

Agenda Supplement – Constitutional and Legislative Affairs Committee

Meeting Venue:

Committee Room 1 – Senedd

Meeting date: 12 June 2017

Meeting time: 14.30

For further information contact:

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Please note the documents below are in addition to those published in the main Agenda and Reports pack for this Meeting

– A stronger voice for Wales: engaging with Westminster and the devolved institutions: Consultation Response

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Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

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*Ar gael yn Gymraeg | Available in Welsh

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IGP003*	Cadeirydd, Y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol	Chair, External Affairs and Additional Legislation Committee
IGP004	Cymdeithas Tir a Busnesau Cefn Gwlad	The Country Land and Business Association
IGP005	Prifysgolion Cymru	Universities Wales
IGP006*	Cadeirydd, Y Pwyllgor Plant, Pobl Ifanc ac Addysg	Chair, Children Young People and Education Committee
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IGP008*	Elfyn Llwyd	Elfyn Llwyd
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IGP010	Yr Athro Paul Cairney	Professor Paul Cairney
IGP011	Yr Athro Thomas Glyn Watkin	Professor Thomas Glyn Watkin

Cynulliad Cenedlaethol Cymru | National Assembly for Wales

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol | Constitutional and Legislative Affairs Committee

Ymchwiliad: Llais cryfach i Gymru: ymgysylltu â San Steffan a'r sefydliadau datganoledig |

Inquiry: A stronger voice for Wales: engaging with Westminster and the devolved institutions

IGP001

Ymateb gan: Dienw

Response from: Anonymous

Both the objectives are language for more power/influence. You have your clear areas of responsibility as to Westminster, overlaps should be minimal. Stop trying to grandstand and pretend you are what you clearly are not.

A) After last referendum you told us you now had the tools to do the job - WELL DO IT". Why are you wasting time and money on this political exercise where the Wales political class will be the only benefactors.

B) Stop interfering in matters outside your competence and get on with doing your jobs.

C) Stop trying to get more AMs we don't need them, if you embrace B) above work load falls, and if you still need help utilise our MPs to scrutinise they have less work now and still on full pay, they can do it in HoC rooms and if need be teleconference (no costs).

D) Again referring to B) listen to the people we voted EU out stop campaigning/working for a watered down solution, or a special Wales solution, we are part of UK whatever the solution is, it will be for all of us across the UK and will be decided by HMG and a parliamentary vote including Welsh MPs.

E) Stop wasting time, money and legislation re Welsh language, most of us don't speak it, have no need or desire to do so. It is clearly costing a fortune, destroying education in EM schools and is purely a tool to lead to being able to say we speak a different language here so are no longer part of UK (more political power). It isn't going to happen.

F) Sort education out again our PISA rating are a disgrace.

G) Sort GDP your efforts are paltry and EU money (well UK money recycled really) wasted on non jobs, being eligible for it is embarrassing.

H) You all have just disgracefully accepted a huge pay rise, so get on and do the job, or shut the whole devolution edifice down, the share of the grant it takes to run should be spent on us the people of Wales not you.

Cynulliad Cenedlaethol Cymru I National Assembly for Wales
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol I Constitutional and
Legislative Affairs Committee

Ymchwiliad: Llais cryfach i Gymru: ymgysylltu â San Steffan a'r sefydliadau
datganoledig I

Inquiry: A stronger voice for Wales: engaging with Westminster and the
devolved institutions

IGP002

Ymateb gan: Cadeirydd, Y Pwyllgor Iechyd, Gofal Cymdeithasol a Chwaraeon
Response from: Chair, Health, Social Care and Sport Committee

Inquiry into inter-institutional learning

Dear Huw

Thank you for your letter informing the Committee of your inquiry looking at
inter-institutional relations between Wales and the UK.

In light of your letter, the Committee discussed this issue at its meeting of
25 January. It is our view that strong inter-parliamentary working and liaison
between Parliamentary Committees is essential for effective scrutiny and can
enable the free exchange of ideas and improved policy learning. In respect of
the remit of our Committee, this is particularly the case for example in
respect of cross-border health and social care issues.

We also consider there is scope for improvement in the way UK Government
Departments co-operate with Assembly Committees in respect of the
scrutiny of policy issues where there is an overlap between devolved and
non-devolved areas. It appears that such co-operation is often at the
discretion of individual Ministers or civil servants rather than an accepted
understanding that such co-operation is essential and has the potential to
benefit all those involved.

We understand, for example, that there were challenges experienced by our
predecessor Committee in engaging the relevant Home Office Minister and
officials in its inquiry into new psychoactive substances in respect of some
non-devolved policy areas of direct relevance to the inquiry. Whilst the issue

was eventually resolved, and oral and written evidence was received, this was only following repeated efforts by Committee staff and correspondence from the then Committee Chair.

We welcome the Constitutional and Legislative Affairs Committee's inquiry into this important issue and look forward to hearing your conclusions in due course.

Yours sincerely,

A handwritten signature in black ink that reads "David R. Lloyd". The signature is written in a cursive style with a large initial 'D' and 'L'.

Dr Dai Lloyd AM
Chair, Health, Social Care and Sport Committee

Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol | Constitutional and Legislative Affairs Committee

Ymchwiliad: Llais cryfach i Gymru: ymgysylltu â San Steffan a'r sefydliadau datganoledig I

Inquiry: A stronger voice for Wales: engaging with Westminster and the devolved institutions

IGP003

Ymateb gan: Y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol
Response from: External Affairs and Additional Legislation Committee

Dear Huw,

Re: A Stronger Voice for Wales: engaging with Westminster and the devolved institutions

Thank you for your recent correspondence drawing our attention to your inquiry on relations between institutions in Wales and the United Kingdom. You will be aware that it is the remit of the External Affairs and Additional Legislation Committee to (inter alia):

(a) to examine the implications for Wales of the United Kingdom's withdrawal from the European Union and to ensure Welsh interests are safeguarded during the withdrawal process, in any new relationship with the European Union and in the intra-UK post-withdrawal arrangements for relevant policy, finance and legislation.

Effective inter-governmental and intra-institutional working will play an important role in ensuring that our Committee is able to fulfil its remit.

During our initial work on the implications for Wales of leaving the European Union, some of the evidence received highlighted questions relating to the robustness of inter-governmental relationships at present, and the need to address these in the context of shared competence and the repatriation of powers when Wales leaves the European Union. In response to your request for views, therefore, we would like to draw your attention to our recent report which examines aspects that are pertinent to your inquiry. In

particular, you will wish to note our findings in chapters 9, 10, 11 and 12, all of which look at themes that are of relevance to your inquiry.

In terms of inter-parliamentary relations, we are engaged in a range of activity with colleagues in other legislatures. This includes participation in a conference of the 'Brexit' committees in the devolved legislature and the London Assembly and through my membership of the EC-UK Forum. Our report also draws reference to these inter-parliamentary arrangements.

We hope that this information will be useful in your deliberations and look forward to receiving your findings in due course.

Yours sincerely,

David Rees AM

Chair, External Affairs and Additional Legislation Committee

Cynulliad Cenedlaethol Cymru | National Assembly for Wales
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Inquiry: A stronger voice for Wales: engaging with Westminster and the
devolved institutions
IGP004
Ymateb gan: Cymdeithas Tir a Busnesau Cefn Gwlad
Response from: The Country, Land and Business Association

The CLA (Country Land & Business Association) is a well-established representative organisation with UK headquarters in London and a national office in Wales. We work closely with both the UK Government and the Welsh Government as a consultee-of-choice on issues concerning agriculture, land-use and the rural economy.

We devote ourselves to addressing our members' interests in rural affairs: the gamut of agricultural interests and also those affecting the rural economy in general. A key part of our role is consistently to engage with government and political representatives in Westminster and Cardiff. We represent 32,000 members in England and Wales, around 10 per cent of whom are in Wales. The needs of the rural community are often under-represented in UK politics. Our membership footprint accounts for the ownership/management of around half of the rural land in both countries. About 80 per cent of land-use in Wales is consigned to farming and rural business. A significant number of our members are rural business-people who have diversified into other sectors of the rural economy. Some members' land, farming or business interests straddle the England-Wales border.

Key Principles

Brexit will have a major impact on our members' interests. We have identified key areas where it is likely to bring about fundamental change in support for agriculture, regulation, trade-deals and the international movement of labour. Consequentially it is our assertion that:-

1. A new and improved UK Food, Farming and Environmental policy–framework must be created which supports the rural economy. The central UK policy should make sure that internal trade–barriers are not created directly or indirectly.
2. It is essential that the needs and contributions of each part of the UK are recognised within the framework. Each country has its own distinct challenges and opportunities and must be allowed to respond to these within the over–arching policy framework. A formal platform to do this is essential.
3. The policy is supported by a new, UK, ring–fenced budget which is distributed to devolved government on a needs–based basis, which is able to develop and execute a range of policies within the devolved settlement for the benefit of Welsh farming and the Welsh rural community.
4. Wales should have proportionate influence over the trade deals developed by UK Government that affect the country’s principal product streams. Securing long–term sustainable markets is key for the viability of the industry.
5. Recent Welsh legislation has created a strong foundation for Natural Resource Management in Wales. This should continue to be the cornerstone for land–use policy which looks to deliver public benefit in a sustainable way, balancing the economic, social, cultural and environmental challenges we face.
6. Workers from the EU play a vital role in a number of sectors in agriculture and the food and drink supply chain. UK Government must ensure that the Welsh economy is not penalised by any restriction in employing skilled or specialist migrant labour where this is well–established.

Political, economic and legal implications

Brexit presents challenges in inter–governmental relationships between Wales and the UK. Wales has no formal role in EU negotiations and in

brokering trade-deals with individual EU countries or other countries/economic blocs. The Welsh Government's document, *Securing Wales' Future* does refer to "current inter-governmental machinery which will no longer be fit-for-purpose," and, it says, "new ways of working" will need to be forged. We would support the view that the current devolutionary settlement will require appropriate attention in order that the devolved government does have meaningful practical role.

The UK framework for agriculture must be consistent with devolution as set out in the recent Wales Act. The UK Government in Wales plays an important role in representing the country at UK Cabinet level and dovetailing UK and devolved government so it works efficiently and effectively. A focus for development may be in the Joint Ministerial Committee. This provides a helpful forum for creating and carrying out strategy. As structures of UK and devolved government develop, we must ensure that means of holding our ministers accountable – both individually and collectively – is not compromised.

EU competences & the devolved administrations

A strong practical foundation has already been established in Welsh law via the Environment (Wales) Act and the Wellbeing of Future Generations (Wales) Act both of which received Royal Assent last year. The Wales Act was considered as the final piece of constitutional change for a generation. Brexit is important, but it should not affect the fundamental structure and principles of government within the UK. The Great Reform Bill should *flow from* and should not *dictate to* this legislation. We await clarification as to how the Great Repeal Bill will tackle issues of devolved responsibility. It should also acknowledge that Brexit does create some practical issues between the institutions and respect those elements of the existing constitution without bringing about wholesale change.

Clearly opportunities exist to improve inter-parliamentary dialogue. As things stand the representative bodies do not take part in each-other's Consultation exercises and members of the UK Parliament and devolved Assembly do not give evidence in each-others' Committee Inquiries. It does seem inevitable that this gap may be bridged in some way at some point.

Conclusion

Sustaining continuity of existing mutually beneficial relationships with the EU or its members is a key practical issue for the rural community in Wales. We must take advantage of a well-established devolved settlement and a firm basis in existing Welsh legislation in confronting these matters. Wales is a rural nation – about one-third of the population lives in the countryside, rural landowners invest over £1.3 billion per year into the rural economy. The needs of the rural community must be considered within the Brexit-Devolution process; we will be pleased to expand on this written submission in oral evidence.

Cynulliad Cenedlaethol Cymru | National Assembly for Wales
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol | Constitutional and
Legislative Affairs Committee
Ymchwiliad: Llais cryfach i Gymru: ymgysylltu â San Steffan a'r sefydliadau
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IGP005
Ymateb gan: Prifysgolion Cymru
Response from: Universities Wales

1. About Universities Wales

1.1. Universities Wales represents the interests of universities in Wales and is a National Council of Universities UK. Universities Wales' Governing Council consists of the Vice-Chancellors of all the universities in Wales and the Director of the Open University in Wales.

2. Introduction

2.1. On 20 December 2016, the National Assembly for Wales' Constitutional and Legislative Affairs Committee launched its call for evidence on its inquiry into inter-institutional working, 'A stronger voice for Wales: engaging with Westminster and the devolved institutions'.¹ The inquiry is focussing on two strands: constitutional matters and policy matters

2.2. We welcome the opportunity to contribute to this consultation. Universities need an effective framework for engagement at a Wales and UK level that facilitates the development of appropriate devolved and UK policy in relation to higher education.

2.3. Higher education brings widespread benefits for individuals, communities, and the nation as a whole. It has the capacity to transform the lives of individuals and communities, to catalyse social mobility. Welsh universities are internationally recognised for the high quality of their teaching and attract a high number of students from around the world, extending the experience and horizons of the nation and enriching our

¹ See [here](#).

cultural heritage. Welsh universities are a leading academic destination for world class research, with more than three quarters of the research recently assessed to be 'world leading' or 'internationally excellent'. The transformative effect of higher education also provides the foundation for Wales' long term economic growth. Welsh universities contribute billions of pounds to the nation's economy and create tens of thousands of jobs, generating some 3% of the nation's GDP and earning a significant share of its much-needed export earnings.

2.4. Devolution means that decisions on higher education policy can be made in Wales to take into account Welsh needs. The policy and legislative framework for higher education in Wales has become increasingly distinct in recent years, and offers many potential advantages. Further devolution has enabled Wales to respond to major changes across the UK with its own fee, funding and student support policies, and to support these with major changes to the regulatory framework for higher education in Wales.

2.5. Although higher education is a devolved subject, however, many constitutional and policy arrangements relating to higher education remain UK wide and the reality is that universities compete within an international higher education market with policy influenced by both decisions in Westminster and factors outside the UK. The success of universities in Wales and across the UK, is dependent, not only the successful development of devolved policy but our ability to work with our colleagues across the UK and beyond to rise to the challenges of rapid global expansion of higher education, seen as a key driver of many competing economies. It is essential for our ability to attract students and staff, to secure research opportunities and funding, and to forge the partnerships that are necessary for international success.

2.6. We offer the following comments in the hope that it will assist the Committee in its task of identifying best practice for the future.

3. Strand 1: Constitutional matters

3.1. Our experience is that effective inter-governmental and inter-parliamentary arrangements are crucial for good legislative practice. Higher

education has been a key area for legislation in Wales and other parts of the UK in recent years, and further legislative change which affects Wales will have to be successfully negotiated.

3.2. Under current devolution arrangements, higher education is a devolved subject, and has been a key area for legislation in Wales since the National Assembly acquired powers to enact its own legislation. The Higher Education (Wales) Act 2015, in particular, introduced major changes to the regulatory framework for higher education in Wales. Much of the key legislative framework for higher education, however, remains enacted as UK legislation. In particular, Education Reform Act 1988 and the Further and Higher Education Act 1992 continue to provide a framework for constitutional and funding arrangements that apply to higher education (with some differences) in both England and Wales. The UK Parliament retains the power to legislate in relation to higher education in Wales, and will continue to do so under the Wales Act 2017. Any changes to this common legislative framework affect Wales.

3.3. Notably, for instance, the Higher Education and Research Bill (HERB), which is progressing through the House of Lords at the moment, contains provisions relating to higher education in Wales specifically as well as provisions that apply to England only, and to the UK as a whole. If enacted, it will mean that, for the first time, there are different constitutional arrangements between England and Wales for such matters as arrangements for the grant of university title, degree awarding powers and the role of the Privy Council. The constitutional provisions applying to higher education corporations (i.e. post-1992 universities) will also be different within the UK. Much of this difference is highly desirable from a university perspective, but it presents a significant challenge and burden for Welsh officials who undertake their duties well.

3.4. For legislative proposals originating in Westminster, this raises two key issues from our perspective.

3.5. The first issue is that, pre-legislative consultation can be reduced. As we noted in relation to the current Higher Education and Research Bill, for instance, the proposals for Wales could not be clear in the UK Government's

White Paper.² The proposed changes for Wales were not identifiable until the Bill itself was laid. Even then the changes, which were not discussed in the accompanying commentary, could only be identified by detailed work tracing the impact of the consequential amendments on other legislation. This made it very difficult for Wales to comment on or contribute to developments for Wales, even though the legislative process necessitated that they must be actioned at same time.

3.6. We note that the challenges in the consultation process that this presents for higher education in Wales are not new. Similar shortcomings in the consultation process for legislation relating to higher education in Wales were identified, for instance, in the Richard Commission Report which informed the Government of Wales Act 2006, and the legislation which led to the Higher Education Wales Act 2004.³

3.7. The second issue is that the National Assembly for Wales does not play a direct role in the scrutiny of legislation relating to higher education in Wales that originates in Parliament.

3.8. By convention, the UK government seeks approval of the National Assembly for Wales, and – in accordance with the Assembly’s standing orders – this is given in the form of a legislative consent motion. As confirmed by a recent Supreme Court ruling, this is a political imperative, rather than an enforceable legal obligation.⁴

3.9. For practical purposes, the greater challenge is arguably that the Assembly does not get the opportunity to fully scrutinise legislation relating to higher education in Wales as whole, even though it is devolved, and has limited opportunity to contribute to the consideration of specific amendments in Parliament. We raised a number of issues concerning the drafting of amendments to HERB in our response to the LCM consultation, for instance. The CYPEC Report drew attention to these but commented that

² See the Universities Wales submission, [here](#).

³ Commission on the Powers and Electoral Arrangements of the National Assembly for Wales Spring 2004 (available [here](#)). See in particular ch7 footnote 24 and the evidence of University of Wales College, Newport (available [here](#)).

⁴ Supreme Court, 24 January 2017, R (on the application of Miller and another) (Respondents) v Secretary of State for Exiting the European Union (Appellant) et al.

“in the time available, it has not been possible for the Committee to consult more widely or follow up the stated concerns with the Cabinet Secretary.”⁵ Our experience is that Committees of the National Assembly play an important part in the scrutiny of higher education legislation in Wales, and were instrumental to securing improved legislation in the case of the Higher Education Wales Bill by contrast.⁶

3.10. In turn, dealing with two different institutions and governments is more difficult for stakeholders such as universities. This can be the case even when both are being helpful and cooperative – as demonstrated, for instance, in relation to recent Wales Bill, which led to important amendments relating to the classification of universities in the new devolution settlement.

4. Strand 2: Policy matters

4.1. Policy decisions in England, Northern Ireland, Scotland and Wales, have an impact on each other that merit discussion and careful consideration before major decisions are taken. The need to develop policy with cross border ramifications in mind is essential. Whilst each nation may have a different approach, governments should work together to increase understanding of the differences and what each of the policy contexts mean in practice to different groups. UK nations must be able to successfully compete in the global market. For the HE sector in Wales to work to the best of its ability with partners in other UK nations, and across the world, maintaining productive and efficient intergovernmental relations is crucial.

4.2. Even when policy decisions do not directly relate to Wales it is important to recognise that their implementation can have major consequences for other nations. For instance, the policy decisions arising from the UK government’s recent White Paper on HE (and HERB) will significant consequences for the UK-wide HE infrastructure, such as Higher Education Funding Council for England (HEFCE), the Student Loans Company (SLC), and

⁵ Children, Young People and Education Committee: Report on the Legislative Consent Memorandum for the Higher Education and Research Bill – 12 January 2017 (see [here](#)), including Universities Wales’ response.

⁶ See further the Universities Wales response to the Law Commission, 16 October 2015, [here](#).

the Higher Education Statistical Agency (HESA) et al. which currently have UK-wide responsibilities in a number of areas. In particular, difficulty in implementing Welsh-specific loans policy through the SLC points to significant potential practical issues and tensions.

4.3. Recent funding and student support changes in England, for instance, have necessitated major reforms in fees, funding and student support in Wales. Given the need for separate legislative processes, the key process issue is to ensure that other nations have time to respond in a way that enables devolved arrangements to be put in place without significant time delays or compromise to the process of scrutiny that would adversely impact on students or institutions.

4.4. Particular consideration should be given to the development of research policy as it relates to Wales. “Research Councils’ are expressly excluded from the devolved subjects in the current legislation (and will be reserved under the Wales Act 2017). At the same time, other aspects of research policy are devolved. A key part of the current proposals of HERB, for instance, is to strengthen the UK research arrangements by subsuming the current Research Councils within a new over-arching body called UK Research and Innovation (UKRI). The dual-funding system will continue to operate as it is at the moment with core funding and general research policy a matter for individual nations, and UK competitive funding and policy dealt with through UKRI (although details of how the budgetary aspects of this will currently operate for Wales remain unclear).

4.5. A key issue we highlighted is that the current proposals for UKRI in HERB rely on a traditional model for determining and delivering UK policy. We have questioned whether this is effective in meeting national interests, given the stage of devolution that has now been reached. Universities in Wales have supported a number of amendments put forward to address issues in relation to the membership of UKRI, consultation and policy development.⁷ These have not been accepted as yet, although further opportunities to consider amendments remain. If these amendments are not

⁷ See Universities Wales response to the House of Commons Public Bill Committee, 17 October 2016, [here](#).

accepted, it will be all the more important that the current internal processes and structures for engagement of UKRI are strengthened. We should say that we fully support UK Research Councils (RCs). Indeed, given the status of the grants they award, they are essential if we are to retain and attract research staff. For this reason and others, hypothecation or further devolution of RCs simply would not work. However, we need to ensure that they are informed and led from policy across the UK.

4.6. Another major area of UK policy that will have a particular impact on Wales is the negotiations regarding the exit of the European Union and the arrangements that will take its place. As discussed in more detail in our submission to the External Affairs and Additional Legislation Committee,⁸ the mobility of staff and students and the European Structural and Investment Funds play a crucial role in supporting universities, and in turn the national economy in Wales. As the third largest recipient of structural funds in the last round, universities are very exposed to the withdrawal of this funding. It is crucial that this funding for infrastructure and capacity-building is maintained, regardless of whether this comes from the EU or national budgets through Barnett. It will clearly be vital for universities, as for the nation more generally, that Wales has an effective voice in the process of negotiating terms both within the UK and internationally.

5. Some possible ways forward

5.1. In addition to potentially strengthening the legislative process, it will be important to ensure that the protocols for engagement with Westminster are effective and implemented. The memorandum of understanding between the UK Government and the devolved administrations sets out the principles for current engagement. The memorandum, which currently dates from 2013, covers communication, consultation, the exchange of information and other matters. Any modification of the arrangements should take into account the following:

⁸ See [here](#).

- Effective communications relating to the different policy contexts, for example how the different fees and funding regimes in the different UK nations operate, is critical.
- A more structured approach to intergovernmental relations, with regular meetings between ministers responsible for HE from the UK Government and devolved governments would be welcomed – to ensure all relevant parties are aware of developments under discussion, and the potential impact of these.
- A greater clarity at the UK Government level about the interaction between devolved and non-devolved policy areas and the impact on universities;
- Future processes for engagement at governmental and institutional level must ensure that policy developments of one nation are not at the expense of another and that this engagement allows Wales to pursue its own policy options through UK-owned infrastructure.
- In particular, there is potential to examine the terms and conditions of grant to UKRI, or the development of service level agreements to ensure that issues of representation and devolved policy interest are dealt with effectively.
- The end result of the above should result in transparent legislative and policy implications for devolved/other nations, and allow timely consultation on them.

Universities Wales – 16 February 2017

Cynulliad Cenedlaethol Cymru I National Assembly for Wales
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IGP006
Ymateb gan: Y Pwyllgor Plant, Pobl Ifanc ac Addysg
Response from: Children, Young People and Education Committee

Dear Huw,

A Stronger Voice for Wales: engaging with Wales and the devolved
institutions

Thank you for your letter dated 17 January 2017. Members of the Children,
Young People and Education Committee were keen to respond to your call
for information on inter-institutional working. My comments for the
Constitutional and Legislative Affairs Committee (CLA) are directly in relation
to Strand II: Inter-institutional relations on policy matters.

The Committee is keen to pursue good working relationships with
counterpart committees of the UK Parliament and devolved administrations
on issues of common interest and concern. In particular, we believe it is very
important to link up work on child health, poverty and abuse to other parts
of the UK by examining their own interventions. There is a great deal of
scope for the Committee to build relationships with counterpart committees
in Holyrood, Stormont and Westminster. I have discussed this with
Committee staff and I am keen for them to examine potential joint lines of
inquiry with other administrations.

To give you a sense of background, the Fourth Assembly's Children and
Young People Committee undertook active work outside of Wales. Notably in
advance of the introduction of the Qualifications Wales Bill, the Committee
met with Quality and Qualifications Ireland and the Scottish Qualifications

Authority. This played a key role in shaping the Committee's approach to scrutiny and ultimately the shape the new qualifications body took.

It is also of note, the Committee visited the Organisation for Economic Co-operation and Development (OECD) at their headquarters in Paris. The Committee met those responsible for the Programme for International Student Assessment (PISA), and the OECD's review of Wales' education system. These visits played a critical role in shaping our approach to scrutiny and in turn influencing the Welsh Government's policies.

Going back to the second and third Assembly, the Education and Lifelong Learning Committee undertook some policy fact-finding work to the devolved administrations. These were seen as critical to informing inquiry work and future planning.

Many of the policy issues the Committee will consider will have strong similarities with other parts of the UK, Europe and beyond. As such, I firmly believe that our Committee's work would benefit from developing better inter-institutional relationships. We would welcome any advice or support from your Committee to help us achieve this.

Yours Sincerely,

Lynne Neagle AC / AM
Cadeirydd / Chair

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IGP007
Ymateb gan: Y Brifysgol Agored Cymru
Response from: The Open University in Wales

About The Open University in Wales

1. The Open University (OU) was established in 1969, with its first students enrolling in 1971. It is a world-leader in providing innovative and flexible distance learning opportunities at higher education (HE) level. It is open to people, places, methods and ideas. It promotes educational opportunity and social justice by providing high-quality university education to all who wish to realise their ambitions and fulfil their potential.
2. Over 7,000 students across Wales are currently studying with The Open University, enrolled on around 10,000 modules. There are OU students in every National Assembly for Wales constituency and we are the nation's leading provider of undergraduate part-time higher education. Almost three out of four Open University students are in employment while they study and with an open admissions policy, no qualifications are necessary to study at degree level. Over a third of our undergraduate students in Wales join us without standard university entry level qualifications.
3. As a world leader in educational technology, our vast 'open content' portfolio includes free study units on the free online learning platform [OpenLearn](#) (including many Wales-related materials and our Welsh Language platform [OpenLearn Cymru](#)) and substantial content on YouTube and on iTunes U where we have recorded over 70 million downloads.

4. The Open University is the only higher education institution which operates across all four nations of the UK and receives funding from all four governments. The OU's unique structure enables us to respond to government priorities, and be appropriately held to account, in each nation and ensure that the global scale and reach of the OU's activity can be delivered for the benefit of students in each UK nation. As a result of our UK-wide presence we are uniquely positioned in respect of both the opportunities and challenges of policy divergence across the UK. This experience and our continued commitment to deliver high quality part-time education across the UK informs our response to this inquiry.

Strand one – Constitutional Matters

5. Higher Education is a devolved policy area with the exception of the Research Councils. However, there are complex and important inter-relationships across devolved and non-devolved areas which impact directly on universities in Wales. These include the income they receive from sources other than the funding council and the competitive environment for student recruitment and research funding. In the case of The Open University, while our students study via distance learning and can do so in any of the four nations of the UK the different HE policies in each nation and associated funding regimes result in differing fee levels and student support packages across the nations of the UK. This should be seen as a positive consequence of devolution rather than a problem, but it does require co-ordination, collaboration and communication across and between governments.
6. In response to the specific questions posed by the Committee around constitutional matters we would like to state our support for the Universities Wales response to this inquiry. The Universities Wales response sets out a number of examples of areas of concern in respect of legislation within the HE sector and we agree with those concerns. This includes the ability of the National Assembly for Wales to scrutinise legislation relating to HE in Wales that originates in Parliament.

7. By way of an example, The Open University has recently been working with the Wales Office and members of the House of Lords to secure an amendment to the Wales Bill to clarify the status of the OU as a Welsh institution within the legislation. Due to the UK-wide remit of the OU this is not straightforward but we were keen to ensure that we would be subject to HE legislation in Wales as we are an important part of the Welsh HE sector and at the same time recognising the unique position of the OU as a UK-wide institution. These matters required effective inter-governmental relations between Welsh Government officials and the Wales Office. It is not clear that this issue was part of any original consideration of the draft Bill until it was identified by Universities Wales.
8. We endorse the recommendation of the Silk Commission's second report in respect of higher education:

*"In the light of the close and complex relationships which we have noted and the possibility of policy changes in England impinging strongly on Wales, we propose that there should be a formal intergovernmental forum to ensure mutual understanding of Higher Education policy issues within the framework of the Welsh Intergovernmental Committee. Among other roles, this forum would provide early information on proposed changes and would promote international excellence and competitiveness."*¹

We believe that this recommendation still merits implementation and this may be something that the Committee could consider as part of its inquiry.

Strand two – Policy Matters

9. Policy divergence is a natural consequence of devolution and The Open University has sought to respond effectively to the opportunity

¹ Commission on Devolution in Wales: *Empowerment and Responsibility: Legislative Powers to Strengthen Wales*, p.143. Available at: <http://webarchive.nationalarchives.gov.uk/20140605075122/http://commissionondevoluti oninwales.independent.gov.uk/files/2014/03/Empowerment-Responsibility-Legislative-Powers-to-strengthen-Wales.pdf>

to operate in four different nations of the UK. As a result we constantly monitor the policies of the four governments and consider where there are areas of difference to which we need to respond and where there are synergies. The OU in Wales responds to the policy direction set by the Welsh Government and the Higher Education Funding Council for Wales but we are also mindful of developments elsewhere that may impact on our work in Wales. Being able to assess, understand and consider the consequences of these at the earliest stage possible is important for us in working through our response and any information that we then need to pass on to our students or partner organisations.

10. Policies need to be nation-proofed effectively by those announcing and implementing them and communication between governments is key to this. Announcements should not be made that impact on devolved areas without prior discussion with the relevant administrations and a full consideration of the exact scope of any policy decision. Recent examples such as the Apprenticeship Levy and the UK Government's industrial strategy are areas where better inter-governmental liaison and discussion before a policy is announced would have ensured that the policy better reflected the devolution settlement and the implications could be more easily understood by those who have an interest in its implementation. Likewise the UK Government's announcements on areas such as the Teaching Excellence Framework could only have benefitted from greater inter-governmental liaison.
11. Another aspect of policy divergence in higher education is the capacity of sector bodies such as the Student Loans Company (SLC) to respond to different policy priorities and adapt their systems accordingly. The final report of the Review of Higher Education Funding and Student Support in Wales (the 'Diamond Review') indicates significant concerns in this regard. It states:

It is possible that, notwithstanding the constructive negotiations now under way between the SLC and the Welsh Government, the increasingly divergent policy priorities of the four UK

governments will continue to create pressures on the SLC's capability.²

The report goes on to quote the House of Lords Committee on the Constitution which includes the following recommendation:

...[the UK Government] should be engaging with the devolved administrations across the whole breadth of government policy: not interfering, but co-operating and collaborating where possible and managing cross-border or UK-wide impacts that may result from differing policy and service delivery choices.³

12. The Diamond review therefore recommends that:

- The Joint Ministerial Committee, at the highest levels, should consider the better coordination of student finance policy between the administrations of the UK without prejudice to devolved decision-making. The Panel welcomes the SLC's willingness actively to explore with the Welsh Government options for implementing the recommendations of this report without delay.
- Depending upon the outcome of that joint work, the Panel recommends that consideration be given, if necessary, to the scoping of a new system of student loan administration for Wales.⁴

We strongly support these recommendations and hope they will be of assistance to the Committee in their consideration of inter-governmental issues.

² Final Report, The Review of Higher Education Funding and Student Finance Arrangements in Wales p.65 available at <http://gov.wales/docs/dcells/publications/160927-he-review-final-report-en.pdf>

³ *The Union and Devolution*, the House of Lords Select Committee on the Constitution (May 2016), para. 305:
<http://www.publications.parliament.uk/pa/ld201516/ldselect/ldconst/149/149.pdf>.

⁴ Final Report, The Review of Higher Education Funding and Student Finance Arrangements in Wales p.66 available at <http://gov.wales/docs/dcells/publications/160927-he-review-final-report-en.pdf>

13. We would also once again refer the Committee to the recommendation of the Silk Commission in respect of a “*formal intergovernmental forum to ensure mutual understanding of Higher Education policy issues*”⁵ which could go some way to addressing these issues.
14. 14. The OU in Wales would be happy to provide any further information to the committee as required in particular drawing on our experience as a UK-wide higher education institution.

17 February 2017

⁵ Commission on Devolution in Wales: Empowerment and Responsibility: Legislative Powers to Strengthen Wales, p.143. Available at: <http://webarchive.nationalarchives.gov.uk/20140605075122/http://commissionondevolutinwales.independent.gov.uk/files/2014/03/Empowerment-Responsibility-Legislative-Powers-to-strengthen-Wales.pdf>

Cynulliad Cenedlaethol Cymru | National Assembly for Wales
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol | Constitutional and
Legislative Affairs Committee
Ymchwiliad: Llais cryfach i Gymru: ymgysylltu â San Steffan a'r sefydliadau
datganoledig |
Inquiry: A stronger voice for Wales: engaging with Westminster and the
devolved institutions
IGP008
Ymateb gan | Response from: Elfyn Llwyd

Sut y mae dulliau rhyng-lywodraethol wedi effeithio ar ddatblygiad y setliad datganoli.

1. Cyn ateb y cwestiwn ar ddulliau rhyng-lywodraethol mae'n bwysig i edrych ar hanes y berthynas rhwng adrannau Llywodraeth San Steffan a Llywodraeth Cymru. Efallai, mae'r peth cyntaf i nodi ydi nad oes yna ddealltwriaeth gywir o natur datganoli ymysg gweision sifil Llundain nac aelodau o'r Llywodraeth ychwaith. Mae hyn yn creu dryswch ac oedi di-angen pan y mae Llywodraeth Cymru a'r Cynulliad Cenedlaethol yn mynnu newid deddfwriaethol. O bosib hefyd mae rhan o'r broblem ydi natur y setliad presennol oherwydd cymhlethdod y model ble mae rhai meysydd polisi yn cael eu rhannu cydrhwng y ddau ddeddfwrfa. Cofiw'n am y tri sialens Goruchaf Lys a oedd, i bob pwrpas, yn ceisio esboniad i'r cwestiynau dyrys hyn. Rhaid oedd i'r barnwyr yn y Goruchaf Lys werthuso'r setliad presennol gan geisio llunio ble y mae'r ffiniau yn bodoli.
2. Fel mae'r Pwyllgor yn ymwybodol un o'r achosion yma oedd yr achos yn ymwneud a chyflogau gweithwyr amaethyddol a dymuniad Cymru i barhau efo corff fel Bwrdd Cyflogau Amaethyddol a ddiddymwyd gan Lywodraeth San Steffan. Cawsom sefyllfa ble yr oedd bron bopeth yn ymwneud ag amaeth wedi ei ddatganoli ond ar fater mor sylfaenol a chyflogaeth dywed Llywodraeth y Deyrnas Unedig mae mater iddynt hwy oedd hyn. Mae'n anodd gweld sut oedd hi'n bosib i gyfiawnhau eu

safiad gan ystyried pa mor greiddiol i'r sector amaethyddol, a'r economi yn deillio ohono, y mae'r cwestiwn o lefelau cyflog.

3. Ar ôl dau achos arall, fe sylweddolwyd bod yn rhaid gweithredu eto ar newid cyfansoddiadol i osgoi gorfod mynd ac achosion niferus drudfawr gerbron y Goruchaf Lys.
4. Felly dyma dderbyn bod angen newid yr oedd llawer ohonom wedi dadlau o'i blaid ers rhai blynyddoedd sef y Model Neilltuedig tebyg i'r hyn a weithredir ers rhai blynyddoedd yn Senedd yr Alban. Mae'r newid hwn yn golygu bod meysydd polisi wedi'w datganoli'n llwyr oni neilltuwyd y maes hwnnw. Yn ddi-os, fe ddylid gweld llai o sialensau yn mynd i'r Llysoedd pan weithredir Y Ddeddf Cymru arfaethedig, a da o beth fydd hynny.
5. Un o'r elfennau ydi'r uchod. Y llall ydi nad oes digon o hyfforddiant wedi cael ei roi i weision sifil San Steffan nac ychwaith i Weinidogion y Llywodraeth yno ar sut y mae y setliad i fod i weithio yn hwylus. Mae'n ddrwg gennyf ddweud, ond mae'n amlwg i mi nad oes llawer o ddiddordeb gan y cyfeillion yma yn yr holl fater o ddatganoli.
6. Er enghraifft, pan fy cwynion am y ffaith fod ymgynghoriad gan yr Adran Cyfiawnder wedi mynd allan i gyfreithwyr yng Nghymru a Lloegr yn uniaith Saesneg nid oedd gan y Gweinidogion syniad am Ddeddf yr Iaith Gymraeg, a'r angen am ddarpariaeth ddwyieithog yng Nghymru – yr esgus oedd “mater i'r Cynulliad yw'r iaith Gymraeg”. Ia wrth gwrs, ond tra bo'r Adran Gyfiawnder yn tra arglwyddiaethu ar faterion cyfiawnder yng Nghymru mae'n fater iddynt hwy hefyd! Pwynt amlwg a sylfaenol ond un nad oedd Gweinidogion yr Adran Gyfiawnder wedi crybwyll na deall.
7. Gofid i mi ydi bod rhai adrannau Llywodraethol yn camu'n ôl oddiwrth y Gymraeg. Deng mlynedd a mwy yn ôl roedd y Swyddfa Gartref yn ddeddfol yn cyfieithu pob dogfen bolisi ac ymgynghoriad ond erbyn

hyn maent hwythau yn peidio gan amlaf. Tydi hyn ddim yn argoeli'n dda am gydweithrediad hapus rhwng y ddau ddeddfwrfa.

8. Tra felly rwyf yn croesawu'r Model Neilltuol arfaethedig – mae'n rhaid deall na fydd y newid yma yn dod a newid yn niwylliant llywodraeth y Deyrnas Gyfunol ac mae gwir angen hynny wrth symud ymlaen.
9. Gobeithiaf na welwn eto yr angen i unrhyw gyfraith ddrafft o Gymru gael ei danfon i bob adran Llywodaeth y Deyrnas Gyfunol pam fo'r newid honno yn effeithio ddim ond ar un maes polisi. Mae'n anhygoel o beth ond dyna fu yn digwydd gan greu mwy o ddryswch a rhagor o oedi – dim rhyfedd bod anniddigrwydd yng Nghaerdydd o ystyried yn y gorffennol bod un rheoleiddiad bach yn ymwneud a newid bychan ymyd amaeth wedi cymeryd 15 i 18 mis i weld golau dydd ar y llyfr statud yng Nghaerdydd, a hynny'n bennaf oherwydd i'r drafft orfod cael ei gymeradwyo gan bob Adran o'r Llywodraeth. Mae engreifftiau fel yna yn dwyn anfri ar y ddau Sefydliad ac yn gwneud hi'n annos i gyd-symud a chydweithredu er lles pobl Cymru.
10. Rhaid cofio, wrth gwrs, y bydd aml i faes llywodraethol heb ei eithrio ac felly bydd angen y cydweithrediad yma hyd yn oed o dan y model arfaethedig newydd sy'n gynwysedig yn Y Ddeddf Cymru dichonadwy.

Sut y mae cysylltiadau rhyng-lywodraethol wedi datblygu ac esblygu, yr hyn a oedd yn llwyddiannus, ac y mae'r cysylltiadau hyn wedi effeithio ar y setliad datganoli.

1. Pan oeddwn yn Aelod o Bwyllgor Dethol Cyfiawnder y Senedd yn Llundain rhan o orchwyl gwaith y Pwyllgor eithaf pwerus hwnnw oedd adrodd ar Lywodraethu Da yn y tiroedd a enwyd y Tiriogaethau Tramor. Yn eu mysg y mae Ynys Manaw ac Ynysoedd y Sianel – tra yn ymweld a Llywodraeth a phrif gyfreithwyr Jersey a Guernsey fe glywais llawer o gwyno ganddynt bod cyfreithiau drafft ganddynt yn disgyn i rhyw bwl di-waelod pan oeddynt yn gorfod danfon y drafftiau i San Steffan. Roedd hyn, a credaf ei fod yn parhau heddiw , yn bwnc llosg ac yn gynnen fawr yn eu perthynas a Llywodraeth Llundain.

Roedd hyn yn fwy poenus i Ynysoedd y Sianel oherwydd yn aml newidiadau yn ymwneud a marchnadoedd arian oeddynt ac wrth gwrs mae rheini yn gyfrifol am ran helaethaf o'u economïau. Ymhellach, fel mae pawb yn gwybod, mae angen symud yn gyflym iawn i wneud newidiadau o'r fath os nad ydynt am fethu a bod yn gystadleuol yn y farchnad fuddsoddi/ariannol byd eang.

2. Dywedwyd wrthyf eu bod hwythau yn gorfod mynd i'r Llysoedd er mwyn sicrhau bod Llywodraeth Llundain yn symud pethau yn gynt ac yn dangos mwy o awch i gydweithredu'n briodol efo nhw.
3. Pan rwyf yn sôn am “ddiwylliant” gweision sifil a Gweinidogion Llundain gobeithio bod profiadau Caerdydd a St Helier ac eraill yn esbonio fy nefnydd o'r gair hwnnw.
4. Dagrau'r sefyllfa ydi bod y diffyg cydweithrediad parod uchod yn bodoli ers cenedlaethau wrth gwrs. Efallai eto yn cyfiawnhau fy nefnydd o'r gair diwylliant.
5. Mae'n ffaith bod angen cryn amynedd a pheth amser i greu newid mewn diwylliant ond y mae gwir angen am newid yn Llundain i sicrhau

ymarfer da a chydweithrediad efo gweision sifil a Gweinidogion Llywodraeth Cymru.

6. Rhag ofn fy mod yn swnio'n rhy negyddol mae'n siŵr gen i bod yna enghreifftiau o gydweithredu da yn y gorffennol agos. Cadarnhau mae hynny bod angen cydweithredu da yn barhaus rhwng y ddau Sefydliad.
7. Un peth i ddweud ydi bod ymagwedd Llundain yn anffodus – tydi Llundain ddim yno i geisio gwadu dyheadau Cymru ond yn hytrach i'w hyrwyddo yn gyson ac i fod yn barod i gynnig gwelliannau os yn addas. Ofnaf mae “ni wŷr orau” sydd yn teyrnasu yng nghoridorau San Steffan ac mae'n rhaid iddynt sylweddoli bod gweithredu cyson a da yn gorfod cael eu seilio ar berthynas barchus a phartneriaeth cydradd neu gyfartal. Dylai'r “fam Senedd” ystyried bod ei phlentyn Cymreig wedi dod i aeddfedrwydd ac y dylid ymwneud a hi/o mewn modd barchus ac aeddfed.

Sut y mae cysylltiadau rhyng-seneddol wedi esblygu, cyflwr presennol y cysylltiadau hyn, a sut y gellid eu datblygu ymhellach o ran y gwaith o ddatblygu deddfwriaeth cyfansoddiadol a chraffu arni.

1. Gadewais San Steffan ym Mai 2015 ac felly nid oes gennyf dystiolaeth am yr hyn sydd wedi bod yn digwydd dros y ddwy flynedd diwethaf yma.
2. Yr awgrym sydd gen i yw y dylid trefnu seminarau cyson rhwng y gweision sifil yn y ddau Sefydliad er mwyn sicrhau dealltwriaeth dyfnach o natur bresennol y setliad cyfansoddiadol. Mae dyfodiad Mesur Cymru, fe dybiwn, yn bwynt da i gychwyn ar y gwaith o ddifrif er mwyn sicrhau bod pawb yn deall eu rôl yn y broses, yn arbennig ble y mae maes polisi yn parhau i fod yn rhannol yn Llundain a Chaerdydd. Mae hyn yn bwysig iawn er sicrhau bod y sianelau yn glir, fel petae. Mae'n bwysig hefyd i osgoi y problemau sydd yn parhau i boeni'r Tiriogaethau Tramor fel y soniais amdanynt uchod.
3. Un mater pwysig ar gyfer y dyfodol yw i sefydlu cyrsiau arbennig i weision sifil Cymreig . Mae Ecole Nationale d'Administration ym Mharis yn fyd enwog ac yn bodoli ers canrifoedd. Efallai mae dyma fwasai'r uchelgais mwyaf. Ond o ddifrif, rydym yn byw mewn hinsawdd ym myd addysg bellach ble mae partneriaethau rhwng Prifysgolion yn cael eu cymell. Rwyf yn Aelod o Gyngor Prifysgol Aberystwyth ac fe wn am fanteision partneru gyda prifysgolion eraill ar brosiectau a'r arian mae hyn yn ei ddenu. Pam, felly, na fyddai dwy adran brifysgol Gymreig yn dod at eu gilydd i lunio cwrs o'r fath. Yn ddi-os mi fyddai hyn yn gam sylweddol iawn at greu deddfwriaeth gyfansoddiadol gref a phwrpasol i Gymru efo buddiannau pobl Cymru bob amser yn symbyliad canolog.

Yn nhyb llawer mae creu cadre o weision sifil Cymreig yn ganolog i dŵf a llwyddiant y broses ddemocrataidd yma yng Nghymru.
4. Fe wn bod sustem o secondiad o Gaerdydd i Lundain yn bodoli ond mae'r sawl sydd yn mynd dros dro i Lundain yn mynd i gael ei

drwytho/thrwytho mewn arferion San Steffan yn hytrach nag arferion Caerdydd. Tydi hynny, wrth gwrs, ddim i ddweud bod llawer o arferion da i'w dysgu yn Llundain ond â ydynt yn rhai hollol berthnasol i ddeddfwriaeth tra wahanol ym Mae Caerdydd? Rhaid deall bod y gwahaniaethau yma am barhau ac mae'n rhaid i bobl werthfawrogi gofynion y ddeddfwrfa Gymreig.

5. Y negeseuon at y dyfodol - rhagor o gyd-gysylltu cyson priodol ac amserol a'r cysylltiadau rheolaidd rheiny wedi'w seilio ar barch a phartneriaeth cydradd a chyfartal.

Document is Restricted

Cynulliad Cenedlaethol Cymru | National Assembly for Wales

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol | Constitutional and Legislative Affairs Committee

Ymchwiliad: Llais cryfach i Gymru: ymgysylltu â San Steffan a'r sefydliadau datganoledig

Inquiry: A stronger voice for Wales: engaging with Westminster and the devolved institutions

IGP009

Ymateb gan: Y Pwyllgor Materion Cyfreithiol a Chyfansoddiadol, Y Senedd, Awstralia

Response from: The Legal and Constitutional Affairs Committee, The Senate, Australia

The Australian Senate Standing Committee on Legal and Constitutional Affairs Committee is pleased to provide the following information to the Constitutional and Legislative Affairs Committee of the Welsh Parliament, relating to the inquiry 'A stronger voice for Wales: engaging with Westminster and the devolved institutions'.

The committee

Established as a standing committee in 1970, the Legal and Constitutional Affairs Committee (the committee) can inquire into legislation and other matters as they are referred by the Senate. The committee routinely enquires into matters associated with family law, constitutional law, criminal law, and administrative law. A number of times each year the committee also takes evidence from the Attorney-General's Department and associated agencies, and the Department of Immigration and Border Protection, as part of the Senate estimates process.

A database of all inquiries completed by this committee can be found here: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries.

Outline

This paper will outline the relations between the Australian Commonwealth State and Territory Governments, as well as the Commonwealth Government's inter-institutional relations in the Asia-Pacific region and beyond.

Establishing the Commonwealth of Australia

In 1900 the British Parliament passed legislation to establish the [Australian Constitution](#), which enabled the six then-colonies to govern themselves as the Commonwealth of Australia. The Act came into force on 1 January 1901. The British Monarch (as represented by the Governor-General) is Australia's head of state, and is vested with the executive power of the Commonwealth. In practice, executive power is exercised by the Prime Minister of Australia and Cabinet, and the Governor-General acts based on their advice.

Australia's Constitution establishes the parameters for the way in which the Commonwealth Government interacts with State and Territory Governments. It establishes that the Commonwealth Government can only legislate in relation to matters set out in the Constitution (primarily in section 51). States have plenary power to legislate. Section 51(xxxvii), known as the 'referral power', enables the Parliament of any State to refer matters to the Parliament of the Commonwealth, but so that the law shall only extend to States which referred that matter, or which afterwards adopted the law in question.

Intergovernmental relations between the Commonwealth, State and Territory Governments

The Commonwealth Government interacts with the State and Territory Governments in a number of ways. Two of the formal means by which this takes place are through meetings of the [Council of Australian Governments](#) (COAG), and the [Commonwealth Grants Commission](#) (CGC).

The CGC was established in 1933 to help address the imbalance in access to revenue sources between the States and Territories, the barriers of which were drawn up with a limited understanding of Australia's geography and natural resources. The CGC can advise the Commonwealth Government that particular States should be given Financial Assistance Grants for government services, to help ensure that citizens can access comparable levels of schooling, health care, justice and transport regardless of where they live.

COAG is the peak Australian intergovernmental forum. COAG members include the Prime Minister of Australia, the first Ministers of each State and Territory, and the President of the Australian Local Government Association. COAG typically meets twice a year to discuss matters of national significance, and other matters which require coordinated action from all Australian governments. Where COAG makes a formal agreement, this may be contained within [intergovernmental agreements](#). Such agreements have included agreements relating to the funding of public hospitals, the sharing of criminal history information, disability insurance, counter-terrorism, and consumer law. In some instances an intergovernmental agreement may be a precursor to legislation, for example, in the case of the development of Australia's (now) national consumer law system.

As explained above, the Commonwealth Government, and State and Territory Governments may work cooperatively in order to legislate in relation to matters which require a concerted effort (for example, matters in relation to

which the States have the power to legislate, but only in relation to their State alone). In such instances, the State Governments may negotiate to:

- refer their power to legislate to the Commonwealth Government so that a national scheme can be implemented; or
- agree to adopt one single piece of model legislation.

Such negotiations typically take place via the COAG forum.

Commonwealth Government inter-institutional relations

The Commonwealth Government maintains close relationships with other nations via diplomatic channels, and through the sharing of information relating to global security, trade, and the environment.

The Commonwealth Government [connects with governments and institutions](#) in the Asia-Pacific Region (and beyond) in a number of ways, including via:

- Asia-Pacific Economic Cooperation (APEC) forum;
- Association of Southeast Asian Nations (ASEAN);
- ASEAN Regional Forum;
- Asia-Europe Meeting (ASEM)

Australia also engages with a number of other international organisations, including the United Nations, G20, Commonwealth of Nations, World Trade Organization, and OECD.

Closing remarks

Australia's formal legal relationship with the United Kingdom differs vastly from that of Wales. While Australia retains its formal legal relationship with the United Kingdom, and the British Monarch is Australia's Head of State, in practice, the Monarch's representative the Governor-General acts on the advice of the Prime Minister and his or her Ministers. By contrast, the Welsh National Assembly and Welsh Government have gradually gained law-making

powers from the British Parliament, including a recent vote in 2011 to give the National Assembly greater law-making powers.

The committee thanks the Constitutional and Legislative Affairs Committee of the Welsh Parliament for the opportunity to provide this information.

If you have further questions we would be pleased to discuss these with you.

Cynulliad Cenedlaethol Cymru | National Assembly for Wales
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol | Constitutional and
Legislative Affairs Committee
Ymchwiliad: Llais cryfach i Gymru: ymgysylltu â San Steffan a'r sefydliadau
datganoledig | Inquiry: A stronger voice for Wales: engaging with
Westminster and the devolved institutions
IGP010
Ymateb gan: Yr Athro Paul Cairney
Response from: Professor Paul Cairney

[‘Westminster and the devolved institutions’](#)

These are some short answers to some general questions that will likely arise in my oral evidence ([22 May, 1.15pm](#)) to the [Constitutional and Legislative Affairs Committee](#) inquiry called [A stronger voice for Wales: engaging with Westminster and the devolved institutions](#).

Could you outline your area of research expertise?

I use theories of public policy to understand policymaking, focusing on particular areas such as the UK (and Scotland in particular), issues such as tobacco policy, and themes such as ‘the politics of evidence-based policymaking’ and policy learning or transfer.

Could you elaborate on the “Scottish approach” to policymaking?

There are several related terms, including the:

- ‘Scottish policy style’, [which academics use](#) to describe two policymaking reputations – (i) for consulting well with stakeholders while making policy, and (ii) for trusting public bodies to deliver policy.
- ‘Scottish model of policymaking’, [described by former Permanent Secretary Sir John Elvidge](#), stressing the benefits of reducing departmental silos and a having a scale of policymaking conducive to cooperation (and the negotiation of common aims) between central government and the public sector.
- ‘Scottish Approach to Policymaking’ ([described by former Permanent Secretary Sir Peter Housden](#)), stressing key principles about how to describe the relationship between research/ policy delivery (‘improvement method’), communities and service users (an ‘assets based’, not ‘deficit focused’ approach), and central government/ public bodies/ stakeholders in policymaking and delivery (‘co-production’).

Each term describes a reputation or aspiration for policymaking, and you'll tend to find in my [published work](#) (click the 'PDF' links) a healthy scepticism about the ability of any government to live up to these aims.

Also note that the Scottish style (as with discussions of Welsh policymaking) tends to be praised in [comparison with a not-flattering description of UK government policymaking](#).

In relation to your comments around “size or scale” of Scottish Government, would similar traits be observed in policy-making in Wales and Northern Ireland, or indeed in other small political systems?

Yes. In fact, we have included a comparison with Wales in previous studies of [‘territorial policy communities’](#) (both have the ‘usual story of everybody knowing everybody else’) and the [potential benefits of more consensual approaches to delivery](#) (both display ‘less evidence of a fragmentation of service delivery organisations or the same unintended consequences associated with the pursuit of a top-down policy style’).

These size and scale issues have pros and cons. Small networks can allow for the development of trust between key people, and for policy coordination to be done more personally, with less reliance on distant-looking regulations. Small government capacity can also prompt over-reliance on some groups in policy development which, on occasion, can lead to optimistic plans (when doing interviews in Wales in 2006, the [example I remember was homelessness policy](#)). Smallness might also prompt overly romantic expectations about the ability of closer cooperation, on a smaller scale, to resolve policy conflict. Yet, we also know that people often have very fixed beliefs and strong views, and that politics is about making ‘hard choices’ to resolve conflict.

Could you explain the importance of personal relationships to policy-making and implementation?

I think they relate largely to psychology in general, and the specific potential effects of the familiarity and trust that comes with regular personal interaction. Of course, one should not go too far, to assume that personal relationships are necessarily good or less competitive. For example, imagine a room containing some people representing the Welsh Government and all the University Vice Chancellors. Sometimes, it will aid collective policymaking. Sometimes, the VCs would rather hold bilateral discussions to help them compete with the others.

To what extent are territorial policy communities too “cosy” with their respective Governments?

You’ll find in many discussions a reference to ‘the usual suspects’ and the idea of ‘capture’, to describe the assertion that close contact leads to favouritism from both sides. It is helpful to note that any policymaking system will have winners and losers. You can take this for granted in larger and more openly competitive systems, but have to look harder in smaller venues. We would need to avoid telling the same romantic story about Welsh consensus politics and, instead, to design ‘standard operating procedures’ to gather many diverse sources of evidence and opinion routinely.

Could you expand on the extent to which key UK policies impact on devolved policies?

Compared to many countries, the devolved UK governments have more separate arrangements. For example, ‘health policy’ is far more devolved than in, say, Japan (in which multiple levels make policy for hospitals).

Yet, there are always overlaps in relation to economic issues (the UK is largely responsible for devolved budgets, taxation, immigration, etc.), shared responsibilities in cross-cutting issues (such as fuel poverty), and the ‘spillover’ effects of UK policies.

The classic case of spillovers in Wales is higher education/ tuition fees policy, partly because so many staff and students live within commuting distance of the Wales/ England border. Each Welsh policy has been in response to, or with a close eye on, policy for England. There was also the case of NHS policy in the mid-2000s, where Welsh government attempts to think more holistically about healthcare/ public health were undermined somewhat by unflattering comparisons of England/ Wales NHS waiting times. In Scotland, these issues are significant, even if less pronounced.

To what extent is the multi-level nature of policy-making downplayed?

I’d say that it is not sufficiently apparent in any election campaign at any level. People don’t seem to know (and/ or care) about the divisions of responsibilities across levels of government, which makes it almost impossible to hold particular governments to account for particular policy decisions. It’s often not fair to hold certain governments to account for policy outcomes (since they are the result of policies at many levels, and often out of the control of policymakers) but we can at least encourage some clarity about their choices.

Could you expand on the “intergovernmental issues” you refer to in a recent article? Do you have any examples and how these were resolved?

I'd encourage you to speak with my [Centre on Constitutional Change](#) colleagues on this topic, since (for example) Professors Nicola McEwen and Michael Keating may have more recent knowledge and examples.

In general, I'd say that IGR issues have traditionally been resolved rather informally, and behind closed doors, particularly but not exclusively when both governments were led by the same party. Formal dispute resolution is far less common in the UK than in most comparator countries. Within the UK, the Scottish Government has not faced the same problem as the Welsh Government, which has faced far more Supreme Court challenges in relation to its competence to pass legislation in devolved areas. Yet, in the past, we have seen similar early-devolution examples of 'fudged' decisions, including on 'free personal care' in Scotland (it gained far more in the 'write-off' of council house debt than it lost in personal care benefits) and EU structural funds in Wales (when the UK initially refused to pass on money from the EU, then magically gave the Welsh Government the same amount another way).

Is there any evidence of devolved Governments and the UK Government learning from one another in terms of policy?

Not as much as you might think (or hope). When [we last wrote about this in 2012](#), we found that the UK government was generally uninterested in learning from devolved policy (not surprising) and there was very little Scottish-Welsh learning (more surprising), beyond isolated examples like the Children's Commissioner (and, at a push, prescription charging and smoking policy). I recently saw a powerpoint presentation showing very few private telephone calls between Scotland Wales, so perhaps it's not so surprising!

In general, we'd expect most policy learning or transfer to happen when at least one government is motivated by a sense of closeness to the other, which can relate to geography, but also ideological closeness or a sense that governments are trying to solve similar problems in similar ways. Yet, the Scottish and Welsh governments often face quite different initial conditions relating to their legislative powers, integration with UK policy, and starting points (for example, they have very different education systems). So, we should not assume that they have a routine desire to learn from each other, or that there would be a clear payoff.

What is the likely impact of the UK's withdrawal from the EU on policy-making in the devolved nations?

I have no idea! The Scottish Government wants to use the event to prompt greater devolution in some areas (such as immigration) and secure the devolution of Europeanised issues (such as agriculture, fishing, and environmental policy).

We should see the practical effect of reduced multi-level policymaking in key areas (even though each government will inherit policies from their EU days) and there are some high profile areas in which things may have been different outside the EU. For example, the Scottish Government would have faced fewer obstacles to enacting its minimum unit price on alcohol (which relates partly to EU rules on the effect of pricing on the ability of firms from other EU countries to compete for market share).

We should also see some 'stakeholder' realignment, since interest groups tend to focus their attention on the venues they think are most important. It will be interesting to see the effects on particular groups, since only the larger groups (or the best connected) are able to maintain effective contacts with many levels of government.

What is your view on Whitehall departments' understanding of devolution in Wales and Scotland?

The usual story is that: (a) London-based policy people tend to know very little about policy in Edinburgh or Cardiff (it's also told about UK interest groups with devolved arms), (b) devolved-facing UK government units tend to have heroically small numbers of staff, and (c) there are few 'standard operating procedures' to ensure that devolved governments are consulted on relevant UK policies routinely. I can't think of an academic text that tells a different story about the UK-devolved relationship.

That said, it's difficult to argue that policymakers in Brussels know a great deal about Wales either, and the Cardiff-London train ticket is cheaper if you want to go somewhere to complain about being ignored.

How would you assess the success of stakeholder influence in policy making? What does this say about the effectiveness of stakeholder engagement?

I'd describe winners and losers. Perhaps we might point to a general sense of more open or consensual policymaking in the devolved venues, but also analyse such assumptions critically. In any system, you'll find a similar logic to consulting with the usual suspects, often because they have the resources to lobby, the power to deliver policy, or the professional knowledge or experience most relevant to policy. In any system, you'll struggle to measure stakeholder influence. If describing the

benefits of more devolved policymaking, I'd find democratic/ principled arguments (about more tailored representation) more convincing than 'evidence-based' ones.

Do you have any views about whether powers over, for example, agriculture should go to London or to the devolved nations?

No. I'll take my views on all constitutional matters to the grave.

Cynulliad Cenedlaethol Cymru | National Assembly for Wales

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol | Constitutional and Legislative Affairs Committee

Ymchwiliad: Llais cryfach i Gymru: ymgysylltu â San Steffan a'r sefydliadau datganoledig

Inquiry: A stronger voice for Wales: engaging with Westminster and the devolved institutions

IGP011

Ymateb gan: Yr Athro Thomas Glyn Watkin

Response from: Professor Thomas Glyn Watkin

1. I should like to thank the Committee for the invitation to submit written evidence to it in relation to this inquiry, and for the subsequent notification of the extended period permitted for the submission of evidence. The opinions expressed in this paper are entirely my own and do not represent the views of any body or institution with which I am or have been associated. I have to admit that I was in two minds as to whether I had anything of value to say on this issue as my direct knowledge and experience of inter-institutional working between Wales and Westminster is limited to my time as Legislative Counsel during the Third Assembly, a period now perhaps more of historical interest than of direct relevance to the inquiry. Indeed, even then, the occasions on which I was directly involved in discussions with UK institutions, as opposed to having to deal with the outcomes of such negotiations, were very few in number. However, the similarities between what I experienced then and more recent experience of involvement in discussions leading up to the passing of the Wales Act 2017 have led me to believe that things may not have changed as much as the length of time which has passed might lead one to suppose.

Experience during the Third Assembly (2007–11)

2. Towards the end of the Third Assembly, I gave evidence to this Committee as First Welsh Legislative Counsel.¹ This related to the difficulties which had been experienced in delivering the Welsh Government's legislative programme under the devolution settlement contained in Part 3 and Schedule 5 of the Government of Wales Act 2006. Under that model of

¹ Constitutional Affairs Committee, CA(3)–04–10 : Paper 1 : 4 February 2010, and the transcript of that meeting.

devolution, the Assembly acquired legislative competence incrementally through the periodical insertion of matters into the 20 fields set out in Part 1 of Schedule 5, which matters could be inserted either by Act of Parliament or through the making of Orders in Council, commonly referred to as Legislative Competence Orders or LCOs. I shall not repeat the evidence given by myself and Mr. Huw G. Davies, Senior Welsh Legislative Counsel, on that occasion regarding my Office's experience of the work. Suffice it to say that the experience had been very frustrating. The extent of the legislative competence to be enjoyed by the Assembly under Part 4 and Schedule 7 of the 2006 Act following a successful referendum was already known, as the 20 headings in Part 1 of Schedule 7 already had listed under them the subjects in relation to which Parliament had decided that the Assembly should be competent to legislate. Those 20 headings corresponded to the 20 fields in Schedule 5. They were in the main empty, matters having yet to be incrementally inserted into them. It was agreed that it was not anticipated that all of the subjects under a heading in Schedule 7 should be transferred into a field in Schedule 5 at any one time, but that each field should grow incrementally. It seemed therefore that what was intended was that the subjects already identified as being suitable for devolved legislative competence should be inserted into Schedule 5 individually or in groups as required to deliver the Welsh legislative programme. This however was not what happened. Following an initial attempt to proceed in this manner, it became apparent that the UK Government was not prepared to confer as broad a competence upon the Assembly as that given by Schedule 7 even in relation to the individual subjects identified there. Instead, each matter was subjected to sometimes very considerable limitations and exceptions which had not been imposed by Parliament when enacting the provisions of Schedule 7. Perhaps the classic example of this can be seen by comparing the text of the proposed Environment LCO promoted by the Welsh Government and agreed by the Assembly in 2007 with the eventual Environment LCO approved by Parliament following lengthy negotiations with the UK Government in 2010.²

² National Assembly for Wales (Legislative Competence) (No.2) Order 2007; National Assembly for Wales (Legislative Competence) (Environment) Order 2010.

Experience during the passage of the Wales Act 2017 – déjà vu?

3. The difficulties encountered in obtaining legislative competence during the Third Assembly seemed to be reproduced in the deliberations leading up to the Wales Act 2017, and the manner in which reserved matters – especially the specified reserved matters – are defined in that Act recall the manner in which matters had been defined for insertion into Schedule 5. It is also in my view significant that little seems to turn on the political complexion of the UK Government in this regard. Many believed at the time of the Third Assembly that problems may have lain more with officials in Whitehall than with UK ministers. The problem would appear to have been an unwillingness to address the issue as one of subsidiarity – “what subjects are most appropriately decided at national level and what subjects need to be retained at State level?” – but rather as one of administrative convenience – “what matters would make my work more difficult if decisions concerning them had to be shared with Wales?” The devolution of legislative competence appears to turn on the convenience or inconvenience of administrative decentralization rather than respect for any right to national self-determination.

4. It is difficult to separate this problem, if it is recognized, from the manner in which devolution has been pursued within the United Kingdom, and in particular from the dual rôle of the UK Government as being both the government of the UK as a sovereign state and also the government of England regarding matters which are not devolved. Until the imbalance of power and sometimes the conflict of interest which results from this situation is satisfactorily addressed, I do not believe that a lasting constitutional settlement will be achieved nor that satisfactory inter-institutional relations can be maintained.

5. Silk II recommended the provision of a statutory Code of Practice on intergovernmental relations.³ It is to be regretted that the Wales Act 2017 did not deliver on this recommendation.

³ Commission on Devolution in Wales, *Empowerment and Responsibility: Legislative Powers to Strengthen Wales*, March 2014, (hereafter Silk II) chapter 5 and recommendation 4.

Cross-Border Issues

6. Silk II also recommended that the Welsh and UK Governments should establish a Welsh Intergovernmental Committee to oversee the operation of the devolution settlement by, amongst other things, resolving cross-border issues.⁴

7. The Wales Act 2017 has addressed two specific cross-border issues by a form of statutory regulation. In relation to cross-border harbours, this involves duties being placed upon both governments to consult one another when exercising certain functions, although in one instance the duty of the UK Minister to consult corresponds to a duty on the Welsh Ministers to obtain consent – an example of the imbalance referred to above.⁵

8. The 2017 Act does however implement to a large extent Silk II's recommendation that a formal intergovernmental protocol should be established with regard to cross-border issues relating to water resources, water supply and water quality, and that the Secretary of State's power of intervention to prevent Assembly bills proceeding to Royal Assent if he or she had reasonable grounds to believe that any of its provisions would have a serious adverse effect on water resources, water supply or water quality in England should be removed in favour of mechanisms under the protocol.⁶

9. The 2017 Act provides for the replacement of the intervention power by a water protocol, and also provides that in exercising functions relating to water resources, water supply and water quality the Welsh Ministers must have regard to the interests of consumers in England and the Secretary of State must have regard to the interests of consumers in Wales,⁷ thus introducing a welcome balance between the two governments regarding the exercise of these functions. Pending the development of a more balanced constitutional structure between the governments of the component nations of the United Kingdom, the approach taken with regard to cross-border water issues as between England and Wales may offer the best way forward for the present in relation to cross-border issues affecting the two nations.

⁴ Silk II, recommendation 6, especially (e).

⁵ Wales Act 2017, ss. 34–38.

⁶ Silk II, recommendation 16, discussed in chapter 8 of the report.

⁷ Wales Act 2017, ss. 50–52.

Legislative Issues

10. Imbalance however continues to exist with regard to the legislative processes of the two legislatures. Putting aside the issue of the sovereign UK Parliament's power to continue to legislate for the devolved nations even on devolved matters subject to the convention that it will not 'normally' do so without consent,⁸ there is also the bone of contention that it legislates in the same sovereign manner when legislating for England only under the procedures regarding 'English Votes for English Laws'. This effectively means that the restrictions placed upon the legislative competence of the devolved legislatures regarding compatibility with EU law and Human Rights legislation do not operate in the same manner with regard to England-only legislation as they do to Wales-only legislation passed by the Assembly. Nor do the same consequences follow from successful challenge. The consequences of devolved legislation straying into matters which are reserved or subject to restriction are therefore materially different from the lack of consequences if England-only legislation wanders across the devolution boundary. England-only legislation is not subject to judicial oversight with regard to competence as are the nation-specific enactments of the devolved legislatures.

11. While with regard to cross-border water issues, Silk II's recommendation relating to the intervention powers of the Secretary of State is potentially poised to bear fruit in the form of a water protocol, the same is not the case with its recommendation that those powers generally should be aligned with those existing in Scotland.⁹ Indeed, the 2017 Act gives the Secretary of State a further power to make regulations which can amend, repeal, revoke or modify Assembly legislation without any requirement to obtain the approval of the Assembly for the statutory instrument making the change.¹⁰ It was this provision which so outraged the former Lord Chief Justice, Lord Judge, during the House of Lords debates that he described it as an 'insult to the democratic process' and a 'constitutional aberration'.¹¹ It will be an interesting test of the legislative balance which it is claimed has been

⁸ Government of Wales Act 2006, s. 107(6), as inserted by Wales Act 2017, s. 2.

⁹ Silk II, recommendation 51(c), discussed in chapter 13 of the report.

¹⁰ Wales Act 2017, s. 69.

¹¹ Hansard, House of Lords, 14 December 2016, col. 1340-41.

achieved by the EVEL procedures and of the logic which lies behind them to see whether, if and when a statutory instrument is laid before the House of Commons containing such regulations, it is only Welsh MPs who will be permitted to vote on its approval, given that any laws being amended apply only in relation to Wales.

Despite my misgivings expressed earlier, I hope these reflections will prove of some use to the Committee in its deliberations.