

Huw Irranca-Davies MS

Deputy First Minister and Cabinet Secretary for Climate Change and
Rural Affairs

Julie James MS

Counsel General and Minister for Delivery

21 March 2025

Dear both,

General scrutiny session, 9 December 2024

I refer to your appearance before the Committee to give evidence on matters within our remit, and your subsequent letter in response to our follow-up letter of 17 December 2024.

We have considered the evidence received and wish to make some observations, as well as seek clarification and further information to aid our understanding of the Welsh Government's position on some matters.

Overall, we are concerned by the evidence we received. Our concern in particular is centred on some of the inaccuracies and inconsistencies we believe the evidence contained, as well as the Welsh Government's general approach to legislating in the context of the devolution settlement.

In a discussion on the approach to legislating, we made reference to the legislative consent memoranda (LCMs) laid before the Senedd [RoP 28], and the Counsel General was of the view that not each of the 55 LCMs referred to represented an individual Bill [RoP 29]. For the record, at the time of the session the Welsh Government had laid 55 LCMs corresponding to 55 Bills introduced to the UK Parliament since the start of the Sixth Senedd. The total number of LCMs plus supplementary LCMs laid by the Welsh Government in respect of those 55 Bills at the time of the session was 126.

We are also concerned about the comments made during the session about the Welsh Government's approach to legislating and the use of the legislative consent process (see in particular RoP [33; 69; 92



to 93 and 99 to 101]). We are likely to explore these comments further in our next general scrutiny session with you.

The specific questions we have following the evidence session are set out in Annex A to this letter.

We would be grateful for a response by 8 May 2025.

Given the relevance of some of the matters covered by this letter to any review of Standing Order 29 undertaken by the Business Committee, I am copying this letter to the Llywydd.

Yours sincerely,

A handwritten signature in black ink that reads "Mike Hedges". The signature is written in a cursive style and is underlined with a single horizontal line.

Mike Hedges

Chair

ANNEX A

References to “you” are references to the Counsel General or Deputy First Minister as appropriate.

Question 1: During the evidence session you made the following comment: “we're thinking of doing an statutory instrument correction omnibus Bill and a standing repeals series of Bills” [RoP 22]. We would be grateful to receive more information about these Bills and their timings.

Question 2: In our follow-up letter of 17 December, question 10 asked for information about an internal review of processes about developing legislation. As your response noted, during the evidence session you referred to the review when responding to a question about why the Welsh Government had only introduced 12 Bills to the Sixth Senedd [RoP 26-27]. We acknowledge your comment that you would not be prepared to share it with the Committee. However, we would welcome any further information you can share about the review in terms of:

- i. outcomes (for example in relation to having a “more streamlined legislative programme” [RoP 27] and allocation of capacity [RoP 54]);
- ii. specifically, what is the “different approach to the legislative programme” you refer to and how do you believe it “will bear fruit” [RoP 87];
- iii. when / how the review is being implemented and over what timeframe;
- iv. its impact on the volume of UK Government Bills for which the Senedd’s consent will likely be sought.

Question 3: Please can you expand on what you mean by “we could do a Welshified Bill” [RoP 33] and, in particular, what would it involve and why the base law in Wales may be an issue?

Question 4: You said that the consultation undertaken by Senedd Committees on legislation “is quite frequently just a reiteration of the same consultation that’s already been done by the Government” [RoP 40]. We are unclear why you have reached this view. However, would you recognise that it is the parliament’s responsibility to scrutinise and seek stakeholder views on Government proposed legislation, and acknowledge that a government consulting on policy and/or draft legislative proposals is different to the Senedd’s responsibility in assessing whether a government has listened to stakeholder’s concerns before introducing a Bill to the Senedd?

Question 5: You state that “we don't do the detailed legislative scrutiny that you see in other parliaments” [RoP 40]. Please could you provide the evidence which led you to make these comments?

Question 6: You made reference to the Welsh Government having a “tendency to bring big omnibus Bills forward” [RoP 58] and cited the Local Government and Elections (Wales) Bill. What other Bills introduced to the Sixth Senedd would you classify as “omnibus” Bills?

Question 7: What impact do you consider “smaller Bills” [RoP 58] will have on the volume of legislation brought forward in a ‘typical’ legislative statement for each Senedd Year?

Question 8: In the context of using UK Government Bills introduced to the UK Parliament to legislate in areas devolved to the Senedd, you said “there’s no shame in identifying the appropriate

opportunities where, when you have a good and productive piece of legislation coming forward at a UK level that has cross-border issues" [RoP 69]. It would be helpful if you could explain what you mean by "cross-border issues" – is it a reference to complexities around the boundaries of legislative competence?

Question 9: Please can you provide more information about the development of "joint legislation" [RoP 106-108] and how you envisage this approach would operate at an intergovernmental level?

Question 10: You told us that:

"One of the things we've been doing in publishing our principles on UK legislation in devolved areas is talking to the UK Government about having an acceptance by them—and, indeed, I've got this via the Secretary of State for Wales—an acceptance by them that these are the principles they should broadly adhere to. I mean, they're not going to make it a constitutional principle, but they are broadly agreeing to adhere to these principles in bringing forward their legislative programme". ([RoP [119]. Emphasis ours)

Please can you explain:

- i. What is the status of the agreement and using what agreed intergovernmental structures was it agreed?
- ii. What does the agreement mean in practice, and what implications does it have for the Welsh Government seeking legislative provision in UK Government Bills before the end of the Sixth Senedd?
- iii. What is the specific role of the Secretary of State for Wales in the process?
- iv. How you will inform the Senedd in a timely manner about decisions made / agreed between the Welsh Government and UK Government that relate to the use of UK Government Bills to legislate in devolved areas?

Question 11: In your response to question 9 of our letter of 17 December 2024, you stated:

*"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."* (Emphasis ours)

Please could you clarify and explain what you mean by "relevant factors"?

Question 12: Please can you provide an update on the progress made on agreeing a new memorandum of understanding with the UK Government on the Sewel Convention. [RoP 164 to 171].

Question 13: During the evidence session you said:

*"... one of my responsibilities is **overall oversight of the legislative programme**, and so what we have to do is keep a weather eye on things like that, to know whether to feed in any specific part of it to our legislative programme or not. **We take a very***

broad view of what we mean by the legislative programme, and it includes the UK programme and, indeed, actually, the Scots programme as well—very latterly the Northern Irish ones—because we want to take a view as to whether they're doing something that we could, frankly, copy, if it's possible to do, and then you have to do a rapid piece of work to see whether it can be lifted, if you like, and put in to our particular set of processes, or whether, actually, it sounds easy to do but actually turns out to be more difficult because the scenario here is very different.” ([RoP 129]. Emphasis ours)

Please can you clarify these comments, particularly in the context of the Welsh Government introducing Bills for scrutiny by the Senedd and using UK Government Bills to legislate in devolved areas?

Question 14: At various points in the evidence session you provided details of the process followed in liaising with the UK Government on using Bills introduced to the UK Parliament to legislate in devolved areas (for example [RoP 99; 101, 105; 129, 140-142]). In order to obtain clarity on this matter, we would be grateful if you could provide a step-by-step guide of the process followed by the Welsh Government in the lead-up to and after the King’s Speech has been made.

Question 15: You explained that “secondary legislation is drafted in legal services, and, quite frequently, drafted by external lawyers who've been retained by the Welsh Government, because it's a specialist area.” [RoP 151]. Please can you clarify the extent to which the drafting of subordinate legislation is outsourced and what quality control processes exist for such subordinate legislation drafted externally?

Question 16: Please can you explain how the Welsh Government intends to track commitments it makes to the Senedd to amend statutory instruments? [RoP 149-154].