

## RESPONSE TO SCOTTISH AFFAIRS COMMITTEE ON INTERGOVERNMENTAL RELATIONS

### Summary

- *Since before the referendum, the Royal Society of Edinburgh (RSE) has been engaged in the debate on the UK's membership of the EU. After the referendum the RSE launched an EU Strategy Group, Chaired by Sir John Elvidge. This group oversees the work of four subgroups on Constitutional Law and Government, Economics and Public Finance, Research and Innovation, and Migration and Rights. This response was facilitated through the Constitutional Law and Government group.*
- *The RSE recognise that the current arrangements are not working effectively in supporting consistent and successful intergovernmental relations. Due to formality and clear objectives the Joint Ministerial Committee for Europe is an example of successful intergovernmental cooperation, however most JMCs have not been as successful.*
- *In improving the current arrangements, the RSE believe that mechanisms such as the JMCs could be put on a more formal footing with clear objectives.*
- *Following our response to the Scottish Parliament Finance and Constitution Committee, the RSE would recommend that an Independent Secretariat should be developed that would primarily support the creation, development and implementation of common UK frameworks. However, it would be expected that the Secretariat would also have a role in improving the existing mechanisms.*
- *The RSE believe that the Secretariat, through use of its statutory power, could ensure for all JMCs the arranging of regular meetings, setting the agendas and consequently, improving the clarity*

*of purpose of the meetings. The Secretariat could also improve transparency by releasing all the relevant documents and minutes online and could also produce an annual report of all JMCs. Furthermore, through its research capability the Secretariat would be expected to improve the success of cooperation by providing objective analysis that would inform the discussion.*

### Introduction

- 1 The RSE welcomes the opportunity to respond to the Scottish Affairs Committee inquiry into intergovernmental relations between the UK and Scottish Governments.
- 2 The inquiry rightly states that due to the current division of responsibility for different areas of policy and devolution both governments currently work together in several areas. The level of interaction is expected to significantly increase as the UK exits the EU, if more powers are devolved and common frameworks to maintain the UK internal market are agreed and implemented.
- 3 The RSE has continued to be engaged in the Brexit process, providing input and advice through our EU Strategy Group where necessary. The Strategy Group is Chaired by Sir John Elvidge and oversees the work of five subgroups, Constitutional Law and Government; Economy, Public Finance and Industrial Strategy; Environment; Migration and Rights; and Research and Innovation. Four of these groups produced position papers<sup>1, 2, 3, 4</sup> and all have continued to provide responses to consultations and inquiries.

1 The RSE (2017), 'Brexit Challenges & Opportunities: Constitutional Law & Government',  
URL: <https://www.rse.org.uk/advice-papers/brexit-challenges-opportunities-constitutional-law-government/>

2 The RSE (2017), 'Brexit Challenges & Opportunities: Economy, Public Finance & Economic Strategy',  
URL: <https://www.rse.org.uk/advice-papers/brexit-challenges-opportunities-economy-public-finance-economic-strategy/>

3 The RSE (2017), 'Brexit Challenges & Opportunities: Research, Innovation & Tertiary Education',  
URL: <https://www.rse.org.uk/advice-papers/brexit-challenges-opportunities-research-innovation-tertiary-education/>

4 The RSE (2017), 'Brexit Challenges & Opportunities: Migration & Diversity',  
URL: <https://www.rse.org.uk/advice-papers/brexit-challenges-opportunities-migration-diversity/>

- 4 The EU Strategy Group recently produced a response to the Scottish Parliament’s Finance and Constitution Committee on Common UK Frameworks post-Brexit. In this response the RSE argued that an Independent Secretariat could be created, which would be a new mechanism to facilitate intergovernmental cooperation<sup>5</sup>.
- 5 This response follows on from that response and was prepared through the Constitutional Law and Government subgroup, Chaired by Professor Paul Beaumont, as well as drawing additional experience and expertise from the Society’s Fellowship.
- 6 The RSE note that the questions focus on the formal arrangements of intergovernmental relations, but it is important to consider the informal mechanisms as well. For this reason, the response takes a holistic view and a more general format rather than answering the questions directly.

### *Current Arrangements*

- 7 As the inquiry states the main mechanism within the current arrangements for intergovernmental relations is the Joint Ministerial Committee, which was established under the MoU which sets out principles for communication and consultation. Currently, there is a ‘Plenary JMC’ that involves the Prime Minister, senior Cabinet Minister, and respective First and Deputy First Minister which meets irregularly. Other notable JMCs are JMC Europe (JMCE) and JMC European Negotiations (JMCEN).
- 8 Outside of the JMC framework there are a variety of other multilateral forums, such as the Finance Ministers’ Quadrilateral, and bilateral forums such as the Joint Exchequer Committee. Some bilateral/multilateral meetings have operated on an ad-hoc basis to deal with issues as they arise.
- 9 The current system is inadequate in supporting consistent and successful intergovernmental relations. Post-Brexit, it is expected the UK will require strong intergovernmental cooperation to maintain the internal market, therefore there is a significant challenge and urgency to develop new formal mechanisms to address these issues. We would encourage all governments to look at new methods and mechanisms that would improve the existing system.
- 10 In reviewing the JMCs the RSE would note that while the current arrangements are somewhat functional, they are not the most effective in meeting their aims and objectives. The merit of JMCs are that they help get key individuals around the table to create positive dialogue and to air any grievances.
- 11 However, there are examples in which JMCs do have objectives but with lack of incentives/purpose they fail to meet consistently which leads to the breakdown of intergovernmental cooperation.
- 12 The recent experience of the JMC EN illustrates a lack of formality. This was established ‘to ensure that the interests of all parts of the United Kingdom are protected and advanced, and to develop a UK approach and objectives for the forthcoming negotiations’ and committed to meet monthly<sup>6</sup>. However, in its first sixteen months, the Committee only met 7 times, and between the month before the Prime Minister sent the Article 50 letter and the following 6 months it did not meet at all. Since the end of the last year the Committee has started to meet more frequently but the opportunity to achieve significant outputs has arguably been lost as the UK and Scottish Government failed to reach an agreement.
- 13 The RSE would note that due to more consistency the JMC E has been one of the most successful JMCs. This works well because it has a clear function with purpose and objectives. It was important for the UK Government to consult the devolved governments before a meeting of the European Council and Council of the EU; this encouraged governments to consult and engage before any of the meetings.
- 14 Despite the experience of the JMC E, the overall success of the JMCs has fallen short, with other JMCs like JMC Domestic not meeting at all in recent years. The lack of consistency in holding meetings and in setting objectives for those meetings is a significant issue. This is evident in the JMCs’ limited success in achieving any agreements and resolving disputes.

<sup>5</sup> The RSE (2018), ‘Common UK Frameworks’. URL: <https://www.rse.org.uk/advice-papers/common-uk-frameworks/>

<sup>6</sup> Scottish Government (2016), ‘Joint Ministerial Committee European Negotiation Minutes’. <https://beta.gov.scot/joint-ministerial-committee-minutes-october-2016/>

- 15** The RSE notes that due to the inadequacy of the formal mechanisms in JMCs to solve difficult negotiations or disputes, bilateral discussions with respective ministers are also used to resolve matters.
- 16** The RSE is aware that intergovernmental cooperation is happening on the implementation of the Industrial Strategy. This is an example of how other areas of policy span the devolved governments and require cooperation out-with the JMCs. The RSE would note that as part of the intergovernmental cooperation mechanism serious discussion should be had in the framework of the development of the Industrial Strategy, and other areas of policy, in which other devolved governments are partners in these discussions.
- 17** In improving the current arrangements, we believe that it would be helpful if JMCs were put on a more formal footing with a schedule of meetings and agendas. The RSE believes that it would benefit the JMC were arrangements to be put in place to clarify when the UK Government is acting as a de facto government of England, for example, when discussing policy areas such as health, education and agriculture which are within the competence of the devolved institutions. The same person should not speak for the overall UK Government position as speaks for the English interests in relation to the subject under discussion.
- 18** Improving understanding of devolution among UK Government ministers and officials may help intergovernmental relationships. The Society would encourage methods to improve this understanding, such as increasing secondment within the civil services and specific training on devolution for civil servants, with Whitehall departments having specific colleagues focused on devolution.
- Future Arrangements**
- 19** Brexit will bring a significant challenge for intergovernmental relations and the constitutional arrangements in the UK, suggesting that post-Brexit good intergovernmental relations will become a requirement rather than an extra. There is general agreement that common frameworks may be necessary in specific policy areas to maintain the UK internal market. Some of these may be negotiated and governed via different intergovernmental mechanisms but this is dependent on what Brexit means for the UK relationship with the EU.
- 20** The RSE believe that post-Brexit Intergovernmental relations may need to rely on principles to improve effectiveness in reaching agreements. These should include the principles of consultation, consensus and parity. This would mean that within Intergovernmental relations mutual respect is maintained which could encourage governments to proactively work together to solve disputes and reach agreement.
- 21** For relationships to work effectively, inter-parliamentary relationships may need to be revisited and a new inter-parliamentary framework developed to deal with the post-Brexit challenges. A new inter-parliamentary framework could allow greater parliamentary oversight for each parliament, allowing greater scrutiny of the intergovernmental relations.
- 22** In our response to Scottish Parliament's Finance and Constitution Committee, the RSE highlighted that currently there is no clear institutional body or arrangement which could effectively facilitate the development and implementation of common frameworks. We welcomed and supported the recommendation from the Public Administration and Constitutional Affairs Committee for the creation of an Independent Secretariat as a new feature for intergovernmental relations.
- 23** The Society argued that the Secretariat could support the development, agreement and operation of common UK frameworks. Therefore, we recommended that it would have statutory power, and be made up of civil servants seconded to the body from all administrations in the UK who would then represent the UK interest. The body would have its own research capability which would help to inform agendas and resolve disputes. Funding for the body would be provided, proportionally, by all governments. This could be ring-fenced to ensure the power of the body is not undermined by the withdrawal of funds.
- 24** The RSE envisage that the Independent Secretariat could have a significant role in common UK frameworks post-Brexit but also have a strong role in improving intergovernmental relations. Currently there are several mechanisms that intergovernmental relations operate through. Rather than add to these the Society would recommend that the formality and structure should be refined rather than new mechanisms created. This could be a role for the new Independent Secretariat.

- 25** The RSE believe that an Independent Secretariat could serve to greatly improve the current methods and mechanisms of intergovernmental relations. Using the JMCs as a starting point for a new model of intergovernmental relations, the role of the Secretariat could allow it to arrange meetings, set agendas and publish research.
- 26** Through its statutory power the Independent Secretariat would create a formality for all JMCs, as it will be able to set regular meetings. The ability to set agendas would help to establish clear purposes and objectives for the meetings and help create a consensus in which agreements are more easily made. There may also be a role for the Secretariat to manage the Chairmanship of JMCs which could rotate among the governments. With these improvements the RSE would see no reason as to why the JMCs could not become a decision-making forum. This would encourage the full engagement by all governments.
- 27** Transparency within intergovernmental relations is an area that also could be improved. The Calman Commission presented recommendations on the transparency of intergovernmental relations and, while this was ten years ago, these are still relevant today. These included recommendations to publish agendas, meeting times, and statements after the meetings with an annual report being published each year<sup>7</sup>. We would expect that this could be achieved through the Secretariat. Papers would be made available via the Secretariat, but the contents of such would be dependent on the sensitivity of the issues discussed.
- 28** Lastly, mechanisms for dispute resolution may also need to be improved in the future arrangements as currently no one method is effective. Disputes could be resolved via several mechanisms and the Secretariat could have a role in these. On occasions in which there is a dispute the RSE would expect the Secretariat to play a leading role. The body should be able to commission research on the areas of dispute, providing objective analysis which would then help inform their efforts in mediation.
- 29** In areas of policy that transcend both UK and devolved Governments, where intergovernmental cooperation is not facilitated through mechanisms but instead on an ad-hoc basis, such as Industrial Strategy, the Secretariat could have a role in facilitating discussion. The expected aim would be to ensure dialogue in areas that could affect the maintenance of the UK internal market.

## Conclusion

- 30** In conclusion, the RSE would note that the current arrangements are not working effectively to support consistent and successful intergovernmental relations. Brexit will provide a significant challenge which the UK and the devolved governments must work together to address. Improving the existing mechanisms must be the primary objective. Therefore, the RSE would encourage the development of an Independent Secretariat that would handle common frameworks as well as working to improve existing arrangements.

### *Additional Information*

This Advice Paper has been signed off by the General Secretary of the RSE.

Any enquiries about this response should be addressed to Paul Stuart, Policy Advice Officer (pstuart@therse.org.uk).

All responses are published on the RSE website (www.rse.org.uk).

<sup>7</sup> Calman Commission, 2008