Huw Irranca-Davies AS/MS
Y Dirprwy Brif Weinidog ac Ysgrifennydd y Cabinet dros Newid Hinsawdd a Materion Gwledig
Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs

Julie James AS/MS
Y Cwnsler Cyffredinol a'r Gweinidog Cyflawni
Counsel General and Minister for Delivery

Llywodraeth Cymru
Welsh Government

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Mike Hedges MS
Chair
Legislation, Justice and Constitution Committee
Welsh Parliament
Cardiff Bay
Cardiff
CF99 1SN

January 2025

Dear Mike,

Thank you for the opportunity to appear before your committee on 9 December and your follow up letter of 17 December. Please find attached a response to the questions in the Annex to your letter.

Yours sincerely,

Huw Irranca-Davies AS/MS
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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.

Question 1: During the Sixth Senedd, this Committee has become concerned about the frequent use of framework legislation by the Welsh Government and the impact this has on Members' ability to properly scrutinise Bills. Can you outline why the use of framework legislation has increased and why the Welsh Government believes it is an appropriate way to legislate?

There are a number of reasons why legislation is split between primary legislation and subordinate legislation. There is merit in keeping bills as clear, simple and short as possible, in other words keeping them less cluttered by detail.

There is also merit in keeping a structure to the statute book so that the main principles of the law are set out in primary legislation, with the detail left to subordinate legislation. When we codified the law on the historic environment for example the primary legislation alone was nearly 200 pages long. We have later made seven subordinate instruments under that Act – and had we added the 50 or so pages we have on the process for making applications for consent to the Act it would have made that Act less accessible not more accessible.

There is also significantly greater flexibility in making subordinate legislation as it is not subject to the same timetable constraints as Senedd Bills, and it enables the law to be quickly updated to match changing circumstances or for the law to be corrected or amended in the light of experience.

Where this process works well, it helps the Senedd to focus on the essential points, policy and principle, in its scrutiny – and in turn it helps the Government to focus on what is most important when responding to the Senedd.

Question 2: Will any of the Bills in the remainder of the Welsh Government's legislative programme be framework legislation?

The vast majority of primary legislation provides powers for Ministers to fill in detail. Our interpretation of a true framework Bill is a Bill that sets very little out on the face of the Bill, leaving almost all of the substance to be provided for by regulations. It is never the Government's intention to bring forward such Bills.

Question 3: What impact does the increased use of framework legislation and the consequential increase in subordinate legislation have on the Welsh Government's capacity to make such legislation?

When a Bill project is set up and a decision taken that powers to make subordinate legislation will be proposed in that Bill, consideration has to be given to how and when that subordinate legislation will be brought forward and what that means for the associated implementation programme.

For example, the Infrastructure (Wales) Act 2024 sets out a detailed structure of the infrastructure consenting process and contains a number of quite narrowly drawn regulation-making powers, which allow appropriate detail to be put in. The consultation on the implementation of that Act is underway, and the feedback from that consultation will enable the finalisation of the Regulations.

Another Bill the Committee will be particularly interested in is the planning consolidation Bill. That cannot be described as a framework Bill, but there will be a significant programme of subordinate legislation attached to it. The work for that is already underway, including a

current consultation on what the proposed changes to the law protecting trees and woodlands in Wales will need to consider.

So whether or not a Bill can be described as framework or not, the work on subordinate legislation is considered as part of the implementation programme for all Bills and in the context of the Welsh Ministers overall programme of subordinate legislation.

Question 4: In your view, does the legislative consent process give the Senedd sufficient opportunity to scrutinise UK Bills that are legislating in devolved areas?

I recognise the Senedd has less ability to scrutinise and impact legislation made in Parliament than that made in the Senedd. This is why our involvement in UK Bills is shaped by reference to our principles, and we do our utmost to enable scrutiny through the LCM process.

Question 5: What changes have occurred within inter-governmental relations (IGR) related to the legislative consent process since the new UK Government has been in power?

There have been clear improvements in engagement, with earlier sharing of drafting as an example. This, in turn, has enabled us to lay legislative consent memoranda more swiftly and effectively than under previous UK legislative programmes.

There have also been improvements in the ways in which the governments are working together to explore specific issues on individual Bills, and we hope that positive updates can be shared with the Senedd on those in due course.

Question 6: The Welsh Government has spoken about working in partnership with the UK Government on Bills such as the Tobacco and Vapes Bill. Is it appropriate for legislation in devolved areas to be developed in this way, with a limited role for the Senedd? What consideration has the Welsh Government given to legislating in parallel to the UK Parliament through a Bill introduced to the Senedd instead of a UK Government Bill in order to facilitate policy collaboration?

When working with UK Government we will look to ensure that legislation in devolved areas is reflective of the Welsh context.

We seek to ensure that the Senedd is kept informed of our work with the UK Government on the specific application of provision for Wales in UK legislation, in particular through the legislative consent process.

Examples such as the Tobacco and Vapes Bill are a useful example of when using a UK Bill, across the whole of the UK, would be appropriate. There is a clear UK-wide policy alignment, as well as relevant legislative competence reservations involved.

Question 7: What impact does the resource allocated to support provision in UK Bills have on the available capacity to support the Welsh Government's legislative programme?

As a government, we are focussed on the delivery of our priorities for the people of Wales. But the reality of course is that with this, comes pressures – this is not unique to the legislative programme, and it is the case across the Programme for Government too.

Cabinet has agreed a legislative programme that we have sequenced and resourced to ensure we deliver our legislative priorities.

Ministers and senior officials closely monitor the delivery of the legislative programme, and we take action where needed to redeploy resources to priority work, including Senedd Bills, subordinate legislation and UK legislation.

By necessity we need to react to a subsequent UK legislative programme which may include provisions for Wales and in devolved areas.

There is an inherent need for resource to be afforded to that legislation, in order to assess its suitability for Wales, to identify specific issues for discussion with the UK Government, to give detailed consideration of the drafting, and to ensure the effective discharge of the legislative consent process.

In line with our principles, there continue to be situations where we take the view it would be in Wales' best interests for provision in devolved areas to be made in UK legislation.

Question 8: What consideration is the Welsh Government giving to the resources and capacity that will be needed to support a full legislative programme in an enlarged Senedd?

The increase in the size of the Senedd and potential increase in the number of Ministers will inevitably have implications for the Welsh Government's own ways of working, including its administration and delivery in response to increased scrutiny.

For example, in future Senedd terms of four rather than five years, it will be necessary to use the final year to introduce and scrutinise legislation, otherwise we risk significantly curtailing the Senedd's legislative output.

The Government is committed to working with the Senedd to consider ways in which the process for agreeing timetables for Government Bills can be strengthened so that committees can take a more informed decision about scrutiny periods.

In future we may well want to move towards a greater number of smaller, or potentially single-issue Bills, which arguably would not require the same amount of time to be allowed for Stage 1 consideration as the larger, more complex proposals that have typically been introduced.

We are continuing to engage through the Future Senedd Committee to explore these issues as there will be implications for the Senedd as much as for the Government in terms of ways of working and resourcing.

Question 9: Does the capacity available in the Welsh Government influence decisions on whether to legislate through the Senedd or to use a UK Government Bill introduced to the UK Parliament?

Consistent with our principles on UK legislation, the requirements of delivering our own legislative programme are relevant factors in relation to our positions on some UK Bills, in

the context of considering the potential timeframe in which equivalent legislation could be developed. In some instances, however, there will be UK Bills that the Senedd could not pass with its current legislative competence, and other issues that would not sit within our priorities but which nonetheless have regard to devolved matters.

Question 10: The Welsh Government Consolidated Accounts 2023-24 refer to a "review of the approach to developing legislation across the Welsh Government". Why was this review felt necessary, what were its aims and why wasn't it referred to when responding, in June 2024, to a Committee recommendation calling for a similar review?

As a responsible Government, we keep our all of systems and processes under continuous review, including our approach to developing legislation.

The combined impact of Brexit and the coronavirus pandemic placed huge pressures on the Government and, as we are sure the Committee would expect, we were keen to take stock earlier this Senedd term to ensure that a sustainable basis for the delivery of the legislative programme was in place.

As the Counsel General and Minister for Delivery explained during the evidence session with the Committee in December, this review was intended for internal purposes only, as it focused on internal systems and ways of working.

Regarding our June 2024 response, we considered the recommendation from the Committee to relate to our capacity in relation to UK legislation and our response therefore set out that we disagreed with the premise that Welsh Government have a reliance on UK Bills. Rather there are instances, including the Renters Reform Bill, whereby we have recommended the Senedd consent to provision on the basis that it is both sensible and advantageous for Wales.

As we move into the final stages of this Senedd term and look towards the next Senedd, it is essential that we continue to review our working practices.

As referenced in answer to question 8 above, the impact of Senedd reform in terms of four-year terms, expanded membership and enhanced scrutiny provide an opportunity for us to further review whether there are things we can do to improve our ways of working. The Business Committee recently agreed a proposal from the Senedd Commission for a review of the public and Member Bills process, with which the Government is looking forward to engaging.

Question 11: Welsh Ministers have conducted a number of bilateral meetings with their counterparts in the UK Government since the general election. How will the Welsh Government ensure that the substance of these meetings is open and transparent to the Senedd and the public?

We endeavour to provide relevant committees with written updates on the substance of discussions, taking into account any confidentiality requirements, in accordance with the Inter-Institutional Agreement between Welsh Government and the Senedd.

Question 12: When does the Welsh Government intend to publish the IGR annual report for 2023 – 2024?

Work is currently underway to finalise the IGR 2023 – 2024 IGR annual report. We aim to publish the report in the near future**.**

Question 13: How many appointments has the Welsh Government made to the IGR secretariat? Have all appointments now been made?

The IGR Secretariat is currently at full complement.

The Welsh Government has also seconded in a member of staff to the Secretariat, following an internal recruitment process.

Question 14: What progress has the Welsh Government made towards the recommendations of the Commission on Justice in Wales and its stated aim of the devolution of justice?

As the Committee will be aware, the Commission on Justice in Wales made a total of 78 recommendations. When the report was first published, the First Minister at the time was clear that the Welsh Government would prioritise the recommendations within the gift of the Welsh Government and other actors within Wales.

The report was published at the end of 2019 and so the pandemic impacted the pace in which we could progress the recommendations. However, we were able to make progress in a number of areas including the creation of the Law Council of Wales, securing changes to the Civil Procedure Rules and undertaking a Family Drug and Alcohol Court pilot.

We did try to progress some recommendations with the previous UK Government, without much success. Delivering Justice for Wales, which was published in 2022, provides further detail on our progress, including our discussions with the previous UK Government.

In terms of the central recommendation of the Commission, our ultimate objective is to secure the devolution of policing and justice in its entirety. That was of course also recommended more recently by the Independent Commission on the Constitutional Future of Wales, chaired by Rowan Williams and Laura McAllister.

In recent years, we have focussed our efforts on considering the legislative and practical steps required to devolve youth justice and probation. Our approach has predominantly involved commissioning experts to undertake reviews in these areas. This includes the following reviews which have all now concluded:

- The Future of Youth Justice in Wales (Wales Youth Justice Academic Advisory Group)
- Youth Justice and the Youth Court in Wales (Dame Vera Baird and Professor Stewart Field)
- Preparing for the devolution of policing in Wales (Carl Foulkes QPM)
- Building a Welsh probation service (Wales Centre for Public Policy)

Our next step is to use the material and insights from these reports to inform our discussions with the UK Government on their manifesto commitments to undertake a strategic review of probation services and to explore the devolution of youth justice. We are now having conversations with the new UK Government on a range of matters in this area, including their commitments on devolution as well as progress on programmes of joint work like the Youth Justice and Women's Justice Blueprints.

Question 15: How has the Welsh Government been working with the new Secretary of State for Justice to improve justice outcomes for people in Wales?

We are working not just with the new Secretary of State but also with her whole ministerial team. For example, the Cabinet Secretary on Social Justice has had productive discussions with both Lord Timpson and Sir Nicholas Dakin, who is the minister for youth justice. That includes discussions on key matters like managing the early release of prisoners, and conditions in Parc prison.

There are also important discussions happening on how we build on the successes of the Youth Justice Blueprint and Women's Justice Blueprint. Although the Blueprints were agreed under the former UK Government, work has accelerated further under them since the election.

The Blueprints set out a collective vision for how we want the justice system to support women and children – both those in contact with the justice system directly and those at risk of coming into contact with it. This vision is for trauma-informed, evidence-based models of support which address the underlying drivers of criminality and empower people to live fulfilling, crime-free lives.

Many of these underlying drivers such as poverty, Adverse Childhood Experiences and mental health are devolved, which is why we must work together across our governments to drive change and transform lives for the better.

We are currently finalising a Prevention Framework which will confirm our approach to supporting children at risk of offending – from first class universal services through to targeted support for those with greater needs and vulnerabilities. The Draft Framework, alongside the Wales Violence Prevention Unit's Wales Without Violence research, has been shared with the UK Government to support the Home Secretary's work on Prevention Partnerships. We are actively involved in this work under the Safer Streets Mission.

Under the Women's Justice Blueprint, we have diverted over 2,300 women into early intervention support and delivered 11 engagement events to over 270 sentencer professionals. 500 practitioners have received gender-informed training, and 89 families have received support through the Visiting Mum scheme. The ONE Wales service, which we jointly fund with criminal justice partners under the Blueprint, is in place to provide holistic 1:1 support for women in the criminal justice system across the whole of Wales.

We are in active discussions with HMPPS in Wales and partners about next steps for our work on women's justice, building on the existing work of Blueprint and understanding where we can go further to support women and girls.

The Lord Chancellor's announcement of both the Women's Justice Board and the independent Sentencing Review are vital steps forward. We are looking forward to engaging with the UK Government on both of these areas, and the Cabinet Secretary for Finance and Welsh Language attended a Ministerial roundtable on Women's Justice with UK Government Ministers in October.

Question 16: Does it remain the Welsh Government's intention to bring forward legislation in this Senedd term to reform the Welsh Tribunals? What could the impacts be on access to justice if this reform is not brought forward in this Senedd term?

Tribunal reform is very much at the heart of our ambition for the justice system in Wales and the reforms we propose cannot be delivered without legislation. We are working diligently to prepare that legislation, and we are determined to develop it thoughtfully and consultatively to ensure that we get it right. This is because the legislation will govern how our tribunals operate for years to come. We cannot, however, confirm at this time when a Bill will be introduced into the Senedd – that is a matter for the next legislative statement about the upcoming legislative programme.

Until legislation is made and implemented, the system as it currently stands will continue to function and will continue to provide the people of Wales with effective access to justice, but the wider benefits we see arising from our proposals for reform will only be realised when we legislate to deliver change.

Question 17: What is the Welsh Government's assessment of the situation at HMP Parc and any progress made since reports of a high number of deaths at the prison earlier this year?

Our thoughts go out to the friends and families of those that have died at HMP Parc. Investigations into the deaths have been launched by the Prison and Probation Ombudsman and he will publish his reports once they conclude. Whilst every death is a tragedy, it is important people do not speculate and wait for the reports to be published by the ombudsman.

Prisons and offender management are the responsibility of the UK Government, and they remain the best and most appropriate source of information about operational matters across the prison system in England and Wales. We work closely with HM Prison and Probation Service on areas where we do have responsibilities such as health and social care and will continue to work together to help mitigate the risk of future harm to staff and prisoners.

Throughout the year Ministers have had regular briefings about HMP Parc. The Cabinet Secretary for Social Justice Trefnydd and Chief Whip and Minister for Mental Health and Wellbeing visited HMP Parc alongside Lord Timpson and Minister Davies-Jones on 5 December. As part of the visit, they were able to see first-hand the steps the senior leadership team are taking to improve safety and security for both staff and prisoners at the site.

Question 18: What is the Welsh Government's position on the impact of the UK Internal Market Act on Welsh legislation?

We recognise the UK Internal Market Act ("the Act") has an impact on Welsh legislation. We sought to test the scope of that impact through a judicial review, but this was not resolved as the challenge was considered premature.

The legal argument we made was that the Act would not affect the Senedd's ability to pass primary legislation in non-reserved areas, but this has not been tested in court.

We have always recognised the provisions of the Act apply fully to Statutory Instruments made under powers provided for in Acts of the UK Parliament.

Question 19: Is the UK Internal Market Act considered by Ministers and officials when decisions are made about whether to work collaboratively with other governments in the UK on policy proposals?

The UK Internal Market Act would be considered on a case-by-case basis, depending on its relevance to the policy concerned.

Where there are shared policy outcomes and considerations we will consider working collaboratively with other governments in the UK. Where collaboration is beneficial, we prefer to do so through the Common Frameworks process.

We recognise there are times the UK Internal Market Act could impact on our policy ambitions outside of the Common Frameworks. In those cases, we would seek to work collaboratively with other Governments to overcome any practical implications.

Question 20: On what basis has the Welsh Government withdrawn from the joint deposit return scheme with the other UK nations? The Welsh Government's written statement references that it has not been possible to address issued caused by the UK Internal Market Act. Why is this the case? Did you discuss with the current UK Government about seeking an exclusion from the Act's market access principles to enable a Welsh scheme to include glass?

The Welsh Government has not withdrawn from a joint DRS. In partnership with the UK and Devolved Governments, we had been working to establish a joint process for appointing the Deposit Management Organisation for our respective schemes. Given the way that the UK Internal Market Act operates, as we were legislating through powers contained in UK rather than Senedd legislation, tailoring the scheme to Wales' needs would potentially engage the mutual recognition principle and therefore require an exclusion. The current UK Government has inherited a challenging piece of legislation in the UK Internal Market Act, and it became apparent that it was not going to be possible for the UK Government to complete their intended process to assess a UKIMA exclusion request within the timescale needed to commence the joint appointment of the Deposit Management Organisation. We are fully supportive of the other three nations going ahead and are sure this will make a significant improvement in their recycling rates.

As a Government, we remain committed to bringing forward a DRS which will deliver the best possible benefits for Wales by supporting our ongoing transition to a circular economy, particularly given we our different starting point as the second best nation in the world for recycling. Our active engagement with industry has highlighted that there are currently a range of views on how best to achieve the transition to reuse. We will therefore continue our active engagement to develop a scheme that supports the transition to reuse for all drinks containers including those made from glass. In doing so we will also continue to draw from international best practice.

Question 21: Has the Welsh Government made any assessment about the interaction between the Product Regulation and Metrology Bill and the UK Internal Market Act's market access principles?

The UK Government has been largely silent on the question of the Bill's potential interaction with the UK Internal Market Act, despite both instruments having a role in regulating domestic UK trade. It is Welsh Government's view that the Bill could have some positive impacts in situations where the devolved nations have a shared ambition to align with the EU. Regulations made using powers in the Bill could have interactions with the market

access principles in the UK Internal Market Act, as could any regulations made in relation to domestic trade in goods and services. These will need to be considered on a case-by-case basis.

Question 22: What discussions has the Welsh Government had with their counterparts in the UK Government about introducing a requirement for consent in the regulation-making powers in the Product Regulation and Metrology Bill?

The Cabinet Secretary for Economy, Energy and Planning met with Lord Leong on the 2 October. The Cabinet Secretary highlighted her concerns about the broad scope of the regulation making powers in the Bill and the absence of any equivalent powers and/or consent mechanism for Welsh Ministers in relation to devolved areas. Lord Leong said that he understood these concerns and the Cabinet Secretary welcomed the offer of further engagement with UK Government on the Bill's powers and the role of the Welsh Ministers and the Senedd in this area. Since then, a number of positive conversations have taken place at official level on how these concerns could be addressed and further updates are awaited from the UK Government.