

Inquiry: The procedure of the House of Commons and the territorial constitution

Following our letter to you of 1 October 2020, in which we welcomed your decision to undertake an inquiry about the procedure of the House of Commons and the territorial constitution, we would now like to offer some views based on the work we have undertaken in recent years.

During the Fifth Senedd, we started an inquiry on Wales' Changing Constitution. The operation of the Sewel Convention was the focus for our work. While the inquiry was subsequently curtailed by the outbreak of the Covid 19-pandemic, we have outlined our views and findings in our Fifth Senedd Legacy Report, which will be published on 31 March 2021. Part One of our Legacy Report outlines our overall conclusions, while Part Two highlights some of the evidence received including our correspondence with the Rt Hon Simon Hart MP, the Secretary of State for Wales (which we enclose for information).

It has become apparent that the UK and devolved Governments interpret the Sewel Convention differently. As we say in our Legacy Report, we believe the precise role of parliaments and governments within the consent process lacks clarity. This is perhaps a reflection that the Sewel Convention and its application has not been formalised or developed in substance since Lord Sewel's contribution to a House of Lords debate on the Scotland Bill in July 1998, save for inclusion as a non-justiciable provision within the *Government of Wales Act 2006* (and the *Scotland Act 1998*). It is perhaps not surprising therefore that a Convention based on a single contribution to a parliamentary debate has failed to form a satisfactory, long-term basis for the relationship between the devolved legislatures and the UK Parliament.

We therefore believe that 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'.

We acknowledge the existing arrangements whereby the Clerk of the Senedd writes to the Clerks of the House of Commons and House of Lords notifying them of the outcome of a consent debate in the Senedd, and that this correspondence is added to the relevant Bill webpage and Order papers.

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.

One way of ensuring that the House of Commons takes into account the view of the Senedd could be to introduce a procedure that requires the House to consider Senedd committee reports on legislative consent memoranda for UK Bills in circumstances where the Senedd refuses consent for such Bills. This procedure should equally apply to reports of the other devolved legislatures.

The *United Kingdom Internal Market Act 2020* will have a significant impact on the effectiveness and operation of laws passed by the Senedd. As a result, we believe the 2020 Act may also have an impact on

the future application of the English Votes for English Laws procedure in the House of Commons and the role of Welsh MPs. The impact of the 2020 Act is likely to be considered in the Sixth Senedd and our successor Committee may wish to provide further comments.

Mick Antoniw MS

Chair of the Legislation, Justice and Constitution Committee

30 March 2021