

Elin Jones MS
Llywydd
Chair,
Business Committee

29 October 2021

Annywl Llywydd

Legislative Consent Memoranda

I am writing regarding the Legislative Consent Memoranda that have been laid before the Senedd by the Welsh Government in the Sixth Senedd to date and which have been referred to my Committee for scrutiny by the Business Committee.

As you will be aware, we have already reported on Memoranda related to five UK Bills and are currently considering a further nine, two of which are also the subject of supplementary Memoranda.

My main purpose in writing is to highlight issues with the scrutiny timetables and reporting deadlines that are being set for our reporting on these Memoranda. In doing so, we note that the Welsh Government's action of laying a legislative consent memorandum acts as the trigger for Senedd scrutiny and, as such, the Welsh Government takes a key role in determining the time available in the Senedd for scrutiny. We have already noted, and raised concerns directly with the Welsh Government, that a number of Memoranda already laid in this Sixth Senedd have been laid much later than the two week guideline set out in Standing Orders. While we appreciate that Standing Order 29.2 requires legislative consent memoranda to be laid *normally* no later than 2 weeks after introduction of a UK Government Bill, we are concerned at the sometimes excessive delay¹ in memoranda being laid and the impact that this has on the time left available for scrutiny. During our consideration of the

¹ LCM on the Professional Qualifications Bill – laid five weeks after the Bill's introduction to the UK Parliament; LCMs on the Skills and Post-16 Education Bill and Health and Care Bill – seven weeks; LCM on the Elections Bill – 10 weeks.

Legislative Consent Memorandum on the Professional Qualifications Bill, the Minister told us that the Standing Order deadline is “potentially achievable for Bills on which the two governments have worked closely together and are in agreement”. In the interests of transparency, we recommended that the Welsh Government should inform the Business Committee of its reasoned position on how and when it considers it would be able to meet the two week guideline. This recommendation was accepted by the Minister.²

By way of another example, the Legislative Consent Memorandum on the Leasehold Reform (Ground Rent) Bill was laid on 26 May 2021. It made reference to including provision in the Bill of comparable regulation-making powers for the Welsh Ministers, to be achieved by amendment. These amendments were made on 20 July. In responding to a letter from the Chair of the Local Government and Housing Committee, the Minister for Climate Change acknowledged the amendments but said:

“Whilst a supplementary LCM would normally be laid within a fortnight of any amendments being tabled, on this occasion we are aware further important amendments are due to be tabled and so, to be more helpful to members, will look to issue a supplementary LCM at that point.”³

According to the Minister, the amendments are unlikely to be tabled before late November or early December, and so we may not get to consider the supplementary memorandum until just before Christmas or early in 2022. In our view, it is not helpful, or appropriate, to reduce the amount of time available for scrutiny of the Welsh Government. Moreover, the original deadline for responding to the Memorandum was 14 October, subsequently extended to 18 November.

Once a legislative consent memorandum is laid, we are concerned that the timetables agreed by the Business Committee do not enable effective scrutiny of Welsh and UK Government action on what are often complex matters and of significant constitutional importance for the Senedd’s role as a legislature. The six week scrutiny period proposed as standard by the Welsh Government is problematic for a number of reasons, not least because of my Committee’s extensive remit but also for other Committees involved in scrutiny because of the two week committee cycle. The overall impact of a short, inflexible deadline is less scrutiny and less time to hold the Welsh Government to account.

Our concern is amplified because the six week timetable is, in many cases, not strictly necessary as it invariably does not take full account of the UK Parliamentary timetable for the relevant Bill. For example, (and in addition to our discussion above), the timetable set for the Legislative Consent Memorandum on the Animal Welfare (Kept Animals) Bill originally required us to report before the second reading in the House of Commons had taken place (for this Bill, this was the first House for

² See [Letter from the Minister for Education and Welsh Language](#), 6 October 2021

³ See [Letter from the Minister for Climate Change](#), 1 October 2021

scrutiny in the UK Parliament). While we chose to report ahead of the revised deadline because of the issues raised in the Memorandum, we do not see why we should have been required to report by the original deadline set when it was so early in the UK parliamentary process for the Bill and the Welsh Government consent motion was unlikely to be tabled in the near future.

As the volume of legislative consent memoranda is increasing, it is becoming more and more difficult for us to conduct effective scrutiny and report within the deadlines set by the Business Committee. This is not only because of the important constitutional issues being raised, but also because of the poor quality of the memoranda and the lack of helpful information contained within them. On this basis, I wanted to advise that we will not be in a position to meet the deadlines set in relation to the following Memoranda:

UK Bill	Reporting deadline	UK Parliament stage	Comments
Leasehold Reform (Ground Rent) Bill	18 November 2021 (extended from 14 October)	1 st Reading, HoC (2 nd House)	Ministerial evidence on 15 November 2021
Skills and Post 16 Education Bill	11 November 2021 (extended from 21 October).	3 rd Reading, HoL (1 st House)	Supplementary LCM expected
Subsidy Control Bill	4 November 2021	Committee Stage HoC (1 st House)	
Building Safety Bill	18 November 2021 (extended from 4 November)	Committee Stage HoC (1 st House)	Ministerial evidence on 15 November 2021
Health and Care Bill	11 November 2021	Committee Stage HoL (1 st House)	Letter with questions sent to Minister, 20 October 2021
Elections Bill	4 November 2021	Committee Stage HoC (1 st House)	

I would therefore be grateful if reporting deadlines could be extended and in doing so take into account the current position of the Bills within the UK Parliamentary timetable. If a longer deadline is set, we may still choose to report sooner if we believe there are issues that need to be highlighted early in the process or in order to seek to influence amending stages in the House of Commons or House of Lords.

As an overarching point, we acknowledge that there are two large issues at the play. First, the Welsh Government's approach to allowing (and sometimes requesting) that the UK Government takes forward legislation on its behalf means that timetabling for scrutiny is effectively controlled in a different Parliament with different procedures and practice. Secondly, we also recognise that the current UK Government is, and has been, pursuing legislation against the wishes of the Welsh Government.

As part of our ongoing programme of scrutiny, we will be monitoring the extent to which the UK Government is legislating in devolved areas and Welsh Government reasoning for including provisions for Wales in such UK Bills. We will also be continually scrutinising the quality of the legislative consent memoranda brought forward by the Welsh Government.

I understand that there is an ongoing review of aspects of the legislative consent process and I hope this letter proves useful for that purpose.

Yours sincerely,

Huw Irranca-Davies

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Chair

