

## THE REVIEW OF INTERGOVERNMENTAL RELATIONS

Since 1999, engagement between the United Kingdom Government, the Scottish Government, the Welsh Government and the Northern Ireland Executive has taken place under the umbrella of 'intergovernmental relations' (IGR). Ministers and civil servants across the UK are in touch on a daily basis across all areas of interest, discussing joint decision-making, policy development and pragmatic ways to work together.

The past 12 months have been testament to the need for effective intergovernmental relations. As the UK looks to recover from the challenges of the COVID-19 crisis, strong intergovernmental relations is essential to support and enhance the important work of all governments.

Following a review of intergovernmental relations this document sets out new structures and ways of working. These will provide for ambitious and effective working, to support our COVID recovery, tackle the climate change crisis and inequalities, and deliver sustainable growth. They are built on principles of mutual respect and trust, respecting the reserved powers of the UK Government and Parliament and the devolved competences of the Scottish Government, Welsh Government, Northern Ireland Executive and their legislatures.

The new system will provide a positive basis for productive relations, facilitating dialogue where views are aligned and resolution mechanisms where they are not. The review also introduces a new era for IGR with improved reporting on intergovernmental activity, providing greater transparency, accountability and scrutiny from each government's respective legislatures.

### PRINCIPLES FOR INTERGOVERNMENTAL RELATIONS

1. Collaborative working will be founded on the following **principles**:
  - a. Maintaining positive and constructive relations, based on mutual respect for the responsibilities of the governments and their shared role in the governance of the UK;
  - b. Building and maintaining trust, based on effective communication;
  - c. Sharing information and respecting confidentiality;
  - d. Promoting understanding of, and accountability for, their intergovernmental activity;
  - e. Resolving disputes according to a clear and agreed process.
2. The following reforms of intergovernmental structures and processes are drafted on the basis of the current constitutional arrangements, whilst not precluding constitutional developments in the future. They provide a statement of political intent, but are not intended to create new, or override existing, legal relations or obligations, or to be justiciable. Nothing within them should be construed as conflicting with the Belfast/Good Friday Agreement. These arrangements will be kept under review.

### MACHINERY

3. This new system reaffirms our collective commitment to work more effectively together through new machinery dedicated to this purpose. On matters of mutual interest, the governments will seek to proceed by consensus, including ensuring the earliest possible resolution of issues. Intergovernmental machinery should:
  - a. sustain positive and constructive relations, based on mutual respect for each others' responsibilities and a shared role in the governance of the UK;

- b. facilitate effective collaboration and regular engagement in the context of increased interaction between devolved and reserved competence in our new relationship with the EU and other global partners;
  - c. promote dispute avoidance by ensuring there are effective communication and governance structures at all levels, from working-level officials to ministers;
  - d. provide equal opportunity for all governments to influence the choice of issues under consideration in intergovernmental forums and to propose, operate and participate in new forums;
  - e. ensure that all governments respect and abide by all jointly agreed guidance, rules and processes;
  - f. facilitate increased accountability and transparency which, in turn, can help develop and enhance the culture of engagement;
  - g. ensure that the processes serve all governments equally and fairly.
4. Effective IGR must be underpinned by regular official-level engagement within a collaborative environment created and fostered by ministers. As a general principle, therefore, the majority of intergovernmental business should be conducted on an ongoing basis through normal official-level channels wherever possible.
5. Ministerial oversight is however essential to promote effective collaboration and to provide political accountability. Ministerial forums should therefore be in place to consider and, where appropriate, reach agreement on issues of mutual interest across policy areas. Regular and tailored engagement within these forums will strengthen a shared ambition to operate a culture change across all administrations in their conduct of IGR. All ministerial engagement will be conducted in accordance with the principles for intergovernmental relations.
6. Intergovernmental decisions will continue to work on the basis of agreement by consensus. The default position will remain that a joint approach will not be taken in the absence of such consensus. There will be clarity throughout on the territorial extent of policy and representation in engagement.

### **Communication**

7. Intergovernmental relations are best facilitated by effective sharing of information and respecting confidentiality of the content of the discussions. The governments have committed to effective and timely communication with each other, particularly where one government's work may potentially have some bearing on the responsibilities of another; and to transparency in the conduct of their relations. The governments will ensure that appropriate formal and informal processes are available for sharing data and information, both multilaterally and bilaterally as appropriate. The governments commit to respecting the terms under which information is shared.

### **Future Conduct of Intergovernmental Relations**

8. Overall accountability for intergovernmental relations will remain with the Prime Minister, the First Ministers of Scotland and Wales and the First and deputy First Minister of Northern Ireland.
9. The new structures and processes should serve all governments equally, fairly and with respect for each government's respective responsibilities. To meet the objectives set out above, future intergovernmental relations will be conducted through the forums established within the three tier structure:
  - a. Portfolio engagement at official and ministerial level;

- b. Engagement on cross-cutting issues, including an Interministerial Standing Committee;
  - c. The Prime Minister and Heads of Devolved Governments Council
10. A standing IGR Secretariat will also be established to provide administrative support and promote the efficient and effective maintenance of relations at each tier and for the handling and resolution of disputes. Further details are outlined in Annex A. The role and functions of each tier are set out below.

## Engagement Structures

11. **Tier 1 - Portfolio Engagement.** All governments will commit to regular portfolio-level engagement on areas of mutual interest. This engagement should take place formally within **Interministerial Groups (IMGs)**, which are expected to cover a number of policy areas and will aim to meet regularly on a quadrilateral basis with established terms of reference. It may be more appropriate in some areas for engagement to be less frequent or in a different format, for example bilaterally, with exact format determined jointly. Further detail is outlined in Annex B.
12. **Middle Tiers - An Interministerial Standing Committee (IMSC)** should be established to consider issues which cannot be considered at the portfolio-level within the relevant IMG, to bring together strategic considerations affecting many different portfolios and to discuss any cross-cutting international issues. The IMSC should provide oversight of all IMGs and its Terms of Reference will therefore provide a remit to consider issues falling within all policy areas of mutual interests, both domestic and international, if they have a bearing on the wider relationships between the governments. It will meet every other month, according to rotating arrangements, but could meet more or less frequently according to need and if agreed by consensus. The IMSC may also consider issues that have been delegated to it. The IMSC, and supporting officials structures, will also be responsible for ensuring the effectiveness of portfolio-level engagement. Draft terms of reference are included in Annex B.
13. Recognising that international relations is a reserved competence, the importance of engagement on the UK Government's approach to international issues as it affects devolved responsibilities is embedded in the system. The IMSC will consider cross-cutting and wider strategic international issues, with FCDO Ministers invited as necessary. This will be complemented by two internationally focussed IMGs, including the Trade IMG to discuss agreements with the UK's new trading partners, and an IMG for the UK-EU Trade and Cooperation Agreement. These forums are in addition to departmental IMGs who will consider international engagement and agreements where devolved competence is being considered. In relation to UK-EU meetings, UK co-chairs will consider attendance as part of the UK delegation. International engagement and agreements that fall outside the remit of the IMSC or a relevant IMG will be led directly by FCDO, either on a bilateral or multilateral basis where necessary.
14. Confidentiality is a material part of all intergovernmental relations, and a necessary condition for engagement. All parties will treat discussions sensitively and not disclose information that breaches the confidential nature of such discussions.
15. If particular issues are identified as needing in-depth and focused consideration by ministers, **time-limited Interministerial Committees (ICs)** will be established by consensus.
16. Building on existing engagement in the Finance Ministers Quadrilateral, a **Finance Interministerial Standing Committee (F:ISC)** will consist of representatives of Her

Majesty's Treasury, together with the devolved governments' finance ministers to consider finance and funding matters. The F:ISC will sit alongside the IMSC and have similar operating arrangements, as outlined in the F:ISC Terms of Reference. It will be supported by a joint secretariat consisting of representatives of each minister's departments. Terms of Reference are included in Annex C.

17. Top tier of engagement - Intergovernmental relations in the UK will be overseen by the overarching **Prime Minister and Heads of Devolved Governments Council** ('the Council'). All middle-tier and portfolio engagement will be accountable to this forum. The functions and operation of the Council are detailed in Annex B.
18. Meetings will be chaired by the Prime Minister. In addition, it is anticipated the Prime Minister will engage with First Ministers and other parties, for example local leaders, outside of these structures.

## **SECRETARIATS**

19. The Council, IMSC and ICs will be supported by a standing IGR Secretariat, consisting of officials from all governments. The Secretariat will be accountable to the Council rather than to individual sponsoring governments. The IGR Secretariat will promote the efficient and effective maintenance of relations at each tier, facilitate prompt handling and resolution of disputes, and provide administrative support across the structures. More detail is set out in Annex A.
20. The F:ISC will be supported by the F:ISC Secretariat, led collectively by officials from the members of the F:ISC. The F:ISC Secretariat, supported by the IGR Secretariat, will lead the first two stages of the dispute resolution process. Further detail is set out in Annex C.

## **DISPUTE RESOLUTION AND AVOIDANCE**

21. All governments are committed to promoting collaboration and the avoidance of disagreements, facilitated by the new intergovernmental machinery in which engagement will normally take place at the lowest appropriate level possible. Any government may refer a disagreement to the IGR Secretariat as a dispute. Escalation of a disagreement between governments as a dispute will only be considered after due and full consideration has been given at portfolio-level (including F:ISC regular engagement), where a disagreement cannot be resolved at portfolio level, and has significant implications for the relationship between two or more governments. This will include circumstances where governments disagree about the interpretation of, or actions taken in relation to, matters governed by intergovernmental agreements, rules or procedures (including Common Framework Agreements). This is without prejudice to the legal provisions within the devolution settlements which govern matters relating to legislative competence. The resolution process (set out in Annex D) should be seen as part of a much wider system of active IGR, and as a process of last resort.

## **TRANSPARENCY AND PARLIAMENTARY ACCOUNTABILITY**

22. The governments are accountable to their respective legislatures for the conduct of intergovernmental relations and will seek to promote a wider understanding of this activity. All governments commit to increased transparency of intergovernmental relations through enhanced reporting to their respective legislatures.
23. All intergovernmental forums will be encouraged to produce communiqués on their meetings and activities and publish these online. These would include:



- a. date, location, Chair and list of participants;
- b. a summary of discussion points.

24. The IGR Secretariat will support any requirements of individual governments in making their reports to their legislatures and will also prepare an annual report on intergovernmental activity.

## **Annex A: The IGR Secretariat**

1. A standing IGR Secretariat, accountable to the Council, will promote the efficient and effective maintenance of relations at each tier, facilitate prompt handling and resolution of disputes, and provide administrative support across the structures.
2. The IGR Secretariat will be hosted and funded by the Cabinet Office, and staffed by officials from all governments (on a rotating basis if overall numbers of staff are lower than four). The Cabinet Office will be responsible for overseeing all IT arrangements. The Secretariat Head will be responsible for managing the Secretariat. The impartiality of the Secretariat is assured through its accountability to the Council and through its commitment to serve all administrations equally in accordance with the agreed guidance, rules and processes in the IGRR.
3. The IGR Secretariat will operate in accordance with the following set of guidelines. The IGR Secretariat will:
  - a. Be accountable at all times to the Council rather than to individual governments;
  - b. Serve all governments equally and act impartially in accordance with guidance, rules and processes that are jointly agreed by the Council;
  - c. Respond to any request by any government to exercise its right to submit an item, supported by any relevant background papers, for a meeting in accordance with the agreed terms of reference (ToRs) of the particular forum;
  - d. Promote transparency and accountability wherever possible.
4. The IGR Secretariat's functions will include:
  - a. Determining dates, agenda, location and chairing of intergovernmental meetings of the Council, IMSC, and ICs, and establishing new IMGs as requested;
  - b. Compiling / commissioning background papers for discussion for the Council, IMSC, and ICs;
  - c. Reporting on the outcomes of meetings, drafting minutes and sharing joint communiqués for the Council, IMSC, and ICs;
  - d. Facilitating the process of dispute resolution. This will include assessing whether the appropriate steps have been followed to resolve a disagreement and decide whether it should be escalated as a dispute through the formal process. Where appropriate, it will appoint a third-party to provide third-party advice or conduct mediation on non-F:ISC disputes, subject to the agreement of all parties to pursue these options;
  - e. Compile reports on IGR activity, noting the separate reporting arrangements each government has in place with its respective legislatures. It will be responsible for gathering information about meetings that have taken place during the year, and collating this information into an annual report to be shared with all governments. All governments will remain responsible for how the information is reported to their legislatures;
  - f. Gathering data relevant to the exercise of its functions.
5. The IGR Secretariat will work with an intergovernmental Senior Officials' Group to ensure that the new structures, processes and behaviours are fully realised. The Secretariat Head will attend meetings of the Senior Officials' Group in order to facilitate feedback between the ministerial and official levels of engagement.
6. For non-F:ISC disputes, the IGR Secretariat will, where appropriate, appoint a third-party to provide advice or conduct mediation.

7. The IGR Secretariat will maintain a record of engagement within IMGs, including a record of IMG meetings as provided by IMG Secretariats. Where a disagreement is referred back to an IMG or should disagreements persistently arise, the Secretariat Head may convene a meeting between relevant senior civil servants for discussion and proposal of solutions.
8. The IGR Secretariat oversees requests for items to be added to the agendas of middle-tier forums, with the exception of the F:ISC which is managed by the F:ISC Secretariat. For non-F:ISC disputes, the Secretariat will coordinate the Senior Officials Meeting to provide ministers with impartial advice about the nature of the dispute, an assessment of implications, and collectively recommended solutions.
9. The IGR Secretariat may convene a meeting of the Council for the purpose of dispute resolution. For all disputes, the agenda item will be supported by a paper produced by the IGR Secretariat. This paper may be considered by correspondence between Council members before, and if there is consensus regarding resolution, in lieu of a meeting. A Secretariat report on the outcome of the dispute, including any third-party advice obtained, must be prepared by the Secretariat and laid by each government before its legislature.
10. The IGR Secretariat will support any requirements of individual governments in making reports to their legislatures. The Secretariat will also prepare an annual report to be published online, including:
  - a. a list of all engagements for each forum;
  - b. agenda items;
  - c. any resolved disputes, an executive summary of the Secretariat report on the outcome, and associated third-party reports when relevant and appropriate.

## **ANNEX B: DRAFT TERMS OF REFERENCE FOR THE COUNCIL, IMSC and ICs, AND DRAFT LIST OF IMGs**

### **The Prime Minister and Heads of Devolved Governments Council**

#### *Attendance*

1. The Prime Minister and Heads of Devolved Governments Council ('the Council') will consist of the Prime Minister, the First Ministers of Scotland and Wales, and the First Minister and deputy First Minister of Northern Ireland.
2. The Council will be responsible for overseeing intergovernmental relations in the UK. Overall accountability for intergovernmental relations will remain with the Prime Minister, the First Ministers of Scotland and Wales and the First Minister and deputy First Minister of Northern Ireland.
3. Other ministers and relevant parties will be invited to attend depending on the specific agenda items under discussion.

#### *Functions*

4. The functions of the Council will include:
  - a. considering policy issues of strategic importance to the whole of the UK;
  - b. overseeing the functioning of and providing strategic direction to the system of multi-level governance created by devolution;
  - c. reaching decisions on strategic direction for IGR by consensus;
  - d. acting as the final escalation stage of the dispute resolution process; and
  - e. overseeing and regularly reviewing this agreement.

#### *Operation*

5. The Prime Minister will host an annual meeting of the Council with the First Ministers of Scotland and Wales and the First Minister and deputy First Minister of Northern Ireland. Meetings will be chaired by the Prime Minister. The IGR Secretariat will oversee the operation of this meeting.
6. In addition to its annual meeting, the Council may meet more frequently for example, extraordinary meetings for the purpose of dispute resolution. The Council may also meet in other formats according to need. Any meeting at this level, even with delegated responsibility to representatives, will be considered a meeting of the Council.
7. If agreed by all governments, the Council will be able to delegate responsibility for specific issues to the middle tier forums as appropriate and will also be able to create or stand down time-limited Interministerial Committees as agreed by consensus. If agreed at the ICs, members of those committees can also stand down committees if the need is no longer there. The Council might assign to one of the middle-tier forums one or several issues to review within these functions, while aligning with the final escalation stage of the dispute avoidance and resolution process.

#### **Interministerial Standing Committee**

8. As policy-specific conversations should take place between the relevant ministers at the portfolio level, the Interministerial Standing Committee (IMSC) will provide some oversight to portfolio engagement but will not replace or duplicate it. The IMSC will consider issues bearing wider implications for relationships between the governments, including issues cutting across different portfolios, cross-governmental programmes of

work, cross-cutting international issues, or policy issues which have moved beyond technical considerations and into a wider political agenda. It will ensure that the relevant forums are in place to consider broader items of intergovernmental policy and escalate issues when necessary.

#### *Attendance*

9. The IMSC will consist of the relevant IGR ministers from all governments.
10. When portfolio-level expertise is deemed beneficial to the particular conversation at hand, ministers from other departments and ministries can be invited to attend.

#### *Function*

11. The aim of the IMSC is to consider issues cutting across several ministerial portfolios and ensuring positive policy collaboration across all four governments. It will also consider issues that require collaboration across multiple IMGs, the breadth of which prevents them from fitting into the remit of a particular IMG and will be an escalation stage between individual IMGs and the top-tier forum in the dispute resolution process.
12. The IMSC will aim to achieve the following objectives:
  - a. Consider matters which cut across multiple policy areas and competences, including any cross-cutting or wider strategic international issues;
  - b. Provide oversight and central coordination of intergovernmental engagement across all devolved policy areas;
  - c. Provide oversight of portfolio-level engagement;
  - d. Consider cross-cutting matters relating to the implementation, development and impact of reserved policies in devolved areas, including but not limited to international issues;
  - e. Provide oversight of the Common Frameworks programme and its governance arrangements. Individual frameworks will be considered in the relevant Interministerial Group as necessary;
  - f. Consider issues which have an impact on regulatory standards across the UK for internal trade;
  - g. Consider the implications of diverging approaches in establishing cross-cutting local policies which impact on another government's area of responsibility;
  - h. Share expertise on devolved areas which is required for the operation of cross-cutting reserved policies;
  - i. Provide an escalation route for international issues, which cannot be adequately addressed in the relevant Interministerial Group, or bilateral meetings, or which require further strategic oversight across multiple policy areas;
  - j. Consider disagreements which have an impact on the relationships between the governments, and escalate intergovernmental disputes when necessary.
13. Items will be added to the agenda according to a strict set of rules overseen by the Secretariat:
  - a. The issue must cut across multiple policy areas within multiple portfolios;
  - b. The issue must not fall within the remit of an existing IMG. If it does, it should either be referred back to the relevant IMG for consideration or an explanation sought from the government which has suggested the item as to why it should be considered by the IMSC rather than the relevant IMG;
  - c. For disputes, the issue must have been assessed by the IGR Secretariat as qualifying as a dispute, as having implications beyond its policy area, impacting the wider relationship between the parties involved, and having already been

considered by the relevant IMG and gone through stage 1 of the resolution process.

#### *Operation*

14. Meetings of the IMSC will take place every other month, but it can meet more or less frequently according to need and if agreed by consensus.
15. Locations and chairing will rotate between the governments and be determined in advance. The agenda will be agreed by all four governments, and the meetings will be facilitated by the Secretariat.
16. Any government will have the right to submit an item to the Secretariat to request it be considered at the relevant IMSC meeting. The Secretariat will be responsible for comparing the item against the above criteria and considering the appropriate timings for the item to be considered.
17. Without prejudice to the chairing arrangement determined for the meeting, when the agenda includes items relating to reserved policies led by a specific UK Government department, those items will be introduced and discussion led by the relevant UK Government minister.

#### **Time-limited Interministerial Committees**

18. If a cross-cutting issue normally falling within the remit of the IMSC requires specific consideration in isolation from other issues, due to political developments, repeat appearances on the IMSC agenda, or urgency, a time-limited Interministerial Committee (IC) should be established for that purpose.
19. Any government may request the establishment of a time-limited IC which will be established by consensus on the need to do so. Frequency of meetings, chairing arrangements and attendance will be determined upon the creation of each IC depending on the particular needs of the issue under consideration. The IGR Secretariat will draft the ToR for each IC in consultation with the Senior Officials' Group, to be agreed by the relevant ministers from all governments.
20. Any number of ICs can be created at any given time but must have a predetermined life-span, which can be extended by consensus. ICs, like the IMSC, will however only consider issues which cannot be considered by the relevant IMG.

#### **Portfolio engagement**

21. Much engagement at portfolio level is already in place and will be rebranded to align with this new agreed structure. These meetings provide an important locus for discussion of the impacts upon each other of policy change in different governments for learning and cooperation between governments, and for agreement on the use of mixed-competence levers (which have both reserved and devolved elements) in support of outcomes. These meetings will be organised, and secretariat support provided, by the participating departments and ministries through arrangements agreed between them. However, the IGR Secretariat will maintain a record of engagement within IMGs, including a record of IMG meetings provided to the IGR Secretariat by the IMG Secretariats. Any government will have the right to request that an item for discussion from an IMG be referred for consideration at the Interministerial Standing Committee or Finance Interministerial Standing Committee. The IGR Secretariat will facilitate inclusion of such items for discussion in accordance with the



principles for intergovernmental relations, the relevant forum's terms of reference (for example IMSC's Terms of Reference), or the dispute avoidance and resolution process set out below. The IMSC, supported by the IGR Secretariat, will also support the review of the effectiveness of portfolio-level engagement as necessary.

22. This section includes a number of preliminary IMGs to be established, but this is not an exhaustive or definitive list, with the intention that groups can be established or adapted according to need. There are a number of issues where engagement between the four governments will be mutually helpful, but the appropriate form of this engagement has not yet been agreed. It will be the role of the IGR policy officials and the new IGR Secretariat to advise on the most appropriate IMG or IMSC/F:ISC where those issues will be discussed. Each forum will be responsible for jointly agreeing and updating their terms of reference depending on changes to their structures and priorities.
23. Guidance will be issued to departments and ministries to shape collaborative attitudes towards engagement in the post-EU exit context of increased interaction between devolved and reserved competence. This will include recommendations for rotating chairing and location and frequency of meetings, but leaving the precise arrangements to be jointly agreed between administrations to ensure they are appropriate for the nature of the forum, and flexible and adaptable for the future. Each department and ministry will be responsible for agreeing and updating their terms of reference depending on changes to their structures and priorities.

<b>UKG department*</b>	<b>Name</b>
BEIS	Engagement on science and research - format TBC
	IMG (Business and Industry)
	IMG (Net Zero)
Cabinet Office	IMG (Elections)
	IMG (UK-EU TCA) - to be established
DCMS	IMG (Culture)
	IMG (Sports Cabinet)
	IMG (Tourism)
Defra	IMG (Efra)
DfE	IMG (Education) - SoS level - to be established
	IMG (Higher Education) - to be established

DfT	IMG (Transport)
DHSC	IMG - to be established
DIT	IMG (Trade)
DWP	Engagement on welfare - format TBC
Home Office	IMG - to be established
DLUHC	IMG - to be established
MoD x Office of Veterans Affairs	IMG (Covenant Veterans)
MoJ	IMG - to be established

\*The inclusion of the name of UKG departments is intended to illustrate the likely department/policy area leading on this, but this will differ depending on the government.

## **ANNEX C: DRAFT TERMS OF REFERENCE FOR THE FINANCE INTERMINISTERIAL STANDING COMMITTEE**

### *Attendance*

1. The Finance Interministerial Standing Committee (F:ISC) will be led by the relevant finance ministers from the UK Government and the devolved administrations.
2. Attendance will ordinarily include all finance ministers, however where appropriate may include bilateral engagement.
3. When portfolio-level expertise is deemed beneficial to the particular conversation at hand, ministers from other departments and ministries can be invited to attend.

### *Function*

4. The aim of the F:ISC is to consider the impact of economic and finance matters affecting the UK.
5. The F:ISC will therefore cover the following:
  - a. Consideration of UK-wide and nation-specific macroeconomic and fiscal positions;
  - b. Consideration of emerging economy and finance issues and longer-term challenges that affect all administrations, where collaboration and sharing of information supports planning, policy development and decision-making;
  - c. Other ad hoc economic/finance issues affecting all administrations;
  - d. Resolution of financial disputes.

### *Operation*

6. The F:ISC should typically take place each quarter, however meetings may take place less or more frequently if agreed unanimously. Meetings should take place around key events.
7. The F:ISC will be chaired by the UK Government or a devolved administration finance minister.
8. The agenda will be determined by the Secretariat. Any administration would have the right to submit an item to the Secretariat to request it be considered at the relevant F:ISC meeting. The Secretariat would be responsible for comparing the item against the above functions and considering the appropriate timings for the item to be considered.
9. Agenda items can be introduced and led by any of the attendees, as determined by the Secretariat. When the agenda relates to reserved policies led by a specific UK Government department, the items would be introduced and led by the relevant UK Government minister.
10. HM Treasury and the devolved administrations will publish joint communiqués setting out the meeting date, meeting attendees, and the high-level meeting agenda.
11. The F:ISC Secretariat will be led collectively by officials from the members of the F:ISC. In the case of a dispute, the F:ISC Secretariat will be comprised of officials from the disputing parties for the purposes of the dispute resolution process.

## *Disputes*

12. The UK Government and devolved administrations will seek to maintain positive and constructive relations, based on mutual respect for the responsibilities of the UK Government and devolved administrations and their shared role in the governance of the UK.
13. All governments are committed to promoting collaboration and the avoidance of disagreements, facilitated by the new intergovernmental machinery in which discussions will take place at the lowest level possible. The escalation of a disagreement between governments as a dispute will be considered only where due and full consideration has been given at portfolio-level. In this context, the following model should be seen as part of a much wider system of active intergovernmental relations (IGR) and dispute management, and as a process of last resort.
14. Any disagreements shall ordinarily be managed through continued official led engagement.
15. Any finance minister can escalate a disagreement as a dispute by notifying the IGR Secretariat and F:ISC Secretariat by writing, if there is a disagreement between members of the F:ISC which cannot be resolved through normal channels or regular F:ISC discussions.
16. The IGR Secretariat will consider whether a disagreement should be classified as a dispute according to the following criteria:
  - a. Has the disagreement been discussed extensively at senior civil servant level for the relevant portfolio?
  - b. Was a solution proposed at the senior civil servants discussion (that was not satisfactory to all parties to the disagreement)?
  - c. Has the disagreement been discussed extensively by the relevant portfolio ministers?
  - d. Does the disagreement have implications beyond its policy area, impacting the wider relationships between the parties involved?
17. No member of the Finance ISC can reject the decision of another to raise a dispute on any economic or finance issue or refuse to engage on its substance if the IGR secretariat recommends a disagreement be escalated as a formal dispute. However, all parties acknowledge that policy decisions on funding are strictly reserved to Treasury ministers, with engagement with the devolved administrations as appropriate. As outlined in the Statement of Funding Policy, funding disputes may only be raised where there is reason to believe a principle of the Statement of Funding Policy may have been breached.
18. The process for resolving a dispute will follow the steps agreed between the UK Government and the devolved administrations through the Intergovernmental Relations Review as closely as possible, recognising specific differences outlined in these Terms of Reference.
19. On escalation of a disagreement to a dispute, the F:ISC Secretariat will coordinate and implement the process by convening a meeting of Senior Officials within 10 working days, unless all parties agree to an extension, which will consider collective recommendations to ministers for resolving the dispute. Portfolio Senior Officials will also be invited to attend if appropriate.

20. If Senior Officials request that the dispute be further considered by ministers, the Secretariat will convene a meeting of the F:ISC in dispute formation. Ministers should aim to meet within approximately 10 working days unless they agree to an extension.
21. The F:ISC will seek to agree to resolve the dispute, either by agreeing Senior Officials' recommendations or through discussion. If ministers are unable to resolve the dispute, any of the disputing parties will have the right to request non-binding third-party evidence or advice to inform subsequent discussion. The scope of this evidence or advice, as well as the body nominated to carry it out, must be agreed by all parties to the dispute.
22. A F:ISC in a dispute setting will be chaired by an independent chairperson. All parties to the dispute must agree the appointment of the independent chairperson. The role of the chair will be to ensure that the discussion proceeds efficiently, positively and keeps to time. The chair will not have a decision-making role but will record any consensus which is reached or, alternatively, outline the next steps under the dispute resolution process if an agreement is not reached.
23. If no resolution is found at the F:ISC, the matter will be referred back to the IGR Secretariat to be considered by the Prime Minister and Heads of Devolved Governments in the Council. This process is set out in the terms of reference for the Council.
24. Disputes raised in relation to the Welsh and Scottish Governments' fiscal frameworks will continue to be managed through the arrangements set out in their respective fiscal framework agreements.
25. The F:ISC Secretariat will provide minutes of the meeting of the F:ISC in dispute formatting.
26. Any concerns with the conduct of the disputing governments can be referred to the IGR Secretariat.

## ANNEX D: DISPUTE AVOIDANCE AND RESOLUTION PROCESS

### Escalation stages

#### Stage 1 - consideration of dispute by IGR Secretariat

1. The final stage for a portfolio-level disagreement before escalation to a 'dispute' to the IGR Secretariat will usually be considered by the relevant IMG or F:ISC. On referral, the role of the IGR Secretariat will be to provide impartial advice to governments about the nature of the dispute. No Secretariat or government can reject the decision of a government to raise a dispute.
2. The IGR Secretariat will base the assessment of the nature of the disagreement on a clear set of criteria:
  - a. Has the disagreement been discussed extensively at senior civil servant level for the relevant portfolio or finance matter?
  - b. Was a solution proposed at the senior civil servants discussion (that was not satisfactory to all parties to the disagreement)?
  - c. Has the disagreement been discussed extensively by the relevant portfolio or Finance Ministers?
  - d. Does the disagreement have implications beyond its policy area, impacting the wider relationships between the parties involved?
3. If the dispute fulfils all the criteria, it is escalated as a dispute to either IMSC or F:ISC. If it does not, the IGR Secretariat will refer it back for consideration to an earlier stage of the process.
4. Ahead of the IMSC or F:ISC, the relevant Secretariat will coordinate a meeting of the Senior Officials' Group within 10 working days, unless all parties agree to an extension, to consider collective recommendations to ministers for resolution. The chair will not have a decision-making role and must not be a representative of a government which is party to the dispute.

#### Stage 2 - consideration by IMSC or F:ISC

5. Following the meeting of the Senior Officials' Group, the relevant Secretariat will convene a meeting of the relevant ministers within 10 working days, unless an extension is agreed by all relevant ministers. The Secretariat will issue the agenda to the relevant ministers and officials summarising the background and the recommendations of the Senior Officials' Group. The chair of the meeting will have been agreed at the Senior Officials' Group meeting. This could be a minister from a government not party to the dispute or an independent third-party who will not have a decision-making role.
6. The IMSC or F:ISC will seek to agree to resolve the dispute. If a resolution is not reached, it is escalated to the Council, unless all parties agree not to escalate and instead to report to legislatures on the outcome of the dispute.
7. **Third-party (non-binding) advice or mediation should be sought once, at the F:ISC or ahead of escalation to the Council unless all parties to the dispute agree not to do so.** Alternative means of resolution can also be sought should all parties



agree. No disagreement over the operating arrangements can prevent escalation to the Council. The relevant Secretariat will determine escalation.

8. On some occasions, third-party intervention will not be appropriate, for example matters of national security or commercially sensitive material. It will be for the senior officials of the IMSC or F:ISC to provide advice to their ministers on whether it is appropriate to seek third-party advice.

### **Stage 3 - consideration by the Council**

9. Following third-party advice (if relevant), the dispute will escalate to the Council for consideration of the dispute and the third-party advice within a month. For all disputes, the agenda item will be supported by a paper produced by the IGR Secretariat.
10. Any member of the Council may initiate a discussion about the status of an emerging or ongoing dispute. A decision will not be made on its resolution, however, until the dispute has been referred to the Council by the IGR Secretariat as a result of the earlier steps identified in the process, or if governments agree to reach a solution outside the process.
11. The IGR Secretariat will report on the outcome of the dispute at the final escalation stage, including any third-party advice already obtained, and this must be prepared by the Secretariat and laid by each government before its legislature. If governments reach a stage in the process where they are unable to reach a resolution and progress the dispute further, each government must make a statement to their respective legislatures setting out the circumstances for the failure to reach a solution.

### **Operating Arrangements**

#### *Chair*

12. The chairs appointed to stage 1 and 2 must not be a representative of a government which is party to the dispute. The chair could therefore either be a representative of a government not party to the dispute or an independent representative. The role of the chair will be to ensure that the discussion proceeds efficiently, positively and keeps to time. The chair will not have a decision-making role. Instead the chair will record any consensus which is reached or, alternatively, outline the next steps under the dispute resolution process if an agreement is not reached.

#### *Third-party involvement to resolve dispute*

13. The appointment of third-parties to provide advice must be agreed by the relevant governments. This includes the commission for the third-party and the scope of their advice. This process will be facilitated by the relevant Secretariat.
14. If required, an independent mediator will be appointed, as agreed by the parties to the dispute, on the recommendation of the Secretariat. The timescales for the mediation process will be agreed by the parties.
15. The key criteria for appointment to provide third-party input into the new process are likely to include:
  - a. Ability to act impartially and independently, without political affiliation;
  - b. Extensive expertise in constitutional and related matters;
  - c. Willingness and capability to respond at short notice and deliver at pace;

- d. Ability to participate in the process without compromising the confidentiality of discussions.
16. The key criteria for appointment to provide third-party input to a particular dispute are likely to include:
- Specific expertise relating to the nature of the dispute (but not necessarily policy expertise as this will have been dealt with at portfolio level);
  - Absence of conflict of interest or ability to manage this within their organisation;
  - Availability to deliver within the prescribed timescales;
  - No public position on matters relevant to the dispute which would create a perceived or actual conflict of interest;
  - Ensure the confidentiality of conversations of a sensitive nature is respected and protected.
17. The Secretariat will issue the report to all governments simultaneously.

*Flowchart of dispute resolution process*

