



House of Commons
Scottish Affairs Committee

**Scotland and the UK:
cooperation and
communication
between governments:
Government Response
to the Committee's
Fourth Report of
Session 2009-10**

First Special Report of Session 2010–11

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The Scottish Affairs Committee

The Scottish Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Scotland Office (including (i) relations with the Scottish Parliament and (ii) administration and expenditure of the offices of the Advocate General for Scotland (but excluding individual cases and advice given within government by the Advocate General)).

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Committee staff

The current staff of the Committee are Nerys Welfoot (Clerk), Alison Groves (Second Clerk), Duma Langton (Inquiry Manager), Ameet Chudasama (Committee Assistant), Karen Watling (Committee Assistant) Tes Stranger (Committee Support Assistant), and Ravi Abhayaratne (Committee Support Assistant)

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First Special Report

The Scottish Affairs Committee reported to the House on *Scotland and the UK: cooperation and communication between governments* in its Fourth Report of Session 2008–09, published on 31 March 2010 as HC 256. The Government's response to the Report was received on 13 July 2010.

UK Government response

This memorandum provides the Government's response to the conclusions and recommendations in the Scottish Affairs Select Committee's report 'Co-operation and Communication between Governments' (HC 256), which was published on 31 March 2010.

Introduction

The Committee's Report was published on 31 March, just prior to the prorogation of Parliament for the General Election held on 6th May 2010. The recommendations and conclusions outlined in the Committee's Report relate to events that occurred during the previous Government's term of office. While we do not intend to comment on the actions or decisions of the previous Government, this Response provides details of this Government's assessment of the recommendations. This Government is committed to working constructively with the devolved institutions. The Prime Minister travelled to Edinburgh to meet the First Minister of Scotland and the Presiding Officer of the Scottish Parliament as one of his first priorities, and the Secretary of State for Scotland appeared before the Scottish Parliament on 17 June. This Government will continue to build on our progress thus far, and to ensure that our dealings with the Devolved Administrations are based on the principles of co-operation and mutual respect. We note the Committee's recommendations with interest. This Government looks forward to working with the Scottish Affairs Select Committee and would welcome an early opportunity to engage with the Committee.

Response to Recommendations and Findings

Recommendation 1

We conclude that it is of great importance for the wellbeing of the people of Scotland that there is constructive and effective communication between the Scottish Executive and the United Kingdom Government and we recommend that our successor Committee in the new Parliament continue to scrutinise relations between the two governments (paragraph 8)

This Government is fully committed to engaging with all three Devolved Administrations with an agenda of mutual respect. One of the Prime Minister's first priorities was to have a useful and productive meeting with the First Minister of Scotland. We recognise the value that devolution delivers to people across the United Kingdom and we are committed to maintaining and supporting devolution and the Devolved Administrations and legislatures. We are committed to regular exchange of information between UK Ministers and counterparts in the Devolved Administrations and their legislatures and we look forward to constructive engagement with the Scottish Government, in the interests of people in Scotland and the rest of the UK.

Recommendation 2

We conclude that an updated Memorandum of Understanding between the UK and Devolved Administrations is long overdue. We therefore urge the Government to publish the agreed revised version as soon as possible. We welcome the publication of the Protocol for Avoidance and Resolution of Disputes which sets out the process for consideration of disagreements at official level and disputes at Ministerial level as we were not convinced of the need for an external arbiter. We recommend that the Joint Ministerial Committee review the Memorandum of Understanding at least every three years to ensure that it remains fit for purpose and should monitor the implementation of the new Protocol (paragraph 24)

The revised Memorandum of Understanding was published by the previous Government and presented to Parliament on 30 March. This document was also laid before the respective devolved legislatures and was the product of discussion and agreement between the then UK Government and the Devolved Administrations in Scotland, Wales and Northern Ireland. The revised Memorandum of Understanding builds on the principles set out in the original Memorandum: cooperation, communication and respect – this Government is committed to these key principles.

The revised Memorandum of Understanding incorporates the Protocol for Avoidance and Resolution of Disputes published after the Joint Ministerial Committee (Domestic) meeting on 10 March. This text sets out in greater detail the principles for dispute resolution that were contained in the original and updated Memorandum of Understanding. This Government welcomes a set of clear processes for resolving disagreements and disputes at both official and Ministerial level. But our aim will be to avoid disputes whenever possible and to work constructively and cooperatively with the Devolved Administrations.

This Government believes that constructive communication and interaction between the Administrations within the UK at both official and Ministerial level will assist to minimise areas of dispute and ensure more informed policy discussion and development. The Memorandum of Understanding includes a commitment that the document will be reviewed at least annually by the Joint Ministerial Committee.

Recommendation 3:

We conclude that it remains a challenge for the Secretary of State to prove the value of his role to the current Scottish Executive. However, we recommend that the Scottish Executive recognise the Secretary of State's role as custodian of the Scotland Act and work with the Secretary of State to improve communication and cooperation between UK and Scottish Governments where possible. We welcome the introduction of the new Protocol for Avoidance and Resolution of Disputes which ensures that the Secretary of State is involved in the process aimed at resolving disagreements between administrations (Paragraph 39).

This Government remains committed to the role of the Secretary of State for Scotland. We believe that it is vital for the interests of all the Devolved Administrations to be represented at the Cabinet table, not least at this time of economic and financial challenges and given the ambitious proposals we have set out to facilitate further devolution of powers to Scotland. The Secretary of State for Scotland will play a full and active role in policy formulation, ensuring that the devolution settlement in Scotland is fully respected during policy development, and also ensuring that the UK Government is represented in Scotland. We welcome the Committee's recommendation that the Scottish Government work constructively with the Secretary of State for Scotland in the interests of people in Scotland and across the UK.

Whilst it is this Government's intention to work constructively in the avoidance of disagreements and disputes, we agree with the Committee's comments on the vital role that the Secretary of State for Scotland should play, when necessary, under the terms of the Protocol for Avoidance and Resolution of Disputes.

Recommendation 4

We note the Secretary of State's concern that he is not copied routinely into correspondence sent from the Scottish Executive to UK Departments. We encourage the Scottish Executive to copy the Scotland Office into intergovernmental correspondence in future, as better and more open lines of communication are likely to enable the Scotland Office to offer its assistance to discussion at an earlier stage. (Paragraph 40).

We welcome the Committee's encouragement to the Scottish Government to copy the Secretary of State for Scotland into all correspondence. This Government does not see the role of the Secretary of State for Scotland to act as an intermediary in direct and constructive bilateral relations between UK Departments and their Scottish Government equivalents, but we do share the Committee's assessment that the Scotland Office plays an important role in supporting the full consideration of Scottish interests in policy formulation and development. Such action on the part of the Scottish Government will help ensure that the Scotland Office is best placed to help early identification of any areas of contention and work with relevant parties (in both the Scottish Government and in Whitehall) to resolve them satisfactorily.

Recommendation 5

Whilst we acknowledge that a formal framework for intergovernmental communication between the UK and Devolved Administrations cannot prevent conflict or dispute, we consider that it is healthy for robust debate and discussion to take place between Ministers on a regular basis. We conclude that it was regrettable that the plenary meetings of the Joint Ministerial Committee, together with the previous sub-committees, fell into abeyance in the years 2002- 2008. It is important for the UK Government and Devolved Administrations to meet regularly to discuss areas of joint concern affecting citizens across the UK. We recommend that the Government, in its response to this Report, set out the formal arrangements in place to ensure that Joint Ministerial Committee meetings continue so that our successor Committee can monitor the effectiveness of those structures (Paragraph 48).

The Government shares the Committee's regret that the Joint Ministerial Committee structure fell into abeyance between 2002 and 2008. This Government is committed to delivering constructive working relations between the UK Government and the Devolved Administrations; it is our assessment that regular bilateral and multilateral engagement is an important part of this constructive relationship.

This Government is committed to the Joint Ministerial Committee structure and will keep it under active review to ensure that it works in the interests of people from across the whole of the United Kingdom. The JMC Plenary met on 8 June 2010 and had productive discussions on: HM Government's Programme for Government and the areas of key significance for future discussions between the four administrations, the economy and public finance; and: inter-administration relations which agreed a forward schedule of meetings for the JMC and its sub-committees. The first meeting of the JMC (Domestic) will take place this Autumn.

Recommendation 6

We conclude that there ought to be greater visibility of the Joint Ministerial Committee process, whilst still protecting the confidential nature of the meetings as a forum for frank and open discussion between Ministers. There would be merit in publishing timetables and agenda for both plenary and domestic sessions of the Joint Ministerial Committee. In its Response to our Report the Government should confirm whether it intends to lay before Parliament an annual report on the state of relations between the UK and Devolved Administrations and whether this will include information on matters discussed at the Joint Ministerial Committees (Paragraph 51).

The Government agrees that inter-administration relations ought to be both transparent and effective, and will publish electronically an annual report on relations between administrations, agreed between administrations. This was agreed between the previous Government and the Devolved Administrations in the March JMC(D), and the Government will abide by that agreement. The Plenary meeting of the JMC agreed the publication by each administration of an annual report detailing formal activity between the four administrations since the last Plenary meeting on 16th September 2009. This

annual report is available on the Cabinet Office's website at <http://www.cabinetoffice.gov.uk/media/415286/jmc-annual-report2009.pdf>.

Recommendation 7

We welcome the action that the Government is taking to improve the knowledge of devolution matters amongst civil servants which has been shown to be occasionally wanting in the areas of Whitehall which have little to do with devolved issues or Scotland. We recommend that the Ministry of Justice ensures that each department has a “devolution champion” at senior level to ensure that structures are put in place to achieve and maintain higher levels of devolution awareness amongst staff. (Paragraph 62).

As a result of recommendations and findings from the Calman Commission, the UK Government undertook an audit of its devolution capability between October 2009 and March 2010 which agreed a series of actions for improvement – one of these was that each department should identify a senior devolution champion. All departments have now identified at least one senior member of staff as their devolution champion. It was also agreed that these leads should form a network across Whitehall and meet periodically. A first meeting of these departmental leads took place on 15th April and we expect a second meeting to take place this summer.

Recommendation 8

The Concordat on International Relations between Scotland and the UK clearly states that the Government should provide Scottish Ministers with information and advice on international developments that may affect their devolved responsibilities. Although the Concordat is not a legally binding document, we conclude that it was regrettable that the UK Government did not advise the Scottish Executive of the terms of the Memorandum of Understanding between Libya and the United Kingdom relating to the devolved matter of justice prior to signing. (Paragraph 75).

Recommendation 9

In future, the UK Government must consider whether the interests of confidentiality outweigh the responsibility it has to keep the Scottish Executive informed of international agreements made on its behalf, particularly in cases such as this where Scottish Ministers will be forced to make decisions on highly emotive and controversial devolved matters as a result (Paragraph 76).

[Note – recommendation 8 & 9 answers combined]

The UK Government is committed to the principles of co-operation and communication with the Devolved Administrations, including the Scottish Government, as enshrined in the Memorandum of Understanding and Concordats. As recommended, in future the

Government will consider carefully the appropriate balance between interests of confidentiality and the responsibility to keep the Scottish Government informed of international agreements made on its behalf. This includes consultation with the Devolved Administrations on matters relating to international relations which touch upon devolved matters. The signature of the Memorandum with Libya, as understanding between states, was rightly for UK Government, respecting the reservation of foreign affairs. The Memorandum recognised the different jurisdictions and explicitly stated that the UK Government would seek to obtain the agreement of all three jurisdictions in relation to devolved matters.

Recommendation 10

It is not within our remit to judge whether the benefits of the Memorandum of Understanding and Prisoner Transfer Agreement between UK and Libya were worth the concessions that had to be made by the UK negotiating team. However, the disagreement between the UK and Scottish Governments over the Prisoner Transfer Agreement throws up the question of how fundamental differences in opinion between the UK Government and Devolved Administrations can be resolved. Whilst we acknowledge that decisions on foreign affairs will always rest with the UK Government, we conclude that communications between Whitehall and Scotland at earlier stage during the Memorandum of Understanding negotiations could have produced a more satisfactory outcome with a possible carve-out for Mr al-Megrahi. We recommend that the Joint Ministerial Committee examine what lessons can be learned from the disagreement during negotiations over the prisoner transfer agreement. (Paragraph 84).

Ministers will always wish to use the meetings of the Joint Ministerial Committee to discuss how relations can be improved. We believe that there are significant lessons from this disagreement that have already been learnt, not least from the Scottish Affairs Committee's helpful report. The Government's priority is to build more positive relations with the Scottish Government in all areas.

Recommendation 11

We conclude that under the Concordat of International Relations, the United Kingdom Government had an obligation to provide relevant and comprehensive information and analysis to the Scottish Executive on the agreement made between the US and UK Governments on where Mr al-Megrahi would serve his prison sentence. Although the Scottish Executive was informed by the UK Government that there was no legal barrier to a transfer under the Prisoner Transfer Agreement, there is a disagreement between governments over whether the information provided to the Scottish Executive was comprehensive enough. (Paragraph 90).

This recommendation relates to the actions of the previous administration, on which we do not propose to comment. As is their right under the devolution agreement, the Scottish Government asked for advice on the international legal aspects of transferring Mr al-Megrahi. The FCO provided advice to the Scottish Government on two occasions, making

it clear on both occasions that it saw no international legal bar to Mr al-Megrahi's transfer. Mr Ivan Lewis, the relevant Minister of State at the time, provided this advice.

Recommendation 12

We conclude that it would be helpful if in future the UK Government could respond to requests for information from the Scottish Executive with either the relevant documentation or a clear explanation as to why it is not possible to provide the information so as to reduce the possibility of disagreements between the two Governments. (Paragraph 91).

The Memorandum of Understanding commits all administrations to provide information as fully and openly as possible to one another, and to safeguard the confidentiality of documents. The Government is committed to this approach.

Recommendation 13

We conclude that the discussions between the UK Government and the Scottish Executive in the run up to the announcement of Mr al-Megrahi's release on compassionate grounds are a good example of how close cooperation and communication, even on the most sensitive and confidential of matters, can enable departments to plan for the impact on the UK of the decisions of Devolved Administrations. However, we consider it unfortunate that the official response of the UK Government to Mr al-Megrahi's release in August 2009 did not reflect either the careful planning undertaken by both Governments beforehand or the information provided in the measured statement of the Foreign Secretary to the House of Commons on 12th October 2009. As a result, it appeared that the UK Government had not fully anticipated either the immediate media reaction or the subsequent international response. This is a matter for the UK Government to ponder. (Paragraph 104).

This recommendation relates to actions of the previous Government, on which we do not propose to comment. However we have taken careful note of the committee's observations.

Recommendation 14

We conclude that whilst there are sensible reasons for not disclosing the substance of discussions at Joint Ministerial Committee (Europe) meetings, there would be merit in publishing a timetable and agenda for the four meetings a year to provide some element of transparency to proceedings. In its Response to our Report the Government should provide details of what extent the confidentiality provision of the Concordat on coordination of European Union policy issues might be relaxed to allow Scottish Ministers to give evidence to the Scottish Parliament External and European Relations Committee in private. (Paragraph 118).

The Government agrees that inter-administration relations ought to be both transparent and effective, and to that effect the annual report on relations between the administrations

contains information on the activities of the Joint Ministerial Committee(Europe). Timetables and agendas are not currently published, but we are looking, in cooperation with the Devolved Administrations, at ways of continuing to improve the process. It is for the Scottish Parliament and the Scottish Government to determine arrangements for Scottish Ministers to give evidence to Scottish Parliament committees. The Government underlines the importance of ensuring that the information shared with the Scottish Government in relation to EU policy and negotiations is treated in line with the confidentiality provision of the Concordat.

Recommendation 15

We conclude that if it would be helpful to the UK to have a particular Minister from one of the Devolved Administrations in the chair, then the responsible UK Minister should ensure that this happens where possible. From the evidence that we have received, the UK Government appears to be open to this. However, we conclude that it is reasonable for the UK Government to prefer a UK civil servant to take the chair in preference to a devolved administration Minister if the devolved administration does not agree with the UK negotiating line. We recommend that in such cases, the UK Government should provide appropriate notice to the devolved administration of its intention to field a civil servant in preference to one of its Ministers. (Paragraph 129).

The Government believes that the Devolved Administrations can and should make an important contribution to the preparation and presentation of UK EU policy. We will work closely with the Devolved Administrations, through the JMC(Europe) and other bilateral contact when developing the UK line. Furthermore we are committed to including Ministers from the Devolved Administrations in delegations to attend EU Council meetings when devolved matters are up for discussion; each and every request will be considered carefully and lead UK Ministers will be encouraged to accept such requests whenever possible. When part of a delegation, Ministers from Devolved Administrations should be able to play a full and active part in the delegation with the agreement of the lead UK Minister, on the basis that they will be representing the agreed UK line.

We are determined to have, from official to ministerial levels, a more constructive engagement with the Devolved Administrations.

13 July 2010

Scottish Executive Response

I am writing on behalf of the Scottish Government to acknowledge the Committee's report on Scotland and the UK: cooperation and communication between governments.

My colleagues and I viewed the report's conclusions with interest. Clearly there have been changes in intergovernment relations since the report was written and the core issues examined by the inquiry have moved on; however we particularly welcomed the

report's support for Scottish Ministers taking the UK chair at EU Council of Ministers' meetings to advance the UK negotiating line which we will have played a part in developing - an issue very much in line with recent discussions at the Joint Ministerial Committee (Europe) on achieving a more positive response to requests from Devolved Ministers to attend and speak at Councils.

Fiona Hyslop MSP/BPA
Minister for Culture and External Affairs
28 June 2010