



Constitution Committee

Corrected oral evidence: The governance of the union: consultation, co-operation and legislative consent

Wednesday 22 May 2024

10.15 am

Watch the meeting

Members present: Baroness Drake (The Chair); Lord Anderson of Ipswich; Baroness Andrews; Lord Beith; Lord Burnett of Maldon; Lord Falconer of Thoroton; Lord Foulkes of Cumnock; Baroness Finn; Baroness Goldie; Lord Strathclyde; Lord Thomas of Gresford.

Evidence Session No. 6

Heard in Public

Questions 96 - 121

Witnesses

I: Rebecca Evans MS, Cabinet Secretary for Finance, Constitution & Cabinet Office for the Welsh Government; Dr Andrew Goodall CBE, Permanent Secretary to the Welsh Government.

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Examination of witnesses

Rebecca Evans and Andrew Goodall.

Q96 **The Chair:** Good morning, everyone, and thank you to our visitors for joining us today. This morning, the Select Committee is taking evidence from Rebecca Evans, Cabinet Secretary for Finance, Constitution and Cabinet Office for the Welsh Government, and Dr Andrew Goodall, Permanent Secretary to the Welsh Government. We are taking evidence on our inquiry into the governance of the union, consultation, co-operation and legislative consent.

Thank you for joining us. Hopefully you have had an indication of the questions that we want to ask. If you are willing, I will go straight into the questions, unless you want to make any opening comments.

Rebecca Evans MS: No, I am happy to go straight into questions. Thank you for the opportunity to speak to you this morning.

The Chair: Fine. I am conscious there are two of you, so if you feel that one has captured the answer and you are quite happy, we can deal with it like that. Let me open by focusing on the new intergovernmental structures. How effective are they in both maintaining and improving the relationship between the UK Government and the Welsh Government?

Rebecca Evans MS: Our starting point is that the structures can be important and useful in those spaces but have yet to prove their worth. They have not yet demonstrated everything that they could. The mechanisms are only part of the story. The general principles that sit beneath the IGR activity are also important. Again, those principles, which should run through everything that we do, do not necessarily support the cultural change that we would like to see yet.

The frequency of meetings is only part of the story, but it is quite telling that the Heads of Devolved Governments Council and the Prime Minister have never met as originally envisaged in the agreement. They have met only once so far, in November 2022. Of course, at that point, Northern Ireland did not have the Executive.

The meetings of the middle-tier structure, the Interministerial Standing Committee, have been sporadic at best. The intention to have a regular, reliable rhythm of meetings has certainly not yet been fulfilled.

We have had more success on the finance side with the Finance: Interministerial Standing Committee, which I am most familiar with having been Finance Minister since 2018. Again, that has not been without its own challenges, because we have had churn with the Ministers involved. I have had to deal day to day with over eight Chief Secretaries to the Treasury now. That lack of stability has had an impact. The interministerial groups are key forums, and we expected those to be used for those mutual discussions at portfolio level, but they are not working as we envisaged. Some are yet to meet, for example.

There are a range of challenges, but I remain hopeful that we have important structures and principles in place that can assist us in our relations with the UK Government. I remain hopeful that they can live up to their potential.

The Chair: Dr Goodall, do you wish to add anything to that?

Dr Andrew Goodall: Chair, to help the flow of the meeting, I am here to support the Minister. I will try to find some areas where I can help to comment or where I know the Cabinet Secretary will allow me to answer questions.

The agreements and the framework that we use have a wider context. It is important to ensure that in discharging the arrangements that are in place, we ensure that the Civil Service more widely has a good understanding of the devolution settlement. I have spent a lot of time alongside other colleagues from devolved government focusing on that and, hopefully, supporting that in our own environment but of course at a UK Government level as well.

As the Cabinet Secretary said, the introduction of a regular rhythm of engagement—allowing Ministers to engage with each other as well as officials—allows us to have confidence. We need to keep our eyes on that.

We need a commitment from Ministers about the use of those arrangements. Until recently, we were not able to involve the Northern Ireland Executive in those arrangements. We need to allow the new arrangements to settle in.

Finally, we need to ensure a focus on outcomes, not just on process. We can come back in the future and tell you whether we feel they have been effective. As the Cabinet Secretary was saying, it will not be because we have had a range of meetings; it will be because we have delivered some clear shared outcomes.

Q97 **The Chair:** Developing that point, an issue that keeps coming up is the value of the co-operation between officials in ensuring that intergovernmental relations work. When we took evidence from Professor Laura McAllister and Dr Rowan Williams, Professor McAllister expressed the view that Whitehall is not confident in understanding devolved politics, which makes it wary of engaging. Dr Williams spoke about routine incompetence and illiteracy about constitutional structures among Whitehall departments. What do you think of those observations?

Dr Andrew Goodall: Yes, I recognise those observations. Our general expectations of the awareness that operates across departments is different. Perhaps I could come back to that in a moment.

From the contact that I see happening among officials, I feel that it is generally a constructive arrangement. The officials involved in the intergovernmental relations, which we have in place for all the devolved

Governments as well as the UK Government, are effective. They underpin the intergovernmental relations review mechanisms.

We have contact with colleagues in the Wales office less regularly than with some of the other departments, but nevertheless it is part of our approach. It is important to engage with those departments that we are able to deal with directly where there are relationships alongside our devolved responsibilities. We have some good and long-standing arrangements in place around those.

We need to continue to focus on awareness. Certainly in my own role, even when I joined the Welsh Government back in 2014, I have spent a lot of time describing our responsibilities, how we work and how we support our Ministers to discharge areas. A training and awareness programme is in place. We use events like Civil Service Live to ensure that we are able to describe that right across the UK.

I wonder whether everybody understands it. Some departments have probably had less contact with us, so maybe when they engage with the Welsh Government for the first time on some areas they need to ensure they have a wider understanding as well. Again, we use mechanisms to understand that like guidance and our overall training approach.

Rebecca Evans MS: We have a long history of working well with some departments across the Government. Agriculture is one. When we were members of the European Union, our Agriculture Ministers used to go to Brussels together to discuss our positions on agriculture. Those understandings of the boundaries of devolution were well understood. That is one example of a department where it works well because it has been the bread and butter of lots of the work they have done over the years.

In my time in the finance portfolio since 2018, I have observed that the UK Government often see the Welsh Government as just another department. We certainly feel that on the finance side. Rather than understanding that we are a devolved Government with responsibilities to our Senedd and with a greater level of public and media scrutiny here in Wales, the sense is that we are treated as just another department. For example, they simply do not factor in the time we need to consult or the protocol that we have with our Finance Committee for laying the budget. Those practical considerations are not on Whitehall's radar. Areas can definitely improve.

On a more positive note, our officials work hard together on the Finance: Interministerial Standing Committee to have a shared secretariat. We agree the agenda collaboratively. Good working goes on behind that. We have had papers tabled jointly in the past. They can take many months to come to a position that we all agree on, but the efforts to work together are important.

Q98 **Lord Strathclyde:** First, thank you for coming along. We have taken a good deal of evidence from the UK Ministers. When they spoke to us

about how devolution works in practice, they were at pains to say that they thought the arrangements were co-operative and had a certain amount of good will. Of course, there are political differences but, on the whole, the policy arrangements seem to work well, so they said.

Do you consider the new dispute resolution process effective for addressing disagreements between the UK Government and the Welsh Government? Have you seen it working in practice? Is it relatively positive?

Rebecca Evans MS: On your first point about the perspective of UK Ministers that things are working well, things could certainly work a lot better. I described the infrequent meetings of the committees that were set up through the intergovernmental structures. Meetings are often cancelled at late notice. It is inevitable in some circumstances, but it speaks to the level of priority that is given to those meetings. For those structures to work properly, we need all parties to be energised about them and for all parties to recognise the benefit they can bring to citizens. The ultimate test has to be the benefit of this to our citizens.

On the disputes, it is important that the purpose of the structures and the mechanisms is dispute avoidance. Thus far, we have not tested the mechanisms to see how they work in a dispute. The Welsh Government have not brought forward a dispute yet, because we take seriously that challenge to resolve disputes through discussion and collaboration. That said, if we are not able to do that, we will use the disputes mechanism.

We also are mindful, though, that the first time we use it we need to do so in a way that sets the tone for how it is used in future. We need to be confident that we have a strong case and will be likely to win. The spaces where we can make most important ground are the constitutional spaces or the finance spaces, where you can certainly gain something that is clear for the future. We do not use the dispute mechanism for minor things. We try to resolve things as best we can through discussion.

The Chair: We will now reflect on the new dispute resolution process.

Q99 **Lord Strathclyde:** Have the Welsh Government appointed officials to the new Intergovernmental Relations Secretariat?

Rebecca Evans MS: Yes, the IGS was established, and all four Administrations are working collaboratively to ensure that that is fully operational. The head of the secretariat is on loan from the Welsh Government for two years and was appointed following a fair and open competition across all Governments. We are in the process at the moment of recruiting an additional member of staff who will also be assigned to the IGR Secretariat. That has been positive. We worked collaboratively to develop those mechanisms first, which was positive.

Lord Strathclyde: Do you want to add anything, Kay?

Baroness Andrews: No. That has covered it, absolutely.

The Chair: Baroness Andrews wants to go to the issue of good will in

making these structures work.

Q100 **Baroness Andrews:** Bore da. Croeso. It is lovely to see you both. Rebecca, you talked about the need for culture change in the context of the questions we have been asking about good will. How important is good will? How do you define it? Laura McAllister here said that we need to drill down into the definition and limits of good will. This is a slightly slippery question. How does good will work? Is that part of your definition of culture change?

Rebecca Evans MS: For things to work as they stand, we definitely need that good will. We need all partners to put energy into the system. We need all Ministers to give direction to their officials to engage properly across Governments and share information early and that kind of thing.

For me, good will is about trust, sharing information early and understanding that that information is shared with confidence. The Welsh Government have never spoken outside of meetings. We respect the confidentiality of the intergovernmental relationships that we have. We feel that we have shown that we can be trusted partners. Earlier sharing of information is important.

A good example, again in the finance sphere, is the UK Government's approaches to tax changes. Stamp duty land tax is frequently changed at a UK Government Budget, but it directly impacts the Welsh Government because it affects our block grant. As such, literally as soon as the Chancellor makes an announcement on stamp duty land tax, we are asked, "What does that mean for Wales? Will my tax change? Should I complete a purchase now or should I wait?" All those questions come through and we have no notice whatsoever.

Also, it impacts on the block grant adjustment, so the UK Government's decisions have budgetary implications for us. A bit of earlier notice of the UK Government's thinking, absolutely confidentially, would help us to respond by understanding how we could spend that additional money, how we could respond to a Budget cut, or how we might change our own land transaction tax. We need to work through lots of complicated things. A bit of time to do that would be helpful.

We have tried to show good will in the other direction. Even though our taxes do not have the same implications for the UK Government, we have shared early information with them on our thinking to continue to develop that relationship of trust. That is a practical example of lack of information at an early stage having financial implications for us and causing us difficulties when it need not. Early trust and information sharing will help.

Q101 **Baroness Andrews:** Budget issues, presentation of fiscal information and so on are rather specific. Have you raised the question generally about other aspects of financial settlements or policy? Have you told them as clearly as you have said to us that a bit more transparency and anticipation would help you to work more effectively with them? Have

you had that sort of conversation with them?

Rebecca Evans MS: Yes, we have that discussion frequently. It is a source of frustration for my colleagues in Scotland and Northern Ireland as well.

At almost every meeting of the Finance: Interministerial Standing Committee, we ask for further information. We might meet, for example, ahead of an autumn statement. We always ask for further information on their tax plans that impact us, or those wider approaches and priorities. Will supporting the most vulnerable people be a priority? What about benefits? Then we have wider discussions about areas of shared priority. Where will they invest? Will this be a green Budget with green investment? We have those discussions. We press quite hard to receive further information.

The only real information we get ahead of a fiscal event is a call with the Chief Secretary to the Treasury on the morning of that event. We get the RDEL and CDEL numbers, the changes to our budget and nothing else. I always run through a list of questions that I ask and we do not get any further information. Respectful sharing of information would make such a big difference to us.

Q102 **Baroness Andrews:** Putting the Budget issues aside now, because they have protocols, if you need information to make a consistent decision, what response do you get from Westminster, from Ministers and officials, about why that does not happen, cannot happen or will not happen?

Rebecca Evans MS: I will use the stamp duty land tax as an example and then I will give some flavour to it. The reason for not sharing with us is that the information about the stamp duty land tax early is market sensitive. It is as if they do not trust that we will not leak that information. It is about trust. In other cases, we have good involvement with departments on policy issues. We have done some good work in procurement, for example. The UK Government legislated on our behalf. Although we could not recommend consent for the entire Bill, the work we did on procurement was good.

It varies. The UK Government's engagement, the extent of the information shared with us and the timeliness of that sharing is inconsistent and too variable at the moment. When it works well, it shows that we can make good progress.

Baroness Andrews: You have a bit of optimism.

Rebecca Evans MS: I am always optimistic.

Q103 **Baroness Andrews:** Good. This may be one for you, Rebecca. You may have been involved as well. Dr Goodall, briefly, common frameworks are designed as a mechanism to bring people together and get them to work more closely together on those aspects of the frameworks that have to be managed for divergence. Have they in fact been useful? I do not want to put words into your mouth. We have described them as a missed

opportunity for different reasons. In your experience, do they do something positive to make a more productive union?

Dr Andrew Goodall: They offer the potential for co-operation and collaboration. We have not manoeuvred our way through the numbers yet as we look to accommodate them. For example, of the 26 common frameworks that apply to Wales and to Welsh Government at this stage, only one has got over the line and lots of others are in train. Are they effective or not? They are a helpful contact point. Our general experience is that even with the work that is in train they are constructive. They were also put in place, of course, ahead of the final agreement to the intergovernmental relations mechanisms. We need to ensure that we can draw them in. They are not to the left hand side of those processes. We need to ensure that they are more integrated as we look forward.

It allowed us to get agreement at least through the Senedd Cymru, through the Welsh Parliament, in the first instance on that first area, but we will see how it goes at the moment. We will keep being constructive, as the Cabinet Secretary has outlined, and hopefully we will continue to see that progress in the next 12 months or so.

Q104 **Baroness Andrews:** Will a larger Senedd make it easier to progress them faster, at least along the political route, because you will have more choice of committee members and so on?

Dr Andrew Goodall: It will help with some of the scrutiny—the Cabinet Secretary may have views on this—and with some of those expanded arrangements at this stage.

One contact point that we have on the legislation programme is that sometimes it is described as the Welsh Government being in agreement or not with the legislation that is being passed and when legislative consent Motions are sought. A real issue is the Senedd Cymru as an institution, of course, and how we knit those mechanisms together. Ministers worry that more time taken to convert UK legislation and to seek LCMs means less time available for Wales to discharge its own lawmaking powers. That alignment of the parliamentary processes as much as the government processes will be important in the future. Those expanded committee mechanisms will inevitably help with some of the scrutiny process, for example, because time on the Floor is limited.

Q105 **Baroness Finn:** Bore da. You have answered quite a lot of the questions about legislation and how communication works across the piece and in finance and so on in Whitehall generally, but what is the Welsh Government's experience of engaging with the Office of the Secretary of State for Wales? We are trying to find out how good the flow is between the two and whether the Office of the Secretary of State for Wales has sufficient influence to fulfil the mandate to represent the UK Government in Wales and Wales within the UK Government.

Rebecca Evans MS: Our normal day-to-day engagement route with the UK Government is the decision-making portfolio Minister in the area in question. Our Energy Minister, for example, will speak directly to their

energy counterpart or our Housing Minister to their housing counterpart. We normally have those relationships. Of course, we are keen to establish and maintain good relationships with all parts of the UK Government, but our day-to-day relationships are with our policy counterparts.

Baroness Finn: What about with the Office of the Secretary of State?

Rebecca Evans MS: My day-to-day relationships are with the Chief Secretary to the Treasury and the Treasury. Then the Energy Minister has his day-to-day relationships with the Minister for energy in the UK Government and so on. We do not have a day-to-day relationship with the Secretary of State for Wales, purely because he does not take decisions in the areas that we are particularly concerned about.

Baroness Finn: Is there no co-ordinating influence from the Secretary of State for Wales?

Rebecca Evans MS: No, and I am not sure that there should be. We do not want additional bureaucracy. The Secretary of State is not a gateway to the UK Government. It is a different role of its own type.

Baroness Finn: That is interesting. Thank you.

Q106 **Baroness Goldie:** That was helpful. You have answered the question I wanted to clarify. Let us be clear: there is no right or wrong to this. We are simply trying to understand how the structures work.

Minister, you have been clear. In my experience as an MoD Minister, I certainly dealt directly with your colleague Hannah Blythyn, for example, if I wanted to discuss issues relative to MoD presence in Wales. But you have indicated that the natural route if the Welsh Government have issues of concern is to go straight to the Whitehall department. Your view is that the decision-making process lies there. Is that correct?

Rebecca Evans MS: Yes, that is right. Then we can move things forward as speedily as possible and talk to the individual who makes the decisions in that space, supported of course by their team of policy officials, who are specialists in that particular area.

Since the current Secretary of State for Wales came into position in 2022, I have had only one bilateral meeting with him, and that was at my request when I was trying to elicit his support for my request for funding for coal tip safety and remediation in the UK Government Budget. The aim was to talk to him about that agenda's importance and hope that he would then also make those representations to Treasury Ministers.

Q107 **Baroness Goldie:** The political conduit for engagement is clear, Minister. Dr Goodall, you indicated at the beginning that you or your officials deal with departments directly, so I presume that is to support the Minister and her colleagues' engagement.

Dr Andrew Goodall: Yes, that is officials' experience as well. Of course, we will do that in support of Ministers and their own contact, but we will

maintain those good offices as well behind the scenes and ongoing contact with different departments. I have a structure with directors general in it. They will be able to go to the respective departments that fit in with their own responsibilities, for example, and not just have a structure in place but build up the relationships so that there is a confidence about engaging.

We also deploy some wider issues. I have a contact every fortnight with the Northern Ireland Executive, the Scottish Government and DLUHC—I will come to it again in a moment—because that maintains the general contact in the intergovernmental relations, and we build up those relationships. Irrespective of those departmental discussions, of course, it is important to recognise Michael Gove’s responsibility in his Secretary of State role beyond DLUHC for that oversight of the constitution and intergovernmental relations. A contact happens through that mechanism with Ministers and often directly with the First Minister.

Q108 Lord Falconer of Thoroton: This is for Rebecca. To what extent does you being in a different political party from the Secretary of State for Wales and the other Ministers in the UK Government cause a problem? Is it no problem? Secondly, and separately, will you ever use the Secretary of State to try to appeal against other Ministers not co-operating?

Rebecca Evans MS: Being in a different political party should not be a problem in itself. Of course we all take different views—sometimes radically different views—on various topics, but that should not mean that we cannot have conversations and always try to find common ground where we can. In itself, it should not be a problem beyond the fact that we all take different views on things. We can still have those respectful discussions. We have not used the Secretary of State to try to resolve issues that we might have with other Ministers, certainly not in my experience. I am not sure, Andrew, whether you have wider examples.

Dr Andrew Goodall: Officials have contact with the Wales Office and we maintain those relationships, but they tend to be more routine. Perhaps an exception is that we will liaise a little more on the legislation outlook and give the good officers of the Secretary of State’s department a chance to help us with some of the legislative areas that we reflect on together.

As I said earlier, because the constitutional contact and the intergovernmental relations are held with the Secretary of State for DLUHC, the interface will happen there when areas are to be put forward on behalf of the Welsh Government or indeed on behalf of the other devolved Governments. I have been alongside the former First Minister when he has engaged in those discussions and has committed to take something into a Cabinet discussion that has been asked for on behalf of Wales or the wider devolved Governments.

Q109 Lord Beith: These are interesting answers. Do you feel under any pressure, either politically or administratively, to route things through the Wales Office and to avoid the level of departmental co-operation that you

have described, or is the pattern settled?

Rebecca Evans MS: I certainly do not feel any pressure to route anything through the Office of the Secretary of State for Wales, because it is established that we all work directly with the Ministers who take decisions in our respective portfolio areas. I have not discerned any pressure in that space. Also—Andrew will probably say more on this—officials have policy relationships with other officials rather than anything through the Office of the Secretary of State for Wales.

Dr Andrew Goodall: The intergovernmental mechanisms reinforce that, because they establish the ministerial meetings formally. That is outwith the Secretary of State for Wales's arrangements. We are drawn towards those arrangements because that framework is in place.

Q110 **Lord Foulkes of Cumnock:** Rebecca, are you missing a trick by not using the influence of the Secretary of State for Wales, who sits in the Cabinet, where a lot of major decisions are made, and on a number of Cabinet committees and subcommittees, where other decisions are made. Surely he could ensure that the interests of Wales were forcefully represented on your behalf at these meetings.

Rebecca Evans MS: The Secretary of State, of course, does not represent the Welsh Government around the Cabinet table, although it is important that he is aware and apprised of the concerns of the people in Wales whom we see as priorities for us.

Coal tip safety is an example of how we have tried to use the influence of the Secretary of State for Wales ahead of a Budget. We tried to use his influence to convince the Treasury Ministers that this is a priority. If the Chancellor wanted to mention one area in his Budget, from our perspective at that point it should be coal tip safety. We tried to elicit his support for making that argument.

That is an example from my portfolio, and there are potentially others. It is important that officials in the Wales Office are also aware of the key issues of concern to us here in Wales. That happens through the structures that Andrew has referred to.

Q111 **Lord Foulkes of Cumnock:** May I ask Dr Goodall a different question? On what issues do you feel accountable to the Cabinet Secretary and on what issues do you feel accountable to the First Minister and the Ministers in Wales?

Dr Andrew Goodall: I am clear that I sit in the UK Civil Service, as do our Welsh Government staff, and that we have many benefits and advantages from that. Also, of course, it sets how we support our Government. My accountability is to ensure that I am able to lead the organisation and that those Civil Service frameworks are in place.

I am responsible to the First Minister to ensure that the programme for Government is achieved and that I am able to support that. My own appraisal process is respectful of that balance and how that happens. I am less pressed on the individual examples because of the different

political objectives, but I am asked to present the confidence of the delivery of the organisation on behalf of the Cabinet Ministers here.

Inevitably, reserved and devolved responsibilities can be matters that we need to consider in some areas, and they are considered carefully at the political level as well as on the administrative side. If I had concerns on any of those issues, I would be able to talk to the Cabinet Secretary and have his support and advice available on those areas, but that is not my usual experience.

We have clear views on the boundaries between those devolved and reserved responsibilities. I am clear on the leadership role in the Civil Service and how it operates alongside my responsibility to ensure that the Civil Service delivers what the Welsh Government expect as their objectives.

Q112 Lord Foulkes of Cumnock: Is it easier for you in Wales with fewer disputes about reserved and devolved areas than in Scotland with an enormous number of disputes because of the nature of the SNP Government?

Dr Andrew Goodall: Whether it is easier or not, I guess I have not had examples of where those concerns have arisen in that sense. The process and the framework remain the same for all of us working on that. I sit with other Permanent Secretary colleagues in the regular Permanent Secretary meetings. I liaise with John-Paul Marks in Scotland regularly in a range of different areas. The relationships that I have with the wider UK Civil Service are important. I have not had cause to raise those concerns like that. We all have a professional understanding of how those boundaries need to work in the Civil Service.

Lord Foulkes of Cumnock: Thank you. You are diplomatic.

The Chair: It is his job.

Q113 Lord Burnett of Maldon: Like others, I found the answers to these questions fascinating and the description of the lack of intense contact with the Wales Office perhaps a little surprising. Minister, what is your perception of the purpose of the Wales Office?

Rebecca Evans MS: I always worry when my answers are fascinating. The purpose of the Wales Office is a UK Government function, in a sense.

Lord Burnett of Maldon: If you will forgive me, that is why I asked about your perception of it.

Rebecca Evans MS: My perception is that the Secretary of State for Wales is the voice of the UK Government in Wales and should be the voice of Wales at the UK Government Cabinet table. That is the role. It is not a role that crosses over into devolved competencies.

The Chair: Okay. Going back to Lord Foulkes's question for a point of clarity, Dr Goodall, is there formal written guidance for Permanent Secretaries in Wales and Scotland supporting the Welsh and Scottish

Government about managing that boundary between reserved and devolved matters, how civil servants are deployed and how expenditure is cast? Has it been revised recently? Is there just a cultural understanding of the rules?

Dr Andrew Goodall: Yes, there is an understanding. We adapt my performance process to ensure that it fits with my own arrangements in Wales, which is repeated for example with John-Paul Marks in the Scottish Government. Our templates perhaps do not fit our outlook and environment, but we work with the Cabinet Office to ensure that that allows us to flexibly describe how we work.

Even as part of these ongoing inquiries and other work that the House of Lords has undertaken, I know that the Cabinet Office has committed to setting some of that down more clearly for guidance. I have been part of conversations on that. It is an open discussion. If I had concerns, I would be able to speak to Simon Case directly, personally and quickly if needed. I am still waiting for some of that advice to convert over not just for me in my current role but to ensure that we have this in place for other Permanent Secretaries as they change around.

The Chair: For the moment, are you working on understandings and the structure of the manner of your appraisal to check on those boundaries?

Dr Andrew Goodall: Yes, indeed. The general approach as a Permanent Secretary in the UK Civil Service still applies. The framework is still for me as a general Permanent Secretary.

As I said earlier, how I describe how I am delivering, in broad terms, the programme for the Government, not least through the First Minister's perspective, is dealt with respectfully and considerately around that table. I feel they understand that there is a different set of objectives from the UK Government.

The Chair: Yes. I was trying to make my questions about process rather than quality. Fine. Moving on to the Sewel convention, which is a specific matter of interest to us during our inquiry, Lord Thomas has a question.

Q114 **Lord Thomas of Gresford:** Croeso. The Sewel convention does not apply to delegated legislation, as we know. To what extent has the Welsh Government been consulted prior to the UK Government using delegated legislation in areas of devolved competence and using Henry VIII powers to alter Acts of the devolved legislatures? Is consultation a role for the Secretary of State for Wales or for departmental Ministers?

Rebecca Evans MS: Thank you for the question. As with primary legislation, our fundamental position is that devolved legislation should be made here in Wales. Our position is that subordinate legislation made by the UK Government in Wales on devolved matters should be made only with the consent of Welsh Ministers.

One of the challenges we had was that engagement in some areas has been poor, with issues raised late in the day, which sometimes makes it

difficult for us to pursue our own legislative solutions to areas that might benefit from alignment between the UK Government and the Welsh Government. That lack of engagement and delay can also cause challenges in being able to give members of the Senedd enough time to undertake scrutiny activity and so on. Engagement on the timeliness can be difficult.

In terms of Henry VIII powers, the devolution guidance notes make clear that any amendments to primary legislation in devolved areas require the consent of the Senedd, and that is achieved through those statutory instrument consent Motions, which is a process we have in the Senedd. That reflects the need for that heightened level of scrutiny of executive powers that amend primary legislation. Of course, the SICM process has no legal effect on the UK Government, but it is important to have those guidance notes to say that those processes should be respected.

Another factor is that we should have those early discussions with the UK Government on their primary legislative programme but, again, that does not always happen.

Andrew might have some more perspective on that and maybe some examples.

Dr Andrew Goodall: We have had some good experiences. Visibly recently, the Tobacco and Vapes Bill showed that strong and collaboration can take place. Officials had clear guidance from our own Ministers in that UK setting to openly liaise and to work through the various areas. Examples can show that it can work if we want to do it, but in some more difficult examples legislation has been passed. Of course, as the Cabinet Secretary has outlined, that caused some difficulty, including with the relationships.

Lord Thomas of Gresford: The consultation has been late, you say, and you have had difficulties with engagement in certain areas. Do you expect it to come from the departments or from the Secretary of State for Wales through the Welsh Office?

Rebecca Evans MS: That should come through the departments as early as possible. We want to see the policy officials in Whitehall working with their counterparts in the devolved Governments to establish what they are trying to achieve and then to explore ways to achieve that. We will then have early opportunities to consider whether we want to legislate on this ourselves here in Wales.

We potentially have time to do that and to ensure that the UK Government meet what those guidance notes set out if they want to legislate in devolved spaces and that Welsh Ministers can consent. That often requires a lot of discussion both at official level and in ministerial meetings, because the UK Government can often make relatively minor amendments or changes in their thinking that allow us to recommend consent to the Senedd. That early discussion does not always happen, which makes it quite difficult.

A recent example is the Data Protection and Digital Information Bill. The UK Government introduced substantive amendments to Welsh Ministers' functions without any meaningful prior engagement. When we said that we could not support this, they continued without our support. That is the other side to the coin. Andrew has given some examples of where that engagement has been good, but in that example it was not good.

Lord Thomas of Gresford: Did you feel in relation to the data protection Bill, which you have referred to, that, "We could do that, and we could do it better"?

Rebecca Evans MS: I may ask Andrew to look at that. Lots of this is outside the competence of the Senedd. The areas relating to the national underground asset register in particular would remove powers from Welsh Ministers and transfer them back to the UK Government. We strongly object to that. That kind of approach from the UK Government is often declared to be a matter of expediency or consistency, but it is insufficient when we are talking about changes to devolved competencies. I do not know whether Andrew has anything further.

Dr Andrew Goodall: These are not all matters where simply the Senedd Cymru would look for legislation in the Welsh Government to enable it within that area. The example the Minister gave was simply where responsibilities were removed, which was the problem. We would not have sought to do a Welsh Government version of that legislation.

My general point about how we handle legislation more generally is that we need to prepare for time on the Floor to ensure that Ministers are supported. Talking more widely about our LCM approach, five years ago probably about 45 LCMs would be asked for in a whole parliamentary term. We see that number now in individual years, which has a wider impact on Senedd Cymru as an institution irrespective of the Welsh Government's ability to maintain those contact points with the UK Government. Something wider is at play here. We need to ensure as officials that we support our Ministers. A genuine issue is there politically to be considered.

Lord Thomas of Gresford: Remind me. Does an LCM committee consider these?

Rebecca Evans MS: We have our Legislation, Justice and Constitution Committee. The name escaped me there for a second. Apologies.

Q115 **Lord Anderson of Ipswich:** The examples you have each given about the use of delegated legislation in areas of devolved competence have been interesting and useful. Tobacco and vapes worked well and data protection not so well.

Do you have any examples of areas where the UK Parliament has taken powers to alter the Acts of the Senedd, the devolved legislature? We spoke last time to the Secretary of State for Wales. He said that although that power may theoretically have been given on occasions, he was not aware of it ever having been exercised by UK Ministers and he was not

aware of any political issues about the use of Henry VIII powers. Understand that Henry VIII powers are quite controversial even within Westminster when Ministers are given the power to amend Acts of the Westminster Parliament. Do you have examples of UK Ministers being given that power to alter Acts of your Senedd? If so, please tell us something about them.

Rebecca Evans MS: I will see whether Andrew has any examples.

Dr Andrew Goodall: On the specific application of Henry VIII powers, no. There are examples where in wider terms no consent has been given by the Welsh Parliament, Senedd Cymru, and the actions have continued, nevertheless.

In the data protection example the Cabinet Secretary gave, the changes to the executive responsibility of Ministers happened differently, but not the direct application of the Henry VIII powers. I know the Lords take high interest in that, as you say.

Q116 **Baroness Goldie:** Can I clarify a simple point emerging from what has been said? Again, your answers have been extremely helpful. I detect from what you say that if we talk about delegated legislation—never mind the Henry VIII powers at the moment—you are saying that you could do with a better heads-up about legislation being contemplated at Westminster that may impact on the Welsh Parliament and the Welsh Government, but you are not aware of it until fairly far down the line. Is that correct?

Rebecca Evans MS: Yes. Again, it is about those early discussions and sharing of thinking at the earliest possible stage. Actually, going back to our first discussion about the interministerial groups, we could facilitate some of those early discussions in those areas. That would be a helpful forum for those.

The Chair: On that point, Dr Goodall, one defence put up by the Government for not doing more timely consultation and giving an earlier and better heads-up is because Whitehall is still working out the policy and it is not settled, and then, when it is, it has to move at speed. I have to be careful how I pose the question, but was that a real constraint on every occasion when you have been concerned that consultation has not started early enough?

Dr Andrew Goodall: We can all work at speed, but coming in at the end point when everything is pinned down and the timescale is constrained is dangerous. Maybe it is to the wider point of ensuring both officially and, as the Cabinet Secretary has already reflected, generally that trust is available to allow some of those conversations to happen.

Again, sometimes it can feel as if these are expressed as if it is all a matter of the Welsh Government's own processes, but we need parliamentary interaction about how Senedd Cymru is respected for its own timetable and requirements. We had an example of consent being sought when the Senedd was not sitting. It simply was not practical to

recall the Senedd for that matter when, with some preparation and organisation, it probably could have been processed rather differently.

However, when looking at the King's Speech and the announcement of legislation, we had constructive and earlier engagement on the last occasion. That allowed us to understand how these things may translate into the government programme and the Senedd more broadly. We were able to work with UK Government officials on some of those individual examples. We learned from that process that when we are involved we are usually able to find some way of accommodating and working with mutual support. Our templates demonstrate this as an effective way of working.

The Chair: Baroness Andrews has a question on primary legislation.

Q117 **Baroness Andrews:** It is a development. I am driving slightly deeper into what you have been saying about all these relationships. You gave an example, Dr Goodall, of Westminster not being aware that the Senedd was in recess. You are alluding to issues of respect here as well as understanding.

As a committee, we have been aware of the lack of consultation, and we referred to the failure to consult on the economic activity of public bodies in February this year. The Senedd legislation committee has also suggested that the Welsh Government make it aware when you have or have not been consulted, so that the whole issue of consultation is elevated and people can appreciate whether it happens. We know from our own research, and Rowan Williams told us, that Sewel has been bypassed 11 times in recent years.

This is a banal question, but has this whole business about consultation prior to legislation altering executive competence got worse in recent years? If so, can you measure or benchmark it?

Rebecca Evans MS: Yes, it has got worse since about 2022. I do not want to be too political today but an element of the UK Government becoming increasingly hostile to devolution is at play. You referred to respect. Respect is critical in intergovernmental relations. Also, once it has happened once, it is easier to happen again. We seem to be in that situation at the moment. One concern is that when the Senedd does not consent, nothing happens. No efforts are made to take that on board or to make any changes to accommodate the Senedd's view. That is a concern.

Baroness Andrews: The internal market Bill created real ructions. Once it was clear that the Senedd would withhold consent, were there conversations with the equivalent Ministers about why, and could anything be done to change that position?

Rebecca Evans MS: I was not involved in those conversations, but Andrew might recall.

Dr Andrew Goodall: The former First Minister picked up those issues at the time. He liaised directly through the intergovernmental contact and

more widely and sought to ensure an understanding of whether the “not normally” phrase in the Sewel convention would become a more consistent experience. I often sat alongside him and I know that he raised those matters. The numbers have changed, however. In some examples earlier than that over this last 10 years, technical reasons meant that it was not respected in the same way, and we would almost understand that. But as the commission itself said to you, there have been more numbers more recently on that.

Lord Strathclyde: You have covered it extremely well. I am happy with the answers given. Thank you.

Q118 **Baroness Andrews:** I have one minor question: how do we make this better? Is there any point in updating devolution guidance notes? If you want to do that, what sort of menu would you have? Which bits of it could be effectively reinforced, or are we talking about structures again and not addressing the realities of trust and transparent relationships?

Rebecca Evans MS: Behaviours will make a difference. How we engage, share and trust will make the difference. Although the devolution guidance notes definitely need to be updated in the sense of referring to the National Assembly for Wales and so on, a first step is to stick to the devolution guidance notes, which would take us a certain way forward. It talks about that early engagement and that collaborative working. We do not have as much of that consistently as we need at the moment, although we have tried to share some good examples to show that it can work if we all want it to.

Dr Andrew Goodall: I share the Minister’s view. At a practical level, it is more in the application than perhaps in the frameworks and the structures. However, the devolution guidance notes need to be updated. A gentle updating took place in 2023, but in reality the world has changed an awful lot since 2019, both because of the context of the EU exit, which impacted the Welsh Government and other devolved Governments, and because of our pandemic response. As the Cabinet Secretary has said, it needs to reflect some of the terminology changes that have happened in that time from a Wales perspective, too.

The Chair: Thank you. Your comment that it is more in the application than in the framework and structures leads us to the issue of people engaging.

Q119 **Lord Burnett of Maldon:** We have heard from a number of witnesses about enthusiasm in some places for a statutory duty to engage in the context of devolution. The Independent Commission on the Constitutional Future of Wales suggested such a change. So, too, did Gordon Brown’s report on the constitution. We have heard different views about it. The Secretary of State for Wales, for example, is not an enthusiast for that. Do you believe that UK legislation should introduce a statutory duty to engage?

Rebecca Evans MS: We welcomed the commission’s recommendation that the Westminster Parliament should legislate for intergovernmental

mechanisms to secure duty of co-operation and parity of esteem between the Governments of the UK. That recommendation was warmly welcomed. We think that a statutory underpinning for the intergovernmental relationships is an important step in addressing some of the fragility and the variability of the current arrangements. We definitely support that.

The structures in the IGR review, as we have talked about, go a long way, but they cannot compel good behaviour as a statutory duty might. We have definitely responded positively to that, and we are interested in exploring how it might be pursued further.

Lord Burnett of Maldon: Do you see any difficulty if a disagreement arose as to whether one or other of the Governments were engaging according to the statutory scheme and that ended up being resolved in the courts?

Rebecca Evans MS: We definitely need to think through an awful lot before the UK Government moved forward with legislation in this space. Understanding the implications of not delivering on those duties is important as part of that. We have not done the work yet to think through each step and exactly what the duty might say and the implications of that, but as a starting point for a conversation we welcome it.

Q120 **Lord Falconer of Thoroton:** Building on that, Rebecca, are you interested in the independent commission's proposal for some duty to co-operate because you think that, without some sort of legislated legal duty, the current arrangements do not work well enough and so they need to be taken to another dimension?

Rebecca Evans MS: That is fair. We have seen examples of when things can work well, but it should not be just the good will that we talked about earlier, I suppose. It should not be just individual Ministers who might be particularly sympathetic to this and want to work co-operatively. That statutory basis takes things to a different level and potentially futureproofs things as well.

As we have talked about, a lot at the moment depends on attitudes, behaviours and levels of energy and enthusiasm that people are willing to put into this. We should definitely explore this further, and we will be keen to hear what your committee makes of it all as well.

Lord Falconer of Thoroton: As an alternative to some generalised duty to co-operate, instead of something like the Sewel convention, what about abolishing it altogether and replacing it with an express statutory provision that the Westminster Parliament will not legislate in areas of devolved competence?

Rebecca Evans MS: The other side of this same coin and the other recommendation that the commission made in this space was that we should press the UK Government to present to the Westminster Parliament legislation to specify that the consent of the devolved

institutions is required for any change to the devolved powers, but it went on to say, "except when required for reasons to be agreed between them", and gave examples of international obligations, defence, national security and macroeconomic policy.

Again, we accepted the recommendation and we are interested in a further discussion on that. Bear in mind that we would also have to employ some excellent legal minds to help us think through some of the implications of all these things. We are at the starting point of the conversation about potentially replacing Sewel with something different, as you have described, and about that duty to consult. Both ideas might help us to take intergovernmental relations to the next stage.

These things take time. We still have to put our energy and our focus into the relations and the structures that we have at the moment and try to make them work for our citizens as well.

Q121 Lord Falconer of Thoroton: Connected to that, we hear the usual frantic talk at this moment about whether there is about to be a general election. What is your advice to whoever wins the next general election in the United Kingdom to improve the relationships between the Senedd on the one hand and the UK Government on the other?

Rebecca Evans MS: I suppose, first, they should look at the intergovernmental review and the work that flowed from that, which, as I have tried to set out, gives us a good basis for good intergovernmental relations but would have to set the tone for that Government. They should take devolution seriously and want to engage in these intergovernmental relations. They should give them the level of priority that they deserve. In setting the tone for the Government, they should set the tone also for the Civil Service to follow that. From day one, it is about establishing good, strong relationships. Early information sharing is important.

There is also that piece of work about how we potentially put things on a statutory footing for the future to safeguard against changes of Government and to ensure that whoever is in government, whether they are the same party or a different party, has those good relationships.

Dr Andrew Goodall: Yes, I agree with the points about the visible commitment, because the tone affects the activities. Officials will always maintain those good relations, but that visible government and ministerial commitment all around is important for us to ensure that the intergovernmental mechanisms work effectively. There is an open discussion about the legislative points, but at least have some understanding of the actual experience at the moment leading to that.

However, I also agree with the Minister's perspective that we need to ensure that any structural or legal requirements have the behaviours wrapped around them at this stage.

Also, again, when talking to colleagues in the Civil Service outside the Welsh Government, I make the ongoing point that sometimes what is

framed as the Welsh Government's perspective can be converted into the mechanisms needed to support Senedd Cymru and the Welsh Parliament's approaches and processes. That interparliamentary engagement also feels part of the potential solution.

Lord Falconer of Thoroton: Would you place the onus much more firmly on the UK Government than on the Senedd? Put aside any questions of parity of esteem. The Senedd is much smaller. Its influence on what happens in the rest of the UK is tiny by comparison with the UK Government's effect on what happens in Wales.

Rebecca Evans MS: I look at that through a different lens. Certainly the influence of the Senedd and the Welsh Government are significant on what happens in Wales and our day-to-day lives and the services we have like health, education, local government and so on. That is important.

Also, the Welsh Government, and it is fair to say the devolved Governments generally, are keen to make these intergovernmental relationships work. The weak point in things working as well as they might is that that the UK Government do not have the onus as they should. The fact that the Prime Minister and Heads of Devolved Governments meeting has happened only once since it was established is pretty poor. The UK Government definitely have an onus to put a greater energy into this.

I also remind colleagues that the secretariat is joint. We jointly consider the agendas for meetings. Lots of that happens with the four nations to support the structures, which is also vital.

Dr Andrew Goodall: I do not need to add anything. Thank you.

Lord Falconer of Thoroton: Those were helpful answers. Thank you.

The Chair: We have come to the end of our questions. You have expressed your views clearly and concisely. That is helpful to the committee. We desire that more than we get it. Thank you. What you said had a richness and things for us to reflect on. We appreciate that you have provided this evidence. Goodbye.

Rebecca Evans MS: Thank you very much

Dr Andrew Goodall: Diolch yn fawr. Thank you.