

Jeremy Miles AM
Counsel General

18 October 2019

Dear Jeremy,

Thank you for giving evidence to our current inquiry into Wales' changing constitution.

We welcome the publication of your written statement *Prorogation of the UK Parliament – legal proceedings* on 18 September 2019, which included your written submissions to the Supreme Court.

You undertook to share your thoughts about how “not normally” could be defined in the context of the Sewel Convention. We note that the Welsh Government has covered these issues in its document *Reforming our Union: Shared Governance in the UK* but would welcome the opportunity to receive any further information you consider relevant. .

During the session, you said:

“We came to an inter-governmental agreement, as you know, and that’s been the basis of ensuring that our consent as an Assembly has been an integral part of that process. (...) [RoP, paragraph 50]

“..that agreement (...) has laid a foundation to ensure that that process is a process that we as an Assembly do have a voice in, and we as a Government also have a voice in.” [RoP, paragraph 50]

“... that principle of having the Assembly’s consent is at the heart of the inter-governmental agreement itself.” [RoP, paragraph 113]

As you will be aware, the inter-governmental agreement was not scrutinised by the Assembly or its committees prior to its agreement. It was negotiated and agreed between governments.

We would like to clarify a number of issues that were raised during the session and seek some additional information, particularly around how the use of agreements relates to the National Assembly providing consent to the UK government legislating in devolved areas.



Q1: Please could you clarify how the inter-governmental agreement has been the basis of ensuring the Assembly's consent has been integral to ensuring our statute book can function properly?

Q2. Why are intergovernmental agreements appropriate for dealing with primary legislation that is passed by legislatures?

Q3: In relation to the UK Agriculture Bill and our consideration of Welsh Government LCMs, the Cabinet Secretary for Energy, Planning and Rural Affairs explained that the Welsh Government had entered into an agreement with the UK Government. Our report on the **second LCM**, expressed concern at the approach adopted. In your view, should such agreements also be subject in the future to formal consent by the National Assembly?

Q4: What risks are associated with intergovernmental agreements given that they are not legally binding and how can the Welsh Government seek to protect the Welsh devolution settlement in the event of future, different governments overriding these agreements?

Q5: How sustainable are the use of intergovernmental agreements and common frameworks over the longer term? If non-legislative common frameworks can be overridden or discontinued by future, new governments, how is this an appropriate way forward? It would be helpful if you confirm that both legislative and non-legislative common frameworks are intended to be a long-term solution.

Q6. How does the use of intergovernmental agreements and common frameworks impact on the complexity of the devolution settlement for citizens?

Q7: There are at least 20 occasions in which the UK Government has amended primary legislation in devolved areas by using subordinate legislation powers under the EU (Withdrawal) Act 2018, this being done (almost always) with the agreement of the Welsh Government, but without the formal consent of the National Assembly.

- (i) We would be grateful for your views on the implications of this approach for any future reform of the Sewel Convention.
- (ii) How the approach adopted by the Welsh Government in not tabling appropriate statutory instrument consent motions is consistent with proposition 5 of *Reforming our Union*.



Yours sincerely,

A handwritten signature in black ink that reads "Mick Antoniw". The signature is written in a cursive style with a horizontal line underneath the name.

Mick Antoniw AM
Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.

