

Mick Antoniw AS/MS
Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution



Llywodraeth Cymru
Welsh Government

Ein cyf/Our re: CG/377/2023

Huw Irranca-Davies MS
Chair – Legislation, Justice and Constitution Committee
Welsh Parliament
Cardiff Bay
Cardiff
CF99 1SN

7 November 2023

Dear Huw,

Further to my attendance before the Committee on 10 July and our subsequent correspondence, please find attached a copy of my letter dated 12 May 2023 as sent to the Secretary of State for Levelling Up, Housing and Communities and Minister for Intergovernmental Relations.

I also confirmed (at RoP 249) I would share information around amendments to UK Bills. You will be aware of the particular challenges posed by UK Parliamentary legislation over the last few years, including the Wales Act 2016, the European Union (Withdrawal) Act 2018 and the United Kingdom Internal Market Act 2020. The Welsh Government's response included publication of legislative drafting to show how that legislation might be amended, or approached in a different way, in order to properly respect devolution. However, those do not represent examples of amendments to legislation being accepted and tabled by UK Government on our behalf.

Whilst there are situations whereby Welsh Government officials and lawyers engage with UK Government on the suitability of text within UK Bills, the Welsh Government do not offer draft amendments or provisions for inclusion in UK Bills.

Yours sincerely,

Mick Antoniw AS/MS
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Counsel General and Minister for the Constitution

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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.



Ein cyf/Our ref: CG/PO/141/2023

Rt. Hon. Michael Gove MP
Secretary of State for Levelling Up,
Housing and Communities and Minister for Intergovernmental Relations
2 Marsham Street
London
SW1P 4DF

psmichaelgove@levellingup.gov.uk

12 May 2023

Dear Michael,

I am writing further to our discussions at the most recent IMSC, and following the discussions between the First Minister and Prime Minister in Holyhead in March, to highlight key issues and areas of concern regarding the UK Legislative Programme. As the First Minister indicated to the Prime Minister, whilst there have been signs of improvements, the overall picture continues to be deeply concerning. I would ask, therefore, for your personal commitment to seek changes both to improve engagement and to ensure the positions of the Welsh Government and the Senedd are fully reflected in Bills across the UK Government's legislative programme.

As I have indicated to you previously, the disrespect shown for the Senedd's position during this Parliamentary session is shameful. Despite the concerns of the Welsh Government, and the lack of Senedd consent, the **Trade (Australia and New Zealand) Act 2023** has now received Royal Assent. You will be aware that the same concerns surrounding concurrent powers in that Bill also exist as regards the trade provisions in the **Procurement Bill**. This is all the more disappointing given the otherwise good collaboration we have had on that Bill. The Senedd withheld consent to the trade aspects of that Bill on 28 March.

In this Parliamentary session, the Senedd has also withheld consent in relation to the **Northern Ireland Protocol Bill**, and the **Genetic Technology (Precision Breeding) Act 2023**. Whilst the former will fall following the Windsor Agreement, there was no indication from UK Government in the passage of the Bill that the concerns of Welsh Government or the Senedd would lead to a change in the Bill's trajectory. The lack of consideration by the UK Government of the devolution implications of the Genetic Technology (Precision Breeding) Act 2023 is, contrasting starkly with the UK Government's stated intention to

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respect devolution, and breaching the ways of working underpinning Common Frameworks to which the UK Government has committed.

We have consistently outlined to UK Government ministers our serious concerns around the **Retained EU Law (Revocation and Reform) Bill** for well over a year now. The First Minister has specifically raised this Bill with the Prime Minister noting in particular the serious risks to devolved legislation arising from the sunset date and our opposition to the powers given to UK Government ministers in respect of devolved responsibilities. The issue of the sunset deadline could be largely resolved by the amendments to the Bill tabled by the UK Government ahead of Report Stage in the House of Lords but there has been no movement so far on the matter of the inclusion on the face of the Bill of a requirement to obtain the consent of the Welsh Ministers for the exercise of 'concurrent' powers by UK Government Ministers. As the First Minister has noted, achieving these outcomes would help ameliorate some of our worst difficulties with the Bill.

The above picture must also be considered amongst the backdrop of the last Parliamentary session, where the Senedd's position in relation to legislative consent was disregarded in relation to the **Professional Qualifications Act 2022**, the **Subsidy Control Act 2022**, the **Nationality and Borders Act 2022** and the **Police, Crime, Sentencing and Courts Act 2022**.

The Sewel Convention and s107(6) of the Government of Wales Act 2006 provide that Parliament will 'not normally' legislate without the consent of the Senedd. However, the growing set of examples outlined above shows the opposite approach – there is an increasing disregard for Senedd consent as the UK Government pursues its legislative programme. This clear lack of respect for the Sewel Convention and the devolution settlement is entirely unacceptable.

Unfortunately, looking ahead there are considerable issues presented by various other UK Bills. Whilst the Senedd has yet to reach a view on these Bills, it is clear that their contents are problematic and require significant change.

As you are aware, the existence of concurrent powers has been a major concern for the Senedd. I am therefore deeply concerned by the continued inclusion of such powers in the **Levelling-Up and Regeneration Bill**. The provision for the setting of levelling-up missions, associated metrics and targets and reporting on progress in Part 1 of that Bill also represents an inappropriate intrusion into the legislative competence of the Senedd. I understand that the Minister for Climate Change wrote to you with regards these concerns on 26 April. The Levelling Up White Paper, which set out the Levelling Up Missions, made significant commitments to be fully respectful of devolution settlements, recognising that this will require close and collaborative work, and the need for a process of *sustained and systematic engagement and consultation with ...devolved administrations, on the White Paper*. However, these discussions, and in particular consultation on the twelve missions, did not materialise in the development of the Bill. We will be unable to recommend the Senedd give consent to this Bill in its current form and there is absolutely no case for these provisions to be retained in their application to Wales without Senedd consent.

Whilst consideration is ongoing, it is clear that there are also considerable devolution issues in the **Energy Bill**. These include (but are not limited to) the Offshore Wind Environmental Improvement Package clauses, as set out by the Minister for Climate Change to the Secretary of State for Energy Security and Net Zero on 29 March.

You will also be aware that we have laid Legislative Consent Memoranda for the **Strikes (Minimum Service Levels) Bill** and the **Illegal Migration Bill**. To date, the Senedd has considered the former and withheld its consent. Although our Governments are not in

agreement on the need for Senedd consent on those Bills, the legitimate interest of the Welsh Government and Senedd in both cannot be disputed - these Bills relate to issues of the utmost importance with significant impacts on devolved services and authorities – as you acknowledged at the last IMSC meeting and agreed to take forward action to address. It is deeply regrettable then, that these Bills were introduced without engagement; an all too common feature of your Government's approach to legislation. You will be aware of the Welsh Government's opposition to the **Bill of Rights**. Whilst the future of that Bill remains unclear, it is again a worrying example of poor engagement on incredibly important legislation, particularly given the consensus on the requirement for Senedd consent.

There are examples which show our Governments can work together effectively where commitments and responsibilities are respected. We have discussed and agreed principles of engagement at IMSC, which go to even the most basic matters such as the importance of sharing policy detail and drafting as early as possible. When those principles are adhered to, we are much more likely to reach consensus on legislation. The ongoing engagement and collaboration on the **Non-Domestic Rating Bill** is a positive example of this.

The **Social Housing (Regulation) Bill** was generally a positive example of inter-Governmental working until its final stages. On that point, I reiterate that the introduction of late-stage amendments (the day prior to the Senedd debate on consent) places significant difficulties on the legislative consent process and the Senedd's ability to consider provisions. It is deeply concerning that this Bill very nearly moved to Royal Assent without the consent of the Senedd being provided on all relevant amendments and I thank you for your interventions in ensuring that this did not take place.

Unfortunately, however, these principles of engagement have all too often been discarded.

The **Energy Prices Act 2022** was not shared with Welsh Government until the evening prior to introduction, and received Royal Assent just two weeks later. Whilst we appreciated the urgency around this Bill, and worked hard to support its smooth passage, the lack of meaningful engagement was entirely unreasonable and placed major limitations on the ability of both Welsh Government and the Senedd to consider the Act.

The **UK Infrastructure Bank Act 2023** was another promising example, where collaboration led to consensus. However, it remains disappointing that consensus was only reached through tireless negotiation, concluding only at the late stages of the Bill's passage. Early, effective engagement should ensure that devolution issues are addressed ahead of a Bill's introduction, not at the last moments under the pressures of Parliamentary timetabling.

Similar difficulties continue to be presented in more recently introduced Bills. Whilst conversations are ongoing in relation to the **Victims and Prisoners Bill** and the **Data Protection and Digital Information No.2 Bill** on matters relating to devolved representation, I see no reason why these issues could not have been suitably explored and resolved prior to introduction of these Bills. Attempting to address concerns throughout the passage of such Bills only hinders progress.

I was also left frustrated and deeply disappointed at UK Government's recent approach on the **Protection from Sex-based Harassment in Public Bill**. Whilst we were keen to ensure provision could be achieved for Wales, the urgent ultimatum for inclusion on that Bill was wholly unacceptable, and again emphasises the major obstacles presented with poor engagement.

We follow the principle that primary legislation in devolved areas should be enacted by the Senedd. However, we remain willing to work with the UK Government on its legislative programme and are committed to achieving outcomes where we can achieve beneficial

policy results whilst respecting devolution. We are unable to do this effectively whilst the UK Government continues to fail to adhere to the principles of engagement we have previously agreed to. These include continuous engagement to avoid 'surprises', notifying of legislative plans as soon as reasonably possible (and particularly where those plans would have an impact on the responsibilities of another), and early sharing of draft clauses. Regrettably, the above overview of our experiences does not demonstrate a commitment by UK Government to live up to these principles.

There are still many outstanding devolution issues in your legislative programme that are not yet beyond positive resolution. I would, therefore, once again ask you and your Ministerial colleagues to ensure that these considerations are taken seriously with a view to ensuring those resolutions can be reached and avoiding disagreements escalating further.

Where, however, ultimately the Senedd does not consent to a UK Government Bill, the UK Government needs to rediscover its respect for the devolution and reverse the position whereby breaches of the Sewel Convention have become the default.

I hope the above enables you to understand the deep concerns surrounding the UK Government's legislative programme, from both the Welsh Government and the Senedd, and how significant improvements are readily achievable by the UK Government with a change in mindset and approach.

As specifically noted at IMSC, and given their urgency, I would ask that you address our concerns with the Levelling-Up and Regeneration Bill, and engage with relevant UK Government Ministers to ensure the devolved interests in the Retained EU Law Bill, the Minimum Service Levels Bill and the other Bills referenced in this letter are urgently addressed. I would also ask that you take steps to ensure that UK Government Ministers consistently apply the principles of engagement we have agreed at IMSC, across the entirety of the UK Government legislative programme.

I am copying this letter to the Cabinet Secretary for Constitution, External Affairs and Culture in the Scottish Government and to the head of the Northern Ireland Civil Service.

Yours sincerely,

A handwritten signature in blue ink, reading "Mick Antoniw". The signature is written in a cursive style and is underlined with a single horizontal line.

Mick Antoniw AS/MS

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