

Rt Hon Karen Bradley MP
Chair, Procedure Committee
House of Commons

30 March 2021

Dear Karen

Inquiry: The procedure of the House of Commons and the territorial constitution

Following our letter to you of 1 October 2020, in which we welcomed your decision to undertake an inquiry about the procedure of the House of Commons and the territorial constitution, we would now like to offer some views based on the work we have undertaken in recent years.

During the Fifth Senedd, we started an inquiry on Wales' Changing Constitution. The operation of the Sewel Convention was the focus for our work. While the inquiry was subsequently curtailed by the outbreak of the Covid 19-pandemic, we have outlined our views and findings in our Fifth Senedd Legacy Report, which will be published on 31 March 2021. Part One of our Legacy Report outlines our overall conclusions, while Part Two highlights some of the evidence received including our correspondence with the Rt Hon Simon Hart MP, the Secretary of State for Wales (which we enclose for information).

It has become apparent that the UK and devolved Governments interpret the Sewel Convention differently. As we say in our Legacy Report, we believe the precise role of parliaments and governments within the consent process lacks clarity. This is perhaps a reflection that the Sewel Convention and its application has not been formalised or developed in substance since Lord Sewel's contribution to a House of Lords debate on the Scotland Bill in July 1998, save for inclusion as a non-justiciable provision within the *Government of Wales Act 2006* (and the *Scotland Act 1998*). It is perhaps not surprising therefore that a Convention based on a single contribution to a parliamentary debate has failed to form a satisfactory, long-term basis for the relationship between the devolved legislatures and the UK Parliament.



Senedd Cymru

Bae Caerdydd, Caerdydd, CF99 1SN

✉ SeneddDCC@senedd.cymru

☎ 0300 200 6565

Welsh Parliament

Cardiff Bay, Cardiff, CF99 1SN

✉ SeneddLJC@senedd.wales

☎ 0300 200 6565

We therefore believe that the UK Parliament should clearly set out its responsibilities and understanding as regards the application of Sewel Convention and its practical operation, including the meaning of 'not normally'.

We acknowledge the existing arrangements whereby the Clerk of the Senedd writes to the Clerks of the House of Commons and House of Lords notifying them of the outcome of a consent debate in the Senedd, and that this correspondence is added to the relevant Bill webpage and Order papers.

In our view there must be a more comprehensive and transparent process that includes a mechanism for ensuring that the views of the Senedd (and the Welsh Government) are set out clearly and at known points in the UK Parliament's legislative process. We do not believe that it would be appropriate for this mechanism to rely on the UK Government's interpretation of the views of the Senedd or the Welsh Government.

One way of ensuring that the House of Commons takes into account the view of the Senedd could be to introduce a procedure that requires the House to consider Senedd committee reports on legislative consent memoranda for UK Bills in circumstances where the Senedd refuses consent for such Bills. This procedure should equally apply to reports of the other devolved legislatures.

The *United Kingdom Internal Market Act 2020* will have a significant impact on the effectiveness and operation of laws passed by the Senedd. As a result, we believe the 2020 Act may also have an impact on the future application of the English Votes for English Laws procedure in the House of Commons and the role of Welsh MPs. The impact of the 2020 Act is likely to be considered in the Sixth Senedd and our successor Committee may wish to provide further comments.

Yours sincerely



Mick Antoniw MS

Chair of the Legislation, Justice and Constitution Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



Ref: 020MISC21

T: 0292 092 4216
E: Correspondence@ukgovwales.gov.uk

Mick Antoniw MS

Chair of the Legislation, Justice and Constitution Committee
Senedd Cymru
Cardiff Bay
Cardiff
CF99 1SN
Email: seneddLJC@senedd.wales

16 February 2021

Dear Mick,

The Sewel Convention

Thank you for your letter of 21 January regarding the application of the Sewel Convention to the United Kingdom Internal Market Bill (the Bill).

As set out in the Minister of State for Small Business, Consumers and Labour Markets' written statement of 17 December 2020, it was the UK Government's intention from the very outset of the process to legislate for the Bill with the consent of all devolved legislatures. As with every UK Government Bill that engages the legislative consent process, we followed the associated practices and procedures for seeking consent from the devolved administrations. We therefore wrote to all three devolved administrations in advance of introduction of the Bill seeking consent.

In this respect I disagree with your assertion that the 'not normal' circumstances of the Bill meant that the Sewel Convention did not apply. The convention applies in all circumstances where Parliament seeks to legislate on devolved matters and the UK government seeks consent on this basis. The convention recognises however that there are circumstances in which it may be necessary for Parliament to legislate irrespective of whether or not consent is obtained. The inclusion of the words 'not normal' within the convention acknowledges that Parliament is sovereign and therefore it is ultimately for Parliament whether to use its power to legislate in any such circumstances.

Our work with the Welsh Government alongside the Bill's parliamentary passage sought to clarify the concerns that they had raised with us with the hope of reaching a point at which the Welsh Government could recommend that the Senedd granted consent to the Bill. I was pleased that as a result of this engagement we were able to bring forward amendments to the Bill to directly address a number of issues.

Ref: 020MISC21

T: 0292 092 4216
E: Correspondence@ukgovwales.gov.uk

This included providing a mechanism that would enable divergence under Common Frameworks to be excluded from the Market Access Principles where there is agreement between all four parts of the UK, as well as ensuring that the Secretary of State is obliged to seek the consent of the devolved administrations when panel appointments are made to the Office of the Internal Market. The UK Government deeply regrets that, despite efforts to find common ground, both the Senedd and the Scottish Parliament refused consent for the Bill. However, we sought consent in good faith and are confident that the legislation is more robust and more attuned to Welsh Government concerns in particular as a result.

The Bill, now Act, is vital in ensuring that businesses in Wales and across the UK can continue to trade freely within our internal market now that the Transition Period has ended. Our consultation highlighted the real concerns that businesses, including those in Wales, had about the potential for regulatory divergence between parts of the UK to create new internal barriers to trade. It is the Government's view that legislation of this kind must be in place across the whole UK in order to provide businesses and consumers from all parts of our country with the same legal protections and advantages. Taking all of this into account, we made the difficult decision at the end of the process that it was necessary to proceed with the Bill without consent and to bring key parts of the Act into force before the end of the Transition Period on 31 December 2020. This is not a decision that was taken lightly, however as I have made clear, it was in line with the convention.

The Government remains firmly committed to the Sewel Convention and its associated practices. The convention continues to work well and it remains the case that the vast majority of UK Parliamentary Bills that intersect with devolved competence are passed with the consent of the devolved legislatures. This has enabled provisions to be made in parliamentary primary legislation which are of great benefit to Wales and ensured that the Senedd has the necessary time and capacity to deliver its distinct programme of legislation. The information provided in explanatory notes which accompany UK primary legislation provide transparency on the provisions for which consent is being sought.

It is a matter for Parliament to consider the role that it should play in respect of the Sewel Convention. I am sure that your Committee will be aware of the implementation of a new procedure in the House of Lords, proposed by the Procedure and Privileges Committee and which the UK Government adopted for the first time in the course of the UKIM Bill's passage. Under this procedure the UK Government is expected to provide peers with a statement to the House outlining the reasons why legislative consent has been refused or not yet granted by the relevant devolved legislatures prior to the commencement of Third Reading.

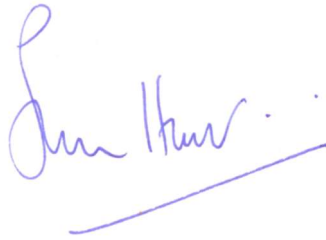
Ref: 020MISC21

T: 0292 092 4216
E: Correspondence@ukgovwales.gov.uk

Letters from the Clerks of each of the relevant devolved legislatures detailing the outcome of LCMs are also made available on the Parliament website. The UK Government will engage constructively with Parliament and its committees on any ongoing improvements to the legislative consent process.

I am copying this letter to the Secretary of State for Business, Energy and Industrial Strategy, the Minister for Small Business, Consumers and Labour Markets, the Minister of State for the Constitution and Devolution, the Chairs of the External Affairs and Additional Legislation Committee, Finance and Constitution Committee, Committee for the Executive Office, the Welsh Affairs Committee, the Public Administration and Constitutional Affairs Committee, and the Lords Constitution Committee.

Yours sincerely,



Rt Hon Simon Hart MP
Secretary of State for Wales
Ysgrifennydd Gwladol Cymru

The Rt Hon Simon Hart MP
Secretary of State for Wales

21 January 2021

Dear Simon

The Sewel Convention

As you will be aware, we are undertaking an inquiry on Wales' Changing Constitution. As we conclude our inquiry, we would like to consider the application of the Sewel Convention to the United Kingdom Internal Market Bill ("the Bill").

We wrote to you on **18 September 2020** asking whether the UK Government would seek to pass the Bill without the consent of the Senedd. You will be aware that this question was asked within the context of the evidence you provided to the Committee on **9 March 2020** in relation to the European Union (Withdrawal Agreement) Bill, during which you said "in this particular instance, 'not normal' emerged as the theme as it became more obvious that the LCM wouldn't get through this place [the Senedd]".

You responded on **3 October 2020** and stated that the UK Government remains "fully committed to the convention on legislative consent". You also said that "...the Bill's explanatory notes state clearly that we are seeking consent in relation to all parts of the Bill [and] the UK government ministers responsible for the Bill wrote... ahead of the Bill's introduction to set this position out in detail".

Prior to the Bill becoming an Act, the Minister for London and Parliamentary Under Secretary of State, Paul Scully MP made a **statement** on 17 December 2020. He stated that:

The Sewel Convention envisages situations where the UK Parliament may need to legislate for the whole country [...] The exceptional circumstances of our departure from the EU, and the need to provide a UK-wide legal underpinning for the internal market, is clearly one such situation.

We share the view of the Senedd's External Affairs and Additional Legislation Committee, expressed in its report **UK Internal Market Bill Legislative Consent**, that the circumstances relating to the UK internal market are fundamentally different from the circumstances of our departure from the European Union.



Senedd Cymru
Bae Caerdydd, Caerdydd, CF99 1SN

✉ SeneddDCC@senedd.cymru

☎ 0300 200 6565

Welsh Parliament
Cardiff Bay, Cardiff, CF99 1SN

✉ SeneddLJC@senedd.wales

☎ 0300 200 6565

The Bill should not, in our view, have been captured by the “not normal” aspect of the Sewel Convention and the Senedd’s refusal of consent should have been respected by the UK Government. Our position that the UK-wide Bill as drafted was a preferred course of action by the UK Government, not a required one, is supported by the UK Government’s own acknowledgement in the [JMC communique of October 2017](#) that a UK internal market could be delivered through legislative and non-legislative common frameworks. This is something that we highlighted in our report on [The Welsh Government’s Legislative Consent Memorandum on the United Kingdom Internal Market Bill](#).

Our report also highlighted that, at the same time as all four governments of the UK were collaborating on common frameworks, the Welsh Government (along with other devolved governments) was being excluded from involvement in the Bill’s development prior to its introduction to the UK Parliament. We were therefore surprised to see the UK Government say in the statement, “At every stage, we have followed the spirit and letter of the devolution settlement and worked hard to secure legislative consent.” We consider that collaboration and engagement with the Welsh Government prior to the introduction of a constitutional Bill that impacts on the Senedd’s legislative competence is an essential part of the legislative consent process. Such an approach would be in line with the UK Government’s own guidance contained in [Devolution Guidance Note: Parliamentary and Assembly Primary Legislation Affecting Wales](#).

In light of our observations, we would be grateful for your responses to the following questions:

1. Why did the UK Government not involve the Welsh Government in the preparation of the Bill prior to its introduction?
2. Your response of 3 October 2020 references the Explanatory Notes to the Bill (as introduced to the House of Commons), which state:

87 There is a convention that the UK Government will not normally legislate with regard to matters that affect or are within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly without the consent of the legislature concerned.

88 The Government has therefore sought legislative consent for the clauses contained in this Bill.

If the circumstances of the Bill were “not normal”, meaning the Sewel Convention did not apply, why did the UK Government seek consent in the first instance?

3. When did the UK Government decide that the circumstances of the Bill were “not normal” for the purposes of the Sewel Convention?
4. Did the UK Government make its final decision after consent was refused by the Senedd?
5. What, if anything, did you do differently when seeking consent for the Bill when compared to the process you followed for the EU (Withdrawal Agreement) Bill, consent for which was also refused by the Senedd?
6. What role does the UK Government consider the UK Parliament should play in the Sewel Convention in respect of each UK Bill for which consent is sought from the Senedd?



7. How could the processes surrounding the Sewel Convention be improved so that it operates clearly and more effectively?

I look forward to hearing from you by 17 February 2021.

Yours sincerely,



Mick Antoniw MS

Chair of the Legislation, Justice and Constitution Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.

cc.

The Rt Hon Kwasi Kwarteng MP, Secretary of State for Business, Energy and Industrial Strategy

Paul Scully MP, Minister for London and Parliamentary Under Secretary of State (Minister for Small Business, Consumers and Labour Markets)

David Rees MS, External Affairs and Additional Legislation Committee, Senedd Cymru

Bruce Crawford MSP, Finance and Constitution Committee, Scottish Parliament

Colin McGrath MLA, Committee for the Executive Office, Northern Ireland Assembly

Rt Hon Stephen Crabb MP, Welsh Affairs Committee, House of Commons

William Wragg MP, Public Administration and Constitutional Affairs Committee, House of Commons

Rt Hon the Baroness Taylor of Bolton, Constitution Committee, House of Lords



Ref: 215SOS20

T: 0292 092 4216
E: Correspondence@ukgovwales.gov.uk

Mick Antoniw MS

Chair of the Legislation, Justice and Constitution Committee
Senedd Cymru
Cardiff Bay
Cardiff, CF99 1SN

3rd October 2020

Daw Mick.

UK Internal Market Bill

Thank you for the letter of 18 September regarding application of the Sewel Convention to the UK Internal Market Bill.

The Government remains fully committed to the convention on legislative consent. As you note, the Bill's explanatory notes state clearly that we are seeking consent in relation to all parts of the Bill. In line with usual practice the UK government ministers responsible for the Bill wrote to the Minister for Economy, Transport and North Wales ahead of the Bill's introduction to set this position out in detail and ask that he begin the process for seeking the Senedd's consent.

We are working closely with the Welsh Government as the Bill progresses through Parliament to understand and respond to the concerns outlined in the legislative consent memorandum published on 25 September. It is very much the Government's intention that this work will result in a recommendation that the Senedd supports the Bill.

I am copying this letter to the Secretary of State for Business, Energy and Industrial Strategy, the Minister of State for the Constitution and Devolution, the Minister for Small Business, Consumers and Labour Markets, the Chairs of the External Affairs and Additional Legislation Committee, Finance and Constitution Committee, Committee for the Executive Office, the Welsh Affairs Committee, the Public Administration and Constitutional Affairs Committee, and the Lords Constitution Committee.

Yn eiddo -



Rt Hon Simon Hart MP
Secretary of State for Wales
Ysgrifennydd Gwladol Cymru

The Rt Hon Simon Hart MP, Secretary of State for Wales

18 September 2020

Dear Simon

UK Internal Market Bill

I am writing to seek the UK Government's understanding of the application of the Sewel Convention to the UK Internal Market Bill.

Paragraphs 87-89 and Annex A of the Explanatory Notes to the UK Internal Market Bill provide that legislative consent is required for every Part of the Bill and that it has been sought. As such, we would expect that the UK Government would not seek to pass the Bill without the consent of the Senedd.

To inform our consideration of the Bill and our wider inquiry on Wales' changing constitution, we would be grateful if you could confirm whether you share this assessment and confirm that, if the Bill remains with the same intention as introduced, this position will not change.

We raise the latter point because of the evidence you gave to us on **9 March** when you thought that, in the context of the European Union (Withdrawal Agreement) Bill, "in this particular instance, 'not normal' emerged as the theme as it became more obvious that the LCM wouldn't get through this place, and indeed through the Scottish Parliament."



Senedd Cymru
Bae Caerdydd, Caerdydd, CF99 1SN

✉ SeneddDCC@senedd.cymru

☎ 0300 200 6565

Welsh Parliament
Cardiff Bay, Cardiff, CF99 1SN

✉ SeneddLJC@senedd.wales

☎ 0300 200 6565

If you do not share our assessment, we would be grateful if you could tell us when and on what basis the UK Government will be able to advise whether the Bill, for the purpose of the Sewel convention, is “normal” or not.

Yours sincerely,



Mick Antoniw MS

Chair of the Legislation, Justice and Constitution Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.

cc.

Rt Hon Alok Sharma MP, Secretary of State for Business, Energy and Industrial Strategy

David Rees MS, External Affairs and Additional Legislation Committee, Senedd Cymru

Bruce Crawford MSP, Finance and Constitution Committee, Scottish Parliament

Colin McGrath MLA, Committee for the Executive Office, Northern Ireland Assembly

Rt Hon Stephen Crabb MP, Welsh Affairs Committee, House of Commons

William Wragg MP, Public Administration and Constitutional Affairs Committee, House of Commons

Rt Hon the Baroness Taylor of Bolton, Constitution Committee, House of Lords

