

Mick Antoniw MS

Counsel General and Minister for the Constitution

8 October 2021

Dear Mick

Follow up to evidence session on 20 September 2021

Thank you for attending our Committee meeting on 20 September 2021. We were grateful for the opportunity to have such a broad-ranging discussion at this early point in the Sixth Senedd, and we look forward to further engagement.

Following the session, we have identified a number of matters that we would like to pursue with you in more detail. These are set out below:

1. You confirmed that you and your officials were working on a strategy for the Welsh Government's legislative programme "setting out the guiding principles for legislation that is coming through, so that we have a consistency of approach". Please can you provide more information about this strategy and confirm when it is likely to be finalised and published?
2. You said that the Welsh Government's strategy for resolving its concerns with the Sewel Convention were meetings at official and Ministerial level and, in future, using the dispute resolution mechanism arising from the Inter-governmental relations review. Is the Welsh Government taking any steps to pursue more fundamental changes to the Sewel Convention?
3. The criteria for determining whether it would be acceptable to use a UK Government Bill to take forward Welsh Government policy appear to have changed. In August 2020, our predecessor Committee was told that one criterion was that "there is no time available for similar provisions to be brought forward" in the Senedd. Given that we are at the start of the Sixth Senedd and there is plenty of time for Welsh Government Bills to be brought forward, this criterion would no longer appear to apply. Please can you provide details of the criteria you



are using in this Senedd to determine whether it would be acceptable to use a UK Government Bill to take forward Welsh Government policy?

4. You referred to '30 or so' planned UK Government Bills during the evidence session. In Plenary on 21 September, you [said](#) that 32 UK 'items of legislation' were expected. Can you confirm how many UK Bills will be subject to Welsh Government legislative consent memoranda in the foreseeable future which are in addition to those UK Bills for which memoranda have already laid before the Senedd?
5. You referred to quadrilateral Ministerial meetings to discuss intergovernmental relations and common frameworks. Will you ensure that the Senedd is notified of all such meetings wherever reasonably possible, in accordance with the Inter-Institutional Relations Agreement?
6. You [confirmed](#) that the Welsh Government does "not have regard to the *Internal Market Act 2020* in terms of [its] legislation", does not believe that the Act "lawfully restricts what [it] can do" and that the Welsh Government is operating "in the way we always have done". Can you confirm that the Welsh Government has not implemented any internal processes to assess the impact of the Act on legislation which may fall within its scope?
7. Does the Welsh Government intend on notifying the Senedd of:
 - i. its own legislation which may fall within the scope of the Internal Market Act; or
 - ii. legislation made or passed in another legislature which may consequently bring Welsh legislation within the scope of the Internal Market Act?
8. The Welsh Government's [grounds for judicial review](#) argue that the Internal Market Act should not be interpreted as limiting the practical effect of devolved legislation. Otherwise, it argues, that the Act would have the implicit effect of rendering devolved areas such as food and environmental standards "completely inoperable" and is tantamount to re-reserving those areas. Is the Welsh Government proceeding with its legislative programme on the basis that the practical effect of Welsh laws within the scope of the Internal Market are not impacted and undermined, as argued in its grounds for judicial review?
9. You stated that the Welsh Government's decision on whether or not to align or diverge from EU law is primarily determined by whether the Welsh Government has competence. Within its competence, can you confirm it is the Welsh Government's intention to keep pace with EU law?
 - i. If the intention is to keep pace, can you confirm: (a) what processes the Welsh Government has in place to monitor developments in EU law and on what basis, and (b) whether the Welsh Government will seek executive powers to keep pace with EU

law, along the lines of the powers envisaged by the Welsh Government in the Law Derived from the European Union (Wales) Bill?

- ii. How will the Welsh Government decide whether or not it will align with EU standards?
10. On non-regression, you stated that there has been disagreement between the Welsh and UK Governments over maintaining standards and the extent to which standards will be protected, particularly in the areas of food, environment and agriculture. Can you provide more information as to these discussions and provide the latest position?
 11. You also stated that each Welsh Government department has carried out analyses for every piece of legislation on what the implications are of non-regression - of “what is happening legislatively, what the implications might be for Wales, what impact it may have in terms of devolved responsibilities, and so on”. Can you provide further information on:
 - i. what processes the Welsh Government has put in place to assess whether legislation it is making does not regress from standards in place at the end of the transition period?
 - ii. Are there any areas where the Welsh Government has concerns that legislation made by UK Ministers has led to regression and what action, if any, has it taken in these instances?
 12. Section 108A of the *Government of Wales Act 2006* used to say that Senedd Acts had to be compatible with EU law. After exiting the EU, that limit on Senedd legislative competence was removed. However, section 108A has not been amended to say that Senedd Acts now have to be compatible with the Withdrawal Agreement. Instead, the *European Union (Withdrawal) Act 2018* (including section 7A of that Act, which gives effect to the Withdrawal Agreement) has been included as a “protected enactment”. Can you set out your understanding of the relationship between legislative competence and the Withdrawal Agreement?
 13. You [confirmed](#) your understanding that a justice ‘data dashboard’ has been established. Is this in a form that can be shared with the Senedd?
 14. You [outlined](#) the Welsh Government’s priorities for justice in the sixth Senedd. A forward work programme for the [Cabinet Sub-Committee on Justice](#) was agreed at its July meeting. Please can you share this with the Committee?

We would be grateful to receive your replies to the above points at your earliest convenience.

Yours sincerely,

Huw Irranca-Davies

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Chair

