

# Agenda – External Affairs and Additional Legislation Committee

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Meeting Venue:

Committee Room 2 – Senedd

Meeting date: 11 December 2017

Meeting time: 14.00

For further information contact:

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## 1 Introductions, Apologies, Substitutions and Declarations of Interest

(14.00)

## 2 Paper(s) to note

(14.00–14.05)

### 2.1 Letter from HM Treasury regarding UK customs policy post Brexit

(Pages 1 – 2)

### 2.2 Letter from the First Minister regarding Brexit sectoral reports

(Page 3)

### 2.3 Letter from the Cabinet Secretary for Finance regarding UK policy frameworks deep dives

(Pages 4 – 5)

### 2.4 Letter from Robin Walker MP regarding EU Withdrawal Bill

(Pages 6 – 21)

## 3 Motion under Standing Order 17.42 to resolve to exclude the public for the remainder of the meeting

(14.05)

## 4 Resilience and preparedness: the Welsh Government's administrative and financial response to Brexit – key themes

(14.05–15.00)

(Pages 22 – 25)



- 5 Legislative Consent: European Union (Withdrawal) Bill –  
consideration of the draft interim report**  
(15.00–15.30) (Pages 26 – 64)
- 6 EU Commission Work Programme 2018**  
(15.30–15.45) (Pages 65 – 67)
- 7 Forward Work Programme**  
(15.45–16.30) (Pages 68 – 75)



HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ

David Rees AM  
Chair of the External Affairs and Additional Legislation Committee  
National Assembly for Wales  
Cardiff Bay  
Cardiff  
CF99 1NF

20 NOV 2017

Dear Mr Rees,

Thank you for your letter of 26 October to Philip Hammond concerning the Customs Bill White Paper. I am responding as Minister with strategic oversight of the UK tax system,

The Government is committed to engaging openly with the Welsh Government and other interested parties on customs issues. Treasury officials have already spoken to counterparts in the Welsh Government to discuss customs, including the approach to legislation, and have recently shared a draft of the Taxation (Cross-border Trade) Bill (also known as the 'Customs Bill'). Officials have also held a series of regional roundtables, including in Cardiff, to give businesses across the United Kingdom an opportunity to present their views.

In assessing options for the UK's future customs relationship with the European Union, the Government will be guided by what delivers the greatest economic advantage to the UK in its entirety and hopes and expects a positive deal to be reached. The Taxation (Cross-border Trade) Bill provides a framework for a new standalone UK customs system, but the implications it will have for Wales, and indeed the rest of the UK, will be determined by the ongoing negotiations with the EU. The Government will provide further assessment of the impacts when the outcome of negotiations becomes clearer.

The design and operation of the UK customs, VAT, and excise regimes are reserved matters, and it will not be necessary to seek a legislative consent motion from the Welsh Assembly on the Bill. However, my officials will continue to engage with the Welsh Government and other interested parties throughout the process.

I hope this reply has been helpful, and would encourage you to respond formally to the White Paper once you have heard back from your stakeholders. I welcome the report on the impact of EU exit on Welsh ports that the committee has published and we will of course consider this, along with evidence from all stakeholders that is submitted in response to the White Paper.

Yours sincerely,

A handwritten signature in black ink that reads "Mel Stride". The signature is written in a cursive style with a large, prominent 'M' and 'S'.

RT HON MEL STRIDE MP



David Rees AM  
Chair  
External Affairs and Additional Legislation Committee  
National Assembly for Wales  
[SeneddEAAL@assembly.wales](mailto:SeneddEAAL@assembly.wales)

30<sup>th</sup> November 2017

Dear David

Thank you for your letter of 29 November.

I can confirm that the Welsh Government has been sent copies of the UK Government's sectoral reports on the impact of leaving the European Union.

The reports were shared with us on a strictly confidential basis and the Welsh Government's policy is to respect confidentiality when papers are shared with us on that basis. In this light, I hope that you and members of the Committee will understand why it is not possible for us to share these papers.

I note your intention to write directly to David Davis, the Secretary of State for Exiting the European Union, and, given that these documents belong to the UK Government, that seems the best course of action.

Yours sincerely

**CARWYN JONES**

# Agenda Item 2.3

Mark Drakeford AM  
Ysgrifennydd y Cabinet dros Gyllid  
Cabinet Secretary for Finance



Llywodraeth Cymru  
Welsh Government

David Rees AM  
Chair of the External Affairs and Additional Legislation Committee  
National Assembly for Wales  
Cardiff Bay  
Cardiff  
CF99 1NA

Eich cyf/Your ref  
Ein cyf/Our ref

Dear David,

4 December 2017

Thank you for your letter of 21 November about the UK policy frameworks deep dives exercise.

I hope you will agree that space has to be allowed for inter-governmental discussion at this very early stage of the development of frameworks policy, so my account of the deep dives exercise is of necessity high level. While I am very willing to commit to full scrutiny of the outcomes of these discussions, none of the participants will provide blow-by-blow commentary on the process. Any common framework (either legislative or non-legislative) would be subject to scrutiny by the subject committee in the usual way and any primary legislation will of course either need to be passed by the Assembly or (in the case of legislation at Westminster) be subject to legislative consent.

Deep dives to give proof of concept for voluntarily agreed frameworks involving officials from the UK Government and the Devolved Administrations took place during November: Agriculture (14-15 November); Justice (21 November) - Welsh Government officials took part in this deep dive from a frameworks policy perspective as the matters under consideration are not within Welsh Ministers' or the National Assembly's competence - and Health (22 November).

Taking first the Agriculture discussion, like all of the deep dives, this was explicitly carried out without prejudice to the Welsh Government's and Scottish Government's ongoing objections to the EU (Withdrawal) Bill as currently drafted.

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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.

The event was positive and there was consensus that the potential for joint development of frameworks has been demonstrated. Substantial progress was made, including agreeing the aspects of agriculture policy that would benefit some level of coordination between England, Scotland, Northern Ireland and Wales.

The Justice deep dive on 21 November mainly comprised an overview of existing areas and modes of cooperation in the civil justice space and how current measures are operationalised.

The aim of the Public Health Deep Dive sessions on 22 November was to agree the scope of the devolved policy area of organ donation that intersects with EU law and consider cross-border health threats. These two sessions were constructive with strong consensus that existing systems work well across the UK.

In all cases, as a proof of concept these events were successful.

We have been consistent with the UK Government in making clear that any engagement on Frameworks does not in any way mean that we accept the UK Government's position on its European Union (Withdrawal) Bill. While we are happy to continue to work on frameworks prior to any agreement on the way forward on the Bill, we will only sign off policy frameworks if the UK Government substantially amends the Withdrawal Bill.

The results of the deep dives and next steps will form part of discussions for the JMC (EN) in mid December. I would be glad to report back verbally to the Committee on that meeting.

Best wishes,

Mark

**Mark Drakeford AM/AC**  
Ysgrifennydd y Cabinet dros Gyllid  
Cabinet Secretary for Finance

# Agenda Item 2.4



Department  
for Exiting the  
European Union

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Mr David Rees AM  
Chair, External Affairs and Additional Legislation Committee  
The National Assembly for Wales  
Cardiff Bay  
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Our Ref: DEXEU029/1

4 December 2017

Dear David

## **EUROPEAN UNION (WITHDRAWAL) BILL**

I hope you found useful the evidence that the Secretary of State for Wales and I provided at the joint evidence session on Monday 6 November. I was glad to be able to support both committees' important work on this essential piece of legislation, and to continue making the positive case for legislative consent.

As promised at that session, I am attaching a response to your committee's report on the Bill. I hope it responds to the principal concerns you raise and explains the Government's position.

In parallel I also attach responses to your written follow-up questions, which I hope both committees find a helpful addition to our oral evidence.

I am copying this letter to the First Secretary of State, the Secretary of State for Wales, and the Chair of the Welsh Assembly's Constitution and Legislative Affairs Committee.

**ROBIN WALKER MP**  
**PARLIAMENTARY UNDER-SECRETARY OF STATE FOR EXITING THE**  
**EUROPEAN UNION**

**Annex A: Response to the Welsh Assembly's External Affairs and Additional Legislation Committee June 2017 report *The Great Repeal Bill White Paper: Implications for Wales***

1. The Government is grateful for the National Assembly for Wales' External Affairs and Additional Legislation Committee report *The Great Repeal Bill White Paper: Implications for Wales*. This document provides the Government's response to that report.
2. The committee's conclusions on the European Union (Withdrawal) Bill (the Bill) can be grouped into a number of themes, which this response addresses in turn.

*Engagement with the Welsh Government and National Assembly on exiting the European Union and the Bill.*

3. We have been clear from the start that the devolved administrations should be fully engaged in the process of the UK's withdrawal from the European Union. There has been technical engagement with each of the devolved administrations on the Bill. Each devolved administration also received advance copies of the Bill itself.
4. There is broad agreement between the UK Government and the Welsh Government on the major objectives for the negotiation. The views put forward by the Welsh Government have been heard and have informed the UK Government's approach to the negotiations. The Secretary of State for Exiting the European Union has held numerous discussions with the Welsh Government – including a number of bilateral discussions with the Cabinet Secretary for Finance and Local Government – and we are committed to continued positive and productive engagement.
5. The First Secretary of State is leading the engagement with the devolved administrations on the Bill's devolution policy and the approach on common frameworks. Working with the Territorial Secretaries of State, he has spoken to and met the First Minister of Wales and Deputy First Minister of Scotland bilaterally three times since the summer to discuss the Bill, principles and ways of working. At the recent JMC(EN) on 16 October, the principles that underpin where frameworks will be needed and where they will not be were agreed with the Welsh and Scottish Governments. We are now moving into the next phase of this work with detailed analysis of the policy areas with the Scottish and Welsh Governments.
6. Given the need for in-depth policy discussions, that more detailed engagement on the precise nature and form of specific frameworks will be led by UK Government Departments. Frameworks will not be needed for all

powers that return to the UK when we leave the EU; far from it. The Government wants to work closely with the devolved administrations to identify - quickly - areas that do not need a common framework or approach. The First Secretary will continue to oversee this work with Departments and the devolved administrations to ensure consistency and clear progress.

7. The Government agrees that continued engagement and collaborative working with the Welsh Government and Assembly will be critical to ensuring the Bill works for all parts of the UK. UK Government officials began discussions with officials from the National Assembly for Wales over the summer, alongside continued discussions with Welsh Government officials. We look forward to continued close working over the coming months to progress technical discussions, including the on tabled amendments, at working level.

#### *Delegated powers in the Bill*

8. The Government's guiding principle is to deliver an exit from the EU that works for the whole of the UK, providing as much legal and administrative certainty as possible and creating no new barriers to living or doing business within our own Union. The Bill takes no decision-making power away from the devolved administrations or legislatures, so anything they could do before we leave the EU, they will continue to be able to do after we leave.
9. In order to deliver a functioning statute book for the whole of the UK, the Bill provides a power to correct problems that arise in retained EU law as a result of our withdrawal. It is right that devolved administrations also have the power that they need to correct such problems in their domestic legislation, but creating such a power is not within devolved competence. For that reason, the Bill confers a correcting power on the devolved ministers.
10. Making sure the statute book in each part of the UK works for exit day will be a joint endeavour, and the UK Government wants to work closely with the devolved administrations throughout the exit process to deliver laws that function correctly across the UK in time for exit. The provisions in the Bill enable the UK Government and devolved administrations to coordinate the corrections to the statute book where there would otherwise be a risk of creating barriers to living and doing business within the UK.
11. As with other areas of retained EU law, parts of retained direct EU law (such as EU regulations) will need to be amended so that they function correctly on exit day. Currently this legislation applies uniformly across the UK, even in areas that are otherwise devolved in some parts of the UK. As such, we believe that the right approach is for this to be corrected by the UK Government. This maximises certainty for individuals and businesses as to

how this uniform body of law will operate on exit day, whilst ensuring that no decisions that can currently be made by devolved institutions are removed from them. However, the UK Government has committed to consult the relevant devolved administrations before making any corrections to this body of law where it relates to an area that is otherwise devolved.

12. In addition to the power to correct deficiencies provided by clause 10 and schedule 2, the devolved administrations will also be able to exercise the powers to implement the Withdrawal Agreement, to prescribe fees and charges for currently EU functions taken on by domestic bodies as a result of EU exit, to alter pre-existing domestic fees and charges that were charged for EU-related functions (so that these can continue to be updated in line with changes in the underlying costs), and to make sure the UK and its constituent parts, continue to comply with international obligations. These powers are essential to prepare the statute book for exit day and it is right that they can also be exercised by the devolved administrations within their existing competence.

#### *Assembly scrutiny of delegated powers in the Bill*

13. We want to work closely with the devolved legislatures to ensure that they are satisfied that they are able to undertake the appropriate level of scrutiny over the use of the powers in the Bill. It is important that we can strike the right balance between the need for robust legislative oversight and ensuring our law works correctly when we leave the EU, all within the timetable set out by the Article 50 process.
14. The Bill proposes scrutiny arrangements for instruments brought forward by UK Ministers, in line with normal practice. The Bill then proposes equivalent scrutiny procedures for powers granted to ministers in the devolved nations (except that no urgent procedure is provided for devolved ministers as it is a non-standard procedure the Government wanted to first seek the devolved administrations' and legislatures' views on the procedure).
15. Scrutiny procedures are an integral part of creating a delegated power. If a scrutiny procedure is not specified when a power is created, the legal position is that the power can be exercised by the relevant authority simply "making" the instrument without any oversight role for a legislature. We therefore strongly believe that the right thing to do is to provide scrutiny provision to ensure that the National Assembly for Wales can provide scrutiny for the use of the powers by the Welsh Ministers.
16. This is standard practice for Acts of Parliament that confer powers on devolved authorities. For example, the Digital Economy Act 2017 conferred a

number of new powers on the Welsh Ministers and set out the procedures for the National Assembly's scrutiny of those powers.

17. The UK Government respects the responsibility the devolved legislatures have for their scrutiny of subordinate legislation made by the relevant devolved authority. That is why we have sought an LCM from the National Assembly for the scrutiny arrangements in the Bill, and it is why the Bill preserves the Assembly's competence (under the Government of Wales Act) to change those arrangements, just as it can change the arrangements for any other powers conferred on the Welsh Ministers by an Act of Parliament.
18. We are happy to take representations on scrutiny procedures during the passage of the Bill from the Assembly and discuss further with both the Welsh Government and the Assembly which scrutiny arrangements they consider most appropriate for legislation brought forward by the Welsh Ministers under powers in the Bill.
19. We are already engaging with the devolved legislatures on how the Bill's provisions work. We will continue that engagement as the Assembly scrutinises the Bill further, including through any consideration by the Assembly of a legislative consent motion for the Bill.

#### *Scope of the delegated powers*

20. The Government agrees that it is important that the powers provided in the Bill are only used to ensure we have a functioning statute book. That is why the power to enact the required changes is time-limited. It can only be used for up to two years after exit day.
21. The Bill and its powers are not the vehicle for the introduction of substantive new policy. The power in the Bill to correct legislation is limited to correcting problems that arise in retained EU law as a result of our withdrawal. Many of these changes are technical, such as amending references to EU law or another member state. Other changes relate to transferring functions from the Commission to another body. The Bill provides criteria that ensures such corrections of a more substantial nature are subject to the affirmative procedure.
22. We recognise the Committee's points on the need to be mindful of broader pressures on legislative timetables. We are keen to work alongside the Welsh Government to build on existing practices around joint working on secondary legislation, to ensure that the UK Government and Welsh Government work effectively together on secondary legislation made using powers in this Bill.

## *Common frameworks and the temporary competence arrangement*

23. Leaving the EU means that decision-making powers currently exercised in Brussels will come back to the UK, and that we have an opportunity to determine the level of government best-placed to take decisions on these issues, ensuring power sits closer to the people of the United Kingdom than ever before. Our guiding principle is that we create no new barriers for people living and doing business within the UK as we leave the EU.
24. The current devolution settlements were designed on an assumption of ongoing UK membership of the EU, which provided the necessary overarching frameworks to permit the free-functioning of the UK internal market. The EU law that creates such frameworks acts as a limit on devolved competence.
25. The UK Government has a responsibility to make sure that EU exit works for the UK as a whole and takes account of the individual interests of Scotland, Wales, Northern Ireland, and England. This includes ensuring that the UK internal market operates freely and fairly. EU law has set rules that apply across the UK and guarantee consistent approaches in a number of policy areas, including some that are otherwise devolved. The Government wants to work closely with the devolved administrations to review the powers that will return from the EU and determine where consistency will continue to be needed. Common frameworks or approaches might be needed to allow businesses to operate across the UK and ensure that consumers get the best deal - this was something explicitly acknowledged in the Welsh Government's White Paper. They might also be necessary to help the UK to fulfil its international obligations and strike ambitious trade agreements, to provide security and justice to all of UK citizens, no matter where they live, or to protect common resources.
26. The Bill provides the space for detailed discussions to take place on where frameworks may to be needed, by replicating the current rules set by the EU through UK legislation. As a transitional arrangement, devolved institutions will continue to be bound by these rules. This provides the certainty that people and businesses across the UK need on where and how laws apply as we exit the EU and helps prevent problematic divergence. The UK Government expects that the outcome of this process of discussion on powers returning from the EU will lead to a significant increase in the decision making powers for the devolved administrations. In creating this transitional arrangement, the Bill ensures that no decision-making power is taken away from the devolved administrations as we leave the EU.
27. The Bill then provides a power to release areas of policy to the devolved administrations by Order in Council once agreement has been reached that a particular area does not require a common approach. The Government's firm

view is that common frameworks should only be established where they are needed. Where an area of policy is released from the transitional arrangement, the relevant devolved legislature will be able to modify, or confer on the relevant administration a power to modify, retained direct EU law in that area.

28. Furthermore, the Bill ensures that, the discretion currently available to the devolved administrations in, for example, implementing EU Directives is preserved. For example, where an EU Directive sets out a minimum environmental standard, the devolved administrations have the discretion to set a more stringent standard and that discretion will be maintained.
29. The principle at the heart of the development of future frameworks is honouring and protecting both the letter and spirit of each of the devolution settlements. We have a long history of devolution in the UK and we remain committed to this going forward.
30. We are mindful of the recent changes to the Welsh devolution settlement, through the Wales Act 2017, that are in the process of being implemented. The move to the reserved powers model will support better joint working through increased clarity on how and where we will need common frameworks in future to ensure a smooth exit from the EU. Going through this process will ensure all parts of the UK deliver on our aim that powers and policies ultimately sit closer to the people of the United Kingdom and are led by the best-placed government to deliver that.
31. The Government is committed to working closely with the devolved administrations on an approach to returning powers from the EU that works for the whole of the UK and reflects the devolution settlements of Scotland, Wales and Northern Ireland. This emphasises the need to work together to develop these. There is agreement between the Scottish, Welsh and UK Governments that common frameworks will be necessary in some areas and we have together agreed a set of principles that will underpin our work to consider where such frameworks will be needed and where they will not.
32. We are keen to progress these discussions at pace and agree, subject to the EU negotiations, areas where common frameworks are not needed and powers can be released to the devolved administrations as soon as possible. We have agreed a programme of intense discussions with the Welsh Government, led by the First Secretary of State, to take this forward. Where it is decided that a common approach isn't needed, the Bill provides for the power to be released from the transitional arrangement through the Order in Council procedure, which requires the approval of both Houses of Parliament and the relevant devolved legislature.

## *Continuity Bill*

33. We do not agree that a 'Continuity Bill' is needed. The European Union (Withdrawal) Bill will enable the whole of the UK to leave the European Union in a smooth and orderly way. It provides the maximum certainty to business, consumers and everybody in our country by ensuring we have a functioning statute book on day one.
34. The Bill makes clear the role of the devolved administrations in delivering an orderly exit from the EU. The Bill preserves existing decision-making powers and provides new powers, for example, the power to make corrections to domestic legislation in devolved areas.
35. We have already started detailed discussions on common frameworks that will allow us to accelerate the process of ensuring powers that previously sat with Brussels sit closer to people than ever before, whilst protecting the rights, interests and certainty of people across the UK.
36. Separately, we have announced our intention to bring forward further primary legislation to implement the agreement we hope to reach with the EU into UK law. This will be known as the Withdrawal Agreement and Implementation Bill, and means that the major elements set out in the Withdrawal Agreement will be directly implemented into UK law by primary legislation.
37. Of course, we do not yet know the exact details of this Bill and are unlikely to do so until the negotiations are nearer completion. However, we expect this Bill to cover the contents of the Withdrawal Agreement, that includes issues such as – an agreement on Citizens rights, any financial settlement and the details of an implementation period agreed between both sides. As with all legislation, once the bill is further developed the Government will consider whether the Sewel convention applies to it in the normal way.

## **Annex B: Response to written questions from the Constitution and Legislative Affairs Committee and the External Affairs and Additional Legislation Committee**

### **Delegated powers to make corrections**

*Question 1: Why does the European Union (Withdrawal) Bill ('the Bill') only provide Devolved Ministers with a power to correct EU-derived domestic legislation, whilst providing a broader power for UK Ministers to correct the entire body of EU retained law?*

The European Union (Withdrawal) Bill provides powers for devolved ministers so that they can correct domestic legislation and ensure we have a functioning statute book as we leave the EU. Parts of retained direct EU law will also need to be corrected as we leave. This is law that applies consistently across all EU Member States and therefore all parts of the UK, even in an area that is otherwise devolved.

As our priority is to provide maximum certainty and continuity to people and businesses as we leave the EU, the UK Government will correct direct EU law so that it continues to work appropriately for all parts of the UK. This will provide a stable base from which we can progress our discussions and more detailed analysis on where we need to retain common approaches and where we do not. The UK Government has also committed to consult the Welsh Government where corrections are made to direct EU law in an area that is otherwise devolved. The UK Government's power in clause 7 is limited in scope and time – it can only be used to correct deficiencies that arise as a result of leaving the EU, and expires two years after exit day.

*Question 2: In its open letter to Members of Parliament, the External Affairs and Additional Legislation Committee concluded that:*

*“restricting the involvement of the Welsh Ministers and the Assembly to correcting only EU-derived domestic legislation in devolved areas makes for a less efficient exit process.”*

*The Committee's reasoning for this is:*

*“Welsh Government and Welsh public bodies are responsible for implementing EU law in devolved areas, and have been for 20 years. They hold the knowledge that is required to make sensible corrections to EU law in devolved areas. If UK Ministers were to seek to make corrections in devolved areas, they would need to seek the expert input of the Welsh Government and Welsh public bodies before drafting such corrections. Enabling the Welsh*

*Ministers and the Assembly to correct all aspects of EU-derived law in devolved areas is a more efficient, and constitutionally appropriate, approach to correcting EU-derived law in devolved areas.”*

*What is your response to this view?*

There are a number of corrections that will need to be made to ensure we have a functioning statute book on exit. For the UK Government, we estimate between 800 - 1000 SIs, which includes corrections to retained direct EU law. Where corrections need to be made to retained direct EU law in an area that is otherwise devolved, the UK Government has recognised that the devolved administrations will have specific views and will consult the relevant devolved administration on the appropriate correction. It is right that there is a UK-wide correction for this type of law given that it currently applies consistently across the UK.

The Bill preserves everything that the devolved administrations could do before we leave the EU so that they may continue to act in the same way after we leave as they could before. Direct EU law has never previously been within the Welsh Government’s competence as this law flows directly into our statute book through section 2(1) of the European Communities Act 1972. The Welsh Government and Welsh public bodies do not currently have discretion to amend, repeal or do anything to contravene this directly applicable EU law, such as EU Regulations.

However, making sure the statute book works for exit day will be a joint endeavour. The Government wants to work closely with the devolved administrations throughout the exit process to deliver laws that function correctly across the UK in time for exit. The UK Government recognises the importance of the input of the devolved institutions and for that reason we will, as stated above, consult the Welsh Government when using the powers in the Bill to amend direct retained EU law to make sure we deliver the right outcomes for Wales.

### **Concurrent powers**

*Question 3: Why do UK Ministers need concurrent powers to correct EU derived domestic legislation in Welsh devolved policy areas?*

The use of concurrent powers is an established part of the devolution settlements and comes with clear benefits. This is a sensible mechanism for allowing us to work together with the devolved administrations to deliver a complete and functioning statute book. This will be most suitable where it is agreed that it more efficient for the UK Government to legislate or where it is agreed that a single set of rules would be easier for individuals and businesses.

This approach means that, where it makes practical sense for regulations to be made once for the whole UK, it is possible for this to happen, as is currently the case for implementing EU law under section 2(2) of the ECA 1972.

We have made a clear commitment that the UK Government will not normally use these powers to amend legislation in devolved areas without the agreement of the relevant devolved administration, and not without first consulting them.

*Question 4: The External Affairs Committee concluded that such powers are not constitutionally appropriate and that the Assembly should be accountable “for scrutinising the legislation for which it is accountable to the electorate for delivering”. What is your response to this view?*

The UK Government agrees that it is for the National Assembly for Wales to scrutinise legislation which the Welsh Government lays before it. The Bill establishes scrutiny arrangements so that the Assembly can do that where the Welsh Government uses its powers.

Concurrent powers allow us to work with the devolved administrations to make one set of regulations where we are following the same approach. This follows the practice established in s2(2) of the European Communities Act 1972. For example, the UK, Scottish and Welsh Governments, and the Northern Ireland Executive jointly determined how to implement the elements of the Marine Strategy Framework Directive (Directive 2008/56/EC) that related to devolved matters, and agreed that this would be delivered through a single set of regulations made by UK Ministers (the Marine Strategy Regulations 2010).

*Question 5: Do you intend to table amendments to remove the UK Ministers’ concurrent powers from the Bill, as suggested by External Affairs and Additional Legislation Committee?*

*Question 6: If you do not intend to table amendments to remove these concurrent powers from the Bill, will you consider tabling amendments to provide duty to consult both the Assembly and Welsh Ministers on the face of the Bill?*

The UK Government is aware that such an amendment, among others, has been tabled to the Bill in the House of Commons. We will have the opportunity to debate those fully during the Bill’s Committee Stage and will not be able to pre-empt that debate.

While we remain open to suggestions on how to ensure the Bill works, our priority is to deliver a functioning statute book in all parts of the UK that will provide certainty and continuity for people and businesses. Providing for concurrent powers

complements the tools we and the devolved administrations have at our disposal to deliver the outcome of the referendum and a smooth exit from the EU.

## **Legislative consent**

*Question 7: Please explain why you do not believe that the Assembly's consent is required for Clauses 7 and 9 of the Bill.*

There are two tests for whether a clause meets the test for legislative consent from the Assembly. The first is whether the clause would be within the legislative competence of the assembly, and the second is whether the clause would alter the legislative competence of the assembly. Our technical analysis indicates that clauses 7 and 9 do not meet either of those criteria and so they alone do not trigger the legislative consent process.

We sought legislative consent for the Bill when it was introduced. It is for the Welsh Assembly to decide whether it gives that consent.

*Question 8: Will the UK Government proceed with the Bill if it does not obtain the consent of the devolved legislatures?*

*Question 9: Do you believe that you can obtain the consent of the Assembly without having accepted the Welsh Government's amendments?*

We want to make the positive case for legislative consent and work closely with the devolved administrations and legislatures to achieve this. Crucial to understanding the Bill is the work on common frameworks – determining the areas where frameworks will and will not be required will reduce the scope and effect of clause 11.

*Question 10: If EU 'continuity bills' are introduced in Scotland and Wales, would the UK Government seek to challenge these in the Supreme Court or to revoke them by an Act of Parliament?*

We do not agree that a 'Continuity Bill' is needed. The European Union (Withdrawal) Bill will enable the whole of the UK to leave the European Union in a smooth and orderly way. It provides the maximum certainty to business, consumers and everybody in our country by ensuring we have a functioning statute book on day one.

The Bill makes clear the role of the devolved administrations in delivering an orderly exit from the EU. The Bill preserves existing decision-making powers and provides new powers, for example, the power to make corrections to domestic legislation in devolved areas.

We have already started detailed discussions on common frameworks that will allow

us to accelerate the process of ensuring powers that previously sat with Brussels sit closer to people than ever before, whilst protecting the rights, interests and certainty of people across the UK.

*Question 11: Will you bring forward amendments to narrow the scope of the powers proposed for ministers?*

The powers in the Bill are essential to delivering a smooth and orderly exit. For example, the power in clause 7 is designed to make changes, mostly of a technical nature, to redundant references within retained EU law.

This is essential to ensuring our legislation remains consistent and continues to function effectively once we leave the EU. It is also key to securing maximum certainty that the rights and protections currently enjoyed in the UK will continue after exit day.

But we have also been clear that we will give proper consideration to sincere suggestions for how this Bill can be improved to make sure that it does deliver that certainty. We have opened a dialogue with the Welsh and Scottish Governments on the amendments that they have proposed to understand their positions and, since these have been tabled by MPs, we will respond to these fully in the House of Commons at Committee Stage.

*Question 12: Does the Bill allow for the term 'exit day' to be defined differently for different clauses in the Bill?*

The Government has brought forward an amendment to clause 14 which will set 'exit day' as 11pm on 29 March 2019. This will make clear that 11pm on 29 March 2019 will be the only date and time of exit.

*Question 13: Why does the UK Government consider it appropriate for Ministers to have the power to amend the Bill itself (using the powers provided to them by Clause 17)?*

*Question 14: Do you intend to table amendment to Clause 17 to restrict the power of UK Ministers to amend the Bill?*

Clause 17 is a technical provision to smooth the introduction of change to the statute book in consequence of the provisions of the Bill. It **cannot** be used to amend the Bill itself. Only clause 9 can do this. This is necessary because – while we cannot pre-empt the negotiations – it is crucial that we have sufficient flexibility to make changes to the Bill to ensure that its provisions don't contradict the terms of our withdrawal, for example, in relation to in-flight CJEU cases. Without this flexibility, we put at risk our ability to deliver maximum legal certainty for UK businesses and

people, and could find ourselves in breach of the withdrawal agreement as a consequence of contradictory provisions in our domestic legislation.

## **Scrutiny procedures**

*Question 15: Why doesn't the Bill allow the Assembly to determine its own procedures for the scrutiny of subordinate legislation arising as a consequence of the Bill?*

The Bill respects the rights of the Assembly to amend the scrutiny procedures. Under GoWA, as amended by the Wales Act 2017, it is within the competence of Assembly to set the procedures for subordinate legislation making powers, even if the enactment conferring the power is protected. The status of the Bill as a protected enactment is without prejudice to the Assembly's ability to make different provisions for scrutiny of the powers the Bill gives to Welsh Ministers.

The UK Government recognises the timing presents challenges in bringing forward new primary legislation to change the procedures while also dealing with the wider programme of EU exit legislation that the Assembly will need to make in preparation for exit day. For that reason, the UK Government has made an open offer to hear the Assembly's views on which procedures should apply in the Bill for the scrutiny of the Welsh Ministers' powers so as to further consider how to streamline any preferred changes.

*Question 16: Why didn't you consult the Assembly, prior to the Bill's introduction, about the scrutiny procedures for delegated legislation to be made by the Welsh Ministers?*

In conferring significant new powers on ministers in the devolved administration, it is right that the Bill sets out procedures for the scrutiny of those powers. Legislative scrutiny is a crucial part of our democratic process and it would not be right to introduce a Bill containing powers such as these without making any provision for how they will be scrutinised.

The approach taken was to apply procedures that are consistent with those for the UK ministers' powers, with the exception of the 'made affirmative' procedure as this is a less common procedure (where we have invited the devolved administrations to consider whether such a procedure is necessary or appropriate in the particular contexts of their legislatures). And then, as has already been stated, to make sure that it is within the Assembly's competence to change those procedures should you so wish.

The UK Government has been clear that it wants to hear the views of the Committee, and those of Assembly Members more widely, on the appropriate scrutiny arrangements. Any further detail that the Committee can provide on what procedures should apply to these powers would be welcome and consideration will be given to how best to account for those views.

*Question 17: Do you agree that scrutiny procedures set for Westminster by the Bill may not be suitable or operable in the devolved legislatures?*

The Government welcomes the views of the Committee on what procedures for scrutiny by the National Assembly for Wales should apply to the use of the powers in the Bill by Welsh Ministers. The approach taken in the Bill is that where it confers powers on devolved authorities it is right that it should also provide scrutiny requirements for the exercise of those powers. A logical starting point is for the requirements to be consistent with those attached to the UK ministers' powers.

However, the Government has also considered the appropriateness of procedures as they apply in the devolved legislatures. For that reason the Bill, as introduced, does not include the 'made affirmative' procedure for devolved authorities' powers because this is a less common procedure and the parallels in the devolved legislatures less well established. The Government has invited the devolved administrations, and invites the Committee as representatives of the National Assembly, to comment on the appropriateness of that procedure.

### **Common policy frameworks**

*Question 18: How will you ensure that discussions on common policy frameworks will be transparent and open to scrutiny by all UK legislatures?*

The UK Government agrees that there should be transparency around the frameworks process so that it is open to scrutiny, and takes very seriously the views of the devolved legislatures on the issue of future common frameworks. We welcome and value their contributions as discussions on these develop.

We have already started discussing these issues with the Assembly through this exchange of correspondence and in the Committee appearances of Ministers last week. Ministers confirmed that they were happy to return to the committees to discuss progress on these matters in the future. Furthermore, officials have been engaging with Assembly officials since the summer on the content of the EU (Withdrawal) Bill and we hope to continue that dialogue on the Bill and related issues over the coming months. Meanwhile, we will continue to intensify our engagement on frameworks with a wide range of interested groups.

*Question 19: What role will stakeholders have in the development and agreement of common policy frameworks and what consultation mechanisms will be put in place?*

It is of course vital that stakeholders across the UK have the opportunity to feed into the discussions on common frameworks as these are developed. We have already begun to explore some of the key issues with existing stakeholder groups and will be increasing our engagement in parallel to the detailed discussions we are having with the devolved administrations. For example, Robin Walker MP, the Parliamentary Under-Secretary of State for Exiting the European Union, attended the Expert Implementation Panel for Wales on Monday 6 November, which is led by the Secretary of State for Wales, to discuss the concerns and interests of businesses in Wales.

UK Government departments will also continue their engagement with stakeholders on specific policy areas.

*Question 20: The JMC (EN) Communiqué from 16 October states: “It will be the aim of all parties to agree [...]”. Does this allow scope for a common policy framework to be imposed by the UK Government in the event of one of the parties not agreeing?*

We will look to agree common frameworks wherever possible, which is why we are working closely with the devolved administrations on the detail of where frameworks need to be retained in the future, what these should be and importantly, also where they are not necessary. Those discussions are ongoing.

# Agenda Item 4

By virtue of paragraph(s) vi of Standing Order 17.42

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# Agenda Item 5

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# Agenda Item 7

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