

The Rt Hon Angela Rayner MP, Secretary of State for Housing,  
Communities and Local Government and Deputy Prime Minister, and  
Minister for inter-governmental relations

Jo Stevens MP, Secretary of State for Wales

The Rt Hon Nick Thomas Symonds MP, Paymaster General and  
Minister for the Cabinet Office (Minister for the Constitution and  
European Relations)

16 July 2024

Dear all

I would like to take the opportunity to congratulate you on your appointments to the newly formed UK Government.

You will be aware that the relationship between the four countries of the United Kingdom, whilst always important, has taken on new and significant meaning in recent years, in particular since the United Kingdom's withdrawal from the European Union. My Committee has responsibility for constitutional matters, and as part of that takes a keen interest in the relationships between the respective governments of our four nations, specifically through the lens of Welsh devolution and how it can and should be protected and respected.

In this regard, we take seriously our role in scrutinising Welsh Government legislative consent memoranda laid before the Senedd for Bills introduced to the UK Parliament that seek to make provision in areas which are devolved to Wales.

It is an unfortunate matter of fact that on too many occasions in recent years the legislative consent (Sewel) convention has been breached and the UK Parliament has been asked to pass laws where consent from the relevant devolved parliament has not been obtained. You will know that this convention is intended to support and respect the devolution of law-making powers to Wales, Scotland and Northern Ireland. Breaches of the convention can lead to an erosion of trust within the constitutional framework and in particular can disrupt and minimise productive intergovernmental relations.

My purpose in writing on this occasion is to highlight, based on the Committee's scrutiny work over the last three years, areas where we believe changes for the better can be made to law-making by the UK Government in the UK Parliament where it intersects with devolved legislative competence. Such changes could, we believe, result in improvements to intergovernmental working in the UK, and would re-invigorate respect for devolution.

Our longstanding and firm view is that it should be the responsibility of the Senedd to legislate for Wales on matters which are within its devolved competence.

Nonetheless, we recognise that on some occasions there will be times when there may be cause for the governments of the UK to legislate together (for example where the boundaries of legislative competence may be unclear), and the UK Government will therefore seek to take a Bill through the UK Parliament's legislative processes.

In drawing these matters to your attention we have a genuine hope that, on such occasions, the intergovernmental engagement will be sufficient and appropriate, and the views and decisions of the Senedd (and other devolved institutions) will be fully respected.

### **The legislative consent convention**

My Committee considers all legislative consent memoranda laid before the Senedd for Bills introduced into the UK Parliament that seek to make provision in areas which are devolved to Wales.

In the Sixth Senedd alone we have considered memoranda for 47 such Bills. This has resulted in us reporting on almost 75 occasions to the Senedd on provisions in these Bills as introduced, or amendments subsequently made to them. Such extensive consideration of these memoranda, that relate to Bills which span UK and Welsh government departmental responsibilities, has given us a firm evidence-base from which to make clear conclusions on the current operation of the legislative consent convention.

Earlier this year, we summarised our conclusions when we provided evidence to the House of Lords' Constitution Committee's inquiry into the governance of the Union. In our [submission](#), we argued that:

*It is imperative that the UK Government and UK Parliament observe constitutional norms in relation to legislating in areas clearly devolved to the Senedd...providing a more robust constitutional footing for the Sewel Convention, built around a clearly defined and universally understood process, would have the potential to improve the understanding of devolution in Whitehall, providing an incentive to ensure it is factored into work planning in UK Government departments and the UK Parliament, throughout the UK legislative process.*

Our submission to the Constitution Committee built upon a conclusion we voiced in our Annual Report for 2022/23 that:

*...reform of the Sewel Convention must include a greater say for the Senedd throughout the consent process. It cannot be right that negotiations between governments form the key components of a process of making law for Wales in a devolved area, while at the same time limiting the Senedd's ability to influence a legislative process that it would expect to be at the heart of.*

In our evidence to the Constitution Committee, we also took the opportunity to welcome the fact that the House of Lords' business document now gives fuller and more prominent consideration about when legislative consent from devolved legislatures is pending or contested, and when it has been granted or withheld.

A further issue, which has most recently been highlighted as part of our consideration of legislative consent memoranda for the Victims and Prisoners Bill (which we are aware was passed by the UK Parliament during the wash-up period ahead of dissolution before the general election), is that it is sometimes the case that the UK Government, the Welsh Government and the Senedd disagree on whether legislative consent is required. This was noted in recent correspondence to us. In this particular case, as the UK Government did not agree that consent was required for certain clauses, the fact that the Welsh Government and Senedd had arrived at a different competence assessment and had declined to give consent for those clauses was not drawn to the attention of the UK Parliament.

### **Engagement with the Welsh Government on Bills introduced to the UK Parliament, and intergovernmental relations**

Our extensive consideration of legislative consent memoranda laid in the Senedd has also enabled us to arrive at firm conclusions about the engagement between the UK and Welsh governments in recent years on Bills introduced to the UK Parliament which engage the legislative consent process.

We have seen several examples of the Welsh Ministers reportedly receiving late sight of Bills and having limited engagement with the UK Government ahead of a Bill's introduction to the UK Parliament. In recent months, this issue has arisen in respect of the Criminal Justice Bill and the Victims and Prisoners Bill. As regards the latter, the Welsh Government has noted that, while interactions with the UK Government on the Bill were initially constructive, engagement later broke down:

*Until the very end of March 2024, and following extensive and constructive engagement at official level, we understood it would be likely the UK Government would offer, in view of the Senedd's competence in this area, a consent provision for the Welsh Ministers regarding the declaration of a major incident and the appointment of an Advocate for victims of major incidents arising in Wales. This*

*position was suddenly reversed to one in which the UK Government undertook to only provide consult provisions which we had been clear did not respect the Senedd's competence and would be unacceptable. They gave no credible rationale for this position and we were surprised and disappointed that what we had worked to achieve was not possible.*

In our evidence to the Constitution Committee we voiced a concern that we were unclear whether Part 2 of the Devolution Guidance Note (DGN) which covers the inclusion of devolved provision in a UK Parliament Bill is being followed fully.

We hope that UK Government Ministers and the UK Parliament itself would appreciate that poor intergovernmental engagement and information-sharing will have a knock-on effect on the time available to Senedd committees to consider and report on legislative consent memoranda, before the Senedd being afforded a meaningful role in the legislative consent process.

In our evidence to the Constitution Committee, we also highlighted our concerns about the negative impact that the tabling of amendments to Bills, particularly where they are significant and/or late in the UK Parliament's legislative process, can have on the Senedd's scrutiny of devolved provisions within those Bills.

Related to these concerns about intergovernmental engagement, we also remain unclear as to why the new intergovernmental structures are not leading to the Welsh and UK governments reaching agreement on important constitutional matters. This was highlighted in our recent report on the Data Protection and Digital Information Bill.

### **Delegated powers in Bills**

One issue which has been a constant and unwelcome feature of Bills introduced to the UK Parliament in recent years has been the delegation of powers in devolved areas to UK Secretaries of State and other reserved bodies, as well as at the removal of devolved executive functions from the Welsh Ministers. Perhaps the most stark example has been the powers included in the Data Protection and Digital Information Bill. We raised several concerns when considering this Bill, including:

- the conferral of regulation-making powers in devolved areas to UK Secretaries of State and the Treasury;
- the lack of Senedd scrutiny that would be afforded by the exercise in the UK Parliament of concurrent/concurrent plus powers that made devolved provision;
- the transferral of regulation-making powers previously exercisable by the Welsh Ministers to UK Secretaries of State therefore modifying devolved executive competence; and
- the revocation of Senedd-agreed secondary legislation.

Such conferral of powers, and indeed the removal and/or modification of competence, in this manner is wholly inappropriate.

## **International implications for the Senedd**

My final comments for you to consider relate to international implications for the Senedd of Bills passed by the UK Parliament. Our scrutiny, where necessary, considers the relationship between international obligations and the Bill which has engaged the legislative consent process.

While we acknowledge that it is the UK Government's responsibility to negotiate and enter into international obligations on behalf of Wales, the Welsh Government and Senedd must comply with these international obligations and are responsible for their implementation in devolved areas. In this context, decisions taken by the UK Government can impact on the delivery of devolved responsibilities.

For example, in our report on the Economic Activity of Public Bodies (Overseas Matters) Bill, we stated that we shared the Welsh Government's concerns about the "compatibility of the Bill with international law and the European Convention on Human Rights", and reasserted our position that:

*...a decision by the Senedd to consent to the Bill could contribute to a breach of international law and would mean the Senedd acting incompatibly with international obligations, which would be in contrast to the spirit of the devolution settlement.*

In the coming months, we would welcome an opportunity to discuss these matters with you further at one of our committee meetings. I have asked our Committee Clerk to liaise with your officials to identify a suitable date.

I am copying this letter to the Rt Hon Vaughan Gething MS, First Minister of Wales; Rebecca Evans MS, Cabinet Secretary for Finance, Constitution and Cabinet Office; the Rt Hon Elin Jones MS, Llywydd; Lord McFall of Alcluith, the Lord Speaker; and the Rt Hon Sir Lindsay Hoyle MP, the Speaker of the House of Commons.

Yours sincerely,



Mike Hedges  
Chair