



T: 0300 244 4000
E: scottish.ministers@gov.scot

Rt Hon Baroness Taylor of Bolton
Chair
Select Committee on the Constitution
House of Lords
London
SW1A 0PW

4 November 2021

Dear Baroness Taylor

Thank you for your letter of 31 August to the First Minister, Deputy First Minister, Lorna Slater and Patrick Harvie (as co-leaders of the Scottish Green Party) on the Sewel Convention.

The Sewel Convention is a crucial element of the devolution settlements. The Convention ensures that the devolved governments and legislatures can exercise their responsibilities in line with their democratic mandates, and that these responsibilities cannot be changed without their consent. Without proper respect for the Sewel Convention, there can be no certainty about the place or operation of devolved institutions within the UK's governance, for as long as the Parliament at Westminster claims unlimited sovereignty.

As your Committee is aware, for much of the history of devolution the Sewel Convention has operated as intended. However, the current UK Government, under the present Prime Minister and his immediate predecessor, has shown the frailties of the Convention under current constitutional arrangements, including the ineffectiveness of the statutory provision made in the Scotland Act 2016. In 2018, for the first time since the devolution, the UK Government disregarded the refusal of consent by the Scottish Parliament for a piece of legislation, the European Union (Withdrawal) Bill, which required consent under the Convention. The UK Government has subsequently ignored the Scottish Parliament's refusal of consent for other legislation, notably the UK Internal Market Act 2020.

Against this background, the agreement concluded between the Scottish Government and the Scottish Green Party committed to protect and enhance the powers and responsibilities of the Scottish Government and Parliament, securing their ability to make decisions in the best interests of Scotland. Specifically, in the Shared Policy Programme we agreed to press for the Sewel Convention to be strengthened and legally defined, and for the UK Government to respect the legislative consent decisions of the Scottish Parliament.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot



The Scottish Government has long recognised that the Sewel Convention requires greater protection to ensure its effectiveness. In 2015 the Scottish Government recommended amendments to the then Scotland Bill that would have provided a proper statutory footing for the Sewel Convention, as recommended by the Smith Commission, by setting out the requirements of the convention in full in the Scotland Act 2016¹. These recommendations would also have strengthened intergovernmental working by ensuring the processes in Devolution Guidance Note 10² are followed.

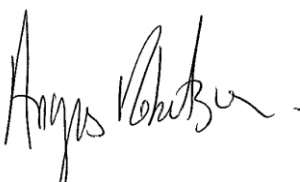
Following the breach of the Sewel Convention by the UK Government on the EU (Withdrawal) Act 2018, the Scottish Government again made proposals to the UK Government³ to strengthen its operation of the Convention, and address the severe damage done to its credibility in the eyes of the Scottish Parliament, including:

- strengthening of processes for determining the applicability of the Sewel Convention to particular Westminster legislation.
- a commitment by the UK Government to respect the views of the Scottish Parliament when consent is required.
- introduction of robust procedures to protect the interest of the Scottish Parliament and enforce the convention; including strengthening the statutory protection in the Scotland Act 2016, and procedures for resolving disputes on the scope of reservations and the applicability of the Convention.

The First Minister of Wales has also made valuable proposals to strengthen the Convention, as set out in his evidence to your Committee on 14 July. However, it is important to recognise that the claim of unlimited sovereignty by the Parliament at Westminster makes it virtually impossible to guarantee the Sewel Convention, or any other aspect of the devolved settlement, or indeed the wider UK constitution.

The Scottish Government will now develop further our previous proposals to meet the commitment in the Shared Policy Programme. We will also be looking to work with other devolved governments. I would also hope the UK Government would engage in discussions to address the serious concerns about the future of the Convention shared by many. We will also be very interested in the views of your Committee in these matters and are ready to assist further with your inquiry in any way we can.

I am copying this letter to the First Minister and Deputy First Minister and to Lorna Slater and Patrick Harvie. I am also copying it to the First Minister of Wales and Mick Antoniw MS; the First Minister and deputy First Minister of Northern Ireland; Rt Hon Michael Gove MP and Rt Hon Steve Barclay MP; and Clare Adamson MSP.

Yours age, 

ANGUS ROBERTSON

¹ See page 26: [Deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities.dot \(parliament.scot\)](https://www.parliament.scot/Assets/publishing/service/gov.uk/government/uploads/system/uploads/attachment_data/file/60985/post-devolution-primary-scotland.pdf)

² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/60985/post-devolution-primary-scotland.pdf

³ [Strengthening the Sewel Convention: letter from Michael Russell to David Lidington - gov.scot \(www.gov.scot\)](https://www.gov.scot/Assets/publishing/service/gov.uk/government/uploads/system/uploads/attachment_data/file/60985/post-devolution-primary-scotland.pdf)

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

The Scottish Parliament, Edinburgh EH99 1SP
www.gov.scot



INVESTORS
IN PEOPLE

Accredited
Until 2020

