

Procedure Committee
House of Commons
London
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Our ref: EJ/HoC

04 January 2021

Dear Chair,

Call for Evidence: the procedure of the House of Commons and the territorial constitution

I write in my capacity as the Llywydd (Presiding Officer) of the Welsh Parliament, commonly known as the Senedd, in response to the Committee's invitation to comment on the ways in which the procedures of the House of Commons engage with the United Kingdom's territorial constitution.

I have focussed on your requests for evidence on:


- The procedures for notification to the House of decisions of the devolved legislatures relevant to matters under consideration in the House, including decisions on legislative consent motions
- The procedural steps required to facilitate greater joint working between committees of each of the UK's devolved legislatures and committees of the House, for purposes including shared scrutiny of intergovernmental working on policy areas of common interest and effective scrutiny of common frameworks.

Notification of devolved legislatures' decisions



The officials of our respective Parliaments operate on the basis of a shared understanding of the arrangements for informing the UK Parliament of legislative consent decisions. Following a decision by the Senedd on whether or not to agree a legislative consent motion the Clerk of the Senedd will send - via correspondence - notification of the Senedd's decision to her counterparts at the UK Parliament, along with any associated memoranda received



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from the Welsh Government. Such letters and memoranda are published on the relevant Bill's page of the UK Parliament website, and may also be 'tagged' on the Order Paper in the Commons. Information about all legislative consent decisions is thereby available on the UK Parliament's website, including any decision of a legislature where consent is not granted.

The Committee may wish to consider the merits of introducing a procedure to formally recognise whether or not devolved legislatures have given their consent for the UK Parliament to legislate on devolved matters.

As you will be aware from previous correspondence, the Senedd's Legislation, Justice and the Constitution Committee is currently giving consideration to how the operation of the Sewel Convention might be reformed.¹ This work is expected to conclude early in the New Year, which may lead to specific recommendations in this regard.

The House of Lords Procedure and Privileges Committee also recommended in a report published on 13 October 2020 and agreed by the House of Lords on 20 October 2020 that:

"when legislative consent has been refused, or not yet granted by the time of third reading, a minister should orally draw it to the attention of the House before third reading commences. In doing this the Minister should set out the efforts that were made to secure consent and the reasons for the disagreement."²

Such a procedure, particularly if adopted by both Houses of the UK Parliament, would provide greater transparency regarding whether or not the Senedd has provided legislative consent and how UK Ministers have taken such decisions into account. It could go some way towards ensuring the views of the devolved legislatures are respected throughout the legislative process. Such a procedure should apply to all legislative consent decisions taken by the Senedd, including Legislative Consent Motions, Statutory Instrument Consent Motions, and Consent Decision Motions (further detail on the circumstances in which such motions take place is set out in an annex to this correspondence).

The procedural steps required to facilitate greater joint working between committees of each of the UK's devolved legislatures and committees of the House

Inter-parliamentary scrutiny can be an effective tool in holding governments to account, and I welcome the Committee's interest in examining the procedural steps by which greater joint working could be better facilitated.

There are also a wide range of mechanisms by which our parliaments can work together. Committees can collaborate through correspondence, sharing of reports, dialogue between their officials, sharing of good practice, informal meetings etc. Officials supporting committees of the UK and devolved parliaments are already working together on an

¹ Senedd, Legislation, Justice and the Constitution Committee, Inquiry into the procedure of the House of Commons and the territorial constitution, 1 October 2020.

² House of Lords, Procedure and Privileges Committee, 4th Report of Session 2019–21 <https://publications.parliament.uk/pa/ld5801/ldselect/ldproced/140/140.pdf>, paragraph 43.



informal basis to share information in support of committee scrutiny of Common Frameworks and other Brexit related work. This has been a positive example of inter-parliamentary working at official level and could be a model for inter-parliamentary engagement in other areas, particularly in relation to legislation. For example, ongoing, proactive dialogue around legislation, including amendments to such, could facilitate Senedd officials in planning and maximising the time available to Senedd Members to consider Legislative Consent Memoranda and Statutory Instrument Consent Memoranda as well as influence consideration of the related legislation at Westminster.

The Inter-parliamentary Forum on Brexit, postponed due to the COVID-19 pandemic, offered a model for joint working. Officials supporting the work of the forum have continued to meet in the absence of formal Member-level engagement. Members of the Senedd's External Affairs and Additional Legislation Committee and of the Legislation Justice and the Constitution Committees have expressed a strong desire to continue to work with colleagues in other legislatures on matters related to Brexit and in particular, on issues related to the future of intergovernmental relations and the future constitution of the UK. Accordingly, Senedd committees are continuing to pursue bilateral relations.

Concurrent meetings

One procedural step the Committee may wish to consider relates to concurrent meetings. The Senedd's Standing Orders currently provide that its "Committees may meet concurrently with any committee or joint committee of any legislature in the UK."³ The House of Commons Standing Orders provide that "The Welsh Affairs Committee may invite members of any specified committee of the National Assembly for Wales (sic)⁴ to attend and participate in its proceedings (but not to vote)."⁵

These provisions have enabled Senedd Committees to meet concurrently with the Welsh Affairs Committee, including the Senedd's Constitutional and Legislative Affairs Committee meeting concurrently with the Welsh Affairs Committee in 2015 for scrutiny of the Draft Wales Bill. The Welsh Affairs Committee Chair subsequently wrote to the Speaker of the House of Commons seeking a change to its Standing Orders to allow all House of Commons committees to meet jointly with committees of the other UK legislatures. This reflected that the Welsh Affairs Committee is not the only House of Commons committee

³ Senedd, Standing Orders, 17.54

⁴ In May 2020, the National Assembly for Wales formally changed its name to the Welsh Parliament, commonly known as the Senedd.

⁵ House of Commons, Standing Orders for Public Business, 5 November 2019, 137A(3)



whose work overlaps with that of Senedd committees.⁶ However, to date, the House of Commons' standing order 137A(1b) is limited to providing that:

"Any select committee or sub-committee with power to send for persons, papers and records shall have power— to meet concurrently with any committee or sub-committee of either House of Parliament for the purpose of deliberating or taking evidence."⁷

To facilitate joint working across a range of policy and legislative areas, the Committee may wish to recommend that this Standing Order be broadened to enable concurrent meetings of all select committees or sub-committees with the committees of other UK legislatures.

International agreements

The current processes for scrutinising and ratifying international agreements - in particular international trade agreements - do not currently allow for formal consideration of the views of the devolved legislatures in areas that will significantly impact upon areas of devolved competence, such as health and agriculture.

The Senedd's External Affairs and Additional Legislation Committee, in submitting a [response](#) to the House of Lords International Agreements Sub-Committee ("the IAC"), has highlighted the need for a revised process of UK Parliamentary scrutiny of international agreements to incorporate:

"the need to consider the views of the Senedd before the conclusion of its scrutiny process."⁸

The IAC concurred with this assessment, commenting that:

"it is vital that Westminster committees engage closely with the Welsh and Scottish Parliaments and the Northern Ireland Assembly in scrutinising the negotiation and agreement of future treaties."⁹

The Committee may wish to consider how procedures that govern the joint working arrangements between the devolved legislatures and the House of Commons could be

⁶ For example, engagement on frameworks is likely to be more beneficial between committees with equivalent policy remits rather than with the House of Commons' territorial committees.

⁷ House of Commons, Standing Orders for Public Business, 5 November 2019, 137A(1b)

⁸ Senedd, External Affairs and Additional Legislation Committee, written evidence to the House of Lords International Agreements Sub-Committee, June 2020

⁹ House of Lords, European Union Committee, Treaty scrutiny: working practice, 10 July 2020, <https://publications.parliament.uk/pa/ld5801/ldselect/lducom/97/97.pdf>, Paragraph 52.



amended to encourage formal consultation with the devolved parliaments in ratification processes and scrutiny of international agreements.

I or my officials would be happy to explore further these matters with the Committee.

Yours sincerely,

A handwritten signature in blue ink that reads "Elin Jones".

Elin Jones MS

Llywydd

Croesewir gohebiaeth yn Gymraeg neu Saesneg / We welcome correspondence in Welsh or English



Annex: Legislative Consent Decisions

As set out in the Senedd's Standing Order 29, a **Legislative Consent Motion** is a motion seeking the Senedd's agreement to the inclusion of a relevant provision in a relevant UK Bill. A "relevant Bill" is a Bill which is under consideration in the UK Parliament which makes provision ("relevant provision") in relation to Wales: for any purpose within the legislative competence of the Senedd (apart from incidental, consequential, transitional, transitory, supplementary or savings provisions relating to matters that are not within the legislative competence of the Senedd); or which modifies the legislative competence of the Senedd.

As set out in the Senedd's Standing Order 30A, **Statutory Instrument Consent Motions** is a motion seeking the Senedd's agreement to the inclusion of a relevant provision in a 'relevant statutory instrument.' A 'relevant statutory instrument' means a statutory instrument or draft statutory instrument laid before the UK Parliament by UK Ministers which makes provision ("relevant provision") in relation to Wales amending primary legislation within the legislative competence of the Senedd (apart from incidental, consequential, transitional, transitory, supplementary or savings provisions relating to matters that are not within the legislative competence of the Senedd).

As set out in the Senedd's Standing Order 30B, **Consent Decision Motions** is a motion for a decision either giving or refusing the Senedd's consent to 'relevant draft regulations' being laid before the UK Parliament. In this context 'relevant draft regulations' are Statutory Instruments made by UK Ministers under the Act temporarily restricting the Senedd's legislative competence or the Welsh Ministers' executive competence seeking draft regulations that a Minister of the Crown proposes to lay before the UK Parliament, in accordance with section 109A or 80(8) of the Act.



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