

Welsh Parliament/Senedd Cymru – Written Evidence (GOU0008)

1. One-page summary

1.1. Intergovernmental relations since 2022

- The Committee is **concerned at the lack of meetings of the Prime Minister and Heads of Devolved Governments Council.**
- The Dunlop Review has not yet led to the kind of step change in intergovernmental relations that we would like to have seen.
- **The UK and Welsh governments should ensure a sufficient and more consistent level of detail is reported following intergovernmental meetings.**
- **The Committee would welcome further clarity and transparency on the use of the dispute resolution mechanism.**
- **The governments of the UK should set out an agreed position for how new bodies to manage UK-EU matters post-Brexit will work together.**

1.2. Consultation by the UK Government with the devolved administrations

- **Due to the increased number of UK Bills making provision in devolved areas, the Committee has identified an emerging democratic deficit, with changes being made to Welsh primary legislation without full scrutiny from the Senedd.**
- **We believe that there should be a clear engagement timetable followed for all UK Bills that include devolved provision. This should be set out in the relevant Devolution Guidance Note.**
- **We are concerned by the uncertainty and lack of clarity created by the informal approach regarding legislative consent for Retained EU Law.**

1.3. Respect for the Sewel Convention

- It is imperative that the UK Government and UK Parliament observe constitutional norms in relation to legislating in clearly devolved areas.
- **Reform of the Sewel Convention must include a greater say for the Senedd throughout the consent process.**

2. Background

1. The Senedd's Legislation, Justice and Constitution Committee's remit includes the consideration of constitutional matters, intergovernmental relations and legislative consent memoranda (LCM) laid by the Welsh Government.

2. Our submission is divided into three main sections based on the Inquiry's areas of focus: intergovernmental relations since 2022, consultation by the UK Government with the devolved administrations, and respect for the Sewel Convention.

3. Intergovernmental relations since 2022

3. Whilst there was an increase in meetings under the reformed IGR structures in 2023 compared to 2022, and some new groups met for the first time, formal structures have yet to be established for some policy areas, including health and social care. The Welsh Government reported that two Interministerial Group (IMG) meetings on health and social care were arranged, but were cancelled due to the availability of UK Government Ministers.¹

4. The Committee notes that Welsh Ministers have expressed frustration at the lack of attendance by relevant Secretaries of State at IMG meetings.² In the example referenced, the Minister informed the meeting that the Welsh Government would not attend the next IMG meeting if the Secretary of State did not attend.

5. The regularity of meetings vary; the Environment, Food and Rural Affairs IMG met five times in 2023, whilst the Business and Industry IMG met once.³ Former First Minister, Mark Drakeford MS, told us in September 2023 that the reformed structures have not yet led to a "reliable, regular rhythm" to relations.⁴

6. Whilst some progress has been made at the operational level of engagement, it is concerning that the top level of the reformed structures, the Prime Minister and Heads of Devolved Governments Council, has still not met since its inaugural meeting in November 2022.⁵ The former First Minister commented on this in Plenary in January 2024, noting that the Council:

¹ Welsh Government, [Report on intergovernmental relations covering the period 2021 to 2023](#), July 2023

² [Letter from the Minister for Rural Affairs and North Wales, and Trefnydd to the Chair of the LJC Committee](#), April 2023

³ UK Government, [Intergovernmental Relations](#).

⁴ Mark Drakeford MS, [Scrutiny session with the First Minister](#), September 2023

⁵ UK Government, [Intergovernmental Relations](#).

*...didn't meet once in the whole of 2023, despite the many challenges we know that we were facing—the cost of living and other crises. Not once did that council meet.*⁶

7. Considering that the Council was intended to be “responsible for overseeing IGR in the UK”, **the lack of meetings is of concern to the Committee.**⁷

8. As we concluded in our evidence to the Public Administration and Constitutional Affairs Committee (PACAC) inquiry on Devolution Capability in Whitehall, the publication of the Dunlop Review into UK Government Union Capability marked a positive step towards improving IGR.⁸ **However, our assessment is that this has not yet led to the kind of step change that we would like to have seen, not least from our perspective as a parliamentary Committee seeking to scrutinise how governments work together, particularly on legislative matters.**⁹

9. While there may have been improvements in individual Whitehall departments, **collectively we do not believe that there has been enough progress overall to improve the knowledge and understanding of devolution across Whitehall, and both aspects remain inconsistent.**

10. Furthermore, as noted in our evidence to PACAC, the Devolution Guidance Notes (DGNs) have not been updated to reflect the new IGR structures or developments around Common Frameworks.

3.1. Scrutinising intergovernmental relations

11. There are challenges for the Senedd and the Committee in scrutinising the Welsh Government’s IGR. The information being provided to legislatures after meetings is inconsistent in terms of quality and timeliness. Communiqués from meetings can sometimes take months to be published, and the detail of discussion points varies significantly. For example, the UK Government’s central communiqués and Welsh Government statements following meetings of the Net Zero, Energy and Climate Change IMG have been very brief, whilst those of the Environment, Food and Rural Affairs IMG have been more detailed.¹⁰ **Both governments should ensure a sufficient and more consistent level of detail is reported following intergovernmental meetings to enable legislatures to better scrutinise IGR.**

⁶ Mark Drakeford MS, [Plenary](#), January 2024

⁷ UK Government, [The Review of Intergovernmental Relations](#), January 2022

⁸ UK Government, [The Dunlop Review into UK Government Union capability](#), March 2021

⁹ LJC Committee, [Submission to Public Administration and Constitutional Affairs Committee](#), September 2023

¹⁰ UK Government, [Intergovernmental Relations](#); Welsh Government, [Written Statement: 15 November 2023 Net Zero, Energy and Climate Change Inter-Ministerial Group](#), December 2023; Welsh Government, [Written Statement: Attendance at Inter-Governmental meeting on 13 September 2023](#), September 2023.

12. The Welsh Government publishes periodic reports on IGR, in line with an Inter-Institutional Relations Agreement with the Senedd.¹¹ The UK Government also publishes quarterly and annual reports on IGR, however, these can often be too focused on the UK Government's perspective and can sometimes conflate formal and informal intergovernmental meetings.¹²

3.2. Dispute Resolution Process

13. The Committee remains unclear about whether the dispute resolution process outlined in the new IGR structures has been fully tested and in what circumstances it may be used. Baroness Penn, Parliamentary Under-Secretary of State, Department for Levelling Up, Housing & Communities, has said that the process was engaged in a dispute between the UK Government and the Northern Ireland Executive in relation to pension payments to persons who sustained injuries because of Troubles-related incidents.¹³ However, the Welsh Government's Counsel General, Mick Antoniw MS, told us that this dispute "did not go through the entire process".¹⁴

14. Despite several disagreements relating to legislative consent, the Welsh Government has yet to trigger the new dispute resolution process. The Counsel General suggested that the Welsh Government would be more likely to use the process to raise a dispute over breaching of the Sewel Convention more generally, rather than on specific pieces of legislation. He told the Committee that:

...It is not the case that the dispute processes in the IGR Review cannot be used in relation to individual UK Bills; however, the associated timetabling would be likely be complex. It can sometimes be very late in a Bill's passage before it becomes clear that agreement at intergovernmental level cannot be reached, and whilst the dispute processes can run quickly, they do not override Parliament's ability to pursue and timetable legislative business.¹⁵

15. The Committee would welcome further clarity and transparency on the use of the dispute resolution mechanism, including the notification of disputes being raised and the publication of progress updates.

¹¹ Welsh Government, [Inter-Institutional relations agreement between the Senedd and the Welsh Government: report on intergovernmental relations covering the period 2021 to 2023](#), July 2023

¹² UK Government, [Quarterly reports on intergovernmental relations](#); UK Government, [Intergovernmental Relations](#)

¹³ Baroness Penn, [Debate: Intergovernmental Relations Within the United Kingdom](#), January 2024

¹⁴ Mick Antoniw MS, [LJC Committee](#), February 2024

¹⁵ [Letter from the Counsel General and Minister for the Constitution to the Chair of the LJC Committee](#), September 2023

16. The Committee is concerned that the independent secretariat, which will facilitate disputes amongst other matters, has taken a significant amount of time to be set up. Baroness Penn has said that full-time staff are in place,¹⁶ but the Counsel General confirmed that the Welsh Government has yet to make all its appointments.¹⁷

3.3. Interaction with Common Frameworks and other means of engagement

17. Common Frameworks have emerged as a key mechanism for the development and coordination of policy and legislation across governments in the UK post-Brexit. The Welsh Government's Counsel General said that the frameworks have the potential to be "enduring, flexible and increasingly significant governance mechanisms for policy areas previously governed by EU law".¹⁸ He also suggested that the reestablishment of the Northern Ireland Executive should enable further progress to be made on the establishment of frameworks.¹⁹

18. In our report on UK-EU Governance, we concluded that **the governments of the UK should set out an agreed position for how new bodies to manage UK-EU matters post-Brexit will interact and work together, including Common Frameworks and the United Kingdom Internal Market Act 2020.**²⁰

19. The Committee is also interested in how new intergovernmental bodies announced in the Safeguarding the Union command paper, such as the East-West Council, will interact with existing intergovernmental structures and ensure the voices of devolved governments and legislatures are heard.²¹

4. Consultation by the UK Government with the devolved administrations

20. When a Bill before the UK Parliament seeks to legislate in a devolved area, the Welsh Government will lay a legislative consent memorandum (LCM), seeking the consent of the Senedd for the UK Parliament to legislate in this way. The Committee has identified three broad categories of LCM based on our scrutiny:

¹⁶ Baroness Penn, **Debate: Intergovernmental Relations Within the United Kingdom**, January 2024

¹⁷ **Letter from the Counsel General to the Chair of the LJC Committee**, March 2024

¹⁸ **Letter from the Counsel General and Minister for the Constitution**, June 2023

¹⁹ Mick Antoniw MS, **Legislation, Justice and Constitution Committee**, February 2024

²⁰ LJC Committee, **Inquiry into UK-EU governance**, November 2023

²¹ UK Government, **Safeguarding the Union**, January 2024

- instances where there may be sufficient and appropriate reasons for the UK Government to be permitted by the Senedd to legislate in devolved areas;
- instances where the current UK Government is, and has been, seeking to legislate in devolved areas against the wishes of the Welsh Government;
- memoranda that reflect the Welsh Government's approach to allow the UK Government to take forward legislation on its behalf, where we believe the Senedd should be legislating.²²

21. During our consideration of LCMs, significant themes and issues have arisen. These include:

- the extent to which the UK Government is seeking to legislate in devolved areas;
- the inclusion of concurrent powers for Welsh and UK Ministers; and
- a reliance on non-binding intergovernmental agreements rather than securing amendments to the face of the UK Bills.

22. Instances of the UK Government legislating in breach of the Sewel Convention are considered in Section 5 of this evidence.

4.1. Use of UK Bills to legislate in devolved areas

23. Our annual reports for 2021/22 and 2022/23 highlighted the significant increase during the Sixth Senedd of UK Bills including provisions within devolved competence, and set out our concerns that a democratic deficit has been emerging as a result.²³

24. This is not just a case of the UK Government unilaterally deciding to legislate in this way. The Welsh Government has used UK Bills to legislate in devolved areas. For example, the Welsh Government worked with the UK Government to make provision for Wales in the Procurement Act 2023. The Welsh Government's then Minister for Finance and Local Government, Rebecca Evans MS, suggested that there would be sufficient opportunities for scrutiny provided by the legislative consent process.²⁴ The Committee argued that legislating in parallel through a Senedd Bill would have allowed the Senedd to undertake its full legislative scrutiny role.²⁵

25. There are also examples of the Welsh Government recommending the Senedd's consent to the use of UK Bills to amend primary legislation passed by

²² LJC Committee, [Annual Report 2021/22](#), October 2022

²³ LJC Committee, [Annual Report 2021/22](#), October 2022; LJC Committee, [Annual Report 2022/23](#), November 2023

²⁴ LJC Committee, [The Welsh Government's LCM on the Procurement Bill](#). October 2022

²⁵ Ibid.

the Senedd. The LCM for the Renters (Reform) Bill, for example, notes that the Bill proposes amendments to the Renting Homes (Fees etc) (Wales) Act 2019 and the Renting Homes (Wales) Act 2016.²⁶ The Welsh Government recommends approving the provisions within the Bill, despite these being Acts of the Senedd, which were relatively recently considered by the legislature. As a consequence of the Welsh Government's approach, the Committee took evidence from the relevant Minister on 11 March 2024 and will publish its report in due course.²⁷

26. Both of the above examples demonstrate an emerging democratic deficit identified by the Committee with changes being made to Welsh primary legislation without full scrutiny from the Senedd.

27. A binary decision – yes or no – to the inclusion of devolved provisions in a UK Bill is not a substitute for line-by-line scrutiny, the ability to table amendments, hear evidence and to seek improvements to Bills introduced to the Senedd.

28. It can often be challenging for our Committee and the Senedd to understand in detail the engagement between the Welsh and UK governments when it comes to UK Bills legislating in devolved areas. To help with scrutiny of the Welsh Government's legislative actions, our Committee has made it clear to **the Welsh Government that it should publicise clearly when engagement has taken place regarding using a UK Bill to make provision in devolved areas.**²⁸

4.1.1. Late engagement and amendments to Bills

29. Welsh Ministers have also reported receiving late sight of a Bill, and the late tabling of amendments can also lead to insufficient scrutiny time for the Committee. Such issues were flagged by the Committee in relation to the Levelling-up and Regeneration Act.²⁹

30. As noted in our evidence to PACAC, there have been instances where the UK Government's engagement with the Welsh Government has been very late in circumstances where provision in a devolved area is to be included in a UK Bill. It remains unclear to us whether Part 2 of the Devolution Guidance Note (DGN) which covers the inclusion of devolved provision in a UK Parliament Bill is being

²⁶ Welsh Government, **LCM: Renters (Reform) Bill**, January 2024

²⁷ LJC Committee, **Legislative Consent Memorandum on the Renters (Reform) Bill: Evidence Session**, March 2024

²⁸ LJC Committee, **The Welsh Government's Legislative Consent Memoranda on the Procurement Bill**, October 2022; LJC Committee, **Scrutiny session with the Counsel General and Minister for the Constitution**, July 2023

²⁹ LJC Committee, **The Welsh Government's Supplementary LCM (Memorandum No. 5) on the Levelling-up and Regeneration Bill**, October 2023

followed fully.³⁰ **We believe therefore that there would be merit in considering the extent to which this particular DGN is being used and how effective it has been.**

31. We also believe that there should be a clear engagement timetable published and followed for all UK Bills that include devolved provision. In our view such requirements should be covered and set out in revisions to the DGN. This would provide a more transparent process so that legislatures, governments and stakeholders know what deadlines are being worked to.

32. The guidance in the DGN could for example:

- **include agreed timetables between governments on “pre-legislative engagement” before a Bill is introduced;**
- **if appropriate, include deadlines for decisions on consent by the Senedd, including for amendments tabled and passed after a consent decision has been made;**
- **require statements to be made by the UK Government where it proposes to act against the wishes of the Senedd;**
- **require the UK Government to provide information about amendments to Bills that make provision in devolved areas, particularly where devolved provision was not originally included;**
- **explain the dispute/arbitration mechanism on whether consent is required in the first instance, given that this can often be a matter of dispute between governments.**

33. We explore some of these matters further in Section 5 on the Sewel Convention.

4.2. Retained EU Law

34. The Retained EU Law (Revocation and Reform) Act 2023 means that the UK Government and the UK Parliament can make changes to Assimilated EU Law in devolved areas without obtaining consent from the Welsh Ministers or the Senedd.

35. However, the Welsh Government has notified the Committee of three situations where UK Ministers have sought, and been granted, consent from Welsh Ministers to make changes to retained EU law (REUL). Welsh Ministers have also written to outline the conversations being had with UK Ministers regarding legislative consent for REUL.³¹ Correspondence from the Counsel General noted:

³⁰ **Devolution Guidance Note: Parliamentary and Assembly Primary Legislation Affecting Wales**, Last updated 20 April 2018

No mechanism has been agreed between UK Government and the Devolved Governments about how consent should be obtained in relation to UK Ministers making regulations using powers in the REUL Act in an area of devolved competence in Wales.

36. Whilst we welcome the action taken by some UK Ministers to seek consent, we are concerned by the uncertainty and lack of clarity created by this informal approach. The Committee has written to the UK Government and Welsh Government on this.³² It remains unclear why, given the practice to date, a formal agreement has not been reached.

5. Respect for the Sewel Convention

37. The Senedd has voted to withhold consent from all or part of ten UK Bills that have since gone on to receive Royal Assent in the Sixth Senedd.³³

38. The Welsh Government's Counsel General has recently argued that the passage of the Energy Bill is a further breach of the Sewel Convention that goes beyond matters relating to the UK's departure from the European Union and constitutional matters, stating that its passage:

...is just a matter where the UK Government has turned around and said, 'Well, we don't agree. We're going to do it anyway.'³⁴

39. The Committee believes that legislating in this way without the consent of the Senedd goes beyond the 'not normally' element of the Sewel Convention and sets a concerning precedent. It is imperative that the UK Government and UK Parliament observe constitutional norms in relation to legislating in areas clearly devolved to the Senedd.

40. While the Welsh Government has noted examples of constructive working with UK Ministers, it recently stated that the "repeated breaches" of the Convention have reinforced arguments in favour of reform.³⁵ It argues that a

³¹ [Letter from the Minister for Rural Affairs and North Wales, and Trefnydd to the Chair of the LJC Committee](#), July 2023; [Letter from the Minister for Climate Change to the Chair of the LJC Committee](#), September 2023; [Letter from the Counsel General to the Chair of the LJC Committee](#), October 2023

³² [Letter to the Counsel General](#), November 2023

³³ The Senedd did not agree to consent to the Northern Ireland Protocol Bill but the Bill was **not pursued** any further as a result of the Windsor Framework.

³⁴ Mick Antoniw MS, **Plenary**, September 2023

³⁵ It should be noted that on this Bill the Committee's view was the Welsh Government should have introduced its own Bill to Senedd Cymru, and legislated in parallel, rather than use a UK Bill passing through the UK Parliament; LJC Committee, [The Welsh Government's LCM on the Non-Domestic Rating Bill](#), June 2023; Welsh Government, [The Welsh Government's response to the final report of The Independent Commission on the Constitutional Future of Wales](#), March 2024

legal requirement to seek consent should be introduced and protected from repeal or amendment.

41. Evidence provided by our predecessor Committee in the Fifth Senedd to the House of Commons Procedure Committee stated:

...The UK Parliament should clearly set out its responsibilities and understanding as regards the application of Sewel Convention and its practical operation, including the meaning of 'not normally'...

...In our view there must be a more comprehensive and transparent process that includes a mechanism for ensuring that the views of the Senedd (and the Welsh Government) are set out clearly and at known points in the UK Parliament's legislative process. We do not believe that it would be appropriate for this mechanism to rely on the UK Government's interpretation of the views of the Senedd or the Welsh Government.³⁶

42. **The Committee believes these points should be addressed.**

43. As discussed, the Welsh Government appears reluctant to use the new IGR dispute resolution process to resolve specific disputes on individual pieces of legislation due to the complexities of the timetable. As UK legislation could lead to irreconcilable disputes between governments, **we would question how valuable the dispute resolution mechanism is to devolved governments if the legislative timeline does not allow time for it to be used.**

44. It is not always clear to the Committee how aware UK parliamentarians are of the consent decisions taken by the Senedd when voting UK legislation into law. Baroness Drake informed the Committee in March 2023 that the House of Lords business document now gives fuller and more prominent information about when consent is pending or contested and when it has been granted or withheld.³⁷ **This is a positive step forward for improving understanding of Senedd consent decisions.**

45. As stated in our evidence to PACAC, **providing a more robust constitutional footing for the Sewel Convention, built around a clearly defined and universally understood process, would have the potential to improve the understanding of devolution in Whitehall, providing an incentive to ensure it is factored into work planning in UK Government departments and the UK Parliament, throughout the UK legislative process.**³⁸

³⁶ [Letter from the LJC Committee to the Chair of the Procedure Committee](#), March 2021

³⁷ [Letter from Baroness Drake to the Chair of the LJC Committee](#), March 2023

46. In our Annual Report 2022/23, the Committee stated that **reform of the Sewel Convention must include a greater say for the Senedd throughout the consent process.**³⁹ **It cannot be right that negotiations between governments form the key components of a process of making law for Wales in a devolved area, while at the same time limiting the Senedd's ability to influence a legislative process that it would expect to be at the heart of.**

30 April 2024

³⁸ LJC Committee, [Submission to Public Administration and Constitutional Affairs Committee](#), September 2023

³⁹ LJC Committee, [Annual Report 2022/23](#), November 2023