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Inter-Parliamentary Relations: Committees

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Executive Summary

This briefing paper addresses a query from the Committee on Procedures on “the procedural steps required to facilitate greater joint working between committees of each of the UK’s devolved legislatures and committees of the House of Commons, for purposes including shared scrutiny of inter-governmental working on policy areas of common interest”. The paper begins by looking at the context in which the inquiry is taking place, identifying the current state of inter-governmental, -parliamentary and – committee relations.

The paper reviews the models of inter-committee relations, identifying a formal procedure which is based on the Standing Orders of both legislatures, and a number of informal methods. The four main methods of inter-committee cooperation are reviewed and their main features compared. This paper concludes that an amendment of the House of Commons’ Standing Orders to allow devolved committees to meet with their counterpart territorial committees appears to be the preferred option for most stakeholders, and considers the necessary procedural steps.

1 Introduction

This briefing paper addresses a query from the Committee on Procedures on “the procedural steps required to facilitate greater joint working between committees of each of the UK’s devolved legislatures and committees of the House of Commons, for purposes including shared scrutiny of inter-governmental working on policy areas of common interest”. This query forms part of a call for evidence from the Procedure Committee of the House of Commons, as part of their inquiry into the procedure of the House of Commons and the territorial constitution.¹

The changes brought about by the progress of devolution since the late 1990s created devolved legislative bodies which interact and co-operate in a variety of ways, both formal and informal. Almost by definition, devolution created the need for inter-parliamentary and inter-governmental relations by creating devolved legislatures which have responsibility for policy previously administered by the UK Government.

Primarily, the focus of scrutiny has been on the conduct of inter-governmental relations (IGR), which refers to relations between the executive bodies of the legislatures. This can be seen, for example, in meetings of the Joint Ministerial Committee (JMC) and bilateral meetings between UK Government ministers and their devolved counterparts. Such meetings ordinarily take place privately, and are reported by way of an agreed joint statement or press release.

Inter-parliamentary relations (IPR) have not received as much attention, and do not happen as frequently or as formally. Where IPR have been scrutinised, the result has been “largely to bemoan their modest state or to suggest that stronger...mechanisms be established”.² IPR refers to co-operation between parliaments, committees and officials.³ This paper will therefore use the term ICR (inter-committee relations) to refer to the specific instance of IPR under consideration, and use IPR to refer to co-operation between legislatures. Cooperation between officials is beyond the scope of this paper, as work carried out at that level does not ordinarily involve scrutiny.

The paper begins by looking at the context in which the inquiry is taking place, identifying the current state of IGR, IPR and ICR. It will then consider the possible models for future joint working and outline their key features.

¹ House of Commons Procedure Committee Inquiry “The Procedure of the House of Commons and the Territorial Constitution” (2020) [The procedure of the House of Commons and the territorial constitution - Committees - UK Parliament](#)

² Adam Evans “Inter-parliamentary relations in the United Kingdom: devolution’s undiscovered country?”, *Parliaments, Estates and Representation* (2019) 39:1, pg 98-112

³ As above, fn 2

2 Intergovernmental relations

2.1 Inter-Governmental Relations: From Devolution to Present Day

The “primary machinery”⁴ for IGR between the devolved administrations is the Joint Ministerial Committee (JMC). A Memorandum of Understanding (MOU), together with subject-specific concordats, outlines its operation. The MOU was first published in October 1999, at which point it did not include Northern Ireland. Since then, it has been updated on a number of occasions, most recently in 2013, and “sets out the principles that support relations between all four governments, stressing good communication, consultation and cooperation”.⁵

The MOU refers to the three devolution settlements as including a statutory basis for consultation by the UK Government with the devolved administrations and vice versa, but notes that the MoU itself does not create any right to be consulted. The MOU states that the JMC and its sub-committees will deal with reserved matters which impinge on devolved responsibilities. It notes that “all proceedings of each meeting of the JMC will be regarded as confidential by the participants, in order to permit free and candid discussion...(but) there may be occasions on which the Committee will wish to issue a public statement on the outcome of its discussions. A communique to be agreed between the participating ministers will usually be issued following each JMC plenary”.⁶ The JMC is “a consultative body rather than an executive body, and so will reach agreements rather than decisions”.⁷

At the time of writing, the JMC’s most active sub-committees, aside from the overarching Plenary session, are EU Negotiations and Europe. Other sub-committees include Domestic (last met 2014); Poverty (last met 2002); Knowledge Economy (last met 2000) and Health (last met 2001).⁸ Since the referendum on the UK’s exit from the EU, the new JMC EU Negotiations (JMC EN) sub-committee has met 20 times,⁹ which is almost twice as frequently as the Plenary Committee has met since its inception. The UK Government decides when meetings of the JMC should be called, which has led to “an irregular pattern”.¹⁰ The JMC sub-committee meetings are usually chaired by UK ministers, and joint communiqués are sent out in relation to the matter discussed during the meeting. These communiqués are “short, largely agreed in advance and provide little insight”.¹¹

⁴ Lord Dunlop *The Dunlop Review of UK Government Union Capability* Cabinet Office, 24 March 2021 pg 32

⁵ Memorandum of Understanding and Supplementary Agreements October 2013
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/316157/MoU_between_the_UK_and_the_Devolved_Administrations.pdf

⁶ As above, fn 5 at A1.11

⁷ As above, fn 5 at A1.10

⁸ Institute for Government, Devolution: Joint Ministerial Committee 1st July 2020 [Devolution: Joint Ministerial Committee | The Institute for Government](#)

⁹ As above, fn 8.

¹⁰ As above, fn 8.

¹¹ As above, fn4 at pg 33.

These structures have been the subject of some criticism. In giving evidence to the House of Commons' Justice Committee, witnesses criticised the “non-transparent nature of relations and the non-statutory nature of the framework for intergovernmental relations”. One witness noted that the Concordats and MOU had only really worked in establishing a set of expectations, but since then had “largely gathered dust”.¹² Since that report was issued, the MOU has been updated to take account of changes in devolved powers. Despite this a report by the Public Administration and Constitutional Affairs Committee (PACAC) noted the general consensus that existing inter-governmental structures are not fit for purpose.¹³

The Dunlop Review contrasted the working practices of the JMC unfavourably with that of other IGR structures, including the Inter-Ministerial Group for Environment, Food and Rural Affairs, (IMG) and the Joint Ministerial Working Group on Welfare, noting that the IMG in particular provided an example of co-decision by consent, with annually planned meetings and jointly agreed agendas.

The Dunlop Review saw room for improvement in IGR activities, noting that they are not seen as transparent and pointing to complexities around the role of Ministers from the UK Government when working with the JMC. It also noted that “the pace of policy development around the UK's exit from the EU has strained the trust required for effective intergovernmental relations” and that the nature of this policy development has caused frustration in devolved administrations. This was “compounded by the use of the term ‘oversight’ in the JMC(EN) Terms of Reference, which created a false impression...about what would be possible”.¹⁴ Other criticisms have been made of the Dispute Resolution Protocol (which outlines how disagreements within the JMC should be managed) pointing out that the UK Government has a dominant role in adjudicating the disputes.¹⁵

The Dunlop Review recommended, amongst other things, that the JMC system be replaced by a UK Intergovernmental Council, which should be “much more open to scrutiny” and have an independent secretariat. Additionally, both devolved and UK Government Ministers should consider making statements to Parliament to enhance transparency, as opposed to the communiqués that are issued at the moment.

Accordingly, it is clear that one of the criticisms frequently made of IGR is a lack of transparency, which inhibits effective scrutiny. IGR reform has been recommended by a number of reports, both government-commissioned, such as the Dunlop Review, and committee-based, as in the case of the PACAC review. In November 2020, the

¹² House of Commons Justice Committee *Devolution: a decade on*, 24th May 2009 HC 529-1 Vol I pg 33
<https://publications.parliament.uk/pa/cm200809/cmselect/cmjust/529/52902.htm>

¹³ House of Commons Public Administration and Constitutional Affairs Committee *The future of the Union, part two: Inter-institutional relations in the UK*. 29th November 2016 HC 839 [House of Commons - The Future of the Union, part two: Inter-institutional relations in the UK - Public Administration and Constitutional Affairs Committee \(parliament.uk\)](#)

¹⁴ As above, fn 4 pg34

¹⁵ As above, fn8. MSP Michael Russell identified a lack of trust in the procedure, saying that it is not used because “there is no point in using it”. [Devolution: Joint Ministerial Committee | The Institute for Government](#)

Government announced a review of the transparency and accountability of inter-governmental relations.¹⁶

2.1.1 Review of Inter-Governmental Relations

The most recent update from the review of IGR identifies some key features of the future plans for IGR. A new three tier structure will be established, namely:

- Portfolio engagement at official and ministerial level;
- Engagement on cross-cutting issues, including an Inter-Ministerial Standing Committee;
- A proposed UK Government and Devolved Administrations Council, which would replace the JMC.

These structures would be underpinned by a permanent Secretariat and a dispute resolution procedure which allows the possibility of third-party input. The Secretariat will support communication of agreed statements and communiques to the legislatures, and the governments are expected to be accountable to their respective legislatures for activity in the Committee/Council.

The most recent update on IGR review is detailed and complex, and beyond the scope of this paper to address in full. It has been mentioned here to highlight the extensive work that has been done on IGR, and the robust procedures which that work has produced.¹⁷

2.2 Common Frameworks

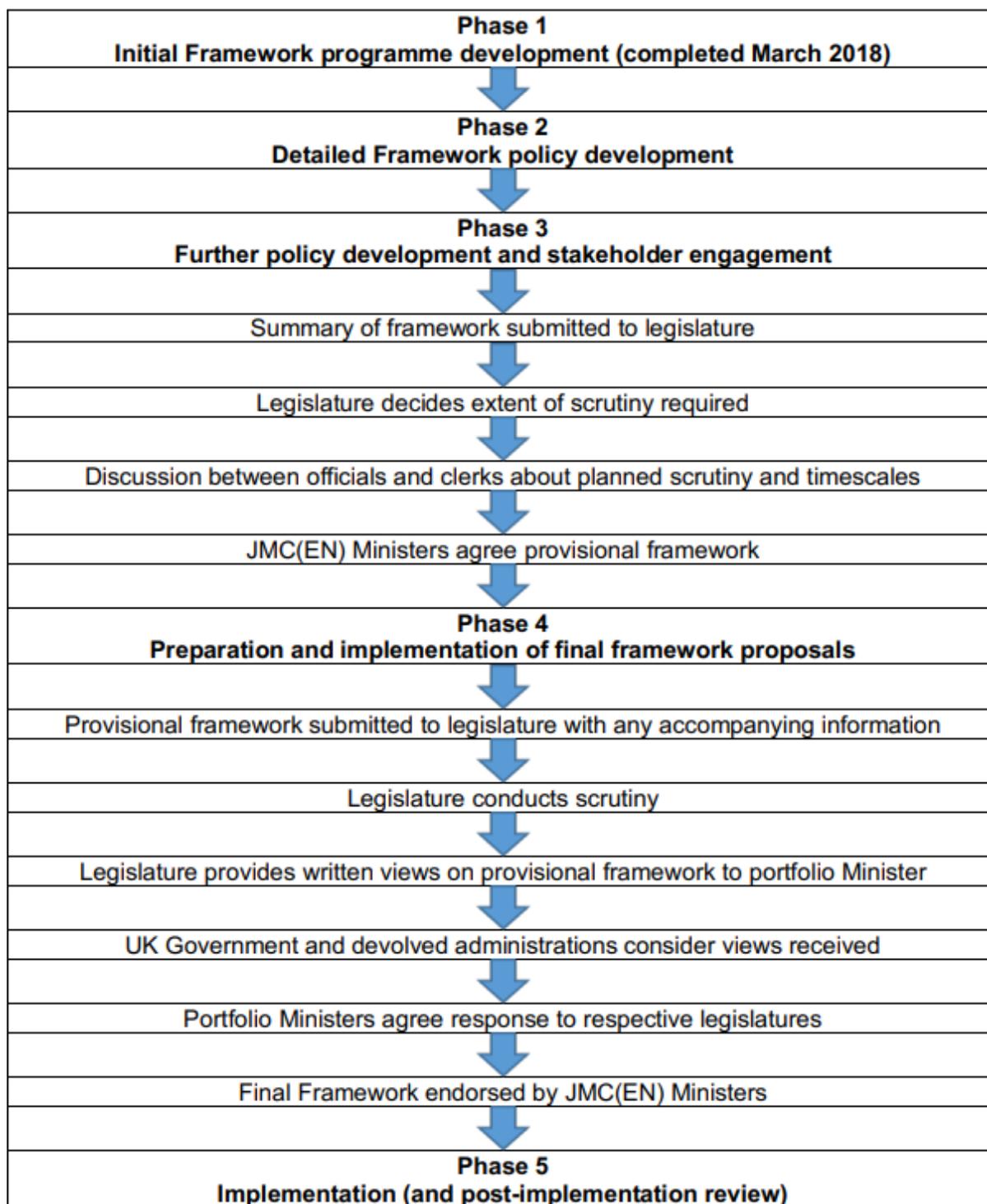
Common frameworks are intended to avoid divergence between the four nations of the UK in areas previously administered by EU law. Their process is heavily influenced by inter-governmental work and relies on the agreement of the JMC(EN). The process has been outlined overleaf.¹⁸

¹⁶ House of Commons Deb 10 November 2020 vol. 683 [Transparency of Intergovernmental Relations: Update - Tuesday 10 November 2020 - Hansard - UK Parliament](#)

¹⁷ Cabinet Office *Progress update on the review of intergovernmental relations* 24th March 2021
<https://www.gov.uk/government/publications/progress-update-on-the-review-of-intergovernmental-relations>

¹⁸ Letter from Chloe Smith MP, Cabinet Office to William Wragg MP, Chair of the Public Administration and Constitutional Affairs Committee, 1st June 2020 [2020.06.01 - 06785 - Outgoing \(parliament.uk\)](#)

Fig. 1 Common Frameworks Procedure.



The two key phases for scrutiny of common framework development are phase 3 and phase 4, where scrutiny is scheduled and then applied by the legislature. Ultimately, the frameworks are endorsed by the JMC(EN), although legislation may be passed by parliament during the implementation phase, and thus subjected to wider scrutiny. As will be seen below, however, procedures for joint scrutiny by committee are not universally formalised across the devolved legislatures, or within the UK parliament.

It is to be presumed that the new structures proposed in the review mentioned at 2.1.1 above will take the place of the JMC(EN) in approving the Common Frameworks.

2.3 The British-Irish Council

The British-Irish Council is a forum which is attended by Ministers from legislatures of the British Isles, and so falls within the definition of IGR. Its purpose is outlined in strand 3 of the Belfast / Good Friday Agreement 1998.

To promote the harmonious and mutually beneficial development of the totality of relationships among the peoples of these islands... the BIC will exchange information, discuss, consult and use best endeavours to reach agreement on co-operation on matters of mutual interest within the competence of the relevant administrations.¹⁹

The Council is a forum for members to discuss and reach agreement on matters of mutual interest. It does not have direct input into legislation.

2.4 North-South Ministerial Council

The North-South Ministerial Council was established under the Belfast/Good Friday Agreement to develop consultation, cooperation and action within the island of Ireland. In the areas of co-operation (health, tourism, transport, agriculture, education and environment) common policies and approaches are agreed and implemented separately in each jurisdiction.²⁰ The Council is composed of Ministers from the Northern Ireland Executive and the Irish Government, and participation by the NI Executive in the NSMC must be on a cross-community basis.

The NSMC is supported by the Joint Secretariat. Implementation bodies of the NSMC are subject to investigation by the NI Public Services Ombudsman.²¹ Legislation is carried forward through the individual parliaments and reports of proceedings are given by participating NI Ministers to the Assembly and Executive.²²

3 Inter-Parliamentary Relations

There are a number of ways, both formal and informal, in which devolved and central parliaments can consult and share knowledge. That said “there is currently no formal role for the UK Parliament, Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly in scrutinising inter-governmental relations”.²³

¹⁹ The Agreement Strand 3 Clause 5

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/136652/agreement.pdf

²⁰ NSMC “Areas of Co-Operation” <https://www.northsouthministerialcouncil.org/areas-of-cooperation>

²¹ Public Services Ombudsman Act (Northern Ireland) 2016 c.4 Sch 3

²² The Northern Ireland Act 1998 s52C ss(2).

²³ David Torrance *Inter-governmental relations in the United Kingdom* Commons Library Research Paper 8371 (2018) p26
<https://researchbriefings.files.parliament.uk/documents/CBP-8371/CBP-8371.pdf>

3.1 British-Irish Parliamentary Assembly

The British-Irish Inter-Parliamentary Body was established in 1990 and, in 2001, was enlarged to include representatives of legislative bodies in Scotland, Wales, Northern Ireland, the Isle of Man, Guernsey and Jersey. At that point it was renamed to the British Irish Parliamentary Assembly. The Assembly is not a legislative body, instead engaging in a “wide variety of non-legislative parliamentary activities”.²⁴

During its biannual plenary sessions, the Assembly debates topical issues, takes oral and written evidence and considers committee reports. It also issues an Annual Report and interacts with the wider international community. It is not, however, a body for scrutiny in the sense of that carried out by committees, as attested by Simon Hoare, chair of the NI Affairs Committee, when giving evidence to the Procedure Committee.

References have been made to BIPA—the British-Irish Parliamentary Assembly—but it is not the same thing (*scrutiny*) that we are talking about here. This needs to be formal, with transparency and with transcript. BIPA is an important organisation but it does not fulfil the function that I am talking about.²⁵

3.2 Inter-Parliamentary Forum on Brexit

Similarly, the Inter-Parliamentary Forum on Brexit consists of the Chairs and Conveners of Committees scrutinising Brexit related issues in the Scottish Parliament, Senedd and NI Assembly, as well as the House of Lords and House of Commons. It meets in private and agreed statements are issued after the meeting. Since the impact of COVID-19, “officials-only” meetings have been taking place.²⁶ There is uncertainty about the future of the forum.²⁷

It was agreed, within the EU-UK Trade and Cooperation Agreement, that a Parliamentary Partnership Assembly “may be established”.²⁸ This body will be able to request information regarding the implementation of the TCA from the UK-EU Partnership Council, which supervises the operation of the Agreement at a political level. It has not been established at the time of writing, so its terms of operation cannot be considered.²⁹

²⁴ [British-Irish Parliamentary Assembly | About the BIPA \(britishirish.org\)](https://britishirish.org/)

²⁵ House of Commons Procedure Committee HC Deb 22 March 2021 vol.838 (Q.44)
<https://committees.parliament.uk/oralevidence/1933/pdf/>

²⁶ House of Commons Committee on the Future Relationship with the European Union 21 January 2021 HC 977 [The shape of future parliamentary scrutiny of UK-EU relations - Committee on the Future Relationship with the European Union - House of Commons](#) para 86.

²⁷ As above, fn 23 at para 89.

²⁸ UK EU Trade and Cooperation Agreement – Title III Art 11 [EUR-Lex - 22021A0430\(01\) - EN - EUR-Lex \(europa.eu\)](#)

²⁹ [The UK-EU Trade and Cooperation Agreement: governance and dispute settlement - House of Commons Library \(parliament.uk\)](#)

4 Inter Committee Relations

In much the same way as IPR and IGR progressed, there has been an asymmetric development of ICR since devolution began in the late 1990s. The next section illustrates the differences between four models for ICR. These are described as “formal”, “guesting”, “visiting” and “twin track”. Other than the formal model, any committee of any legislature could employ any model if it so chose. Examples have been used to illustrate the operation of each model.

4.1 Formal Model – Welsh Affairs Committee

The formal ICR mechanism is found in Standing Order 137(A)(3) of the Standing Orders of the House of Commons,³⁰ with its devolved counterpart found in the Senedd Standing Orders (17.53 and 17.54).³¹ This allows the Welsh Affairs Committee of the Commons to conduct joint work with any committee of the Senedd. The standing orders of the Senedd make reciprocal arrangements, although these are more liberally drafted, allowing any Senedd committee to meet with “any committee or joint committee of any legislature in the UK”.³² Although initially a temporary measure to allow scrutiny of the draft Transport (Wales) Bill of 2004, the joint work of the Committees has been generally regarded as positive. The Welsh Affairs Committee noted that the method had avoided duplication of evidence, and the House of Commons voted in July 2005 to amend the standing orders.³³

This process has been described as ‘reciprocal enlargement’,³⁴ but is described here as the ‘formal model’, where standing orders of either house allow for joint work between committees. The advantage of this model is that it takes place within the ordinary bounds of committee work, thereby attracting parliamentary privilege and the power to call for papers and take formal evidence. In addition, the reports can be joint reports which are entered into the record in both legislatures.

4.2 Guesting Model – Scottish Affairs Committee

In contrast to the Welsh system, the Scottish Affairs Committee has used an informal procedure, here referred to as the “guesting” model. Although this procedure shares some similarities with the “formal” described at 4.1, the similarities relate to the process of committee work, that is gathering evidence, scrutiny and reporting. The differences relate to the powers and privileges of a committee, and those of its members.

The guesting model was used to facilitate joint work between the Scottish Affairs Committee of the House of Commons and the Scottish Social Security Committee of

³⁰ House of Commons Standing Orders; [Standing Order 137\(A\)\(3\)](#)

³¹ Standing Orders of the Senedd 17.53 and 17.54 [Standing Orders of the Welsh Parliament \(senedd.wales\)](#)

³² As above, fn 28.

³³ As above, fn 2, pg 7-8.

³⁴ As above, fn 2, pg 10.

the Scottish Parliament.³⁵ The process shared some similarities with the formal model. The Committees attended a joint session in Holyrood³⁶ and in Westminster.³⁷ The Chair of each committee allowed representatives from the guesting legislature to ask questions of witnesses in the host legislature, and vice versa. A document was published by each committee³⁸ which set out the committee's key findings and suggestions. During its Westminster sessions, the proceedings attracted parliamentary privilege.

There were, however, substantial differences between the Committees' proceedings. In order to avoid the absence of a procedural footing for each session, at each Committee session the "guesting" MPs or MSPs were described as witnesses. The Chair of the home Committee would, however, treat them as Committee members, allowing the guest MP/MSPs to ask questions of the other witnesses.

The report could not be published as a joint report, and instead was drafted as a letter, signed by both chairs and addressed to the relevant Cabinet members in each administration. When hearings were conducted in the Scottish Parliament, they could not be conducted as sessions of the Scottish Affairs Committee, and thus the witnesses did not benefit from parliamentary privilege.³⁹

Proposals for Reform

When giving evidence to the Procedure Committee in respect of the current inquiry, Pete Wishart MP was asked directly about his views on the extension of S137 A 3 to the Scottish Affairs Committee and gave the following response.

There will always be a constant devolution of responsibilities and powers, which all of us in the territorial Committees need to look at and properly assess and inquire upon, and we need our colleagues from our Parliaments and Assemblies in order to make sure that we do the best possible job. If there was one thing that your Committee could do, it will hopefully be to change Standing Order 137A(3).⁴⁰

³⁵ Inter-governmental co-operation on social security Press Release (Scottish Parliament) 6th February 2017

<https://archive2021.parliament.scot/parliamentarybusiness/currentcommittees/104007.aspx>

³⁶ Scottish Parliament, Social Security Committee *Inter-governmental co-operation on social security* Session 5 Col 1 13th March 2017 <https://archive2021.parliament.scot/parliamentarybusiness/report.aspx?r=10837>

³⁷ House of Commons, Scottish Affairs Committee *Inter-governmental co-operation on social security* HC 1095

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/scottish-affairs-committee/intergovernmental-cooperation-on-social-security/oral/49162.html>

³⁸ Letter to Secretary of State for Work and Pensions from Scottish Affairs Committee and Social Security Committee 10th April 2017 https://archive2021.parliament.scot/S5_Social_Security/Inquiries/PW_SW_SoS.pdf. An identical letter was sent to the Cabinet Secretary for Communities, Social Security and Equalities on 1st April 2017

https://archive2021.parliament.scot/S5_Social_Security/Inquiries/PW_SW_Cab_Sec.pdf

³⁹ As they are creatures of statute, proceedings in the devolved administrations do not attract parliamentary privilege.

[Parliamentary Privilege in the Northern Ireland Assembly - Insight Articles - News & Events - Carson McDowell \(carson-mcdowell.com\)](#)

⁴⁰ As above, fn 22 Q43

4.3 Visiting Model - Northern Ireland Affairs Committee

The Northern Ireland Affairs Committee (NIAC) has conducted evidence gathering sessions in Stormont, but these have not been joint sessions of committees, rather, they have been NIAC sessions held in Stormont. For example, during the 2017-19 Parliament, when Stormont was not sitting, NIAC held an evidence session in relation to its inquiry into Bombardier.⁴¹ Similarly, the Committee has heard evidence from MLAs at Westminster. There, MLAs act as witnesses, and have not been treated by the Chair as committee members with the right to question other witnesses.⁴² These proceedings were within the normal course of NIAC's work.

There are few similarities between the NIAC approach and the guesting and formal models. Although evidence of representatives from the Assembly could be included in the report, the report was issued by NIAC and witnesses could not, beyond their evidence, have input into the conclusions drawn or recommendations made.

Proceedings also attracted parliamentary privilege as ordinary committee proceedings would. Although it could be argued that questioning MLAs does not amount to joint scrutiny of government policy, the questions asked largely pertained to policy issues or Government action. In one report, devolution and the (then) suspension of the Stormont Assembly was considered, which drew heavily from MLA evidence and made recommendations on action to be taken by Executive parties and the Secretary of State for NI.⁴³ As with the guesting model, this process could be seen as a method of imitating the formal model without the necessary standing orders.

More informal methods of sharing knowledge and best practice exist. For example, in December 2013 members of the Committee for Agriculture and Rural Development (ARD) of the NI Assembly met in London with the Environment, Food and Rural Affairs Committee (EFRA) at the House of Commons.⁴⁴ Despite the fact that CAP reform, plant health, food security and bovine TB were discussed at the meeting, it does not appear in the EFRA Committee minutes for that year,⁴⁵ and was briefly referenced by ARD in the minutes of its next meeting.⁴⁶ Similarly, MLAs have held informal meetings

⁴¹ [Oral evidence - Bombardier - 30 Nov 2017 \(parliament.uk\)](#)

⁴² For example, on 21st February 2018 Colum Eastwood MLA and Claire Sugden MLA both gave evidence to the NI Affairs Committee, followed by Mr Jim Allister QC MLA; Mr Steven Agnew MLA and Mr Robin Swann MLA on the 6th March. Simon Hamilton MLA appeared on the 7th. NI Affairs Committee [Devolution and democracy in Northern Ireland – dealing with the deficit - Northern Ireland Affairs Committee - House of Commons \(parliament.uk\)](#) 22 March 2021

⁴³ House of Commons Northern Ireland Affairs Committee [Devolution and democracy in Northern Ireland – dealing with the deficit \(parliament.uk\)](#) 22 May 2018 HC 613 pg 59 para 2.

⁴⁴ NI Assembly Press Release 12th December 2013 AGR 04/13/14 [AGRICULTURE COMMITTEE DELIBERATES KEY ISSUES WITH WESTMINSTER COMMITTEE \(niassembly.gov.uk\)](#)

⁴⁵ HC Environment, Food and Rural Affairs Committee *Minutes of Proceedings Session 2013-14* [efra formal minutes 2013-14 consolidated.pdf \(parliament.uk\)](#) at pg 27.

⁴⁶ Committee for Agriculture and Rural Development *Minutes of Proceedings* 14th January 2014 [14-january-2014.pdf \(niassembly.gov.uk\)](#)

with⁴⁷ and given evidence to⁴⁸ Committees from the Oireachtas, but were not permitted to act as Committee members, e.g. by questioning witnesses.⁴⁹

Owing to the lack of participation in evidence gathering during these meetings (in the sense of joint examination of witnesses) and the inability of the visiting representatives to influence the final report, this form of ICR can be described as the “visiting” model.

Proposals for Reform

Giving evidence to the Procedure Committee in reference to the current inquiry, Simon Hoare, current Chair of NIAC, referenced the desirability of “formal interactions and meetings”. Mr Hoare noted “there is potential for joint inquires and joint working on a formal, clerked, transparent and in the public-domain basis”.⁵⁰ In the same session, Mr Hoare also associated himself with other evidence given to the Committee by the clerk of NIAC, Mr Nick Beech, which contains the following key points and is an effective summary of proposals for reform of ICR.

- The effect of SO 137 (A) (3) is to allow the Welsh Affairs Committee (WAC) to hold a “formal joint meeting with parliamentary privilege with a Committee of a devolved parliament”.⁵¹
- WAC is the only Committee which has this power.
- Extending this power across all territorial select committees would “increase the range of scrutiny options available to Committees in the House of Commons and the devolved parliaments”.⁵²
- There may be a case to extend this power beyond the territorial Select Committees to include all Select Committees.
- The possibility of formal joint meetings between committees of the Commons and of the Oireachtas, to scrutinise matters of shared concern, is potentially an option for the Procedure Committee to explore.
- The engagement of the devolved parliaments would be key to any extension of SO 137 (A) (3).

⁴⁷ NI Assembly Press Release 27th June 2013 ETI 11/12/13 [Assembly Committee Examines Roaming Charges with Oireachtas Communications Committee \(niassembly.gov.uk\)](https://www.niassembly.gov.uk/assembly-committee-examines-roaming-charges-with-oireachtas-communications-committee/)

⁴⁸ Seanad Special Committee on the Withdrawal of the United Kingdom from the European Union OS Deb 2nd February 2021 [Seanad Special Committee on the Withdrawal of the United Kingdom from the European Union debate - Tuesday, 2 Feb 2021 \(oireachtas.ie\)](https://www.oireachtas.ie/seanad/special-committee-on-the-withdrawal-of-the-united-kingdom-from-the-european-union-debate-tuesday-2-feb-2021/)

⁴⁹ Joint Committee on Communications, Natural Resources and Agriculture CAP Reform: Discussion with EU Commissioner Dacian Ciolos OD Deb 19th January 2012 [JOINT COMMITTEE ON COMMUNICATIONS, NATURAL RESOURCES AND AGRICULTURE debate - Thursday, 19 Jan 2012 \(oireachtas.ie\)](https://www.oireachtas.ie/joint-committee-on-communications-natural-resources-and-agriculture-debate-thursday-19-jan-2012/)

⁵⁰ House of Commons Procedure Committee HC Deb 22 March 2021 vol.838 <https://committees.parliament.uk/oralevidence/1933/pdf/> Q41

⁵¹ Written evidence submitted by Nick Beech, Clerk, Northern Ireland Affairs Committee (TTC 05) to the [Procedure Committee](https://committees.parliament.uk/writtenevidence/18849/pdf/) inquiry *Procedure of the House of Commons and the Territorial Constitution*. <https://committees.parliament.uk/writtenevidence/18849/pdf/> (para 5)

⁵² As above, fn 48 para 6.

4.4 ICR between national parliaments

There have been occasions where committees of two central legislatures have worked together. For example, the Digital, Culture, Media and Sport Committee (DSCMSC) has held an International Grand Committee on Big Data, Privacy and Democracy. This Committee largely followed the approach adopted by the Scottish Affairs Committee, the “guesting” procedure referred to above.⁵³

Similarly, the House of Common’s Defence Committee held a Joint Inquiry with the Standing Committee on National Defence and Armed Forces of the Assemblée Nationale. This followed the Lancaster House Agreement of 2010 between France and the UK, which led to a Parliamentary Working Group composed of representatives from both Parliaments. In order to distinguish this model of co-operation it will be referred to as the “twin-track” approach, as it contained some elements of formal and informal procedure.

The Parliamentary Working Group met privately, but agreed to hold a joint inquiry on the Future Cruise/Anti-Ship Warfare programme. This joint inquiry, unlike the “guesting” model used by the DCMS, developed a bespoke architecture in order to facilitate a formal joint report. From the Defence Committee perspective, the methodology was described as a twin track approach⁵⁴ - a formal track which involved decisions of the committee, and an informal track which carried out the joint work, including evidence gathering via informal sessions, which were not covered by parliamentary privilege. Transcripts of these informal sessions were entered into evidence by the Defence Committee, for the purposes of its own inquiry.

In order to avoid problems around the confidentiality of a draft report (which cannot be shared outside Committee) the report was drafted as a memorandum. The drafting was divided between the secretariat of the Defence Committee and that of the National Defence and Armed Forces Committee, and then each exchanged chapters of the report for comments and suggestion. Once this process had been completed the memorandum was submitted to each Committee, and, although members could propose amendments, these had to be agreed by both Committees and so were submitted in advance. The memorandum was approved by the Committees separately, following which it was reported as a Committee Report in the Commons, and approved for publication by the French Committee.

⁵³ Digital, Culture, Media and Sport Committee *Disinformation and fake news: Final Report* 18th February 2019 HC Deb 1791

⁵⁴ Adam Evans “A Parliamentary Entente Cordiale? The House of Commons Defence Committee’s Joint Inquiry with the Assemblée Nationale’s Standing Committee on National Defence and the Armed Forces” *The Political Quarterly*, Vol. 91, No. 1

This mechanism was “more complex than the approach taken by the (Scottish Affairs Committee) in 2017 and the DSCMSC in 2018”⁵⁵ and did not address the issue of parliamentary privilege for live proceedings (although the written transcript was entered into evidence and thus did attract privilege). However, this approach did have a more robust architecture, a formalised procedure and allowed for the production of a joint report, even if it could not be formally described as such. It was noted that this approach was necessitated by the lack of power in the Standing Orders to carry out this kind of joint inquiry.⁵⁶

⁵⁵ As above fn 49 pg 233

⁵⁶ As above fn 49 pg 229

Summary

The models of co-operation between committees of legislatures have various different features. These are summarised in the table below.

Table 1. Features of different ICR models.

	Formal	Guesting	Visiting	Twin-Track
Based on SOs	Y	N	N	N
Joint examination of witnesses?	Y	Y	N	Y
Parliamentary Privilege?	Y	Only for evidence given to Commons Committee	Only for evidence given to Commons Committee	Only for evidence given to Commons Committee
Dedicated Secretariat?	N	N	N	N
Permanent Committee?	N	N	N	N
Public?	Y	Y	N ^{***}	Y
Power to meet any Committee?	N*	Y	Y	Y
Power to call for evidence as a joint committee?	Y	N	N	N
Power to issue joint report^{**}	Y	N	N	N

* Although the SOs of the Senedd do allow its Committees to meet with any Committee of the House of Commons, the SOs of Parliament restrict this to the Welsh Affairs Committee, so practically speaking any Committee of the Senedd may meet with the WAC.

** This is a document which can be published as a joint report, rather than entered into evidence or simultaneously published by each Committee.

*** Evidence sessions are in public, but not all meetings are evidence sessions.

5 Procedural Considerations

5.1 The Formal Model

In order to take advantage of parliamentary privilege, it will be necessary for the House of Commons to amend their Standing Orders to allow devolved administrations to participate in joint proceedings of Committees. This is done through a vote in the House, as it was in the case of the Welsh Affairs Committee. The favoured method in evidence given so far to the Procedure Committee appears to be the amendment of SO 137 (A) (3) to include the other devolved administrations. At present, the intention appears to be to allow the devolved administrations to work jointly with the appropriate territorial committee. The Committee may wish to consider its views on the limitations it would support when giving evidence to the Procedure Committee, although it is likely that, should such a limitation be imposed, the territorial committees could work jointly and invite participation from devolved committees, if the situation arose.

The Standing Orders of the NI Assembly do not appear to have an explicit provision allowing an Assembly committee to meet with a committee from another parliament. The obvious solution is an amendment of the Standing Orders in a similar fashion to the Senedd's Standing Order 17.53 & 17.54. This will require a cross community vote.⁵⁷ It is possible that ad-hoc committees, per NI Assembly SO 53, could draft their remit in such a way as to permit joint work. This could be done by virtue of the phrasing of SO53 (1) which allows the Assembly to decide the Committee's membership and direct its method of operation. The disadvantage of this approach is that it would require a newly established committee for each joint inquiry, and be limited to the work of the committee so established.

The Committee may wish to consider whether the Assembly's standing orders could be amended in such a way as to permit more flexibility than meeting with Westminster MPs. All devolved administrations could be included. That said, the powers of committees to call for witnesses and documents,⁵⁸ as laid out in the Northern Ireland Act 1998, are limited to those which affect Northern Ireland. In order to give a joint committee full powers, i.e. to call for witnesses and papers on issues which affect both legislatures, each committee should be working under full authority of its own Standing Orders. Therefore, reciprocal amendments to the Standing Orders of the NI Assembly and Scottish Parliament would be necessary, as the Standing Orders of the Senedd already allow Committees to "meet concurrently with any committee or joint committee of any legislature in the UK".⁵⁹

⁵⁷ The Northern Ireland Act 1998 s41.

⁵⁸ The Northern Ireland Act 1998, s44.

⁵⁹ Standing Orders of the Welsh Assembly SO 17.54.

5.2 Visiting, Guesting and Twin-track Models

The other models do not require amendment to standing orders and already take place in the absence of such amendments. They rely on cooperation from both committees to arrange joint evidence sessions and, in the case of the guesting model, drafting a joint letter. The twin track model had a more robust architecture in the form of decisions made by the Westminster committee used as procedural cover for activities – for example, the terms of reference were agreed between the two committees informally and then formally launched by the Defence Committee in the same way as for any inquiry.

6 Potential Models for Future Co-Operation

There are a number of options for ICR, each with their advantages and disadvantages. The consensus favours an extension of the provisions of SO 137 (A) (3) to the other territorial committees, or even more widely, to allow for scrutiny of matters of mutual interest under parliamentary privilege and the issue of formal joint reports. The amendments of the SOs of the House of Commons will require reciprocal amendments to be made to the SOs of the devolved legislatures. The advantage of this method is that it is a permanent solution, allowing the territorial committees and their associated devolved legislatures to use the same procedure.

The formal procedure, in its current form, still has its limitations. As mentioned above, the provisions of SO 137 (A) (3) prevent the Senedd committees from working jointly with any committee other than the Welsh Affairs Committee. That said, it may be possible for the territorial select committee to work with other select committees under the provisions of standing order 137 (A) (1), which authorises select committees to meet jointly and publish joint reports.

It can be argued that the procedures outlined above, namely the guesting, visiting and twin track approach, are an attempt to emulate the provisions of SO 137 (A) (3). To a greater or lesser extent, they attempt to conduct sessions of cooperative scrutiny in a public forum, provide parliamentary privilege to witnesses where possible, and publish a 'joint' document which is intended to act as a report.

There seems to be broad consensus across the parliamentary spectrum that extending SO 137 (A) (3) is the preferred approach, as seen in evidence already submitted to the Procedure Committee as part of the current inquiry.⁶⁰ The model could be made more robust, for example by putting the frequency of meetings on a more regular schedule, rather than the ad hoc system in place. It is also not known what would happen should committees be unable to agree the remit or scheduling of a joint inquiry or evidence session. In addition, to support the committees in their work, the establishment of a secretariat, perhaps to be shared between the territorial committees, could be

⁶⁰ As above fn 1

considered in the longer term. Such innovation would depend on the way in which joint working develops.

Appendix 1 – Standing Orders for the formal model

House of Commons Standing Orders Standing Order 137 (A)

137(A) Select committees: power to work with other committees

(1) Any select committee or sub-committee with power to send for persons, papers and records shall have power—

(a) to communicate its evidence to any other select committee or sub-committee of either House of Parliament or to the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly or to any of their committees; provided that evidence from the National Audit Office shall first have been agreed between that Office and the government department or departments concerned;

(b) to meet concurrently with any committee or sub-committee of either House of Parliament for the purpose of deliberating or taking evidence;

(b) to agree with any other select committee or sub-committee of this House on the exercise of any power which each of those committees, or sub-committees may separately have to appoint specialist advisers, to authorise witnesses to publish written evidence submitted by them, or to adjourn from place to place;

(c) to meet concurrently with any other select committee of this House for the purpose of considering a draft report;

(d) to agree in the choice of a chair for any concurrent meetings; and

(e) to invite members of any other committee to which this order applies to attend any meeting and, at the discretion of the Chair, ask questions of witnesses or otherwise participate in its proceedings; but no member of another committee so invited may move any motion or amendment, vote or count towards the quorum.

(2) Where two or more select committees have agreed reports to the House in identical terms, those reports may be published as a joint report.

(3) The Welsh Affairs Committee may invite members of any specified committee of the National Assembly for Wales to attend and participate in its proceedings (but not to vote)

Standing Orders of the Welsh Parliament, Standing Orders 17.53 &17.54

Meetings with Other Committees

- 17.53 Committees may meet concurrently with other committees of the Senedd.
- 17.54 Committees may meet concurrently with any committee or joint committee of any legislature in the UK.