

**Y Pwyllgor Deddfwriaeth,  
Cyfiawnder a'r Cyfansoddiad**

**Legislation, Justice and  
Constitution Committee**

**Senedd Cymru**

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Rt Hon Mark Drakeford MS,  
First Minister of Wales

29 September 2023

Dear Mark,

Legislation, Justice and Constitution Committee, 18 September 2023

Thank you again for attending our meeting on 18 September 2023. We are grateful for the time you gave over to the Committee.

As noted at the end of the meeting, there are a series of questions we wished to ask you but for which time did not allow. We would also like to follow-up on a number of matters which were discussed during the meeting. As such, we would welcome a response to the questions in the Annex by 17 October 2023.

Yours sincerely,

*Huw Irranca-Davies*

Huw Irranca-Davies  
Chair

## ANNEX

### Approach to legislating / legislative programme

In your evidence session you stated:

*"...where I don't have the same anxieties, is when a UK piece of legislation is brought forward where the Welsh Government believe that this would allow us to legislate more quickly and more effectively than if we were to wait for an opportunity of a Welsh-only Bill in front of the Senedd to come forward. I think those occasions are relatively rare, but they've always been there; we've used those opportunities through the whole of the period. Now, they're generally the ones where we are able to spot those opportunities earlier.*

*I should say this very clearly to the committee: the Welsh Government doesn't go looking for these opportunities ... we are always reacting to whatever they [UK Government] decide to do. But 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. In those circumstances, I don't think we should deny ourselves that opportunity because we somehow have a belief in principle that the only time legislation should ever be made for Wales is in Wales. When we do those things, it's likely to be that there will be the longest period for the Senedd to express a view, so I think that the democratic deficit and oversight anxieties are less." [RoP, paragraphs 47-48].*

Bills that would appear to fit into this category cover policy on the environment, leasehold reform, building safety, animal welfare (UK Bill not being pursued), protection from sex-based harassment in public, procurement, levelling up and regeneration, and non-domestic rating.

**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?

**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 as 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.

**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?

**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?

**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?

**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.

**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, non-domestic rating, protection from sex-based harassment in public?.

**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?

**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?

**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).