



Mick Antoniw MS  
Chair  
Legislation, Justice and Constitution Committee  
Senedd Cymru

11 June 2020

Dear Mick

In my letter of 12 February following my oral evidence session of 13 January on your 'Wales' Changing Constitution' inquiry, I said that I would write again to you once I had had the opportunity to consider further the appropriateness of a greater role for the Senedd in scrutinising intergovernmental agreements and related matters. I apologise for the delay in addressing this, although I am sure you will understand the reasons for this.

The first point which I would like to make is that there is a wide range of intergovernmental agreements, from, for example, the overarching Memorandum of Understanding and Supplementary Agreements which provide the basis structure for inter-governmental working, to much more specific arrangements, such as those made under section 83 of the Government of Wales Act 2006.

We will always respect the inter-institutional relations agreement. This means we will specifically draw to the Senedd's attention those we consider likely to be of significant interest, and to notify others appropriately and for the record.

In this letter, however, I would like to address the two kinds of intergovernmental agreement I understand to be of particular interest to the Committee at present: Common Frameworks and agreements which expand upon or relate to provisions in UK Acts.

### **Common Frameworks**

The Welsh Government has been, and remains, committed to the Common Frameworks programme, which was established in the light of the Intergovernmental Agreement between the UK Government and the Welsh Government on the European Union (Withdrawal) Act 2018. The Common Frameworks programme has inevitably been delayed by the Covid-19 crisis, and the Counsel General and Minister for European Transition will be writing to the External Affairs and Additional Legislation Committee about this shortly.

The Common Frameworks programme is a joint endeavour by all four governments of the UK and all four are committed to transparency and scrutiny by the four legislatures.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Frameworks will not be fully finalised until the Senedd and other UK legislatures have had the opportunity to consider and comment on them.

The Welsh Government will of course treat with utmost seriousness comments made by the Senedd in relation to both the specifics and generality of the Frameworks, and ensure these comments are considered fully through the Common Frameworks Programme Board. However, the Common Frameworks are the subject of intergovernmental negotiations and their shape and content are by no means entirely within the gift of the Welsh Government. Any material shared with the Senedd will have been through a rigorous process of multilateral discussion and an approach that may well represent a hard-won compromise between the views and interests of different administrations may be difficult to revisit.

So, while the Senedd and the other legislatures will be able to propose amendments or changes to the Frameworks, it may be difficult for amendments advocated by only one legislature to be accepted. It would therefore seem appropriate for the legislatures to work together in their scrutiny of draft Frameworks, as far as this is practicable. I can assure you that the Welsh Government will do whatever it can to facilitate such joint working. I would be interested to know more about whether and how interparliamentary discussions are progressing.

### **Agreements around provisions in UK Acts**

As the Committee has reported, in addition to the Intergovernmental Agreement under the European Union (Withdrawal) Act, the Welsh Government has entered into agreements with the UK Government on what became the Healthcare (European Economic Area and Switzerland Arrangements) Act 2019 and on the Agriculture Bill. These intergovernmental agreements impose political constraints, where statutory constraints are not possible, on the actions of one government with respect to another's responsibilities. We are also developing an agreement on the Fisheries Bill.

The Welsh Government would prefer not to resort to this kind of intergovernmental agreement. Our starting point is that there should be appropriate provision on the face of UK Bills to delineate the exercise of functions by the governments of the UK in accordance with the devolution settlements.

However, where the UK Government is not prepared to agree the inclusion of such provisions on the face of its Bills, the Welsh Government faces a difficult choice. On the one hand, we could recommend that the Senedd does not consent to a UK Bill, with the clear risk that the UK Government will invite Parliament to ignore the withholding of consent, thus further undermining the inadequate Sewel convention. On the other, we could look to non-legislative solutions, such as an intergovernmental agreement to enable a recommendation that the Senedd consents to the Bill. In the current constitutional and political circumstances, with a Government with a large majority in the House of Commons and facing significant policy and legislative challenges arising from the UK's departure from the EU, there are likely to be some occasions when we favour the latter option.

Unfortunately the negotiations associated with this kind of intergovernmental agreement have none of the helpful features of those involved in Common Frameworks. When negotiating about a UK Bill, we face compressed timescales (which both sides use as leverage) and competing negotiating positions. These conditions are not conducive to facilitating scrutiny. Wherever possible, we will provide early notification to the Senedd about the need for negotiations on an intergovernmental agreement of this kind, and about the Welsh Government's negotiating priorities. And we will keep the Senedd as informed as possible about the nature and progress of such negotiations. We will always aim instead to

present the finalised agreement in order to inform the debate about whether or not to provide legislative consent.

I hope that these observations are helpful and I look forward to further discussion with your Committee should that be necessary. Meanwhile, I would be happy to agree that my officials can provide further technical briefings if that would be of assistance.

Best wishes

A handwritten signature in black ink that reads "Mark Drakeford". The signature is written in a cursive, slightly slanted style.

**MARK DRAKEFORD**