

Mick Antoniw MS
Counsel General and Minister for the Constitution

30 June 2022

Dear Mick

Follow-up to evidence session, 20 June 2022

Thank you for appearing before the Committee on 20 June and giving evidence on matters within your portfolio.

There are a number of issues we would like to pursue further. I would therefore be grateful to receive your responses to the following questions by 31 July 2022 (references to the Record of Proceedings (RoP) for the evidence session are provided where necessary).

Legislative consent process

1. The Welsh Government revised its five-year Programme for Government when it entered into a cooperation agreement with Plaid Cymru. Given there is precedent to publishing revisions to the Programme, can you see any reason why the Welsh Government should not publish regular updates which would provide clarification as regards which Government and which Parliament will legislate to achieve a particular commitment?
2. The Welsh Government announces a legislative programme for each year within a five-year Senedd term. You told us the next announcement would be on 5 July. Acknowledging the potential for different timings of Welsh and UK Government legislative announcements, it should be feasible to give an indication, in the annual announcement, of the current inter-governmental working on UK Bills where the Welsh Government is seeking provisions for Wales in devolved areas. Can you see any



reason why the Welsh Government should not include this information in its annual legislative statements and, further, to provide timely updates as and when needed?

3. In terms of the Welsh Government legislating itself for Wales you said that the issue of capacity in the Welsh Government is not a problem “in terms of the things that we want to do” (RoP 44 and 46). Does this mean that the Welsh Government will, in effect, allocate resources to a set number of Bills and then take opportunities presented to it to use UK Bills to deliver other, previously unidentified (or not prioritised) legislative objectives?

4. In your letter of 20 April you said:

“So we decide how best to do that via both Senedd and UK Parliament legislation, taking account of the priorities and capacity of our own legislative programme and also the potential opportunities – and risks – arising from the UK Government's legislative programme.

If we only delivered our priorities through Senedd legislation, rather than pursuing a wider set of priorities through both legislative programmes, then we would end up delivering less for the people of Wales.”

- i. Would you agree that this letter paints a different picture to your view in evidence that capacity and resources (RoP 42-46) are not a barrier to bringing forward Welsh Bills?
- ii. Given the remarks in your letter, and if the Welsh Government has the resources ‘to do what it wants to do’, are we correct to surmise that the Welsh Government needs the support of a different government and different parliament to help make and pass laws in devolved areas for Wales?

5. How do you respond to the view that the UK Government is setting, in effect, a large part of the legislative agenda for Wales because of the Welsh Government’s approach?

6. As regards the current political landscape you spoke of a situation “where you have a UK Government legislating and seeking to legislate in Welsh areas” (RoP 57). While that may be the case, it is also true to say that on occasion the UK Government includes provisions in UK Bills at the Welsh Government’s request, as your comments at paragraph 12 of the RoP would appear to suggest. How could the Welsh Government be more transparent in this regard?

7. You state that “quite often, UK Government Bills will relate to things that aren't part of our programme for government, and then the issue arises whether there's something in that that we might want to seize the opportunity to do, that it might be advantageous to the people of Wales” (RoP 12).

- i. On what basis does the Welsh Government decide that these opportunities are “advantageous” if they aren’t in the programme for government and no consultation or evidence-gathering with Welsh stakeholders has taken place?
- ii. How long does this decision process generally take? If, as you suggest (RoP 75), it can be only a matter of weeks, please can you explain how this is in the interests of good law-making?

8. What steps will the Welsh Government be taking to reduce the democratic deficit caused by the Welsh Government’s using the UK Government and UK Parliament to legislate in devolved areas, and to improve the current constitutional structure to which you refer (RoP 57-58)?

Retained EU Law Bill

9. Please can you clarify whether:

- i. you are working with the UK Government on the Retained EU Law (or “Brexit Freedoms”) Bill, and whether it is your intention that the Bill’s provisions will apply to Wales?
- ii. the Welsh Government is in agreement with the UK Government’s statements / proposals for reform of the status of retained EU law? If not, what is the Welsh Government’s position on reforming the status of retained EU law?

10. The UK Government has said the Bill will include a “targeted power” to accelerate the repeal or amendment of retained EU law. What is your response to this?

11. You spoke of the possibility of the use of sunset clauses in the Bill and the resultant need to check “potentially several thousands of pieces of legislation” (RoP 83). What preparation has been made internally within the Welsh Government in anticipation of having to do this?

12. You also spoke of discussions with the Minister for Brexit Opportunities and Government Efficiency, the Rt Hon Jacob Rees-Mogg MP, and that you were “given the assurances I hoped for at that time, that there may be areas there where we do not agree and that we want these matters to be retained.” (RoP 83). Can you confirm which specific matters or areas of retained EU law the Welsh Government has identified at this stage and whether these were raised with Mr Rees-Mogg?

13. Can you confirm what guarantees you have received that the Bill will not change the status of retained EU law in devolved areas, if the Welsh Government does not want it changed?

14. The UK Government has suggested the Bill will change the status of retained EU law for interpretation by the courts. What is your response to this?

Northern Ireland Protocol Bill

15. Can you explain whether, in the Welsh Government's opinion, the Bill constitutes a breach of international law?

16. Has the Welsh Government had an indication from the UK Government of any potential powers that could be granted to the Welsh Ministers under the Bill, and for what purpose?

17. You made reference to your concerns about whether the Senedd can consent to a Bill "that effectively legitimises unlawfulness" (RoP 145). Please can you explain what your specific concerns are?

18. What are the implications of the Bill for Wales, including your assessment on other areas of work within your portfolio, including common frameworks and intergovernmental relations?

Divergence and alignment

19. Given that the Welsh Government is not in a position to continuously monitor the alignment or divergence of EU law from existing Welsh law (RoP 91), how does it know if standards in Wales are keeping pace with developments in the EU?

20. What impact is the lack of monitoring having on Welsh Government policy-making and its approach to bringing forward new legislative proposals?

21. What impact is existing UK-EU divergence since the end of the transition period having on Welsh Government policy-making and its approach to bringing forward new legislative proposals?

Intergovernmental relations

22. Why was the planned meeting of the Inter-Ministerial Standing Committee postponed twice in June?

23. How is the Inter-Ministerial Standing Committee approaching its responsibilities for oversight of intergovernmental relations in relation to:

- i. improving joint working on the UK Government's legislative programme;
- ii. oversight of the UK internal market and common frameworks; and
- iii. the oversight of international relations?

24. In light of your comments on the dispute resolution process (RoP 112-118), do you intend to raise any intergovernmental disagreements as disputes through this process, not least in terms of the lack of engagement on some key UK Bills?

25. We have been copied into correspondence from the House of Lords Constitution Committee regarding the UK Government's review of the Cabinet Manual. Can you confirm what discussions you have had with the UK Government on this review?

26. We would welcome your observations on the role, if any, the Manual plays in intergovernmental relations, and in what ways (if any) you think it should be updated?

UK Internal Market Act 2020

27. If the Welsh Government's litigation in relation to the UK Internal Market Act 2020 is not successful, will it be seeking further exclusions under the terms of the Act?

28. If exclusions cannot be secured, what impact will this have on the Welsh Government's legislative programme?

29. Can you confirm that the Welsh Government will notify the Senedd of any disputes with the UK Government over exclusions? At what point in the process would you intend to provide such notifications?

30. We acknowledge your comments about the situation surrounding the Genetic Technology (Precision Breeding) Bill (RoP 128-136), but could you clarify whether, in the Welsh Government's view, the proposals to alter the existing GMO authorisations processes fall within exclusions related to the protection of health of humans, animals or plants?

31. Could you set out the Welsh Government's assessment of the potential impact of the Northern Ireland Protocol Bill on the UK Internal Market Act 2020, including on the powers provided to the Welsh Ministers in relation to the Protocol?

Common frameworks

32. We note your comments on the impact of common frameworks in making laws for Wales. Can you provide an update on whether there have been any instances of the Welsh Government changing or not proceeding with a change to law or policy because of intergovernmental discussion through a common framework?

33. In your letter to us of 2 March 2022, you said that you would be surprised if there had been any delays to Welsh Government policies or initiatives in common framework areas, because the "processes of the Common Frameworks are now an intrinsic part of how policy is developed in the areas where they apply". Can you explain how you are ensuring that intergovernmental decision-making through common frameworks leads to no dilution in the role of the Senedd and Welsh stakeholders in making law and policy for Wales?

34. In that letter, you agreed that the Welsh Government should notify us when a common framework dispute is escalated to Ministers. Why did the Welsh Government not notify the Senedd that a dispute had been raised through the common framework for resources and waste over the request for an exclusion for single use plastics from the UK Internal Market Act?

35. In the same letter, you also agreed that the Welsh Government would notify the Senedd where legislation relates to a common framework. The Welsh Government has not always notified the Senedd of the relationship between secondary legislation in a common framework policy area and the common framework. Will you commit to do this?

Yours sincerely,

Huw Irranca-Davies

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Chair