

Rt Hon Elin Jones MS

Y Llywydd and Chair of the Business Committee

5 June 2024

Annwyl Lywydd,

Our recent reports on Welsh Government legislative consent memoranda, and comments on the legislative consent process

The Business Committee will be aware that my Committee considers all legislative consent memoranda laid before the Senedd under Standing Order 29, and to date have laid almost 75 reports on such memoranda.

The Business Committee is also aware that my Committee has written on several occasions in the Sixth Senedd to draw attention to recommendations we have made in our reports about, or to raise particular concerns with, Standing Order 29 and the legislative consent process. We welcomed your letter to us dated 20 March 2024 in which you confirmed that Standing Order 29.1 will be considered as part of the Business Committee's planned work in relation to the legislative consent process.

Most recently on 10 May 2024 we wrote to you in relation to our consideration of the Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the Criminal Justice Bill, where we again noted that, in determining whether a Bill's provisions require the Senedd's consent, different tests are currently being applied within the Senedd, the Welsh Government and the UK Government respectively. Again, we thank you for your letter of reply on 15 May, in which you confirmed that the Business Committee is expecting to further consider its work on the legislative consent process, including the matters we raised, ahead of the summer recess.

When my predecessor wrote on 10 May 2024, it was highlighted that the Committee would likely write again about Standing Order 29 following the publication of the Committee's report on the Welsh Government's Legislative Consent Memorandum on the Renters (Reform) Bill. The Committee's

report was laid on 10 May 2024, and I would like to draw your attention to three of the Committee's recommendations:

***Recommendation 1.** When laying a legislative consent memorandum, the relevant Cabinet Secretary should include a timeline of relevant intergovernmental discussions and engagement that have taken place at official and Ministerial level.*

***Recommendation 6.** When laying a legislative consent memorandum, the relevant Cabinet Secretary should explain in detail in that memorandum why the use of an expedited legislative scrutiny process for a Welsh Government proposed Bill is not being pursued instead of the use of a UK Government Bill to make provision in a devolved area.*

***Recommendation 8.** If a UK Bill is to be used to legislate in a devolved area, the Welsh Government must comply with Standing Order 29 and in accordance with that Standing Order must produce legislative consent memoranda normally within 2 weeks.*

The Committee has also now reported on the Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 4) on the Data Protection and Digital Information (DPDI) Bill. There are two serious matters in that report which we also feel need to be drawn to your attention.

First, given the reporting deadline of 13 May 2024 ahead of the scheduled legislative consent debate on 14 May 2024, it was highly unsatisfactory that the Committee only received on 13 May copies from the Cabinet Secretary for Economy, Energy and Welsh Language of critical intergovernmental correspondence relating to the Bill. The Committee was only very briefly able to review the correspondence. One issue of considerable importance to the Senedd which warranted detailed consideration was confirmation for the first time, in a letter dated 1 March 2024 enclosed within the Cabinet Secretary's letter of 13 May 2024, that it was the UK Government's intention that the Bill will "enable the better use of data in health and adult social care".

The Committee was also able to learn more about the UK Government's Devolution Guidance Note (DGN) which has been referenced several times by the Welsh Government in various legislative consent memoranda in the past few months, and this is the subject of the second matter we wish to raise. The Welsh Government has told the Committee, for example in recent correspondence relating to the DPDI Bill, that the relevant UK Government Minister of State had written to the Welsh Government noting that its DGN states that consent from the Senedd should be sought when conferring or imposing reserved functions on a devolved Welsh authority. This has been used by the Welsh Government, not only in relation to the DPDI Bill, to justify engagement of the Senedd's legislative consent process. However, having now seen the specific letter from the Minister of State (see letter dated 6 February 2024 enclosed within the Cabinet Secretary's letter of 13 May 2024), it

appears that the UK Government's position is more nuanced and actually acknowledges that the Senedd's Standing Orders do not make provision for situations where a UK Parliament bill imposes such functions. In the letter the Minister of State for Data and Digital Infrastructure states:

"The UK Government maintains that these functions are reserved, but in further consideration of the Welsh Devolution Guidance Note, which sets out that consent should also be sought when conferring or imposing reserved functions on a devolved Welsh authority, we have come to the view that it is appropriate to seek agreement to Clause 74 and Clause 78(3) - either through a Legislative Consent Motion or a statement made by the Welsh Ministers - noting that there is no procedure in the Senedd Standing Orders covering situations where a UK Parliament bill imposes reserved functions on devolved Welsh authorities."
(emphasis added)

As my predecessor said in a letter on 10 May 2024, as a Committee we are concerned that the approach being taken by the Welsh Government is leading to confusion as to the basis on which the consent of the Senedd is being sought.

I wish to reiterate that we acknowledge and very much welcome the fact that work has begun on reviewing the Standing Order.

However, the Committee now has strong concerns that these most recent developments highlight a potential need for the Business Committee to undertake a full procedural review of Standing Order 29 to ensure it is fit for purpose. We have reached this view because we believe that consent is being sought for provisions in devolved areas on a scale that may not have been envisaged when the standing order was originally drafted. In our view, in circumstances where the Welsh Government is seeking the Senedd's consent for significant devolved provision to be included in a UK Bill, relevant legislative consent memoranda should be required to provide more detailed information to enable more informed and timely scrutiny to take place. Of course, a key matter that would still require recognition is that even with more detailed information, consideration of legislative consent memoranda cannot replicate the level of scrutiny that would be available for provisions that were included in Bills introduced to the Senedd).

Yours sincerely,



Mike Hedges

Chair