

Welsh Parliament

External Affairs and Additional Legislation Committee

External Affairs: Scrutiny in the Sixth Senedd

March 2021



The Welsh Parliament is the democratically elected body that represents the interests of Wales and its people. Commonly known as the Senedd, it makes laws for Wales, agrees Welsh taxes and holds the Welsh Government to account.

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March 2021



About the Committee

The Committee was established on 28 June 2016. its remit was agreed on 15 September 2016 and can be found at: www.senedd.wales/SeneddEAAL

Committee Chair:



David Rees MS
Welsh Labour

Current Committee membership:



Alun Davies MS
Welsh Labour



Huw Irranca-Davies MS
Welsh Labour



Dai Lloyd MS
Plaid Cymru



David J Rowlands MS
Independent Alliance for Reform
Group

Chair's foreword

As we end the Fifth Senedd, Wales' place in the world and Welsh devolution have fundamentally changed since we began our work in the summer of 2016.

Wales, as part of the UK, is no-longer a member of the European Union, and the basic terms of a new relationship have been agreed.

The ongoing fractiousness evident in the UK-EU relationship is a cause for concern. It is creating a degree of uncertainty at a time when businesses and the people of Wales need confidence in the terms of the new relationship.

Relationships between the devolved governments and legislatures and the UK Government and Parliament are at a low ebb as consequence of decisions on the part of the UK Government and Parliament to legislate against the will of the devolved legislatures on key decisions about the future of the UK outside the European Union.

Policy decisions have been taken by the UK Government to place new restrictions on devolution. Funding that once came from European Union that was controlled by the Welsh Government and the Senedd will now come from the UK Government and be controlled by the UK Government, even in devolved areas of policy. It is as yet unclear whether the amount of funding to be distributed to Wales will match that once provided by the EU.

Scrutiny and engagement with European affairs has been a central part of the Senedd's work since its establishment, due to the number of areas of devolved competence that fell within European policy frameworks.

The Senedd had a formal scrutiny function, relating to the EU principle of subsidiarity, provided in the Senedd's Standing Orders.

Whilst the need to consider European affairs in these ways is no-longer necessary, the process of leaving and establishing a new relationship with the EU has created a significant range of new scrutiny challenges.

During the course of the Fifth Senedd, a range of scrutiny tasks have also emerged as a consequence of the Brexit process. Prominent examples include the UK-wide common policy frameworks, UK international agreements, and the UK internal market.

This report aims to capture the scrutiny functions that this committee has become responsible for during the course of the Fifth Senedd and that we believe

need to be incorporated into the design of scrutiny approaches and the establishment of committees at the start of the Sixth Senedd.

Given the scale and importance of the scrutiny tasks we identify in this report, we might have been tempted to recommend that the Sixth Senedd establishes an External Affairs Committee.

We stop short of making any recommendation about how these scrutiny functions should be undertaken by the Sixth Senedd, recognising the complex range of considerations that need to be balanced when establishing committees and approaches to scrutiny.

We ask that these scrutiny tasks are considered seriously by the incoming Business Committee when it turns its attention to the establishment of committees for the Sixth Senedd.

Introduction

- 1.** This report is not a record of our work, but rather a relatively succinct list of scrutiny tasks that we believe need to be carried forward into the Sixth Senedd in one form or another.
- 2.** If we had the benefit of more time ahead of us, we would be continuing to develop and deliver the tasks identified here. Whilst we are content that we have done as much as we can during the course of this Senedd, there's much more to be done.
- 3.** To help prepare us for this report, we drew on our experience of the past five years and the work of the many contributors to our work during that time.
- 4.** Additionally, we held two roundtable sessions with expert contributors. One session was loosely titled "Wales in the World" and the other "Wales in the UK". These sessions were designed to help us take stock of where Wales now sits in the World and in the UK at the end of the Fifth Senedd.¹
- 5.** The insight from those that participated has been invaluable in assisting us to extract the scrutiny tasks that we believe need to be continued in the next Senedd. However, we cannot yet draw conclusions on where Wales sits in terms of the wider world or what its place in the United Kingdom will be in the context of devolution.
- 6.** This uncertainty further demonstrates the need for our work to be continued in some form in the Sixth Senedd, a Senedd within which it will be possible to start drawing these conclusions.

¹ See the transcripts of our meetings held on 25 January 2021 and 1 February 2021.

Scrutiny task for the Sixth Senedd

7. We make one broad recommendation in this report:

Recommendation 1. We recommend that the Sixth Senedd’s Business Committee incorporates the following scrutiny tasks when preparing proposals for the establishment of committees for the Sixth Senedd:

Task		Brief description (see the body of the report for a fuller account)
A	International Agreements	
A1	Relationship with the EU	<p>There is an on-going need to scrutinise the implications for Wales arising from the implementation and future development of both the Withdrawal Agreement and the Trade and Cooperation Agreement.</p> <p>This covers issues as diverse as citizens' rights, level playing-field commitments under the TCA, to the impact on sectors of the Welsh economy.</p> <p>Maintaining and developing relationships with the EU institutions and other European legislatures will be essential to efforts to foresee potential issues for Wales that might emerge from the implementation and/or development of the relationship, for knowledge exchange, and for holding the Welsh Government to account in this arena.</p>
A2	Existing UK international agreements and obligations	<p>There is an on-going need to scrutinise the implications for Wales arising from the implementation and future development of UK international agreements and the obligations arising from them.</p> <p>The Senedd can potentially enhance the value of trade agreements to Welsh stakeholder by proactively giving a voice to Welsh interests in circumstances where development of an agreement is possible and barriers to trade have been identified.</p>

Task		Brief description (see the body of the report for a fuller account)
A3	New UK international agreements	<p>The approach to scrutinising international agreements that we developed during the Fifth Senedd should continue in the Sixth Senedd.</p> <p>We believe that the Senedd can play a more significant role in the development of new international agreements. We have proposed an approach for doing this that could be pursued by a committee in the Sixth Senedd.</p>
B	Intra-UK relations and policy	
B1	UK Internal Market Act 2020	<p>There is a need to continue developing an understanding of the UK Internal Market Act and how it affects devolution, how the UK internal market concept is being implemented and regulated, and how to represent Welsh stakeholders affected.</p> <p>There are a range of reporting duties and delegated powers that will require on-going scrutiny.</p>
B2	Common Frameworks	<p>Scrutiny has barely begun on the frameworks and they are undergoing significant revision. Substantial work is needed to scrutinise these in late 2021 and early 2022. Ongoing monitoring will be required throughout the next Senedd.</p>
B3	Intergovernmental Relations	<p>Scrutiny of Intergovernmental Relations within our current remit should be continued in the Sixth Senedd.</p>
B4	Interparliamentary Relations	<p>There should be continued and increased engagement with the other legislatures of the UK at both a political and official level, building on the experience of the Interparliamentary Forum on Brexit.</p>
B5	Replacement EU funding	<p>As details of the UK Government's approach to replacing EU funding emerge, Senedd scrutiny will be essential.</p>

Task		Brief description (see the body of the report for a fuller account)
C	Welsh Government and the Senedd Commission	
C1	International Strategy	Scrutiny of the Welsh Government's international strategy will need to continue in the Sixth Senedd.
C2	International Strategy	The Senedd will have an important part to play in establishing Wales' new place in the world and there is a critical role for Senedd Committees in terms of scrutiny, representation, and knowledge exchange.

8. The remainder of this report provides some further explanation of each of these tasks.

9. Many of these scrutiny tasks are cross-cutting in policy terms and interconnected in a complex way.

10. If the Sixth Senedd's Business Committee believes that the scrutiny task identified in this report should continue, it will need to consider the merits, or otherwise, of mainstreaming functions across multiple committees versus concentrating them in one committee.

1. International agreements

- 11.** The international agreements that we have most prominently considered have been those between the UK and the EU, to facilitate the UK's exit from the EU and to establish a future relationship.
- 12.** In addressing the implications arising from the UK's decision to leave the European Union, it became apparent that we needed to pay close attention to the international agreements made by the UK with other nations and organisations. This included the agreements to "roll over" existing EU agreements into the UK context, new trade agreements, and new non-trade agreements.
- 13.** UK international agreements have the potential to significantly affect devolved areas of policy, laws passed by the Senedd, and the devolution settlement. There is a risk that these implications are not explicitly recognised or understood at the point at which an agreement is made, unless the Senedd has a scrutiny process in place.
- 14.** International agreements may also present opportunities and, in some cases, the prospect of further development. The Senedd has a role in identifying Welsh interests and, through scrutiny and representation, ensuring that agreements are implemented and developed in a way that maximise their benefits to Wales.

1.1. Relationship with the European Union

- 15.** Whilst we had an opportunity to scrutinise the development of the Withdrawal Agreement at some length, the approach that the UK Government took to negotiating the UK-EU Trade and Cooperation Agreement ("the TCA") has meant that we have only been able to start assessing the terms of the UK-EU future relationship at the start of 2021.
- 16.** There is much more to be done in terms of assessing the implications for Wales arising from this agreement. Not least because whilst the structure for the future relationship is set out in the TCA, much of the work on how the agreement will work in practice is yet to be done.
- 17.** The agreement is not just one about trade but one that covers other large areas of devolved policy such as health, public services, agriculture and environmental standards. The decisions taken about how the agreement will operate in practice, be revised, and disputes resolved, will have a significant impact on Welsh businesses, citizens and public services.

- 18.** Further, the TCA provides that discussions should continue between the parties on cooperation of areas important to Wales such as protected food names and recognition of professional qualifications.
- 19.** Senedd Committees will need to ensure that they have the capacity to continue scrutinising the implications for Wales arising from the implementation and future development of both the Withdrawal Agreement and the TCA.
- 20.** These agreements cover issues as diverse as citizens' rights, to the TCA's level-playing commitments, to the impact on sectors of the Welsh economy as a consequence of the new (and developing) relationship.
- 21.** The Senedd will need to continue monitoring the rights of EU citizens in Wales and the vital contribution that they make across areas of devolved policy. In addition to scrutinising Welsh Government actions, and understanding the UK Government's approach, the Sixth Senedd will need to continue building good relationships with the numerous communities of EU citizens across Wales.
- 22.** The terms of the Northern Ireland Protocol, and the Scottish Continuity Act, mean that monitoring developments in EU law remains relevant in the context of scrutinising intra-UK matters such as the Common Frameworks and associated legislation.

1.2. Relationships with the European Union's institutions

- 23.** We recently wrote to senior members of both Houses of Parliament to request that Members of the Senedd be represented on the UK's delegation to the UK-EU Parliamentary Partnership Assembly established by the TCA.²
- 24.** It is unlikely that this request will be resolved before the end of the Fifth Senedd. Given the breadth of coverage of devolved areas by the TCA it is important that committees and Members in the Sixth Senedd continue to pursue this issue.
- 25.** We believe there is merit in a Senedd Business locus to maintaining and developing European relations, with membership of any inter-institutional bodies drawn from relevant Senedd committees. This would ensure that the benefits of the relationships are realised in a business context i.e. that they contribute directly

² Letter from the Chair of the External Affairs and Additional Legislation Committee to the Chair of the House of Commons Liaison Committee and the Chair of the House of Lords European Union Committee, 21 February 2021

to the work of relevant committees and, through committee reporting and Chair's statements, plenary business.

1.3. Existing UK international agreements and obligations

26. There is an on-going need to scrutinise the implications for Wales arising from the implementation and future revision of UK international agreements and the obligations arising from them.

27. This includes proactively giving a voice to Welsh interests in circumstances where development of an agreement is possible. For example, in circumstances where barriers to trade are identified by a Welsh business or organisation or where disputes arise that affect Welsh businesses.

1.4. New UK international agreements

28. We have developed a scrutiny process for assessing UK international agreements for their potential implications for Wales and the devolution settlement. This is illustrated in the diagram on page 12.

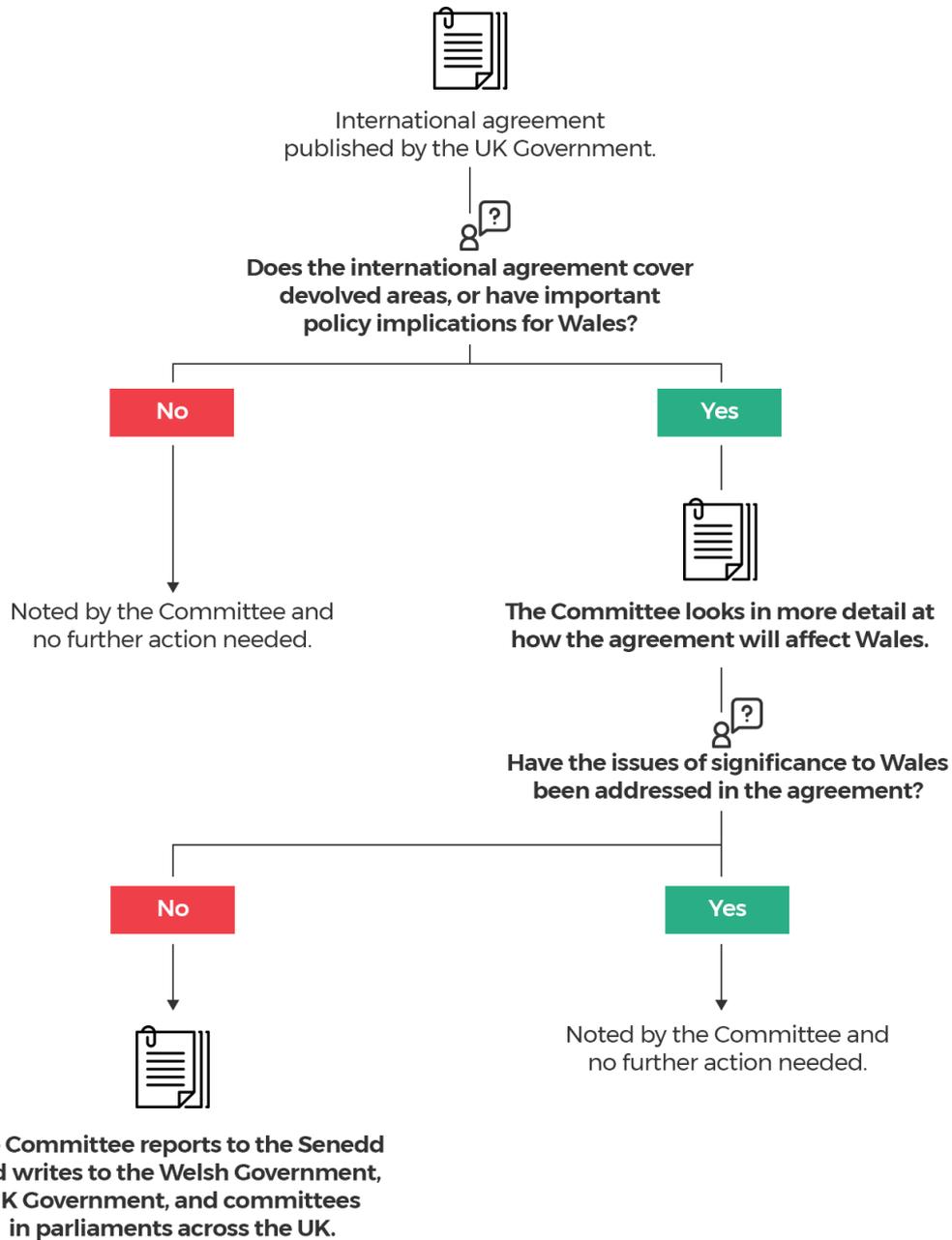
29. In our 2019 report, *UK international agreements after Brexit: A role for the Assembly [Senedd]*, we proposed a more developed role for the Senedd in upstream engagement with, and scrutiny of, international agreements.³

30. This has been recognised by committees in the UK Parliament.⁴ Further work is needed to develop this approach at the start of the Sixth Senedd, particularly as significant UK agreements are expected during the Sixth Senedd e.g. with the USA, Australia, New Zealand, and the possibility of joining the Comprehensive and Progressive Agreement for Trans-Pacific Partnership.

³ External Affairs and Additional Legislation Committee, *UK international agreements after Brexit: A role for the Assembly [Senedd]*, December 2019.

⁴ For example, the House of Lords International Agreements Sub-Committee's report on *Treaty scrutiny: working practices*, July 2020.

The process of scrutinising International Agreements



2. Intra-UK relations and policy

2.1. The UK Internal Market Act 2020

31. The UK Internal Market Act 2020 has significant consequences for devolution in Wales. It reduced the Senedd's legislative competence and it has created a situation where the practical effect of future laws passed by the Senedd, in a range of areas, is uncertain.

32. See our report *The UK Internal Market Bill: Legislative Consent* for a fuller explanation of our position on this legislation.⁵

33. There are significant scrutiny tasks ahead for the Senedd. How fundamentally will this legislation affect the ability of the Senedd's laws to make a meaningful difference to lives of the people of Wales? How does it interact with other limits on the devolution settlement, such as the common frameworks programme and international agreements?

34. There are also various reporting duties and delegated powers that will require on-going scrutiny. This includes the need to develop a relationship with the Competition and Markets Authority's Office for the Internal Market.

2.2. Common Frameworks

35. Scrutiny of common frameworks has barely begun and they are currently undergoing significant revision to take account of the UK Internal Market Act 2020, the TCA, and whatever outcome there is to the Welsh Government's legal challenge.⁶

36. The Common Frameworks will form the basis for a significant proportion of intra-UK intergovernmental relations. They require scrutiny before they are finally agreed by the governments of the four nations of the UK, as well as on-going monitoring and scrutiny once fully operational.

⁵ External Affairs and Additional Legislation Committees, *The UK Internal Market Bill: Legislative Consent*, December 2020.

⁶ On 18 January 2021, The Counsel General issued formal proceedings in the Administrative Court seeking permission for a judicial review to seek declarations as to the scope of provisions of the United Kingdom Internal Market Act 2020.

- 37.** Currently, there is an end of 2021 target for all Frameworks to have completed scrutiny and reached full intergovernmental agreement. In the meantime, provisional common frameworks remain operational.
- 38.** Our experience of monitoring the development of Common Frameworks suggests that this deadline may need to be extended into 2022.
- 39.** There is a need to scrutinise both the detail of individual Common Frameworks and the aggregate effect of the Common Frameworks programme as a whole. This includes its interactions with other cross-cutting scrutiny tasks such as on-going scrutiny of the UK Internal Market and international agreements.
- 40.** This work is important not only because of the Frameworks' potential impact on the practical effect on the Senedd's competence but because they directly affect citizens and business in Wales. For example the process for food businesses to register new nutrition-related food products.
- 41.** Early scrutiny of Frameworks has shown that they may also offer an insight into how EU law has been retained and where the power lies in these areas of policy. Again, there is much more work needed to understand the implications of this for Wales and how the process of retaining EU law has affected the devolution settlement.

2.3. Intergovernmental relations within areas of the EAAL Committee's remit

- 42.** In a letter to the First Minister, 17 March 2021, we have concluded that the poor (and worsening) state of intra-UK intergovernmental relations has prevented the Welsh Government from performing a meaningful role in the Brexit process and has led to unnecessarily confrontational policy choices on the part of the UK Government.
- 43.** We are aware of the on-going review of intergovernmental relations that was first announced in March 2018.⁷ It is clear that significant change is needed to reflect the strains placed upon current structures by Brexit and wider constitutional changes.
- 44.** Our main focus has been on the JMC European Negotiations and the Ministerial Forum on International Trade.

⁷ This review was agreed at the JMC Plenary meeting on 14 March 2018.

45. Intergovernmental relations will remain an important area for scrutiny in the Sixth Senedd.

46. Moreover, the type of relationship afforded to the Welsh Government in relation to matters such as the governance and development of the TCA, and, the development and negotiation of new international agreements, will have a direct bearing on the scrutiny arrangements that the Sixth Senedd will need to consider.

2.4. Interparliamentary relations

47. The Chair of the EAAL Committee has been a member of the European Committees of the UK Forum (“EC-UK”) and the Interparliamentary Forum on Brexit (“the IFB”).

48. These Forums have been underpinned by informal official-level networks for the sharing of information and, where possible, coordination of work.

49. Building relationships with committees in the other legislatures of the UK has helped us find areas of common purpose and new avenues of possible influence.

50. Continued and enhanced engagement with the other legislatures of the UK at both a political and official level will be essential if the Sixth Senedd is to effectively scrutinise the many areas of policy that now intersect with policy decisions taken in the other nations of the UK.

51. Within our current remit, we see the potential to develop interparliamentary relations in relation to the scrutiny of the Common Frameworks, the UK internal market, international agreements including the TCA, and intergovernmental relations more generally.

52. Without detracting from the need for the direct accountability of each administration to its own legislature, a coordinated interparliamentary approach offers at least the prospect of occasional scrutiny outcomes that are greater than the sum of their individual parts.

2.5. Replacing EU funding

53. As we end the Fifth Senedd, the precise means by which EU funding will be replaced has not been announced by the UK Government.

54. The Welsh Government has made constructive proposals for how this might be managed, but these proposals do not appear to have been adopted by the UK Government.⁸

55. The UK Government has taken new powers to spend in devolved areas of policy, through the UKIM Act, and has stated that it will control post-Brexit regional funding through the UK Shared Prosperity Fund.

56. This removes a role previously performed by the Welsh Government and takes it into the control of the UK Government. By extension, it removes a scrutiny role from the Senedd to an extent too.

57. The total value of any future funding is unknown, making a comparison with levels of investment from the European Union impossible at this time.

58. There is a need for continued scrutiny of these developing policies and their implications for Wales. Additionally, the effect on devolution associated with direct UK Government financial intervention in devolved areas of policy will need to be monitored.

⁸ Welsh Government, *Regional investment in Wales after Brexit: policy paper*, first published in December 2017 and updated in October 2020.

3. Welsh Government and the Senedd

3.1. Welsh Government's international strategy

59. During the course of the past Senedd, the current Welsh Government has developed an international strategy, and a range of supporting policies. We have scrutinised the development of the strategy and its early implementation.⁹

60. The Sixth Senedd will need to consider how the external activities of the incoming Welsh Government are scrutinised, including any international strategy it adopts or develops, to ensure that the future Welsh Government is doing all it can to efficiently and effectively promote the interests of Wales in the wider world.

3.2. The Senedd and international activity

61. We have considered the Senedd's future relationship with the European Union's institutions and have been engaged in work to maintain links with the EU through membership of the Committee of the Regions UK Contact Group and seeking representation on the UK-EU Parliamentary Partnership Assembly.

62. We welcome the Senedd Commission's continued link through the Contact Group.

63. Over the past five years, we have developed relationships with the EU institutions, national governments and legislatures, regional governments and legislatures, cities, municipalities and international stakeholder organisations. This experience has led us to conclude that these relationships work well when there is a clear and purposeful link with Senedd business through a committee.

64. Being a respected international actor is an important part of being a national legislature, contributing to and benefiting from knowledge exchanges, finding allies and enhancing the influence that the Senedd can have through scrutiny and representation.

65. The existence of an external affairs committee has provided a natural locus for some of this activity and enabled international activity to link with Senedd business.

⁹ See our website for details of this work, including our December 2019 report on the Welsh Government's (then) draft international strategy.

66. We believe there is merit in considering how Senedd committees can continue to contribute to the Senedd's standing in the world during the Sixth Senedd, and how this activity makes a meaningful contribution to Senedd business.