



Huw Irranca-Davies
Chair
Legislation, Justice and Constitution Committee
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20 October 2023

Dear Huw,

Thank you for your letter dated 29 September regarding the Legislation, Justice and Constitution Committee meeting that I attended on 18 September. Please find attached a response to the questions in the Annex. An update on the referral of an issue between the Northern Ireland Executive and the UK Government to the dispute resolution process has also been provided.

Best Wishes,

A handwritten signature in black ink that reads "Mark Drakeford".

MARK DRAKEFORD

Question 1: We acknowledge your comment that the Welsh Government does not go “looking for opportunities” to use UK Bills and that you are reacting to UK Government decisions. Nevertheless, that reaction does appear to involve spotting opportunities for using UK Bills.

- We note your comments at paragraph 70 of the Record of Proceedings. However, once the UK Government’s legislative programme is published, please can you set out how this is considered in determining your overall legislative approach: your legislative programme for the Senedd, or adaptations to it, including for future years and the opportunity provided to make law outside of Wales?**
- The Welsh Government is intending to bring forward at least 8 Bills this year. What is the maximum number of Bills the Welsh Government could bring forward in an annual programme and why were there so few in the first two years?**

We cannot ignore the legislative intentions of the UK Government, which, in the current climate, represents a significant risk to Wales and to devolution. The Committee is aware of our principles for recommending consent to UK Bills. My full statement at RoP 48 should not be misconstrued. Responding reactively to potentially advantageous opportunities in UK legislation is not the same as proactively seeking opportunity to deliver our legislative objectives through UK Bills.

My statement at RoP 78 sets out that our own legislative programme, despite challenging circumstances and the need to respond to external events, is more ambitious and significant than ever before.

Our programme demonstrates our wide-ranging use of our legislative powers, and at an extensive rate. A number of the Bills that we are bringing forward are large, technical, complex proposals and the nature and content of the proposals is a relevant consideration to the timing of their introduction. The policy development process involves detailed work with a broad range of stakeholders to get the proposal right.

A significant programme of subordinate legislation sits alongside and underpins our primary legislative programme. The Committee will appreciate how broad and important subordinate legislation is. In recent years, there has been an increase in the volume, scale and complexity of such legislation and the importance of the decisions determined in this way. This has significantly increased the workload of the Executive and the legislature in recent years, both in Plenary and committees.

Therefore, there is no maximum number of Bills or items of subordinate legislation per year – the scale, complexity and length of time necessary to develop and scrutinise each Bill or statutory instrument varies considerably. What is important is ensuring the law is clear, accessible, delivers our policy ambitions and is developed with the support and engagement of stakeholders to ensure it can be implemented effectively. In sequencing our programme, we are also mindful of the capacity of the Senedd and the need to ensure that adequate time is allowed for Committees and Members to scrutinise our legislative proposals.

Question 2: The Counsel General wrote to us on 1 March 2022 and 4 August 2022 about the Welsh Government’s approach to using UK Bills to legislate in devolved areas. In the August letter he said: "In those instances where we have sought

provision, or where we are minded to agree to provision in UK Bills, I am committed to ensuring the Senedd remains informed at the earliest meaningful opportunity, rather than include information in the annual legislative statement." Please would you make a commitment that the Welsh Ministers will inform the Senedd as soon is possible that they have either sought provision in a UK Bill or are minded to accept the offer from the UK Government of the inclusion of devolved provision in a UK Bill? .We acknowledge that this need not be in the form of a legislative consent memorandum, and could precede the formal legislative consent process.

The Counsel General has already made such a commitment.

Question 3: You will know that we monitor and scrutinise intergovernmental relations. For that reason, we are interested in who initiates contact regarding the use of UK Bills for legislating in devolved areas. – Once you have spotted an opportunity to use a UK Bill, does the relevant Minister contact their counterpart to initiate discussions? – How does the Welsh Government go about requesting provisions in UK Bills (for example as happened with the Non Domestic Rating Bill)? – How does the UK Government invite you to include provisions in UK Bills?

As noted during our discussions and as the Counsel General has consistently highlighted to the Committee, it is not the case that Welsh Government would proactively approach UK Government to legislative on our behalf.

The Counsel General and the Minister for Finance and Local Government have been clear with the Committee on the situation with the Non-Domestic Rating Bill. UK Government invited us to explore provision with them ahead of the Bill's introduction.

Question 4: When Ministers are making decisions on whether to recommend to the Senedd that it should consent to the use of a UK Bill, can you set out the criteria that are used to decide whether using a UK Bill to make legislation in a devolved area is more "sensible and advantageous" than passing legislation in the Senedd?

The final decision on recommending consent to a UK Bill typically involves consideration of a range of constitutional, policy, political and other factors.

Our principles are applied in the context of often complex and fluid negotiations and it will sometimes be necessary to consider the possibility of compromises in order to secure our most important policy objectives. We approach our recommendations in terms of maximising the outcomes for the people of Wales in line with our priorities.

It is then for Members to decide whether or not to accept the reasoning put forward by Government.

Question 5: Who in the Welsh Government makes the decision on whether to recommend to the Senedd that it should consent to provisions being made in devolved areas in UK Bills? Do you have oversight of final decisions?

All decisions made by the Welsh Government are made on behalf of the whole Welsh Government and are owned collectively by all Ministers.

Question 6: How many times has the Welsh Government declined to be involved in a Bill following an invitation from the UK Government on grounds that it would be more appropriate for the Senedd to legislate? Please would you provide the details of each occasion.

It is simply not possible to reduce this information to a specific number. Evaluation of UK Bills includes consideration of whether it might be more appropriate for the Senedd to legislate, alongside a range of constitutional, policy, political and other factors.

Question 7: In your evidence you said that, when speaking about the UK Government legislating, "sometimes, in the things they decide to do, there will be an opportunity that would benefit people in Wales, and where the prospects of a Bill coming in front of the Senedd are reasonably remote."

- Why do you consider it appropriate that the initial decision of what would benefit the people of Wales should rest solely with the Welsh Government and accordingly deny the Senedd a role until the end of the process, when all it has is a take or leave it vote?**
- Using a UK Bill to legislate for Wales in devolved areas means by-passing detailed Senedd scrutiny. Why is denying the Senedd its proper law-making role, including the decision on whether to delegate regulation-making powers to the Welsh Ministers, appropriate and how could that be regarded as "sensible and advantageous"?**
- Why would the prospects of a Bill coming in front of the Senedd be "reasonably remote", particularly when they concern priorities for the Welsh Government, e.g. animal welfare, nondomestic rating, protection from sex-based harassment in public?.**

The Welsh Government operates within the established legislative and Standing Order arrangements. It is entirely appropriate for the Government to take decisions and make recommendations to the Senedd on what it considers to be sensible and advantageous for Wales. It is then entirely open for Members and Committees to present their own positions, including through the legislative consent process.

Question 8: How will Senedd reform impact the volume of the Bills the Welsh Government would be able to bring forward in future?

Question 9: What preparations is the Welsh Government making to increase its legislative capacity for the Seventh Senedd?

The increase in the size of the Senedd and potential increase in the number of Ministers will inevitably have implications for the Welsh Government's own ways of working, including its administration and delivery in response to increased scrutiny.

The extent of the impact will depend on a number of decisions that can only be taken after the legislation is passed and in preparation for the next Senedd.

Question 10: The Committee considers non-trade international agreements, for which you frequently provide us with additional information. In your view, how are the intergovernmental mechanisms operating in the context of the development of international agreements? Are there any changes you would like to see?

International Agreements are signed across a range of policy areas, led by different UK government departments. Given the diverse nature of the agreements, to my knowledge, there is no single mechanism that creates arrangements for engagement between the UK government and the devolved governments with each lead UK department engaging with their devolved counterpart at a time and frequency of their choosing. Nor is there a central mechanism for us to understand the agreements that are being negotiated.

There are areas of good practice. For example, the Department for Business and Trade (DBT) engages with devolved governments on Trade Policy and during the negotiation of trade deals. This engagement is, in our experience, mostly positive. There is engagement at a Ministerial level, through the Trade IMG, and officials have regular contact. Early and frequent engagement has led to constructive discussions with some positive outcomes and concessions for Wales. This model is sometimes tested, particularly as negotiations edge towards endgame, where some more direct intervention is required. It is also important to note that not all of our requests have been considered during FTA negotiations but, on the whole, the model used is a positive one.

At a more strategic level, this is an area where I would look for improvements. Fundamentally, devolved governments must be fully engaged in the negotiation of any international agreement, especially those that could impact on devolved areas of policy, with engagement as early in that process as possible. There should be greater consistency in how UK government departments, including DBT, work with the devolved governments when negotiating any international agreement, and that levels of engagement should align with the expected levels of good practice.

Question 11: In the evidence session we discussed the Welsh Government's relationship with the EU and would be grateful if you could set out the Welsh Government's strategic priorities for its relationship with the EU including in relation to the implementation and review of the TCA. (RoP 98- 105).

The economic relationship between Wales and the EU is vital to us and should be enabled and enhanced by the political relationship between the UK and the EU. As I explained in my session with the Committee on 18 September, the focus and foundation of any developments of the relationship with the EU should be around recreating an economic relationship that works for both sides. The immediate focus is to ensure that the existing arrangements set out in the Trade & Co-operation Agreement work as effectively as possible, and that UK Government fully engages the Welsh Government in ensuring that, building on the Inter-Ministerial Group on UK-EU Relations. The longer-term and fuller development of a deeper economic relationship, based on a better political co-operation between the UK and the EU, will realistically only be able to take place after both the European Parliament elections and the appointment of a new European Commission in mid-2024, and after the next UK general election. I believe that there is scope to do that. As Welsh Government we will press and support the UK Government to prioritise this and to maximise the potential of the UK-EU relationship for the benefit of the people of Wales and of the rest of the UK.

Northern Ireland Executive and UK Government Dispute Resolution:

The Northern Ireland Finance Minister last year referred an issue which had arisen between the Northern Ireland Executive and the UK Government to the dispute resolution process. At this time the issue has not proceeded through the full dispute resolution process in the absence of Ministers in the Northern Ireland Executive.