

Chloe Smith MP
Parliamentary Secretary (Minister for the Constitution)
Cabinet Office

26 April 2018

Dear Minister

Understanding of devolution

On 2 February 2018 we published our report **UK governance post-Brexit**. A summary report of the evidence will be published shortly.

Our report made nine recommendations; the first four recommendations concern strengthening the existing Joint Ministerial Committee (JMC) followed by a more fundamental reform to create a decision-making UK Council with an independent dispute resolution, arbitration and adjudication mechanism.

Our report also considered the understanding of devolution by civil servants in Whitehall and indicated that we would write to the UK Government to seek clarification on how devolution is supported across Whitehall.

Many witnesses to our inquiry highlighted the poor knowledge and understanding of devolution that exists in parts of Whitehall, despite some laudable efforts to remedy the situation by successive administrations.

One of the drivers for our inquiry was our experience of, and a desire to learn lessons from, the UK Government's handling of the Wales Bill (our summary report will identify some of the evidence we heard on this issue). We had become concerned that Whitehall departments were able to exert too much influence over the architecture of devolution, despite partial and inconsistent understanding and knowledge. In our view this was the root cause of the problems that surrounded the draft Wales Bill and the Bill itself, which



meant that our extensive work on this legislation was largely focused on highlighting problems and identifying potential solutions, rather than contributing positively as part of a constructive constitutional dialogue.

We recognise that training is made available to civil servants on devolution. However it was surprising to hear in our evidence sessions that there is some way to go before there is a clear understanding within the civil service of the way in which powers are now held in the different nations of the UK. As if to emphasise this point, we were told that training on the new reserved powers model under the *Wales Act 2017* would be rolled out across the Civil Service prior to the Act's introduction. Given the central role of Whitehall departments in shaping the Act, these comments added to our sense that many Whitehall departments may have been making decisions on reserving powers without a clear understanding and knowledge of devolution, or the implications of the decisions that they were making.

Regrettably, the legislative outcome is that in our view the *Wales Act 2017* is an unnecessarily complex and restrictive settlement.

The lack of understanding about devolution was highlighted to us as recently as this week with the publication of a supplementary memorandum concerning the delegated powers in the European Union (Withdrawal) Bill relating to amendments tabled by the UK Government on 23 April. Paragraph 28 of the memorandum concerning the sifting of statutory instruments made under the Schedule 2 powers by the Welsh Ministers appears to confuse the roles of the National Assembly and Welsh Government as legislature and executive, stating:

“The UK Government has consulted the devolved administrations on where additional scrutiny requirements applied to UK ministers in the Bill should be extended to the corresponding powers for devolved authorities. The Welsh Government, having sought the views of the National Assembly for Wales, has requested the sifting committee procedure should apply where the Welsh Ministers lay negative instruments under their Schedule 2 powers.”

This text appeared despite the UK Government receiving notification of the National Assembly's formal position on these issues in a letter from the Llywydd on 22 March.



In light of our concerns, I would welcome clarification on the following points:

- The new devolution settlement came into force on 1 April. Are you satisfied that all civil service departments are fully conversant with the new reserved powers model in the *Wales Act 2017*?
- Recommendation 4 of our report included a call for Devolution Guidance Notes to be subject to a thorough overhaul and public consultation. In the meantime, it would be helpful to know the status of any revised Devolution Guidance Note that accompanies the new reserved powers model. The existing Devolution Guidance Note 9 was intended to help Whitehall departments have an understanding of the conferred powers model so that UK Government Bills were developed with devolution in mind. What guidance has been available to Whitehall departments over the last few months in respect of developing Bills on the basis that devolution in Wales would be moving to a reserved powers model?

Our observations not only influenced our recommendations advocating reform of the JMC, but also suggest that the civil service machinery that supports UK governance needs to adapt and change to the new UK constitutional position that will emerge as we leave the European Union.

In our report we said that the internal Civil Service apparatus supporting devolution as described to us appears complex and muddled. In order to help improve our understanding of how the civil service machinery works, it would be helpful to have your observations on the following:

- The staffing structure does not appear to mirror the political structure, with both Wales and Scotland having Secretaries of State but not Permanent Secretaries, while Northern Ireland has both. Why is this the case?
- What are your observations on our view that it is problematic for the most senior official in the Wales Office with the most direct contact with the Secretary of State for Wales and potentially knowledge and understanding of devolution, not to be involved in important discussions at Permanent Secretary level that may impact on Wales?
- Whether it is appropriate for the Head of UK Governance Group (with responsibilities for Wales and Scotland) and Permanent Secretary at the Department for Exiting the EU to be the person to whom the Head of the Wales Office is ultimately accountable? Is there a danger of blurring the lines of accountability and how are conflicts of interest resolved?



Another theme that emerged in our work and which is relevant to understanding of governance in the UK is that the Civil Service supports the UK Government in its role as the executive for the UK and, in devolved areas, England. We would welcome your observations on this anomaly and what plans the UK Government has to address it post-Brexit.

I am copying this letter to Rt Hon Alun Cairns MP, the Secretary of State for Wales and Philip Rycroft CB, Head of UK Governance Group and Permanent Secretary at the Department for Exiting the European Union.

I look forward to receiving your response.

Yours sincerely

A handwritten signature in black ink that reads "Mick Antoniw". The signature is written in a cursive style with a horizontal line underneath the name.

Mick Antoniw

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

