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Llywodraeth Cymru
Welsh Government

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Members of the House of Lords

17 January 2023

Welsh Government Briefing on UK Primary Legislation

Dear Members of the House of Lords

On 9 January I met with members of the House of Lords to provide a briefing session on Welsh Government's position on the UK Legislative Programme and its impact in Wales. I am very grateful to those Members who were able to attend and contribute to that session, and hope that they, and others who were unable to join the meeting, will find the information attached to this letter helpful.

The importance of the House of Lords in safeguarding our constitution and the integrity of the devolution settlement cannot be understated. I remain deeply grateful in this context for the efforts of Members in seeking to ensure that UK Government legislation fully respects devolution and the Sewel Convention. I welcome further engagement with Members on Wales' interests in the UK Legislative Programme and would be very happy to attend future sessions with you.

I am copying this letter to the First Minister of Wales, and to the Llywydd and the Chair of Legislation, Justice and Constitution Committee of the Senedd.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Overview of Welsh Government positions on UK Primary Legislation

1. **The UK Government's legislative programme is significant for the Welsh Government and for Wales:**
 - a. Bills on non-devolved matters often apply to Wales and in many cases have a significant impact on our economy or the wellbeing of people in Wales.
 - b. Bills relating to devolved matters necessarily impact very directly in Wales and, as a matter of constitutional principle, also require the consent of the Senedd in line with the Sewel Convention (that is, that the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Senedd).
2. The Welsh Government have serious concerns about UK Government's adherence to principles of devolution, compliance with the Sewel Convention, and with effective inter-governmental working.
3. **Effective engagement** by UK Government with Welsh Government is one of the biggest obstacles to the smooth operation of the current legislative consent process. Whilst there have been some positive experiences, the position generally is one of poor engagement. This places significant constraints on our ability to consider legislation in a timely manner, as well as the ability of the Senedd to scrutinise legislation. Whilst there have been some improvements more recently by UK Government, the lack of engagement prior to the introduction of the Minimum Service Levels Bill is an unfortunately familiar example.
4. The number of occasions where the UK Government did not respect the **Sewel Convention** in recent Parliamentary sessions is unacceptable and completely unjustified by circumstances. We believe that the Sewel Convention needs codification. At the very least, UK Government should set out the decision-making process they go through when they come to a decision to that a situation is 'not normal'.
5. **In this current session, several specific Bills give cause for concern.** The Senedd has refused consent to the Northern Ireland Protocol Bill. Whilst the Senedd has not yet voted and these are ongoing issues, Welsh Government has also currently recommended consent be withheld in relation to the Trade (Australia and New Zealand) Bill, the Genetic Technology (Precision Breeding) Bill, the Levelling-up and Regeneration Bill and the Retained EU Law Bill. Our detailed position in relation to each of those Bills can be found in the relevant legislative consent memoranda. We have not yet laid a memorandum for the Bill of Rights but have similarly set out our public opposition to the Bill.
6. At the briefing session on 9 January, I set out an overview of my concerns relating to **the Retained EU Law Bill** - a Bill which I'm aware Members share similar concerns on. Those issues include the arbitrary 'sunset' date for legislation, the lack of powers for the Welsh Ministers to extend that sunset date, the harm presented by the 'regulatory burden' restrictions, and the use of concurrent powers.

- **Concurrent powers** – that is, powers which confer the ability to make secondary legislation on both Welsh Ministers and UK Ministers – should not be created in devolved areas. They do not reflect, or respect devolution – they give UK Government powers to act in areas which Parliament has determined are devolved. As a result, they fundamentally change the devolution settlement and the Senedd’s legislative competence. However, as seen in the Retained EU Law Bill amongst other Bills, the UK Government have demonstrated a worrying trend in their reliance on concurrent powers. In limited circumstances, concurrent powers might be acceptable; but that is only the case if the ability of a UK Minister to exercise the power in Wales is subject to the consent of the Welsh Ministers.

Access to Welsh Government and Senedd detailed positions on UK Bills

7. The Senedd’s [website](#) hosts a ‘legislative consent’ page⁽¹⁾ containing the Welsh Government’s legislative consent memoranda, and Senedd Committee reports relating to UK Bills. Our legislative consent memoranda include commentary on whether Bills make appropriate provision for Wales, and as such provide detailed information on areas of concern and engagement between Welsh Government and UK Government. Members may find this information useful when seeking to take part in debates, raising questions and scrutinising the impact of UK Government Bills on Wales.

⁽¹⁾ <https://senedd.wales/senedd-business/legislative-consent/>