Government and Scottish Parliament. This agreement should be guaranteed by making reference to minimum standards of transparency ...’⁸¹

Recommendations of the Public Administration and Constitutional Affairs Select Committee *Report* raised the profile of the need for strengthened inter-parliamentary relations, with its recommendations yet to be implemented. The UK Government issued its response to the PACA *The Future of the Union Report* on 15 September 2017⁸². While the UK Government commented on the mechanisms for inter-governmental relations, there was a limited response to PACA Report’s recommendations (17-21) to strengthen inter-parliamentary relations:

‘The UK Government suggests that recommendations 17–21 would be for the UK Parliament and, where applicable, the devolved legislatures to comment upon.’

International comparison of inter-parliamentary models

To cite international examples as a model of best practice would be difficult and any international comparisons require caveats given the unique constitutional and political arrangements in the devolved system in the UK. The complex nature of asymmetrical relations in the devolved UK make international comparisons of effective models of inter-parliamentary relations less than straightforward, though such comparisons could provide insights to effective mechanisms to strengthen inter-parliamentary models.

The Scottish Parliament's Devolution (Further Powers) Committee in its *Report on Changing Relationships: Parliamentary Scrutiny of Inter-governmental Relations* (2015) commissioned external research on international models of inter-governmental relations to inform its inquiry. Its recommendations noted that evidence to the committee and external research chimed with the Silk Commission's view:

'The Committee considers that there is no ideal model to adopt from the international comparators that we looked at with regard to the parliamentary processes that should be adopted in order to facilitate parliamentary scrutiny of inter-governmental relations. However, the Committee agrees with the view of the House of Lords Constitution Committee that – effective scrutiny of inter-governmental relations requires both greater transparency than currently exists, and the necessary structures and desire in Parliament and the devolved legislatures to scrutinise those relationships. The Committee's consideration of practices in other jurisdictions has reaffirmed its view that there is a need for improved scrutiny in this area and for specific structures and processes to facilitate this be put in place.'⁸³

The Report commented that the evidence from international comparisons showed that:

'... in almost every country examined here, the role of parliaments in scrutinizing inter-governmental relations is greater than the role the UK's parliaments currently enjoy in the scrutiny of UK inter-governmental relations.'⁸⁴

Comparisons with relations in Canada, Germany, Spain, Belgium, Switzerland, the USA and other member state legislatures of the European Union found that legislatures tended to be weak actors in relation to scrutiny of inter-governmental relations.⁸⁵

Professor Michael Keating, giving evidence to the inquiry, argued that the Danish model could offer examples of effective relations between legislatures and executives:

'With regard to the capacity of Parliaments to hold Governments to account in relation to European negotiations, the Nordic countries and particularly Denmark give an example of what can be done. Ministers have to come and explain their position to extremely specialized committees that know the dossiers, and those committees report back to the Parliaments. Something like that could be done here for inter-governmental relations.'⁸⁶

The Further Powers Committee concluded that:

'Our research on international comparators has shown that other legislatures in federal and quasi-federal systems also tend to be at best weak actors in terms of a scrutiny role in relation to inter-governmental relations'.⁸⁷

From international comparison, where parliamentary scrutiny of inter-governmental relations had been done through formal structures, these tended to take three forms:

- Plenary sessions of the whole devolved legislature to debate inter-governmental agreements reached;
- A specific parliamentary committee established to scrutinize inter-governmental relations;
- Mainstreaming scrutiny of inter-governmental relations across subject committees, with individual committees considering inter-governmental relations within specific policy areas.⁸⁸

These formal structures would be less effective if there was a ‘lack of political incentives’ for cross-institutional working.⁸⁹

An example of cross-institutional working was the Conference of European Regional Legislative Assemblies (CERLA). This was established in 1997 to bring together European legislative regional assemblies and was guided by the principle of subsidiarity in the working of the EU.⁹⁰

Conclusions and commentary

Liaison between the devolved legislatures and the UK Parliament has been recognised as a gap in the working of devolution. The Inter-parliamentary Forum on Brexit is regarded by some interviewees with knowledge of it as the most fully developed and effective example of a semi-formal mechanism for cross legislature working and sharing of information on mutual areas of concern. However, one could argue that the exceptional nature of the forum is in itself a sign that inter-parliamentary relations in the devolved UK is at a relatively under-developed stage.

There is a very clear consensus that, post-Brexit, strengthening cross-legislature working in the devolved UK is an area requiring reform. This would require political leadership and buy-in from across governments and legislatures in the devolved UK.

4 Literature review: inter-parliamentary relations in the devolved UK



4

Overview: devolution ‘settlements’ in the UK

The unsettling of the devolved settlements in the UK has been a recurrent theme of academic studies of UK territorial governance.⁹¹ This is due to the principle and rigidity of definition of parliamentary sovereignty of the UK Parliament sitting uneasily with a devolved system of territorial governance.⁹² Existing mechanisms for cross-legislature working have developed in an ad hoc way.⁹³

Norton sums up the constitutional and political reasons explaining how the ‘Englishness’ of the UK Parliament has shaped territorial governance:

‘Devolution has created particular problems for the Westminster Parliament ... An English Parliament ceased formally to exist in 1707 but in practice merely expanded and absorbed members from the other parts of the United Kingdom, constituting the sole legislature of the kingdom. Demands for Home Rule in Ireland, and later other parts of the UK created problems of how to accommodate (or not accommodate) members from the devolved parts of the United Kingdom in Westminster, an inherent conundrum in the context of asymmetrical devolution and parliamentary sovereignty.’⁹⁴

However, inter-parliamentary relations have received limited attention in academic studies as a substantive analytical consideration in the working of devolution in the UK. UK legislative studies have also tended to focus on institutions rather than the culture of the legislatures.⁹⁵ Peters sets out what he classified as ‘traditional’ approaches to studying legislatures in the devolved UK. He argues:

‘These studies describe one or more aspects of parliaments extremely well, and fit them into broader patterns of governance in the United Kingdom’⁹⁶

Evans argued in 2019 that: ‘In the UK, inter-parliamentary relations has attracted relatively little attention in the academic literature.’⁹⁷

McAllister in her critique of the model of devolutions and approaches to constitutional change in Wales argues multi-level governance has been characterised by:

‘... poor inter-parliamentary communication between the devolved legislature and the Westminster parliament.’⁹⁸

The absence of academic research on inter-parliamentary relations and the need for reform to inter-parliamentary relations in UK was commented on by Arnott in March 2019:

‘... gaining more attention from across the political spectrum [in legislatures in the devolved UK] ... not only in relation to reform of inter-governmental relations – while not agreeing what direction that may take – current inter parliamentary relations are also being highlighted as requiring reform.’⁹⁹

Parliamentary sovereignty

The uncodified constitution in the UK has been premised on the sovereignty of the UK parliament,¹⁰⁰ and some commentators have argued that this has contributed to a reluctance of the UK Parliament to embrace formal joint institutions in the working of devolution.

Norton has noted that:

‘... the merging of parliaments to form the United Kingdom was premised on English constitutionalism and the norms of the English parliamentary practice.’¹⁰¹

Changes to the constitution since 1999 where the multi-national UK shifted from a centralised state to devolved arrangements in territorial governance, together with the Human Rights Act 1998 and the incorporation of the European Convention on Human Rights into legal systems of the UK challenged Dicey’s view of parliamentary sovereignty. These constitutional reforms were in the statute book while much of the constitution in the UK Parliament remained based on conventions. Antony King in 1988 argued that, while not having a codified constitution:

‘... more and more of [the UK’s] small c-constitution has come to be written down in recent years.’¹⁰²

For McConalogue, constitutional changes over the past twenty have led to:

‘... modern challenges ... affecting parliamentary sovereignty.’¹⁰³

Parliamentary sovereignty was the core principle of the Westminster system. For the devolution system legislated for in 1998 and subsequent legislation:

‘So many of the current problems of the British state, from the devolution settlements to Brexit, stem from the reluctance of the British political class to share sovereignty. Devolution was conceived as a way to stem the growth of nationalism, but it has instead fuelled it in Scotland, and hostility to the privileges granted to the devolved administrations threatens to unleash it in England.’¹⁰⁴

Bogdanor argues that:

‘... the constitutional problems likely to result can only be resolved by radically rethinking our constitutional arrangements and moving towards a written or codified constitution. Brexit, therefore, could prove a constitutional moment. It may mark an end to our membership of the European Union. But it could also mark a new beginning in our constitutional development.’¹⁰⁵

A former senior civil servant in Whitehall and Head of the UK Governance Group in the Cabinet Office 2015-16, Sir Philip Rycroft argued in December 2019 that Brexit has highlighted different forms of ‘sovereignty’:

‘The problem this leaves us with is working out precisely whose sovereignty it is that we have taken back control of. Sovereignty needs a boundary, a state apparatus, a national identity. But the sovereignty of Brexit has been layered on the complex of existing identities within the United Kingdom.’¹⁰⁶

Devolution and the UK constitution

The UK Parliament has adapted to devolution in an ad hoc way and as Gormley-Heenan and Sandford argue:

‘... the UK Parliament has been slow to reform to respond to the devolution “settlements” in the UK.’¹⁰⁷

Since 1997, the UK constitution has undergone significant change, and devolved institutions have been established – inter-governmental, inter-parliamentary and civil service – but the procedures of the UK Parliament in relation to the working of devolution have developed in an ad hoc way. For Bodganor, this is a source of ‘constitutional uncertainty’:

‘... an uncertainty on the precise constitutional relationship between the Westminster and the devolved bodies ... the panic stricken extension of devolution in Scotland [*after the Scottish Independence Referendum in 2014*] and the beginning of devolution in England were implemented in an ad hoc and unplanned way, with inconsideration of the implications for the cohesion of the United Kingdom as a whole.’¹⁰⁸

The lack of agreement on the principles of devolution has resulted in increasing constitutional and political concerns about the sharing of power and resources within the UK.¹⁰⁹ Concerns regarding sovereignty and the legitimacy of how territorial governance works across political institutions in the UK reveal the unsettled nature of devolution.

Implications of EU exit

Post-Brexit, the implications for the powers and responsibilities of devolved legislatures will continue to raise complex constitutional and legal issues such as whether they ‘require legal protection – to prevent Westminster changing the rules of the game.’¹¹⁰

As the UK does not have a codified constitution, it could not for example adopt a pure form of federalism (even if that was politically desirable). There is therefore arguably an in-built and even unresolvable tension between the status of the devolved institutions as, in the final analysis, creations of Westminster statute and the UK Parliament as an extra-statutory and constitutionally unbound sovereign lawmaker. The decision to leave the European Union has made this tension much greater by demonstrating that Westminster can take Scotland and Northern Ireland out of the EU against the expressed wishes of their people, and in defiance of their parliaments.

The devolved Scottish and Welsh legislatures have sought to exert their influence more in recent years, particularly during the EU exit process.¹¹¹ Evans has argued that:

‘The Legislative consent convention forms one of a number of conventions underpinning the UK’s uncoded constitution and is a central pillar of devolution in the United Kingdom.’¹¹²

However, devolution legislation has affirmed the right of the UK Parliament to pass legislation in devolved areas. The so-called Sewel convention is set out in both the Wales Act 2017 and Scotland Act 2016. Winetrobe notes that the UK Parliament remained ‘... the significant legislator in devolved areas through the operation of the Sewel convention [*legislative consent motion*],’ and that was an informal procedure.¹¹³ The UK Parliament would not normally use this convention without the consent of the devolved legislature.’¹¹⁴

English Votes For English Laws

In 2015, the UK House of Commons introduced ‘English Votes for English Laws’ (EVEL). Procedures and practices in the Commons for EVEL did not take the route suggested by the McKay Commission and as argued by Kenny and Gover:

‘The EVEL reform introduced by the government in October 2015 has been much caricatured and misunderstood, in part as a consequence of its complex character.’¹¹⁵

Reducing the complexity of the EVEL procedures in the Commons was required to enhance the scrutiny and improve legitimacy in this process and also for Kenny and Gover it was necessary that cross party discussion should agree the principles of EVEL.¹¹⁶

This was a response by the UK Government to the pledge made by unionist parties during the Scottish Independence Referendum in 2014 that more legislative powers would be devolved to the Scottish Parliament.¹¹⁷

Legislative Consent Motions

Legislative Consent Motions (LCMs) are a constitutional convention, rather than a rule or an effective veto for the devolved parliaments, and this was reaffirmed by the UK Supreme Court in its judgment in *Miller v Secretary of State for Exiting the EU*.¹¹⁸ Numerous academics recognize the constitutional, legal and political significance of the Miller judgment, but more in-depth analysis of implications at political and official levels on the relations between legislatures is required.¹¹⁹ Following the Miller judgment, the non statutory mechanisms in the working of devolution such as LCMs and also the principle of sovereignty of the UK parliament fuelled calls for reform to inter-governmental and inter-parliamentary relations.

Studies of the LCM process and relations between the devolved legislatures and the UK legislature found that the withholding of legislative consent was rare before 2018.¹²⁰ The Brexit process, including the repatriation of EU competences, has led devolved legislatures in Wales and Scotland to withhold LCMs from the UK Parliament to consent to the EU (Withdrawal) Bill and later the EU Withdrawal Agreement Bill.

The Scottish Parliament introduced the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill as it had not approved a LCM for the EU (Withdrawal) Bill. The Scottish Bill passed on 23 March 2018. The UK Supreme Court ruled¹²¹ on 13 December 2018 that the Scottish Parliament had acted outside its legal competence in respect of a number of Sections of the Bill.

The earlier Miller ruling by the UK Supreme Court (24 January 2017) had led to ‘constitutional shadow-boxing ... about the location of constituent power within the UK.’¹²² The UK Supreme Court in 2017 had accepted the Miller view that the UK Government required consent by the UK Parliament to initiate the withdrawal process from the EU. The devolved legislatures claimed that the UK Government would also require LCMs to be approved by the devolved legislatures.

Conclusions and commentary: gaps in the study of inter-parliamentary relations in the devolved UK

The UK's uncodified constitution, the implications of asymmetric devolution for representative democracy, and inter-parliamentary relations remain neglected areas of research. The 'pooled' (shared) powers of the devolved and UK legislatures are intermeshed – future relations between the legislatures will shape the working of devolution after the exit of the UK from the EU on 31 January 2020.

Following analysis of secondary literature three main inter-related research areas have been identified in relation to gaps in existing literature:

1. The incremental devolution process since 1999 and its impact on functions of the devolved legislatures and the UK Parliament and for inter-parliamentary relations in the UK;
2. The extent to which the relationship between UK Parliament and the devolved legislatures in the UK has changed since 1999, including attempts to modernise culture and practice in the legislatures in the devolved UK;
3. The nature and functioning of representation in the UK Parliament for parties representing constituencies in devolved nations have changed since 1999. Under procedures of the House of Commons, EVEL provides MPs representing English constituencies (or England and Wales) to vote on an English law during the legislative process and scrutinize English law without the input of the MPs representing Scottish constituencies.

These research areas connect to wider issues of functional and territorial interdependencies in asymmetrical UK, an area where future IWA research could add to informed public debates.

Any such research would be happening at arguably a critical juncture of constitutional and political debates in the UK. The 'pooled' (shared) powers of the devolved and UK legislatures are intermeshed. Future relations between the legislatures will shape the working of devolution after the UK exit from EU membership on 31 January 2020. For devolved administrations and devolved legislatures, the principle of subsidiarity in the working of devolution in the UK should be addressed in cross institutional working in the UK during the Brexit transition period agreed in the UK-EU Withdrawal Agreement (1 February 2020 and 31 December 2020) and the framework for the future relationship of the UK with the EU.

5 Expert stakeholder interviews



5

Background and methodology

Semi structured interviews with key respondents – officials, politicians and academics in the devolved UK – were conducted between November 2019 and January 2020. Interviews conducted under the Commons Academic Fellowship since 2017 have also informed the interview findings.¹²³ Access to key informants for interviews was affected by the calling of the UK General Election in November 2019 and also the Stormont talks on restoring devolution in December 2019.

A main research question explored at the interview stage was the ‘scale of acceptability’ of existing and alternative models for UK inter-parliamentary relations. The analysis ‘[mapped] activity across seven key challenges: four of which refer to the measures of the value of inter-parliamentary relations, and three refer to the political acceptability of inter-parliamentary relations.’¹²⁴ (see figure 1).

These measures were:

- Purpose
- Transparency
- Knowledge exchange
- Accountability
- Formality
- Functionality (including flexibility and intensity)
- Sovereignty.

Issues explored in the semi structured interviews were:

1. The scale and nature of inter-parliamentary activity across the UK
2. Effective or less effective models of inter-parliamentary working
3. International examples of inter-parliamentary working that may contribute to the UK framework of inter-parliamentary forums
4. Future development of inter-parliamentary working in relation to the scrutiny of the UK/ devolved administrations.

Preliminary analysis of the data explored the following issues:

1. Current models of inter-parliamentary relations in the devolved UK
2. The effectiveness of existing arrangements
3. How more effective inter-parliamentary relations might be developed.

Thematic mapping inter-parliamentary relations in the devolved UK

The interview data analysis is grouped thematically to examine seven key challenges to critically explore the ‘scale of acceptability’ of the future development of inter-parliamentary relations in the devolved UK.

The value of enhanced inter-parliamentary relations

Purpose

There was a range of perspectives on the nature and direction of inter-parliamentary relations reform. There was a sense in Wales and Scotland that as the devolved legislatures had assumed law making powers and tax raising powers they were becoming more embedded in terms of legitimacy in the eyes of the public. For example as argued by one interviewee:

‘... devolution has changed substantially over the past 20 years ... (the Senedd) is now a tax raising and law-making parliament. The shift in Wales has been enormous and we saw that in the 2011 referendum [on increasing the then Assembly's powers] – parliament has become very much embedded in Welsh way of life ... It was a sea-change from 2011 when primary powers came to Wales.’

[Interview 20, politician, January 2020]

For another interviewee, regarding current devolved settlements:

‘... there [was] not much formally [in existing inter-parliamentary relations] but informally quite a lot happens. There are flexible advantages to that – lack of any institutional structure. In terms of talking to each other, parties are always talking to each other. Northern Ireland doesn’t have such a direct relationship with us [in Wales]. So there is quite a lot of contact but it is subject driven – rather than developing wider policy inquiries. The great test will be [post Brexit] the common framework issues ... I think that will be quite a challenge and fragmented. The nearest thing to a structure is the British-Irish Parliamentary Assembly ... that’s an interesting model. It is conference-style rather than a scrutinizing body. So it tends to look at subjects of interest ... [It] has been very security based, but it had started to move away from that. But as Brexit has developed it was very focused on North-South Relationships and security focused again. And never really got wider than that but has the potential to do so.’

[Interview 15, politician, December 2019]

The argument that existing inter-parliamentary relations have been sporadic and ad hoc was also reflected by another senior Welsh politician. Commenting that they thought inter-parliamentary relations:

‘... had been limited. Not just in terms of the question of Brexit, but there have been attempts by certain committees in the Welsh Assembly and Scottish Parliament to do things jointly but those are very sporadic and piecemeal. I’m trying to think of examples where there has been a significant step forward [in inter-parliamentary relations] and I’m struggling to think of any.’

[Interview 5, politician, July 2019]

The scale and nature of inter-parliamentary relations over the last twenty years for devolution in UK was reflected on by another interviewee:

‘In terms of England, Scotland and Wales – rather than Northern Ireland because there are more differences than similarities [due to the Good Friday Agreement] – the relationship between the three countries on the island of Great Britain [in territorial governance] ... asymmetrical devolution was a necessity in 1997 and 1999 but it is more of hindrance than a help today. Where you have a close result of a referendum [in 1998 to create a National Assembly for Wales] the concept of ‘loser’s consent’ is quite important ... I supported many of the proposals in the 1998 legislation because there hadn’t been the mandate for significant change in the [Welsh] referendum as there had been in Scotland. I thought the powers were too limited ... but to create an institution that would accrue and develop powers was important. At the start of this century I thought asymmetrical devolution was a reasonable way to go ... but twenty years later I am not convinced that this is the situation that is facing us now.’
[Interview 16, politician, December 2019]

Conclusion

- The scale and nature of inter-parliamentary relations over the last twenty years for devolution in the UK has been sporadic and ad hoc.
- Structures between legislatures to scrutinize inter-governmental relations have been informal.
- Devolved legislatures have sought revised models of inter-governmental relations to strengthen accountability, scrutiny and transparency that could provide more robust informal or semi formal structures to facilitate greater inter-parliamentary working.

Transparency

Transparency was a recurrent theme for both officials and politicians interviewed. How the legislatures in the UK work together to scrutinize UK concerns such as Common Frameworks and the Internal Market in a post-Brexit devolved UK were raised as examples in twelve interviews as areas that would require working across legislatures.

A number of elected members (five interviewees) in the devolved legislatures raised the issue of capacity (time and resources) to strengthen scrutiny of inter-governmental relations. For example as a model of good practice each government (UK and devolved administrations) should routinely report to the legislatures on inter-governmental meetings and outcomes.

Conclusion

Three key issues were raised in relation to transparency:

- Greater transparency would be required for the access and flow of information between parliaments in the devolved UK;
- Transparency and public engagement – greater transparency of inter-governmental relations could facilitate support in legislatures for inter-parliamentary agreements;
- Capacity – increased resources for legislatures to support additional scrutiny of information and agreements of inter-governmental relations could strengthen public support and accountability.

Knowledge exchange

There was a consensus across all interviewees that the Inter-parliamentary Forum on Brexit had facilitated knowledge exchange between the devolved and UK parliaments on Brexit related issues. For example, one interviewee welcomed the Forum as an opportunity to ‘exchange information’ between legislatures *[Interview 20, politician, January 2020]*. They also mentioned that this exchange of information was possible because it was:

‘... an avenue to build informal contacts between both officials and politicians. As the “party machine” is not always the best way to structure inter-parliamentary relations.’
[Interview 20, politician, January 2020]

Another interview respondent commented, ‘... that there was feeling that there was quite a depth to the information gathering” from the [Brexit] Forum meetings.’ *[Interview 11, politician, June 2019]*

The breakdown in relationships and trust in inter-governmental mechanisms was commented on by another interview respondent.

‘The breakdown in relations in Joint Ministerial meetings on Brexit-related issues makes the possibility of lack of knowledge and also exchange of information between devolved administrations and the UK Government more likely. In the Inter-parliamentary Forum on Brexit it could bring an informal network together.’
[Interview 8, politician, June 2019]

The other route of knowledge exchange between legislatures in the devolved UK was via committees:

‘Some select committees maybe have joint meetings if there is an equivalent committee in devolved parliaments ... that is really informal networking. I don’t think that has an official status.’
[Interview 12, politician, July 2019]

Conclusion

- Knowledge exchange had been an important outcome of the existing informal inter-parliamentary structures
- Building informal contacts and networks – at official and politician levels – were a valued dimension of inter-parliamentary relations for the exchange of information.
- Exchanging and gathering information via informal mechanisms had contributed to policy-making;
- By working together, committees of the legislatures had a route to exchanging knowledge and expertise.

Accountability

Strengthening inter-parliamentary mechanisms was discussed by all respondents as a means of improving scrutiny and accountability in relation to three aspects of governance in the devolved UK. The following quotes illustrate the forms of accountability that were raised by interviewees.

Scrutiny of inter-governmental relations

Strengthening inter-parliamentary mechanisms would be part of reform of inter-governmental relations. In the words of one respondent:

‘Inter-governmental relations need to be reviewed and relations between government and parliaments need to be on a more sustainable basis.’

[Interview 17, politician, January 2020]

Another interviewee reflected on the working of inter-governmental relations over the twenty years of devolution:

‘There is more formality to the Joint Ministerial Committee but it fell into disuse at one stage during the Blair years. [The use of JMC] tended to depend on the Prime Minister’s views of them and how important they thought they were. The European JMC was seen as most effective but for a while. It met more frequently ... but I don’t think they were driving things ... it will be interesting to see how trading relations are dealt with in the future. We could have “JMC Trade” to have a place where you can agree a negotiated position. That doesn’t seem to be happening.’

[Interview 15, politician, December 2019]

For one interviewee the Brexit process highlighted the flaws in existing inter-governmental relations and the scrutiny by legislatures in the UK:

‘Brexit shined the spotlight on some of the weaknesses and constraints but I’m not at all hopeful that this is the time that Whitehall turns a corner on this.’

[Interview 5, politician, July 2019]

Strengthen accountability and scrutiny of statutory instruments and secondary legislation

The role that the devolved legislatures had in the scrutiny of statutory instruments and secondary legislation in the UK Parliament was raised by four interview respondents. The overlapping of devolved and reserved powers (and also ‘pooled powers’ of devolved legislatures and the UK Parliament) strengthen arguments that parliamentary mechanisms should be reviewed in light of enhanced devolution to Scotland and Wales. Referring to existing arrangements for the devolved legislatures to scrutinize statutory mechanisms and secondary legislation in the UK Parliament – the ‘legitimacy’ of the devolved legislatures was raised:

‘Legitimacy is a contested idea. We may just stumble on – with [a] sort of unsatisfactory status quo and that creates the seeds for further problems down the line.’

[Interview 5, politician, July 2019]

The issue of politicians' capacity to scrutinize statutory instruments and secondary legislation were raised by interviewees across all legislatures. For one interviewee this had become more significant because of their role in the Brexit process, and the possible implications for devolved and 'shared powers' *[Interview 4, politician, June 2018]*.

This view was shared by another interviewee – in their view the handling of statutory instruments (SIs) and secondary legislation in terms of the working of devolution required reform. There was little liaison between the UK Parliament and devolved parliaments:

'... the Scottish Government may flag up a piece of secondary legislation affecting devolution ... [you need] a picture of how a new SI might be affecting devolution. Is it just an administrative change? Or is it proposing a more significant change in policy? In previous parliamentary sessions there were 100 SIs to review in a year, but now it's 900 a year. You can't possibly give them the same level.'

[Interview 11, politician, July 2019]

Common frameworks and the internal market

The post-Brexit negotiations to develop Common Frameworks and the agreement of the Internal Market in the UK might, in the words of one interviewee, be the 'catalyst' for inter-parliamentary reform. New frameworks are to be agreed to ensure there is coordination by the UK and devolved governments across certain policies such as agriculture and fisheries. One interviewee argued:

'... inter-parliamentary relations might become an issue. We have separate discussions about common frameworks regarding the governments – matters that are shared policy places in the UK and the Union. The parliament [in Wales] and also the UK parliament has legitimate appetite to scrutinize the new ways of doing business. What would be a real asset in that process, and to fit our footing the post Brexit world, is to find a high level of coordination between different parliaments and different committees in the UK, taking scrutiny of those frameworks and also inter-governmental relations more broadly in [a] time sensitive way to put building blocks in place quickly. Government can accept that arrangements can be put in place that both accept the need for timeliness, and the need for confidentiality and the need for parliaments to work together – the way that governments work together. It may be that some of that is happening but it doesn't feel as though there is an established set of principles that recognize the value of that ...'

[Interview 17, politician, January 2020]

Another purpose of inter-parliamentary relations in the devolved UK, and cross-institutional working by legislatures and governments was that they acted, in the words of one respondent, as the 'glue' for the Union. The cross-institutional working on the internal market might be what facilitates post Brexit working of devolution:

'I won't overstate their *[EU regulations embedded in the devolved legislation]* importance in tying together the Union as glue. The internal UK market is pretty powerful glue in terms of tying the UK together ... if you are from a Unionist mindset you should not be complacent about that. We are living in very fluid times ...'

[Interview 5, politician, July 2019]

Conclusion

Strengthened accountability through inter-parliamentary relations was raised in relation to three aspects of governance in the UK:

- Reforming inter-governmental relations requires that inter-parliamentary structures are reviewed to enhance accountability, and establish both principles and mechanisms for cross legislature scrutiny
- Strengthening accountability and scrutiny of statutory instruments and secondary legislation. Capacity issues for politicians to scrutinize statutory instruments and secondary legislation were raised by interviewees across all legislatures;
- Common Frameworks and the Internal Market in the UK might be the ‘catalyst’ for inter-parliamentary reform. Cross-institutional working on the internal market might be what facilitates post-Brexit working of devolution and also relationships across UK political institutions.

Formality

Formal structures of inter-governmental relations were contrasted with the more informal working and also the semi-formal working of inter-parliamentary links. One respondent discussed the inter-parliamentary Forum on Brexit as an “informal channel” to build and sustain working relations across the legislatures’ *[Interview 8, politician, June 2019]*.

For another interviewee:

‘JMCs’ relationships had been more tense but in the inter-parliamentary forum there was more discussion.’

[Interview 11, politician, July 2019]

They also felt that:

‘... it was important *[for the Brexit Forum]* to stay informal ... when you change an initiative to formal it changes the dynamics.’

[Interview 11, politician, July 2019]

An interviewee in the Scottish Parliament considered that ‘semi-formal’ networks or forums such as the Inter-parliamentary Brexit Forum had made a positive contribution to relationships between legislatures as a conduit for bringing politicians and officials with expertise of shared policy competence together on a regular basis.

The informal nature of the Inter-parliamentary Forum on Brexit was also a ‘channel’ to build networks. Informal working enabled the buy-in to working across legislatures by politicians and also officials.

‘The SNP as third opposition in the Commons could use informal networks via the Forum as a possible way to influence the Lords regarding the Brexit process.’

[Interview 9, politician, June 2018]

This is particularly notable as the SNP supports the abolition of the House of Lords, and does not nominate any members to the Lords.

Whether there was a political will to develop formal structures was tied to wider debates about institutional reform in the UK Parliament. One interviewee said;

‘Probably there is a lack of political will in England ... we could have sub state legislators feeding into a reformed House of Lords ... it could be done if there is a will to do it. You could have it as a Chamber of the Union ... you could consider trade and immigration for the devolved nations to have a stronger voice ... then we see some interactions between legislatures and the scrutiny.’

[Interview 15, politician, December 2019]

Conclusion

- The informal nature of the Inter-parliamentary Forum on Brexit was also a ‘channel’ to build networks. ‘Trust’ could be built between participants. Regular attendees viewed the IPFB as a useful conduit for exchanging knowledge;
- Buy-in from politicians and officials across legislatures in the devolved UK was necessary for informal networks to be effective;
- Formal structures changed the dynamic of relations between participants. Informal networks were a very useful route to share experience;
- Whether there was a political will to develop formal structures was tied to wider debates about wider institutional reform in the UK Parliament.

Functionality

The functions of legislatures include legislative powers, control over executive and public engagement. Respondents discussed the functionality of inter-parliamentary relations in terms of 'shared' policy areas for legislatures such as the internal market. Reform to the working of devolution should be premised on building working relations. In part, this was closely related for some interviewees to the formality of relations. As discussed above, the informal mechanisms and networks were seen as a way to sustain working relations.

Another related factor was the capacity of legislatures regarding workload and resources to support the work of non-executive elected members of legislatures. An interviewee from a devolved legislature mentioned that it may be necessary

‘... to make scrutiny [of inter-governmental relations] more effective.’
[Interview 15, politician, December 2019]

A point raised by interviewees in each parliament was that the use of legislative consent motions as a practical inter-parliamentary mechanism could be reviewed. One interviewee argued that the use of legislative consent motions ties to the legitimacy of the devolved legislatures and also the relationship between the UK Parliament and devolved legislatures. They also argued that there would be different viewpoints concerning the UK Parliament's role in passing legislation in devolved areas of responsibility.

Asymmetrical devolution in the UK had hindered the building of inter-parliamentary relations. For one respondent the 'shared powers' of devolution between devolved matters (the responsibility of devolved legislature) and reserved matters (the responsibility of the UK Parliament) had contributed to the lack of working understanding from UK Governments of how these powers could operate. The complexity in the Commons of English Votes for English Laws (EVEL) procedures had shown the weaknesses in asymmetrical devolution. These procedures allow for MPs representing English (and Welsh) constituencies to veto legislation that applies only in England (and Wales).

‘... there are too many jagged lines to make the settlement work ... [we] need to have systematic devolution that has understood structures of governance ... Also, all the UK structures are the property of the UK Government. The UK Government is judge and jury. We need UK structures that are independent of the UK Government.’
[Interview 16, politician, December 2019]

Another respondent referred to the 'need to respect the devolved parliaments' role in inter-parliamentary relations' and that this raised issues about the place of Legislative Consent Motions [Interview 14, politician, December 2019]. The interviewee also reflected on 'consent' from devolved legislatures for the UK legislature to pass legislation on devolved responsibilities. The convention of LCMs states that 'normally' consent should be given by the devolved legislatures for the UK Parliament to pass legislation in a devolved area. They argued that the UK Government should acknowledge when devolved legislatures do not pass legislative consent motions in the handling of legislation in the UK Parliament. They also argued that if the UK Government chose to proceed without accommodating the legislative consent motion they should explain their reasons.

Conclusion

- Asymmetrical devolution has evolved in an ad hoc and piecemeal process that has hindered the building of inter-parliamentary relations;
- Legislative consent motions as a mechanism of ‘consent’ by the devolved parliaments have legal, constitutional and political consequences for legitimacy of the devolved legislatures in devolved matters.

Sovereignty

Sovereignty was a key challenge in relations between legislatures in the devolved UK. For one respondent, sovereignty was related to working between legislatures and governments in the devolved UK on ‘shared powers’ under the devolution legislation. This was in relation to overlapping of reserved/ devolved powers in certain policy areas:

‘... some of the areas such as justice, energy and agriculture where common frameworks are being proposed by the UK government regarding “shared power” ... raise questions because for some [policy] areas they should be devolved and directed to the devolved legislatures rather to Westminster ...’

[Interview 16, politician, December 2019]

Another interviewee set out that policy differences between governments in the devolved UK may not be grounds alone for the convention of legislative consent motions to be reviewed. There should be a ‘reasoned basis’ on the grounds of the legitimacy and sovereignty of the devolved legislatures in relation to the principle of LCMs. The interviewee argued that LCMs must either be received from the devolved legislatures or normally received from the devolved legislatures. If the latter is chosen, this should be set out more clearly in terms of the grounds for the use of the term ‘normally’. This would help to inform the working of inter-parliamentary relations.

One interviewee commented on the convention of sovereignty in the Treaties of Union that formed the UK. Their view was that ‘shared sovereignty’ rather than ‘parliamentary sovereignty’ should be used in inter-governmental and inter-parliamentary relations. How the UK government was interpreting sovereignty was raised as an illustration by the interviewee. The example used was the EU Withdrawal Agreement Bill (Clause 38) that states the UK Parliament is sovereign but in Scottish constitutional law there is no convention of parliamentary sovereignty.

Conclusion

- There has previously been less need for cross-UK policy delivery because the devolved UK operated within common EU frameworks. ‘Pooled sovereignty’ across institutions in post Brexit devolved UK requires the UK and devolved government to agree new common frameworks in certain areas such as agriculture, environmental regulation and justice. These are required where there is a need to coordinate across certain policy areas.
- The legitimacy and sovereignty of the devolved legislatures in relation to the convention of LCM should be reformed in post-Brexit inter-parliamentary structures.

6 Conclusions and recommendations



6

Conclusions

This scoping project has concluded that there is a significant gap in academic research on inter-parliamentary relations in the devolved UK.

Interviews with politicians and officials have highlighted the need for improved inter-parliamentary relations to ensure transparency and accountability in inter-governmental working (particularly post-Brexit), and to facilitate valuable knowledge exchange.

Inter-parliamentary collaboration should be a routine and unquestioned aspect of the working of devolution, and in this scoping report we have demonstrated that there is a need for a greater understanding of its value.

Interviews showed there was a recognized need for further research concerning future institutional relations in the devolved UK. Officials and politicians commenting on existing informal and semi-formal inter-parliamentary relations regarded these as adding value to the working of devolution in the UK. Inter-parliamentary relations contributed by building networks and knowledge exchange between legislatures. This view was accompanied by a call for enhanced transparency.

There was a consensus in the interviews conducted that inter-parliamentary relations over the twenty years of devolution had been sporadic and ad hoc and that further work was needed on legislative relations within the UK. Possible starting models for future relations could draw on existing inter-institutional relations between Great Britain, Northern Ireland, Ireland and the British Islands via the British-Irish Parliamentary Assembly, and also the Inter-parliamentary Forum on Brexit

Constitutional relations between nations and territories in the UK have evolved in an ad hoc and asymmetrical manner, with devolution settlements responding to administrative and political drivers for 'devolution' of responsibilities and powers in nations and territories of the UK. This has not resulted in a coherent and rational framework for devolution, and has led to a continuing need to tweak and amend the devolution 'settlement'. This ongoing process of constitutional reform has not been subject to adequate inter-parliamentary scrutiny.

We found no direct international comparisons for the UK's distinctive constitutional arrangement.

Conclusions and recommendations

Why is reform of inter-parliamentary relations necessary?

In our view, the main drivers for reform of IPR are:

1. The call from devolved legislatures for revised models of inter-governmental relations to strengthen accountability, scrutiny and transparency;
2. The desire for strengthened accountability through inter-parliamentary scrutiny of secondary legislation and statutory instruments in areas of ‘pooled sovereignty’;
3. The need for legislatures in the UK to work together on the scrutiny of common frameworks and recognition that the UK’s internal market requires coordination between devolved jurisdictions;
4. A review of the workings of devolution in relation to the role of the UK parliament and to legislative consent motions as a mechanism;
5. In negotiations on future relations between the UK and EU, the institutional focus of relations should embed the role of the UK’s devolved institutions.

What is needed for reform?

Improved inter-parliamentary relations will require both structural and cultural change within the four parliaments. This report has aimed to articulate the problem, and the reasons why reform is in the public interest.

There are few significant constitutional barriers to legislatures working together at an individual or committee level. But there are structural barriers to proper resourcing of inter-parliamentary working, and the establishment of clear processes to enable it. Both these areas require more work. The four legislatures should commission this work collectively.

An important factor in making progress will be the buy-in of individual parliamentarians, and their recognition that good inter-parliamentary relations contribute to effective governance for the whole UK, not just the devolved nations. In the future, inter-parliamentary collaboration should become a routine part of each Member’s role.

Improving processes and demonstrating to parliamentarians the value of inter-parliamentary relations can go hand in hand.

We therefore propose the following:

1. Experiment, take risks, and learn by doing

The UK's legislatures need to experiment with dynamic models of IPR in the devolved UK which are flexible and adaptable. These models need to be monitored and tested for their fitness for purpose, and the learning shared proactively. The purpose of collaboration will also need clear definition, and consensus.

Models could include joint inquiries by committees in different parliaments on a specific topic. This would build understanding across multiple political parties and legislatures, and lend legitimacy to any findings and recommendations. It would also help avoid political sensitivities around a committee in one parliament being seen to criticise a government in another part of the UK.

Ultimately, reform will need a willingness to experiment, and learn from failure.

The Liaison Committees of both Houses of the UK Parliament, and parliamentary corporate bodies of the devolved legislatures, are the right bodies to take the initiative on inter-parliamentary relations.

We recommend that a working group comprising members from each parliament should be formed to consider perspectives from each nation, and establish consensus on a way forward. This should be taken forward by the committees/bodies mentioned in the previous paragraph.

2. Formalise the role of parliaments in scrutinising inter-governmental relations

In a union of devolved nations, accountability to the public via their elected representatives cannot only happen bilaterally. Governments should respect the democratic mandate of the devolved parliaments, and welcome the opportunity for enhanced transparency and accountability through informed scrutiny from the devolved perspective.

Written agreements should be developed between UK Parliament, UK Government, devolved legislatures, and the devolved governments on a best practice framework for inter-parliamentary oversight of inter-governmental relations.

The written agreement between the Scottish Government and Scottish Parliament could be used as a starting point, as a model of good practice.

Parliaments in the devolved UK should be notified of formal inter-governmental meetings such as joint ministerial committees (JMCs). Devolved legislatures should have access to information prior to inter-governmental meetings and receive reports of the proceedings and their outcomes. Taking this forward should be the responsibility of the UK Government.

3. Strengthen the role of devolved parliaments in legislative consent

The Scotland Act 2016 and the Wales Act 2017 put the convention of legislative consent (the ‘Sewel Convention’) into law. Significant legal and constitutional questions about the intersection of parliamentary sovereignty in Westminster and the devolution settlements were raised by the passing of the EU (Withdrawal) Act 2019.

In the past the Legislative Consent Motion (LCM) process has largely been treated as a matter of inter-governmental negotiation with the legislatures merely as bystanders. In the light of the more complex world of overlapping competences that will exist after the UK’s departure from the EU, the process needs to be redesigned to engage the elected members of the legislatures in a genuine conversation, sharing of views, allowing proper consideration of the impact on areas of devolved competence.

The passing of a law by Westminster after consent has been withheld should require formal processes in the UK Parliament and potentially formal inter-parliamentary dialogue.

The UK Constitution, Democracy and Rights Commission mentioned in the 2019 Conservative party manifesto would be well placed to consider both these matters, and explore how the Sewel convention could become a political as well as a legal fact. If this is not within the eventual remit of the Commission, the matters should be considered by the parliamentary authorities in liaison with Governments.

4. Learn from existing best practice in inter-parliamentary working

Both devolution and Brexit are processes rather than events. The process of negotiating the UK’s future relationship with the EU, its future trading relationships with the rest of the world, and creating new domestic regulatory frameworks and sustaining them into the future will put a strain on existing underdeveloped intergovernmental relations in the devolved UK.

Negotiating Common Frameworks and the Internal Market of the UK should therefore be the catalyst for inter-parliamentary reform. Indeed, the need for this scrutiny prompted the formation of the Inter-parliamentary forum on Brexit – a well regarded example of informal inter-parliamentary working.

Existing partnership working between devolved legislatures should be actively examined as a model of best practice for IPR. The Inter-parliamentary Brexit Forum should be used as a starting point for future models of best practice for mechanisms of IPR.

Further research should seek to identify strengths and weaknesses, and pathways for increasing the visibility and impact of, these models. The significant constitutional and legal challenges to IPR should be considered in a broader examination of the impact of Brexit on the governance of the devolved UK and models of intergovernmental relations.

Further research should support the scoping of a review of IPR and should be commissioned by the Westminster Liaison Committees, and their counterparts in the devolved legislatures.

5. Improve public information about inter-parliamentary relations, and decision making

Ultimately, both parliaments and governments are accountable to the public who elect them. Improved inter-parliamentary working should happen in a way which also improves people's opportunities to understand and engage with decision making, particularly making use of technology.

Better public information and education in the purpose of, and mechanisms for, IPR will be needed, and further research directed towards identifying priorities for such work should be part of the research mentioned in the paragraph above.

Notes

Chapter 1

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Chapter 2

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Chapter 3

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Chapter 4

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Chapter 5

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