

Agenda – External Affairs and Additional Legislation Committee

Meeting Venue:

Committee Room 2 – Senedd

Meeting date: Monday, 3 July 2017

Meeting time: 13.40

For further information contact:

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Committee Clerk

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Private pre-meeting (13.40 – 14.00)

- 1 Introductions, apologies, substitutions and declarations of interest**
(14.00) (Pages 1 – 7)
- 2 Inquiry into the implications of Brexit for Welsh Ports – evidence session with the Cabinet Secretary for Economy and Infrastructure**
(14.00–15.00) (Pages 8 – 23)
- 3 Paper(s) to note**
(15.00–15.05)
 - 3.1 Correspondence from the First Minister regarding the Welsh Government policy document, 'Brexit and Devolution'**
(Pages 24 – 45)
 - 3.2 Inquiry into the implications of Brexit for Welsh ports: written evidence from the UK Chamber of Shipping**
(Pages 46 – 54)
 - 3.3 Correspondence from the Llywydd to the Secretary of State for Wales regarding the Great Repeal Bill**
(Pages 55 – 64)



3.4 Correspondence from the Chair of the Finance Committee regarding the scrutiny of the draft budget

(Pages 65 – 66)

4 Motion under Standing Order 17.42(vi) to resolve to exclude the public for the remainder of the meeting

(15.05)

5 Inquiry into the implications of Brexit for Welsh ports: feedback from rapporteur visit to Dublin

(15.05–15.25)

(Pages 67 – 70)

6 Inquiry into the implications of Brexit for Welsh ports: consideration of evidence

(15.25–15.45)

(Pages 71 – 75)

7 Forward work programme

(15.45–15.55)

Document is Restricted

Agenda Item 2

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

Document is Restricted

Ken Skates AC/AM
Ysgrifennydd y Cabinet dros yr Economi a'r Seilwaith
Cabinet Secretary for Economy and Infrastructure



Llywodraeth Cymru
Welsh Government

David Rees AM
Chair
External Affairs and Additional Legislation Committee

19 June 2017

Dear David,

I very much welcome the External Affairs and Additional Legislation Committee's inquiry into the implications of Brexit for Welsh and Irish ports.

Our ports make a significant contribution to the Welsh economy, and I am pleased to see the committee's recognition of their importance to Wales' current and future prosperity, and the need to protect and enhance their role following the UK's exit from the European Union.

I am looking forward to discussing this matter in more detail with the committee later this month. Ahead of this, I have attached written evidence to this letter, which I trust you will find helpful.

A handwritten signature in black ink, appearing to read 'Ken', written in a cursive style.

Ken Skates AC/AM
Ysgrifennydd y Cabinet dros yr Economi a'r Seilwaith
Cabinet Secretary for Economy and Infrastructure

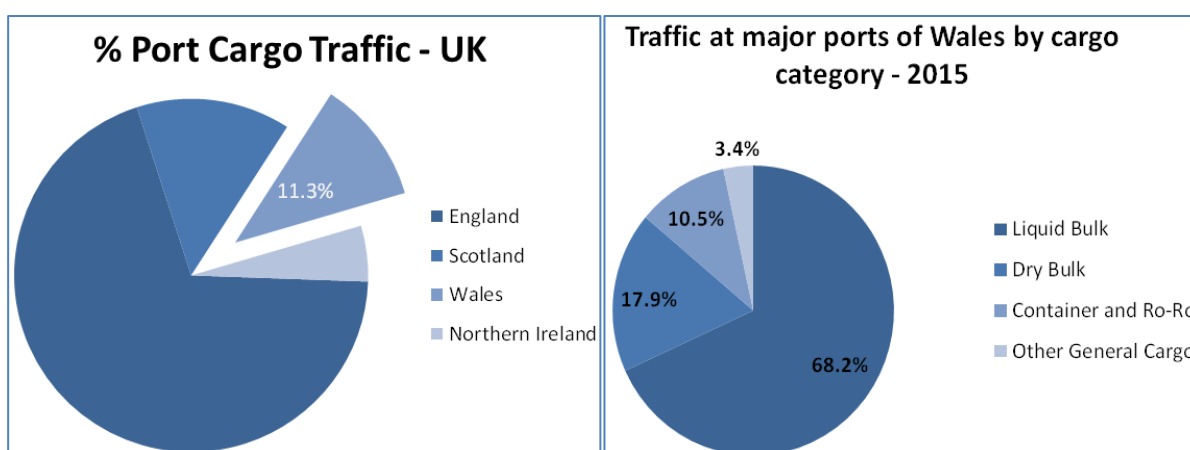
**EXTERNAL AFFAIRS AND ADDITIONAL LEGISLATION COMMITTEE
WRITTEN EVIDENCE
INQUIRY INTO THE IMPLICATIONS OF BREXIT FOR WELSH PORTS**

Introduction

1. Welsh Government recognises the key role ports in Wales play in supporting a prosperous, united, secure and connected Wales. They are an important source of economic wealth and jobs at a national, regional and local level, and ensure Wales is internationally and sustainably connected for both the transport of people and goods.
2. Welsh ports are significant players nationally and internationally, servicing a wide range of specialised and general markets. They make important contributions to our economy, directly and indirectly, acting as a gateway to economic hubs in the Republic of Ireland, the UK, the rest of Europe and the world.

Context - Cargo

3. The Welsh port share of UK freight traffic for 2015 was 56.4 million tones (Mt) – around 11% of the UK total¹.
4. Of the total Welsh traffic, major ports² are responsible for handling 55.5 Mt, which is further broken down into
 - 37.8 Mt (68.2%) Liquid bulk³
 - 10 Mt (17.9%) Dry bulk⁴ (Ores, Coal, Agricultural products)
 - 5.8 Mt (10.5%) Container and roll-on/roll-off traffic
 - 1.9 Mt (3.4%) Other general cargo⁵
5. The busiest ports in Wales in terms of freight moved by weight are Milford Haven, Port Talbot and Holyhead.



¹ [Department for Transport – Port Freight Statistics 2015](#)

² Holyhead, Fishguard, Milford Haven, Swansea, Port Talbot, Cardiff and Newport

³ Liquefied gas, Crude oil, Oil products etc.

⁴ Ores, Coal, Agricultural products

⁵ Forestry products, Iron and steel products etc.

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| Freight Traffic (weight) through Welsh cargo ports - by direction 2015 | | | | |
|---|---------------|----------------|--------------|----------------------|
| Weight: Thousand Tonnes | | | | |
| Port | Inward | Outward | Total | Rank in Wales |
| Milford Haven | 26,433 | 11,251 | 37,684 | 1 |
| Port Talbot | 7,732 | 381 | 8,113 | 2 |
| Holyhead | 2,214 | 2,241 | 4,455 | 3 |
| Newport | 1,517 | 1,055 | 2,571 | 4 |
| Cardiff | 1,499 | 292 | 1,791 | 5 |
| Swansea | 386 | 132 | 518 | 6 |
| Fishguard | 239 | 139 | 378 | 7 |
| Barry | 207 | 93 | 300 | 8 |
| Llandulas | 0 | 197 | 197 | 9 |
| Neath | 61 | 132 | 192 | 10 |
| Burry Port | 110 | 0 | 110 | 11 |
| Port Penrhyn | 33 | 3 | 35 | 12 |
| Mostyn | 7 | 6 | 13 | 13 |

| Cargo type at main Welsh ports, 2015⁶ | | | | | | |
|---|--------------------|-----------------|----------------------------|--------------------------------------|--------------------------------------|--------------------------------|
| Port | Liquid bulk | Dry bulk | Other general cargo | Lift-on / Lift off Containers | Roll-on / Roll-off Containers | Total (thousand tonnes) |
| Milford Haven | 97.51% | 0.16% | 0.04% | | 2.29% | 37,684 |
| Port Talbot | | 99.98% | 0.02% | | | 8,113 |
| Holyhead | 0.37% | | | | 99.63% | 4,455 |
| Newport | | 41.02% | 58.98% | | | 2,571 |
| Cardiff | 60.02% | 17.92% | 14.35% | 7.71% | | 1,791 |
| Swansea | | 79.46% | 20.54% | | | 518 |
| Fishguard | 2.75% | | | | 97.25% | 378 |

6. An important role for Welsh ports is as the principal route for lorry traffic between Ireland and Great Britain (and on to the rest of Europe). Over three quarters of goods taken by Heavy Goods Vehicle (HGV) to GB and the rest of the EU goes through Wales, the majority of which is through Holyhead.

Context - Passengers

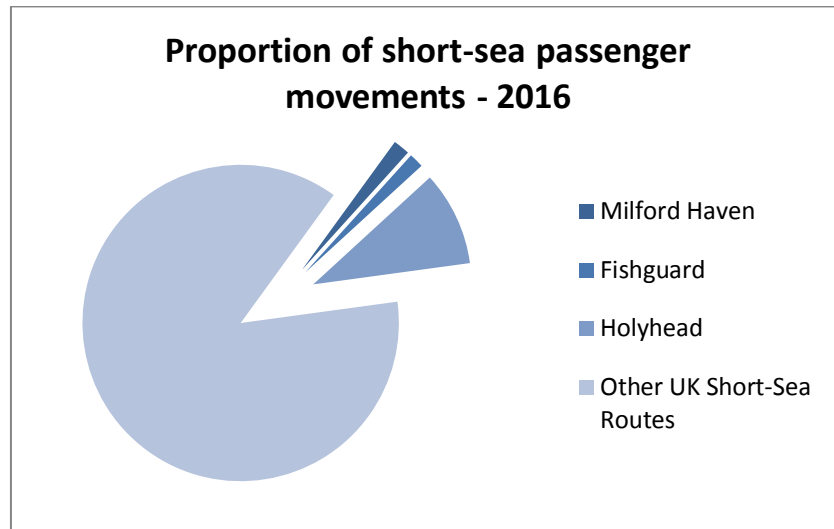
7. In respect of passengers movements, the market in Wales is focused on short-sea, international movements primarily between the UK and Ireland. In 2016, at total of 2.6 million passengers moved through the main Welsh cruise ports -

⁶ [Department for Transport – Port Freight Statistics 2015](#)

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Holyhead, Milford Haven and Fishguard.⁷ This represented 13% of the total UK short sea passenger movements (around 20 million).

8. Cruise calls in Wales are one of the fastest growing sectors in tourism and have increased on average by 30 to 35% year on year since 2013. 2017 will see 88 cruise calls - a potential 53,000 passengers and crew visiting Wales. This equates to approx. £5 million in economic impact.



Supporting Activity

9. In recognition of this position, the Welsh Government continues to provide direct and indirect support for the ports sector. Our ambition is to help the sector further enhance the significant economic contribution it makes to Wales. To that end, we have:
 - Provided funding to help ports develop their wider economic potential, for example as tourism gateways/hubs, which includes the allocation of £2 million for the Ports Development Fund
 - Established industry led Freight Task and Finish and Working Groups to advise on strategic issues affecting the freight transport sector's ability to support economic development which recognise the core role of ports for intermodal freight
 - Further developed major road enhancements and improvements which will improve surface connectivity to ports, including the M4, A55, and A40.
10. We have pressed for and welcome the further devolution of ports and harbours that will be delivered through the Wales Act 2017⁸. This will allow us to better connect ports in Wales with wider policy areas – such as energy and tourism. It is disappointing that the UK Government did not agree that Wales' largest port - Milford Haven – should be devolved. We recognise the importance of Milford

⁷ [Department for Transport – Provisional Sea Passenger Statistics 2016](#)

⁸ [Wales Act 2017 – Legislation.gov.uk](#)

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Haven to Wales's regional and national economy, and will continue to work in partnership with the port.

11. The port provisions under the Wales Act are scheduled to come into force from April 2018. In preparation for this, a dedicated ports team is being assembled within the Welsh Government to provide early collaboration and engagement with the sector.

Brexit – Threats and Opportunities

12. There are a range of common threats and opportunities for UK ports in respect of Brexit. Early discussion with the sector, wider industry, the UK Government and the other devolved administrations has surfaced key issues in respect of the implications for customs and immigration control, as well as changes to state aid, revised trade deals, and infrastructure investment.
13. The vital issue for the sector UK-wide is the importance of maintaining the efficient movement of goods and people via seamless customs arrangements that are, as a minimum, no more burdensome than the current Customs Union regime. Any changes to migration and/ or customs rules which add to costs, time, inconvenience and regulation could have an immediate and major impact, with negative consequences for both private and public sectors, and citizens.
14. Furthermore, there is a potential and unique threat for the sector in Wales because of its key role as the gateway for moving goods and people to and from the Republic of Ireland. Currently over 70% of cargo to and from Ireland, Great Britain and the wider EU pass through Welsh ports.
15. It will therefore be important to both ensure border check procedures are proportionate and effectively protect the interests of Wales and the wider UK, whilst also ensuring that land movements between the Republic and Northern Ireland remain as seamless as possible.
16. However, there is a significant risk that additional checks at mainland UK ports (a 'hard' sea border) could reduce the efficiency of traffic passing through the ports, especially in respect of roll-on / roll-off (Ro-Ro) freight movements. A more relaxed regime at the Irish land boundary (a 'soft' land border), in contrast to a stricter customs regime at UK mainland ports, could encourage movement via this land border through Northern Ireland ports into England and Scotland potentially at the expense of the current, well established direct routes from Ireland into Wales.
17. Whilst in general this might not be damaging to wider UK economy, as the same volume of trade could still move between the two countries, the potential for a marked reduction in throughput at the Welsh ports could disproportionately impact on the viability of moving goods through Wales and cause a major negative impact on the wider Welsh economy.

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18. Additionally, surface access is a key component of the effectiveness of ports in Wales, and infrastructure investment is an important part of any strategy to grow and develop Welsh ports. The Welsh Government is already making progress with a number of road schemes which will result in positive impacts for ports in Wales.
19. Our investment in roads supports the Trans-European Transport Network (TEN-T) regulations⁹ - the EU initiative designed to promote cohesion, interconnection and interoperability of national transport, including roads, railways, airports, ports and inland waterways. A number of ports and strategic surface routes in Wales are within the network, and a continued commitment from the UK Government to meet the standards set out by the TEN-T regulations - including electrification of the rail line to Milford Haven by 2030 - would strengthen opportunities for ports.
20. Wider changes to state aid policy could also present an opportunity for Government to invest more in the economic activity that can be generated by ports. Changes to the State Aid General Block Exemption Regulations (GBER) have been agreed by the Commission and will provide opportunities for further investment into ports infrastructure. However, the restrictions in place on these changes will not enable us to provide support to sustain the growth in the cruise sector, particularly in respect of accommodating longer cruise vessels.
21. There are also risks around the undesirable market distortion which could result from relaxing state aid rules. Particular care will be needed to ensure that any changes do not lead to unintended consequences of this nature.
22. In summary, Welsh Government considers the following as priorities:
- I. Ensure Welsh ports are not disadvantaged by inefficient border check regimes, and that sufficient resource is made available by the UK Government to enable new, efficient arrangements to be put in place as necessary.
 - II. Continue to support ports in Wales by promoting conditions and a regulatory environment which best enables all ports to contribute to economic growth and wider policy objectives
 - III. Ensure the UK Government continues to recognise the importance of the Trans-European Transport Network (TEN-T) , which features the major ports in Wales, and commits to meeting post-Brexit the standards for the network established by the TEN-T regulations
 - IV. That any modifications or replacement to state aid policy are carefully considered on a principle of avoiding undesirable market distortion
23. We will continue to engage closely with the UK Government to ensure the Brexit negotiations and post-Brexit arrangements result in a favourable outcome for Wales.

⁹ [REGULATION \(EU\) No 1315/2013](#)



Llywodraeth Cymru
Welsh Government

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

15th June 2017

Dear David,

As you will recall, in January, together with Plaid Cymru, I published our White Paper “Securing Wales’ Future” outlining our agenda and priorities for Wales as the UK prepares to leave the European Union (EU). I made it clear then that this marked the beginning of a dialogue, and signalled my intention to publish a series of further policy documents to contribute to the debate both here in Wales and the United Kingdom (UK).

Today I have published the first of those policy documents, “Brexit and Devolution” which is enclosed. You will have received the Written Statement issued this morning, and I intend to make an Oral Statement to the Assembly during Plenary on 20 June.

The UK which leaves the EU is not the same as the one that entered it nearly 50 years ago and we will need to find new mechanisms for working with the UK Government and the other devolved administrations which reflect and respect devolution. We have consistently been very clear that powers already devolved to Wales, Scotland and Northern Ireland must remain devolved after EU exit, and that any other proposition would be wholly unacceptable. The people of Wales have voted for our powers and this must be respected.

This policy document offers constructive and inclusive proposals for the future of the UK, including governance mechanisms which respect devolution and enable the four governments of the UK to work together to ensure the smooth functioning of the Union after we leave the EU.

These proposals set out to protect devolution and we will aim to draw support on a cross-party basis; we welcome views from your Committee as we take forward the debate on the important issues raised. I look forward to taking the opportunity to discuss our proposals with you in the near future.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

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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.

I have also written in similar terms to the Chair of the Constitutional and Legislative Affairs Committee and I am copying this letter to the Presiding Officer.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Carwyn Jones', written in a cursive style.

CARWYN JONES



Llywodraeth Cymru
Welsh Government

Brexit and Devolution

Securing Wales' Future

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1 First Minister's Preface

Leaving the European Union (EU) is the most significant challenge facing the United Kingdom (UK), a challenge thrown into even sharper relief by the outcome of the General Election. Decisions taken now will affect Wales for decades to come.

Our ability to trade, travel, attract investment, determine policies, legislate, support our countryside, invest in our regions – all of these will be influenced by how we leave the EU. The UK which will leave the EU is not the same country which joined in 1973. At that time, the UK was one of Europe's most centralised states. Today, through nearly 20 years of devolution, much has changed. Most notably, there are devolved legislatures and administrations for Wales, Scotland and Northern Ireland. Westminster and Whitehall retain responsibilities for some policies – health, education and agriculture, for example – in England only and for others, such as defence and foreign policy, for the UK as a whole.

The EU which we are leaving is also very different from the European Economic Community we joined in 1973. During this time, the EU has become much bigger, its powers have increased and the degree of integration between its Member States has deepened greatly. So the task of disengagement is complex and, as we prepare to withdraw, many difficult issues must be addressed within the UK as we learn afresh how to manage our business as a dynamic multi-national democracy outside the EU.

A return to the Wales and UK of 1973 is plainly not an option. The arrangements for the UK's

withdrawal from the EU must reflect the reality of devolution. And let us remind ourselves that devolution, just as much as EU exit, is also based on referendums and popular will. We, and colleagues across the UK, must keep that in mind as we deliberate our collective future.

This document outlines the Welsh Government's proposals for responding positively and creatively to the constitutional implications of EU exit. We suggest how the division of competences between devolved administrations and the UK Government can best be managed in the interests of all – and how we need to work together to ensure the smooth functioning of the UK after we leave the EU.

In this critical period in our history it is vital that the UK Government and devolved administrations work together in genuine partnership to map our collective future.

We should agree common approaches where these are necessary – through discussion, not diktat – because it is in all

our interests to do so. If there is a 'Brexit dividend' for Wales then part of that must, surely, be the opportunity to exercise our devolved powers in a fuller and more creative sense.

As First Minister, representing a party which has just received a further incontrovertible endorsement from the electorate in Wales, I am both passionate about Wales and proud of our United Kingdom. I see no contradiction between the two. Clearly, not everyone takes this view. There are those who see our Union as a shackle and others who are disrespectful towards the clear mandate for Welsh devolution which was reinforced by the 2011 referendum. I believe in Wales' ability to address our future according to our needs and values. I believe, equally, that a vibrant and dynamic Union benefits us all. Any retreat towards a monolithic and centralised UK takes us in the wrong direction and in the long term, I am certain, will serve to threaten, not strengthen, our Union. The opportunities presented by EU exit must be about the future, not the past.

I believe we must address four fundamental questions:

- how do we ensure coherence across the UK to protect the functioning of our internal market without at the same time undermining devolution?

- how do we achieve deeper and more sustained co-operation between the four governments in the exercise of our individual, but connected, competences after the UK withdraws from the EU?
- how do we reform the machinery of government to support this coherence and co-operation?
- how do we build wider consensus across political parties and civic society about the long term governance of the UK?

Wales and the UK will be stronger for an open discussion. This debate on the future of the Union should be positive and inclusive, and should develop without disparagement or disrespect to others. No one has the monopoly on good ideas.

This document sets out the Welsh Government's approach to these questions. I want our United Kingdom to survive and prosper. This needs vision, ambition and imagination and I believe this document makes a significant contribution to that debate.



Carwyn Jones
First Minister of Wales



2 Summary of Welsh Government proposals

At the start of 2017 the Welsh Government, together with Plaid Cymru, published a White Paper, “Securing Wales’ Future”, setting out how we think the UK should approach withdrawal from the EU. This new document develops constitutional and governance ideas which were first surfaced in that White Paper.

Withdrawal from the EU represents a major constitutional change for the UK and for Wales. But Brexit must not undermine devolution, which is now a fundamental and permanent part of the UK constitution as recognised in the Wales Act 2017.

We are calling for deeper and more sustained co-operation between devolved administrations and the UK Government after EU exit, a shared governance approach developed on the basis of agreement between the four governments, and building on the traditions of co-operation built up during the years of EU membership. Our proposals for agreeing new UK frameworks describe how this would work in practice. New arrangements for consultation, joint decision making and joint delivery will be needed.

This means redesigning our approach to inter-governmental relations, in order to support shared executive governance of devolved matters, and deeper collaboration where devolved and non-devolved issues inter-connect.

The UK’s inter-governmental machinery must be reformed with a new UK Council of Ministers, served by an independent secretariat, to strengthen decision making and collaboration.

A Convention on the Future of the United Kingdom should be held to build cross party and civil society consensus on the future governance of the UK for the long term.

3 The EU Referendum and its impact on the governance of the United Kingdom

As a consequence of the EU referendum of June 2016 the UK has activated Article 50 of the Treaty on European Union. This has triggered a negotiation between the UK Government and the EU on the terms of withdrawal. The provisions of Article 50 allow two years for these negotiations and, all other things being equal, the working assumption is that the UK will formally leave the EU in spring 2019.

Since the referendum, the Welsh Government has been in discussions with the UK Government, the Scottish Government and the Northern Ireland Executive about the overall negotiating priorities of the UK. The Welsh Government's priorities are set out in our White Paper "Securing Wales' Future". These discussions have progressed through a combination of bi-lateral engagements and the formal inter-governmental machinery of the Joint Ministerial Committees (JMC). JMC Plenary brings together the respective heads of government from the four administrations while JMC EU Negotiations is the forum for more detailed work by the UK Government and Ministers representing the devolved administrations. The Welsh Government has played a constructive part in this process and remains committed to working with partners to produce positive outcomes for Wales and the UK.

By the time of our likely EU exit, the UK will have been in the EU for nearly 50 years. During this half century the competences of the EU have extended substantially and the UK's integration with EU policies, markets, programmes and practices is now wide and deep. Consequently, disengagement from the EU will necessarily be complex and many challenges must be addressed.

It is not only the EU which has changed over the last 50 years. The UK has itself changed profoundly. Devolution is foremost among these changes.

The UK entered the Common Market as a highly centralised state but we will leave the EU as a much more decentralised country, governed through four administrations drawn from directly elected legislatures. More generally, the General Election which has just been held has highlighted that no one political institution or political party can legitimately claim alone to speak for the whole of the UK.

As the UK leaves the EU, returning to the 1973 status quo is obviously not an option. Brexit arrangements within the UK must recognise devolution and the allocation of competences to the Welsh Government and the National Assembly for Wales - as well as those of our Scottish and Northern Irish counterparts.

A positive future for the UK must be based on respect, recognition of competences and joint decision-making in areas of common UK interest.

4 Devolution: the Welsh context for EU withdrawal

Devolution in Wales

Devolution in Wales was established in response to the Welsh referendum of September 1997. The Government of Wales Act 1998 paved the way for a new Welsh democratic institution. The first elections were held in May 1999 and powers were transferred from UK ministers to the National Assembly for Wales on 1 July that year.

Devolution has been transformed since 1999 as a result of further Acts of Parliament in 2006, 2014 and 2017. A further referendum was held in 2011 which confirmed popular support for devolution in Wales. Among other matters, this referendum conferred powers on the National Assembly for Wales to make primary legislation in devolved areas. The Wales Act 2017 confers additional powers and establishes a 'reserved powers' model for devolution in Wales.

(below) The Senedd, Cardiff Bay

The National Assembly for Wales is now the principal law-making body for Wales on most matters which affect people in their daily lives, such as the following:

- Health
- Education and training
- Housing
- The environment
- Economic development
- Local government
- Transport
- Planning
- Agriculture and fisheries
- Culture
- Sport and recreation

Some of these policy areas, including economic development, environmental protection and agriculture and fisheries, are also areas where the EU institutions have had the most significant powers. On these matters the National Assembly must not, in exercise of its powers, enact legislation in contravention of EU law.

Welsh Government Ministers exercise a wide range of executive powers in broadly the same fields as those in which the Assembly can legislate. Welsh Ministers make decisions, award grants, make secondary legislation and take other action necessary to promote the economic, social and environmental well-being of Wales. In carrying out these functions Welsh Ministers are accountable to the National Assembly.

Under the UK constitution, the UK Parliament retains the power to legislate on any matter for Wales as for the rest of the UK.



However, in accordance with the ‘Sewel Convention’, Parliament will not normally legislate for Wales on matters which lie within the National Assembly’s legislative competence, or affect that competence, unless the Assembly has given its formal consent through a Legislative Consent Motion. In contrast, Welsh Ministers’ executive powers have been transferred away from the UK Government and are generally exercisable free of any possibility of interference by UK Ministers. Welsh Ministers owe no accountability to the UK Parliament. The model of devolution practised in the UK has some examples of co-ordinated agreements in relation to the exercise of competence, but most decisions are taken either by Welsh Ministers or by UK Ministers as appropriate.

In reality however, given the distribution of executive responsibilities between the governments, the actions of one government may well have significant implications for the policies of one or more of the others, or for citizens in ‘another’ territory. This means that the machinery for inter-governmental collaboration needs to be effective. The existing arrangements operate under the aegis of the Joint Ministerial Committee (JMC), which brings together Ministers from the four administrations to discuss matters of common concern. The JMC is a consultative body and takes no decisions: EU withdrawal raises fundamental questions about its role and working arrangements, and we address these in chapter 7.

This model of distinct and separate competence has worked well in areas where there is relatively little inter-dependence

between government activity and each administration has been free to pursue distinct policies in line with its mandate. This is the case, for example, with most front-line public services such as education and health, which are very largely devolved matters. Even here, though, there is some linkage; for example, cross-border health referrals are covered by an inter-governmental protocol which largely works well. In general these issues have not presented substantial administrative (as opposed to political) challenges for inter-governmental relations within the United Kingdom, partly because they have a relatively limited international dimension and there is, therefore, no requirement to establish a UK-wide external facing perspective. The existing devolution settlement establishes obligations on the National Assembly and Welsh Government to observe international obligations and these responsibilities have been fully discharged during the period of devolution.

The Welsh Government’s relationship with the EU

Those devolved competences which have a significant international impact (actual or potential) have, in practice, generally been exercised within the framework of EU regulation. Under current arrangements, the Welsh Government engages with EU-related business in two ways.

First, we deal directly with the European Commission on agreeing the strategic direction and administration in Wales of key programmes financed by the Structural Funds, and on implementation of the Common

We also contribute, in accordance with the Memorandum of Understanding first agreed in 1999 (see chapter 7), to the development of the UK’s policy lines for representation in meetings of European Councils. The JMC Europe (E) provides the machinery for our engagement, alongside the other devolved administrations, with the UK’s policy development process on EU matters.

The Welsh Government does not recognise the description, in the previous UK Government’s White Paper (“Legislating for the UK’s withdrawal from the European Union”) of the apparently exclusive responsibility it attributes to the UK Government in the development of EU policy frameworks. The UK Government normally represents the UK in European Council of Ministers meetings but, in doing so, it must present the policy of the United Kingdom as a whole rather than the policy of the UK Government alone.

Since devolution began, the Welsh Government has been able to exercise appropriate influence directly in Brussels, through our collaborative arrangements with the UK Government. As a broad generality, Welsh Ministers have viewed the cross-UK collaborative practices on EU business positively as a means to advance and protect the Welsh interest at EU level – working through the UK as the Member State of which Wales is part. Withdrawal from the EU will require entirely new arrangements for dealing with these matters.

We are clear that EU exit should not result in the ‘repatriation and redistribution’ of the functions of government within the UK. The powers will lie where they rest

as a result of Parliamentary legislation since 1999, but these will no longer be exercised subject to EU obligations. That is the position under the devolution legislation, and that position, as was noted in the ‘Miller judgement’¹, can only be changed by new primary legislation at Westminster – which we believe is unnecessary and undermining of devolution.

The Welsh Government is strongly resistant to any suggestion that Whitehall and Westminster have exclusive

responsibilities in respect of any UK-wide policy frameworks required after EU exit has taken effect.

Powers already devolved must remain devolved and Wales has a legitimate interest in a range of reserved policy areas which will impact on us. The Welsh Government expects to continue, within the scope of our powers, to contribute to the development of policy frameworks where they are necessary, as it has done in the past: our proposals on this are set out in chapter 6.

EU membership and the devolution settlements

We also reject the view, set out in the UK Government’s White Paper that the existing devolution settlements are ‘premised’ on the UK’s continuing membership of the EU. As the Supreme Court pointed out in the ‘Miller case’:

“When enacting the EU constraints in the Northern Ireland Act and the other devolution Acts, Parliament proceeded on the assumption that the United Kingdom would be a member of the European Union....But, in imposing the EU constraints and empowering the devolved institutions to observe and implement EU law, the devolution legislation did not go further and require the United Kingdom to remain a member of the European Union....”

(below) Main entrance of the Supreme Court, London



5 Legislating for EU exit: ensuring continuity while respecting devolution

The Welsh Government's ambition is that the Great Repeal Bill or any equivalent legislation brought forward by the UK Government should be constructed in a way that freezes EU law into UK law, at the point of our departure from the EU, while respecting and accommodating devolution. We believe this is straightforwardly achievable and the Welsh Government stands ready to work with the UK Government to help frame the legislation in an appropriate way.

The UK Government's White Paper ("Legislating for the United Kingdom's withdrawal from the European Union") signalled an intention to replicate the current EU frameworks in domestic law. It is suggested there should be "intensive discussions with the devolved administrations to identify where common frameworks need to be retained in the future, what these should be, and where common frameworks covering the UK are not necessary. Whilst these discussions are taking place with devolved administrations the UK Government will seek to minimise any changes to these frameworks".

While we welcome dialogue with the UK Government in areas of common interest, we oppose new and additional constraints being placed on our devolved legislative competence. Among the arguments for EU exit in Wales was the opportunity to escape from EU policy constraints; swapping EU constraint for a UK version doing the same thing would leave Wales no better off in respect of devolution – and arguably worse, since in our dealings with

the EU we are guaranteed an input into the formulation of a common UK position.

From the outset of the debate about our collective future outside the EU, the Welsh Government has recognised a need to develop UK frameworks. It is clearly important that no new barriers to the effective free movement of goods and services within the UK are created as a result of EU withdrawal. The development of UK frameworks should be taken forward immediately on the basis of negotiation and agreement among the four UK administrations.

But, separately from EU exit, there are some important areas of inter-dependence between devolved and non-devolved matters. For example, the UK Government's proposed changes to social security benefits, and to higher education, have had very significant repercussions for the Welsh Government which the existing inter-governmental machinery has not adequately addressed. Most recently, the interface between the UK Government's planned reforms of prisons and youth justice, and devolved services, is very extensive and we have at present no machinery for addressing this. There are many other examples. In short, the existing inter-governmental machinery is no longer fit-for-purpose: we set out our proposals for change in chapter 7.

Withdrawal from the EU will radically increase these areas of inter-connected competence. It will do so in relation to both:

- devolved matters where UK wide approaches will need to be negotiated and agreed;
- non-devolved matters which will have a major impact on devolved services and budgets, or on Wales more generally.

To deal with these matters of inter-connected competence, the Welsh Government advocates a deeper and more sustained co-operation between devolved administrations and the UK Government after EU exit. We believe that the traditions of co-operation which have been built up during the years of EU membership provide a useful body of experience for inter-governmental thinking and a useful starting place for further work. We believe it is implausible that the UK can withdraw from the EU and then continue with existing governance arrangements as if nothing major had happened. We believe that such an approach, or a centralising agenda, will threaten the Union over the long term. We further believe that a coherent and adaptable response to our post-EU governance arrangements will help bind our own four-nation Union together more closely.

Co-operative and collaborative work between the devolved administrations and the UK Government is clearly the best approach both to continuity legislation for EU departure and for the longer term as we shape a new future for the United Kingdom: indeed, particularly in the light of the outcome of the General Election, any

other approach would seem constitutionally inappropriate and reminiscent of the 1980s.

We hope that the UK Government will recognise this by:

- Consulting fully with the Welsh Government and the other devolved institutions on both the principles and the detail of the Great Repeal Bill or equivalent legislation;
- Agreeing that the Sewel Convention applies and that a Legislative Consent Motion must be sought from the National Assembly;
- Removing any threat of introducing new constraints on the competence of either the National Assembly or the Welsh Government.

If it does not, then the Welsh Government must consider other available options to protect our devolved interests, including the option of introducing our own legislation to secure the rights of the National Assembly and Welsh Ministers in respect of EU derived law in devolved areas of competence.

Our objectives in doing so would be two-fold. First, to protect the devolution settlement and powers which the Welsh people have consistently voted for over many years. Secondly, to preserve for the long term the social and environmental protections which we have accrued through the EU. Withdrawal from the EU must not be a licence for slackening

environmental and other protections or allowing exploitation of workers. If we cannot be confident that the UK Government will work fairly with us, and in good faith, to secure these outcomes, then we must pursue other avenues.

The following chapters set out how we think co-operative arrangements could work in practice, through new inter-governmental agreements, and new machinery for delivering them.



6 Shared executive governance: a new approach to the exercise of powers in a United Kingdom outside the EU

This chapter proposes that we need to move from our current binary (devolved or non-devolved) approach to competence, to one that recognises the reality of inter-connected competences. This will not change the need for clarity on where powers lie, but will introduce a more sophisticated approach to the exercise of those powers in the interests of better governance and delivery for citizens.

As discussed, many of the powers devolved to the National Assembly and Welsh Government are currently exercised within the framework of EU regulation. The powers include agriculture, fisheries and environmental protection. These powers were devolved by means of UK Parliamentary legislation based on the explicit approval of the Welsh people in two referendums (1997 and 2011). The Wales Act 2017 frames Welsh devolution within a ‘reserved powers’ model along similar lines to Scotland’s settlement.

This means that matters reserved to the UK Parliament’s legislative competence are specifically listed; competence in respect of matters not explicitly listed is devolved. One of the benefits of this model is that it provides greater clarity about which powers are reserved and which are not.

At the point of UK exit from the EU, unless there is Parliamentary legislation to the contrary, those devolved powers currently exercised within an EU context

will remain with the devolved institutions in Wales. Any other outcome would, in our view, require UK Parliamentary legislation to reverse the existing devolution settlement. Such a course would directly contradict the explicitly expressed preference of the Welsh people and would be vigorously opposed by the Welsh Government. We believe an approach along these lines would weaken trust and undermine the Union.

The current EU policy and regulatory frameworks

Under current arrangements, the EU ensures policy coherence and common practice, with agreed frameworks, in its areas of competence. In order to address the implications of removing these frameworks, and to understand which aspects may be needed on a UK-wide basis, it is important to appreciate the extent and scope of the current EU policy and regulatory frameworks. These are summarised in Box 1.

These EU frameworks also ensure aligned goals and co-ordinated approaches within the UK, where the policy choices of four administrations might otherwise challenge the smooth frictionless functioning of the UK’s own internal market.

In addition, following Brexit, a range of powers outside of our devolved competence currently exercised exclusively by the EU, or jointly by the EU and Member States, will most probably return

to the UK Government. The Welsh Government will have an active policy and practical interest in many of these, including State aid regulation, competition law, migration and trade policy.

Box 1: The Components of an EU Framework

In each regulatory framework there is a complex picture of international, EU and domestic legislation. In addition, governance, administrative and funding arrangements operate at the EU and domestic levels to support the operation of EU frameworks.

An EU framework can therefore consist of all or some of the following:

- An overarching strategic policy direction developed and set at the EU level;
- A legislative framework, enacting the policy direction, consisting of EU Treaties, Directives and Regulations, some of which are directly applicable;
- The legislative framework also translates international obligations (where they exist) into a common EU framework which is then tailored and implemented at a domestic level;
- Domestic legislation as necessary to enact the EU requirements into domestic law;

- Administrative arrangements including for example in relation to registration, inspection, labelling, licensing, quotas, export requirements and management plans;
- Enforcement mechanisms;
- Support for research underpinning policy development;
- Financial support such as structural funds and competition rules such as in respect of State aids;
- Governance in place within the UK as a Member State to oversee the UK's input into the design and delivery of the EU's frameworks, including agencies and delivery bodies and decision making fora etc.

It may well be that in some of these areas the UK will need to maintain regulatory convergence with the EU even after Brexit, in order to secure the sort of full and unfettered access to the Single Market which is our main objective for our future relationship with the EU.

But in other areas, a consequence of the UK's exit from the EU will undoubtedly raise this question: how do we ensure coherence of policy and practices across the UK to protect the functioning of our internal market without undermining devolution?

The previous UK Government's White Paper "Legislating for the United Kingdom's withdrawal from the European Union" states on pg 27:

“When the UK leaves the EU, the powers which the EU currently exercises in relation to the common frameworks will return to the UK, allowing these rules to be set here in the UK by democratically-elected representatives”

We agree with this, but hold that it is democratically-elected representatives in Cardiff, Edinburgh and Belfast as well as those in London who need to set these rules in areas of devolved competence.

The Welsh Government believes that, on matters within devolved competence, and where necessary, binding UK frameworks should be drawn up and agreed by all four administrations: Wales, Scotland, Northern Ireland, and the UK Government representing England's interest and separately – if necessary – the wider Union interest. The Welsh Government recognises the need for such frameworks and readily accepts the duty to reach agreements which benefit all and harm none. What we could not accept, and what would risk tearing the Union apart, would be if the UK Government attempted to take powers to itself and seek to impose by central diktat what can and should be achieved through negotiation, shared interest and agreement.

So far as the non-devolved matters mentioned above are concerned, the Welsh Government will naturally have an active interest in these. In the same way that there must be UK-wide discussions on some devolved policies, we also argue for UK-wide discussions and agreement in some aspects of non-devolved policy. We believe this is necessary to ensure that policies have legitimacy across all parts of the UK and to ensure that there is appropriate integration where necessary between devolved and non-devolved policies.

Determining the case for shared governance frameworks at UK-level

As we plan for the UK's withdrawal from the EU, it will be essential for the UK Government and the devolved administrations to agree where the shared governance approach is needed. We propose this should be approached on the basis of subsidiarity, and where it is determined that a shared governance approach is needed, there should be consideration of the scope and mechanisms required in each case. As Box 1 illustrates, there is a wide spectrum of options and regulatory mechanisms to be considered, including: structures of governance, decision making bodies, and operational oversight.

Where it is agreed that shared governance frameworks are required, this will not necessarily mean securing policy uniformity. In some instances frameworks may be concerned to promote convergence and a common approach to be followed by all administrations – for example, in dealing with specific environmental threats. In other instances frameworks may be designed to constrain



(above) Llyn Clywedog reservoir

divergence but still leave individual administrations with room for manoeuvre to suit local circumstances – as for example, the existing Common Agricultural Policy does (a conclusion endorsed for UK domestic law by the Court of Appeal in the ‘Horvath case’²). It is worth noting, by way of illustration, that environmental standards under EU Directives currently allow for divergence between administrations, so there should be no assumption of convergence under future UK frameworks, except where this is necessary to secure an agreed common policy outcome.

So where regulatory convergence is no longer a requirement of our future relationship with the EU, we propose a pooling of sovereignty by the devolved administrations and the UK Government, supported by a system of shared governance, to regulate aspects of the internal UK market. This should not be a matter of simply replicating EU frameworks at the UK level: the

case for maintaining existing EU policy frameworks domestically will need to be considered afresh in the UK context.

Some existing EU frameworks, for example, those created by the Birds Directive or the Bathing Waters Directive, are not primarily motivated by internal market considerations, and there may be no need to retain a UK-wide regime for these. This does not mean that the protections achieved by such Directives should be withdrawn; the point is rather that it should be for the responsible governments in each part of the UK to have the freedom to decide.

Criteria for shared governance frameworks

Clear and agreed criteria, having regard to the principle of subsidiarity, will be required for identifying where UK-wide approaches and decision-making structures are appropriate. Such criteria might include:

a. Measures which support a fully functioning internal UK market

these might include: common minimum standards which enable goods to be traded both within the UK and abroad; rules on State aid/business support (subject to regional variations or exceptions); and environmental requirements on production industries – in so far as these are not pre-determined by our future relationship with the EU or other international obligations.

b. Matters where there is a direct dependency between devolved and non-devolved policy areas

outside of the EU, the Welsh Government would have a more direct interest in trade negotiations, particularly given that these would have important inter-dependencies with key aspects of the policy and regulatory context for devolved areas such as steel, agriculture or fisheries. At present, the Welsh Government has the opportunity to work with the UK Government to influence EU negotiating mandates on new free trade

agreements to ensure that Welsh interests are protected. It would be perverse if, post-Brexit, we had less opportunity to ensure that trade policy does not adversely impact on devolved policy areas. Continuing full and unfettered access to the Single Market is our primary ambition for EU negotiation and we remain unconvinced of the UK Government's arguments for leaving the Customs Union, but if this were to happen, we need appropriate constitutional arrangements to ensure our interests are protected.

c. Trans-boundary co-ordination

Many issues are trans-boundary in nature where activity in one country has a consequential effect in another.

d. Shared administrative arrangements

in some cases shared administrative arrangements may be the most efficient or cost effective way of continuing to deliver services after EU exit.

e. Compliance with international standards

for instance the co-ordination between administrations of controls to ensure the UK meets international obligations.

An example of inter-governmental collaboration and shared governance: animal health and welfare

We argue that a new model of shared governance is both essential and achievable. The current arrangements for protecting animal health and welfare across the four UK administrations illustrate what can be achieved through shared purpose and collaboration based

on evidence, as summarised in Box 2. As a general proposition, we do not believe it will be in the general interest to develop four separate and incompatible animal health regimes across the four countries of the UK. Such an outcome would complicate commercial mobility of livestock and produce, and add needless cost – an outcome which is in no one's interests. What we will need, plainly, is a set of binding UK-wide framework agreements developed and sustained through negotiation.

Animal health and welfare is a devolved matter and each administration sets its own policy priorities, within the context of EU regulation. The Chief Veterinary Officers of the four UK administrations work closely together to ensure that responses to animal health and welfare threats are evidence-based, and that they are co-ordinated and aligned as far as possible.

Box 2 illustrates inter-governmental collaboration in a high profile and fast moving area, enabling the UK to meet its international obligations, and to support both trade and animal welfare.

This is the kind of approach that will be needed to underpin new UK inter-governmental frameworks as discussed above. To oversee these, and ensure the necessary democratic accountability, there will need to be new inter-governmental governance structures, led by Ministers, as outlined in chapter 7.

Box 2: inter-governmental collaboration: animal health and welfare

- An agreed set of overarching principles which frames each administration's strategy;
- Policies recognise cross-border issues, and implementation is joined up and coherent;
- Great Britain (GB) Livestock and Welfare Enforcement Group includes representatives of 3 GB administrations, the Food Standards Agency, Food Standards Scotland and the Animal & Plant Health Agency, and meets quarterly to share intelligence and develop consistent proposals and communications;
- the four UK administrations work together to align evidence-based action in response to serious animal health disease, with a collectively agreed UK contingency plan;
- disease control strategies set out complementary, co-ordinated measures for managing an outbreak in each part of the UK;
- these plans and strategies are underpinned by joint working arrangements, including monthly meetings of the Chief Veterinary Officers;
- taken together, these arrangements meet the UK's legal obligations to the EU and the OIE (World Organisation for Animal Health).

7 Inter-governmental relations: how things work now and how they should change

Everyone agrees that leaving the EU is a step of profound importance which will radically revise how we are governed. It is inconceivable that so major a change can occur without far-reaching changes in how the four governments within the UK work together. This calls for clear thinking and imagination.

How things work now

Formal discussions between devolved administrations and the UK Government take place through the Joint Ministerial Committees (JMC). The JMC structure is set out in the Memorandum of Understanding (MoU) between the UK Government and the devolved administrations, originally agreed in 1999, with an updated version presented to the UK Parliament, the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly in October 2013. The MoU also comprises concordats on a number of matters including the co-ordination of EU issues.

In variable formations the JMC bring together Ministers from the four administrations to discuss policy in areas of common interest across the UK. The Prime Minister and First Ministers meet at JMC Plenary (P). Traditionally this met once a year and only in London, until January 2017 when it met outside London for the first time in Cardiff City Hall. JMC EU Negotiations (EN) was established after the referendum as the main Ministerial forum for EU exit negotiations. The

JMC Europe (E) remains the body which develops the UK's agreed positions on EU business (with the full participation of the devolved administrations in respect of devolved matters) and will continue to operate until the point of EU exit.

The British Irish Council (BIC) also provides an important forum for discussions on the UK's withdrawal from the EU and we believe the significance of BIC should grow over time.

What needs to change

EU withdrawal raises fundamental questions about the JMC's role and working arrangements. In our view, these are inadequate for the new challenges we face as discussed. The JMC is a consultative body and makes no decisions – it might negatively be characterised as, effectively, a 'talking shop'. What will be needed in future, outside the EU, is a structure capable of taking forward negotiations on dossiers of common UK-wide interest and reaching binding decisions. It must also be supported by a dispute resolution mechanism.

Lessons from effective Government across the World

The UK will need to establish our own arrangements to strengthen the Union as we leave the EU, but there are useful lessons to draw on from other countries with decentralised governments. Formal structures to support co-ordination and collaboration between the different levels of government are well established

features of political governance across the world, such as in Australia, Austria, Canada and Germany. While developing a model to suit our own circumstances, the UK should be open to learning from approaches elsewhere in order to ensure our political leadership is fit for purpose.

Political leadership: a new UK Council of Ministers

We propose a UK Council of Ministers system. This would operate along lines similar to, but on much smaller scale than, the EU Council of Ministers. In practice, the four administrations would meet regularly in a variety of formats to negotiate common rules and frameworks where it is agreed that coherence across the UK is necessary and beneficial. We will need a set of binding UK-wide framework agreements developed and sustained through negotiation, although the agreement of common approaches as a basis for free transactions across the UK should not prevent individual administrations developing enhanced policies, over and above framework imposed requirements, within their own sphere of competence. The new Council of Ministers should have a structure and work programme designed to enable the negotiation and implementation of such agreements. The case for statutory underpinning of the Council of Ministers could usefully be explored in this context.

How decisions should be made

A UK Council of Ministers would comprise four administrations: Wales, Scotland and Northern Ireland as devolved administrations, with the UK Government representing the UK and England. Decisions based purely on population share would result in the UK Government permanently dictating outcomes, thus undermining the collaborative democratic principle. Equally, if the three devolved administrations were able to outvote the UK Government this, too, would produce perverse and undemocratic outcomes (it is worth noting, in any case, that no assumptions should be made that devolved administrations share 'block interests': on the specifics of policies, devolved administrations are often no more or less likely to agree with each other than they are with the UK Government).

The first option should always be to achieve decisions through consensus and, in general, this is the outcome we would most frequently expect. Where consensus is not possible, we suggest a combination of the UK and one of the devolved administration should be sufficient for affirmative decisions. This would ensure the degree of plurality necessary for legitimacy in a multi-national state while respecting the dynamics of population share.

What happens if agreement cannot be reached at all through normal procedures? We recognise the need for a backstop arrangement as part of the overall operating procedure and we are open to further discussion on this.

Failure to reach agreement on a specific matter implies deadlock in a negotiation. The first response to such a deadlock should be a period of independently managed arbitration: the arrangements for this should be discussed and agreed by the four administrations.

Implementing decisions and resolving disputes

Once frameworks have been agreed which relate to devolved matters, responsibility for implementing them should rest with the devolved administrations (including where necessary securing appropriate consent from legislatures) in respect of their territories and with the UK Government for England.

Where disputes arise about the implementation of agreed standards, there will need to be an independent adjudication mechanism.

This might be undertaken by (or under the aegis of) the Supreme Court, or might involve a new institution in the first instance.

A new independent secretariat

At present the JMC secretariat is a group of officials, in a virtual secretariat mode, but in practice part of the constitutional team in each administration. This structure is not sufficiently robust to manage a programme of work to underpin shared or inter-connected competences.

The work of the UK Council of Ministers would best be managed, we believe, by an independent standing secretariat charged with cohering arrangements in the general interest, similar to the current structure for the British-Irish Council secretariat. In practice, the personnel would be seconded from each of the four administrations, but would operate independently of their 'home' administrations' interests. An independent secretariat – with ownership shared across the four administrations – would provide a strong foundation for supporting the shared governance approach we propose in chapter 6.

8 The future governance of the United Kingdom: building consensus for the long term

Leaving the EU is a profound change of direction for the UK. It is unrealistic, impractical and, we believe, undesirable, to take a step of this magnitude without significant change in how we conduct business within the UK. Simply carrying on as we are is not a plausible option.

The Welsh Government supports a dynamic and inclusive UK which works for the benefit of all its parts and disadvantages none. We believe in mutual respect for all parts of the UK and a principle of solidarity underpinning the collective interest. Our role, plainly, is to promote and protect the interests of Wales and we will always pursue that aim with vigour. However, we also recognise that a fair and successful Union must balance a range of interests, territorially and socially, across the whole UK.

For these reasons, we believe the time is now right to convene a Convention on the Future of the UK. This should draw together the various interests across the Union with a view to reporting

with options for sustainable future governance models for a UK operating in a global environment in fundamentally changed circumstances outside the EU. Its chair should be a respected independent figure of stature and the Convention should take evidence from the UK Government, the devolved administrations, Parliaments and National Assemblies, elected mayors and local government, business and civil society.

The Convention should consider the range of major questions which will face the UK once it is outside the EU. These include effective constitutional arrangements for a Union of four nations, respecting the identity and aspirations of each, while preserving the collective interest of the whole. The UK is, in spite of many challenges, a successful multi-national democracy but to remain so it must change and adapt to meet new circumstances.

We believe that the traditional model of exclusive Westminster Parliamentary sovereignty is outmoded and inappropriate to the circumstances of a modern UK.

Instead, we believe that ‘pooled sovereignty’ offers a better way forward. Pooled sovereignty recognises the special nature of the UK as a union of four countries which combine, through democratic consent, to form the world’s most successful multi-national democracy.

In the era of devolution this balances the freedom to act with autonomy in each nation with agreement to work together collaboratively in specified areas of common interest.

Pooled sovereignty acknowledges that the people of Wales, like those of Scotland and Northern Ireland, have chosen devolution as their preferred model of government. Pooled sovereignty offers a different relationship among the nations of the Union based on mutual respect and parity of esteem among the administrations.

9 Conclusion

The Welsh Government appreciates that, for many in the UK, some of the ideas set out in this document may appear challenging. Adopting them would amount to a major constitutional reconstruction of the UK, and we do not under-estimate this.

But in our view, the UK's withdrawal from the EU represents an existential challenge to the UK itself. As an administration committed to both the Union and devolution, we consider that all options should be on the table, in order to preserve and foster unity for the UK while guaranteeing the diversity of its constituent nations.

We want to assure the principle of autonomy as well as the imperative of integration. We are clear that an excessive emphasis on centralisation in the UK's response to Brexit would be counter-productive and damaging, and we are concerned that the UK Government's White Paper veers in that direction.

Can the Union survive EU exit in the medium and long terms? No-one can be sure.

For some years now (and long before the 2016 EU referendum), the First Minister has argued for the establishment of a constitutional convention:

“primarily tasked with examining the full context of relationships between the devolved administrations and the UK Government, bearing in mind [our] joint enterprise of the governance of the UK”.

It continues to be the Welsh Government's belief, and even more so after the EU referendum and the General Election, that a debate along these lines, across the political parties and civic society, about the future of our Union is vital to its survival.

Such a convention would be charged with putting in place appropriate, sustainable political institutions recognising the quasi-federal nature of the United Kingdom, resolving questions around the way in which the interests of England and English regions (including the position of the London Mayor and metro-mayors) are fully represented and achieving clarity on the form and function of UK-wide political and governmental institutions, including the House of Lords.

In the meantime, this paper sets out the Welsh Government's proposals for action that can be taken now in response to the constitutional and inter-governmental challenges presented by leaving the EU. These are practical and constructive proposals designed to achieve the deep and sustained co-operation between governments that we believe is needed. In our White Paper, “Securing Wales' Future”, we called for imagination and vision to design a new way of working. This paper sets out the Welsh Government's proposals to respond to this challenge, to protect the interests of Wales and strengthen the Union.

Agenda Item 3.2



Risks and opportunities presented by Brexit for Welsh ports

**Inquiry by the External Affairs and Additional Legislation
Committee of the Welsh Assembly**

Submission by the UK Chamber of Shipping

Introduction

The UK Chamber of Shipping is the trade association for the UK shipping industry, representing owners and operators of ships, ship managers, marine professional firms and service providers throughout the wider maritime sector based in the UK. It has approximately 170 member companies, located throughout the UK, and trading throughout the world. Its membership includes the operators of merchant ships (primarily ferries and shuttle tankers) trading regularly to ports in Wales, and the operators of a number of tugs and other service vessels based in Welsh ports.

The UK Chamber is therefore pleased to submit evidence to the Committee's Inquiry in the risks and opportunities facing Welsh ports as a consequence of the UK's withdrawal from the EU.

General considerations

The primary role of ports is that of a gateway, and the commercial success of any port will therefore depend ultimately on the economic vitality of the hinterland it serves. It is clearly possible that Brexit may have an impact on the economy of the geographical areas that generate cargo movements through Welsh ports – whether by producing, processing or consuming the goods concerned – but the UK Chamber is not in a position to forecast such impacts or to offer any insights into them.

Demand for shipping – and, by extension, business opportunities for ports – derive from demand for cargo. Ships will visit ports in Wales if there is cargo to be carried, but shipowners are not in a position to generate cargo where there is none, except to the extent that efficient and competitively-priced shipping services may stimulate trade. Similarly, business opportunities for Welsh ports as bases for the ships that construct and maintain offshore energy installations derive entirely from the existence of the installations concerned. Brexit will make no difference to this fundamental dynamic.

In contrast to cargo shipping, ports in Wales (as elsewhere) do have an opportunity to generate new and additional business by attracting cruise ships. Cruising is a discretionary activity, and new business can be created by the development of new cruise itineraries, with appealing destinations. The market in UK cruising has grown impressively in the last ten years, exceeding one million visitors for the first time in 2015: a decade earlier, the UK had attracted only 322,000 cruise visitors.

The west coast of Britain is a popular feature in cruise itineraries, and the port of Holyhead has succeeded in attracting a good number of cruise ships to call. There is a dearth of options for cruise ships on a west coast itinerary looking to schedule a call between Holyhead and the south coast of Britain, and ports in South Wales are ideally placed geographically to attract such calls. They could be expected to do so, if they were to invest in berth facilities that enabled cruise ships to tie up alongside without needing to pass through locks first, and in associated passenger facilities ashore. This opportunity, of course, exists now and the UK's withdrawal from the EU should not affect it.

Port access

Welsh ports' ability to exploit opportunities and attract maritime traffic will be influenced by the regulatory regime governing access to the port. Legally, ports in Wales (as in the rest of the UK) are subject to the open port duty, established in section 33 of the Harbours Docks and Piers Clauses Act 1847, which requires them to admit and handle any ship that pays their dues. The Harbours Act 1964 requires their dues and other charges to be reasonable, and EU law forbids them to impose discriminatory charges. The UK Chamber presumes that this legal framework will remain in place, unaffected by the UK's withdrawal from the EU.

Physical constraints on access to ports also invite attention. Natural conditions at many Welsh ports are challenging, with very significant tidal ranges on the south coast, ferocious storms on the west coast, and heavy siltation in the Dee Estuary. Ports' ability to manage such conditions has in recent years been constrained by EU environmental restrictions: most obviously, the withholding of consent for the port of Mostyn to clear silt accumulations from its navigation channel and thereby enable ships to enter at all states of the tide, which rendered the operation of the ferry service at the port unviable. The UK's departure from the EU could enable the Welsh Government to develop an alternative regulatory framework that did not effectively prohibit ports from carrying out the normal maintenance dredging operations necessary to remain open for traffic.

Border Controls

The greatest risk for Welsh ports arising from the UK's departure from the EU is the imposition of border controls at ferry terminals. The three ferry terminals at Holyhead, Fishguard and Pembroke are significant gateways for the UK, for Wales, and for Ireland: handling some 2.5 million passengers and, more significantly in this context, some 530,000 lorries and trailers in 2016. This traffic is not currently subject to any border controls, except for occasional police interventions, and passes through the terminals freely. All three terminals therefore operate highly efficiently, with all their infrastructure and handling processes configured so as to get passengers and vehicles through the terminal as swiftly as possible and without delay or interruption to their journey.

The absence of border controls is, very largely, a function of the UK's membership of the EU. The absence of routine immigration controls is a function of the Common Travel Area which has existed by special arrangement between the UK and the Republic of Ireland, but it is undoubtedly supported by the principle of free movement of people within the EU. The absence of customs and port health controls is entirely a function of the EU's Single Market: such controls were dismantled at Welsh ferry terminals when the Single Market came into being at the start of 1993, and the enormous growth in freight traffic flows since then (700% at Holyhead) is attributable in large part to the fact that traffic can flow freely through the port (rather than having to queue at checkpoints and wait for permission to proceed) so that the entire site is in productive use.

For the port, the immediate risk is that the imposition of border controls would reduce the effective capacity of the terminal. A border control would, almost inevitably, entail the construction of checkpoints and examination sheds. Such facilities do not exist now and, as there is no spare or redundant land at any terminal, could only be built if land that is currently used for handling traffic were taken out of productive use. Clearly the loss of roadway, embarkation lanes, or marshalling yards would reduce the effective capacity of the port. Similarly, if every vehicle were to spend longer on the port, because it had to queue at a checkpoint and await permission before proceeding, the overall number of vehicles that could be handled in any period of time would be reduced – again cutting the effective capacity of the port.

More broadly, the imposition of border controls poses a risk to the supply chains upon which Wales and the rest of the British Isles relies. All sectors of the economy have, over the last 20 years or so, adopted just-in-time supply models, which depend absolutely on predictable delivery schedules. Logistics operators treat the British Isles as a single entity, and Welsh ports accordingly serve a

hinterland that stretches from the west of Ireland to the east of England and beyond. The arbitrary and unpredictable delays caused by border controls are incompatible with such just-in-time supply chains, and the introduction of such delays at Welsh ports would accordingly represent a risk to the continued viability of those supply chains. The UK Chamber set out the matter in more detail in a paper submitted to HM Revenue and Customs in January, a copy of which is annexed hereto.

The risk for Welsh ports is especially acute in two ways. Firstly, the proportion of perishable food traffic is higher at Welsh ports than those elsewhere in Britain, because of the predominance of agriculture and food businesses in both Wales and Ireland. Such traffic is doubly vulnerable to delays at border controls at ports because, in addition to the general intolerance of just-in-time supply chains to delays, the goods themselves are liable to spoil if they are delayed in transit. Additionally, of course, such goods are subject to more intensive border controls than general cargo, being liable to animal and plant health controls in addition to routine customs controls.

Secondly, Welsh ports compete with those in England and Scotland to handle the significant number of lorries and trailers that are destined to or originate from Northern Ireland. Approximately 25% of the traffic passing through Holyhead and Dublin is estimated to be in transit through the Irish Republic in this way. The imposition of border controls at the UK's borders with the Republic would, clearly, pose a risk to the continued routing of such traffic through Welsh ports – since the delays, unpredictability and costs of such border controls could be avoided entirely by re-routing the traffic to sailings between Belfast, Larne or Warrenpoint and Loch Ryan, Heysham, or Liverpool.

The specific risk that Welsh ports might lose business if traffic between Northern Ireland and Great Britain that is currently routed through the Irish Republic were diverted to purely domestic UK ferry sailings is reflective of a broader risk to Welsh ports from the imposition of border controls at Irish ports. Clearly, every border has two sides; and the imposition of border controls at Irish ports would create exactly the same difficulties as would be experienced. The problems of physical constraints (no space for checkpoints, examination sheds or queues) and the intolerance of just-in-time supply chains to delays and interruptions are just as serious at terminals on the other side of the Irish Sea.

One particular risk stands out starkly. EU law stipulates that all animal products and certain plant products may enter the EU only via a Border Inspection Post (i.e. a checkpoint with an examination station that conforms to EU specifications and is approved by the European Commission for inspections of such products). There is no such facility at Rosslare, and the facility at Dublin is not thought to be designed to handle the high volume ferry traffic from Holyhead (and Liverpool and Heysham) in addition to the containers from outside the EU that it currently handles. At the moment, therefore, it appears that the imposition of usual EU animal and plant health controls on traffic arriving from the UK after Brexit at Irish ports would have the effect of prohibiting the entry of much of the food and agricultural traffic that is currently shipped from Welsh ports.

As regards mitigating these risks, the only sure option is to avert the imposition of border controls – of all types (customs, port health, and immigration) since the risk arises from the fact that the flow of traffic is interrupted rather than from the specific reason for the interruption. A markedly inferior mitigation (although preferable to none) would be to design border controls in a manner that did not interfere with the physical flow of the traffic through Welsh ports; border controls of such a type do not exist at other UK or EU ports, and would require original and creative thinking.

The UK Chamber would therefore urge the Welsh Government to exert its *influence* – and, in respect of animal and plant health controls, its *authority* – over the UK and the Irish Governments to avert the imposition of border controls on traffic passing through Welsh ferry ports.

UK Chamber of Shipping
23 June 2017

Roll-on / roll-off freight: the risk to UK trade from the imposition of customs and other controls on goods

This paper describes the scale and characteristics of the UK's international ro-ro freight sector, placing ferry services within the broader supply chain. It shows how the fact that lorries pass through ferry terminals freely, without having to stop and await clearance, is vital both to the capacity of UK ports to handle their current volumes of trade and to the ability of manufacturers, retailers and other businesses across the UK to rely upon just-in-time logistics. It evaluates the proportion of traffic that is time-sensitive, either because the goods themselves are perishable or because they are required for immediate use. Finally it demonstrates that making the entry of lorries and trailers into the UK (or its EU neighbours) conditional upon the provision of a declaration would cause UK trade to be dead-stopped.

The scale of the UK international ro-ro freight sector

More than 40% of the UK's international trade by value arrives in and leaves the country in lorries and trailers on ferries (or the Channel Tunnel). The busiest single gateway for this traffic is the port of Dover, which handled 2.5 million lorries in 2015 – an average flow rate of 7,000 lorries a day, or 290 lorries every hour, and representing 17% of the UK's international trade in goods. The Channel Tunnel carried a further 1.5 million lorries.

The majority of the remainder of ro-ro freight between the UK and the Continent passes through terminals on the Humber (Hull, Immingham and Killingholme: 1 million units) and on the Thames (Purfleet and Tilbury: 550,000 units in 2015) and through Harwich (350,000) and Portsmouth (250,000). The ports of Teesport, Newhaven, Tyne, Poole, Plymouth and Rosyth also handle significant numbers of lorries and trailers.

International traffic across the Irish Sea is concentrated on two corridors, the central and southern, serving Dublin and Rosslare respectively. Slightly more than 750,000 lorries were carried on the central corridor in 2015, 50% of them passing through Holyhead, 45% through Liverpool, and 5% through Heysham. A further 100,000 were carried on the southern corridor, two-thirds passing through Pembroke and one-third through Fishguard. (For completeness and comparison: another 770,000 lorries were carried across the Irish Sea between GB and Northern Ireland.)

Traffic volumes rose strongly during 2016. Dover recorded its busiest day ever for freight traffic on 23 November 2016, handling 10,558 freight vehicles. Similarly, traffic volumes across the Irish Sea in November 2016 were 11% higher than in the same month in 2015.

Composition of traffic

Ro-ro freight is carried on ferries either as driver-accompanied lorries or unaccompanied trailers. The mix of traffic varies from port to port, and depends largely on the length of the sailing: typically, the longer the sailing the greater the proportion of unaccompanied trailers.

Virtually all (98%) freight on the Short Sea ferry services through Dover, and absolutely all freight on the Channel Tunnel shuttle services, is driver-accompanied. At Portsmouth, 70% of the freight traffic is driver-accompanied. Most services across the North Sea, by contrast, carry unaccompanied trailers (and up to 12 drivers per ship) only – although 50% of the freight traffic through Harwich and 40% through Hull, which both handle tourist passenger traffic alongside the freight, is driver-accompanied.

On the Irish Sea, driver-accompanied lorries comprise 70% of the freight traffic through Holyhead, the busiest port and the terminal for the shortest (3½ hours) sailings to Dublin. Unaccompanied trailers comprise a larger proportion of the freight through Liverpool and Heysham. Overall the

proportion of unaccompanied trailers has risen in the last decade, as growth in traffic has outstripped the supply of drivers and changes to the cabotage rules for road haulage in 2010 restricted the availability of lorries (by confining tractor units, but not trailers, registered outside the UK to a maximum of three UK hauls in a 7-day period).

Terminal processes

A lorry or trailer's carriage by ferry is always just one part of a longer logistics chain, and its transit through ports of loading and discharge is as rapid as possible so that the cargo can continue its journey to its ultimate destination. The process varies by port and is obviously different for driver-accompanied and for unaccompanied traffic but is driven, in all circumstances, by the imperative of getting the freight through the port without interruption so that it can continue its journey to where it is wanted according to a predictable schedule.

On arrival at a UK terminal where immigration controls do not apply – ie Dover (because the immigration control has already been performed, either at Calais or Dunkirk, prior to the inbound sailing) or at any ferry port on the west coast (because traffic from Ireland is outside the scope of immigration control) – all lorries drive straight from the ship's ramp to the dock gate and out onto the public road unless, exceptionally, they are pulled for an examination of some sort. At all other ports handling Continental traffic, where immigration controls do apply, lorries pass through a passport checkpoint on their way to the dock gate, queuing or stopping for as long as it takes for their drivers' passports to be checked, but otherwise drive straight out of the port unless, again exceptionally, pulled for an examination. They do not stop or wait in any other circumstances and there is no place in the port for them to do so.

Unaccompanied trailers are unloaded from a ferry only after the lorries have already driven off. They are then shunted to a designated area of the terminal to await collection by the tractor unit that will take them to their destination. Typically, some 85% are collected from the terminal within 2-3 hours of the ship's arrival – so, given the time involved in unloading them from the ship and shunting them around the terminal, many trailers are collected and removed as soon as they are available for collection. The proportion that remain in the terminal beyond the day of their arrival is only 5%.

Such dwell times are significantly shorter than they used to be: as the proportion of unaccompanied trailers on ships has risen, so they are no longer reserved for non-urgent cargo. The near-universal adoption of a drop-and-collect model by hauliers, whereby a tractor unit that delivers an outbound trailer for shipment then proceeds immediately to collect a just-arrived trailer for a haul inland, both ensures that trailers *are* removed promptly and necessitates their being *available for removal* without delay.

Processes for outbound traffic also vary. At Dover, with 52 sailings a day (so a ferry departs, on average, every half an hour), freight is carried on a turn-up-and-go basis: no bookings are taken, and on arrival at the port, after pausing briefly at the French immigration checkpoint, a lorry simply checks-in for the next available sailing. After check-in, the lorry proceeds directly to the embarkation lanes for the berth from which the ferry will depart and then drives on to the ferry as soon as directed to do so by the traffic marshals.

At other ports, where sailings are less frequent, hauliers usually book a number of slots on each sailing (often on a long-term contract) so as to be sure that their freight will be able to travel. It should be noted that these bookings are not specific to individual lorries; they are specific to the haulier, who then uses them for whichever vehicles he despatches on that day. Ferry operators typically stipulate that a lorry should arrive at the port at least an hour before the scheduled departure of the ship. Unaccompanied trailers are required to arrive further in advance, typically four hours before sailing time on services that carry both accompanied and unaccompanied traffic, because they need to be loaded on to the ship before the lorries drive on – but some 15% of trailers typically arrive after the cut-off time and are still carried.

As at Dover, after checking-in, vehicles proceed to the embarkation lanes from where they are called forward on to the ship as soon as it is ready. Loading of unaccompanied trailers typically commences as soon as the inbound traffic has been discharged from the vessel; and, when it has been completed, the lorries are embarked. The time spent on the terminal by any particular outbound lorry or trailer prior to loading can therefore be short. Once the embarkation of lorries has commenced, a lorry can drive from the check-in, through the terminal, and up the ship's ramp without stopping at all.

The efficiency of these processes are founded on the fact that traffic can move freely through ports, without needing to obtain permission to embark on a ship or to leave the dock gate, in the same way as it can on any other part of the UK transport network. Ports are configured accordingly: terminals handling unaccompanied traffic include a trailer park but the only place where driver-accompanied lorries can park is the embarkation lanes in front of the berth. Regardless of the type of traffic they handle, ports typically have space only for one shipload of vehicles per berth. Dover, uniquely, has a contingency area where 4km of traffic (just less than two shiploads) can be parked if necessary.

This twin ability for traffic to move through ports without interruption and for all space in a port to be given over to productive use is what made possible the huge increase in traffic volumes through UK ferry terminals since the removal of customs (and health) controls at the start of 1993. Traffic volumes across (ie both over and under) the Dover Strait rose from 1 million lorries in 1992 to 4 million in 2015 (a 300% increase); traffic volumes through Holyhead rose from 54,000 to 392,000 over the same period (a 630% increase). The scale of these increases is vastly greater than the physical expansion of port sites over the period.

Land is scarce at all UK ferry terminals, constrained by the sea on one side and the town on the other, and is intensively used. At all terminals, the entire site is occupied by facilities that are integral to the operation of the port – roadways, check-in kiosks and offices, embarkation lanes, a passenger terminal building, and safety infrastructure for controlling shipping in the harbour – and all the vehicle areas are full on a daily basis. There is no spare space in which vehicles could park while awaiting clearance before re-joining the flow of traffic (inbound or outbound) or where new checkpoints or examination sheds could be built. Constructing new control facilities or associated parking areas would necessarily reduce the area currently used by the freight traffic itself: the effect would be to reduce the overall capacity of the port as well as choking the flow of traffic through it.

Operation Stack in Kent – ie the closure of the M20 to traffic, so that the carriageway can be used as a lorry park – demonstrates plainly what happens when the flow of traffic through a main ferry port is choked now. The phenomenon is familiar in relation to Dover, but the factors that give rise to it are replicated at every UK ferry terminal: no space to park waiting vehicles within the terminal, no significant provision for truck parking in the port hinterland, and reliance on a single trunk road for access to the port. Similarly, at every other port as at Dover, port traffic relies on the local road network for the final mile approach to the port, so any queues at the dock in-gate immediately cause congestion and disruption in the town too.

Such queues begin to build up as soon as the flow of vehicles through the port is interrupted for any reason. Ro-ro terminals are able to handle their current volumes of freight traffic only because that traffic moves freely across their site, in both directions. Any choke on the flow of freight vehicles immediately reduces the effective capacity of the terminal.

All land at ferry terminals is used for traffic proceeding to/from ships. There is no space for lorries or trailers to be held pending clearance away from the traffic flow before re-joining it, nor any space in which to build new control points or examination sheds. Such new facilities would necessarily encroach on the area available for the traffic flow and, given that all ports are for practical purposes already full, would reduce the capacity of the terminal. The maintenance of existing trade volumes therefore depends absolutely on avoiding a scenario where lorries or trailers need to stop in the port and await clearance before they can either be embarked on a ship or be driven out of the dock gate.

The wider context of just-in-time logistics

The free flow of freight traffic through ports (and the shorter dwell times of unaccompanied trailers) is symptomatic of the general adoption of just-in-time logistics across the UK and in neighbouring European countries. In all sectors, from manufacturing to retail, businesses operate without inventories of stock and rely instead on their product being delivered just before it is due to be used. This model of operation relies absolutely on certainty of delivery times, so that production lines keep running and retail shelves are always fully stocked.

Overnight sailings are invariably the busiest for freight in every ferry operator's schedule, carrying vehicles that have been despatched from one premises at the end of one working day for delivery to another at the start of the next. The road haulage sector's collective need for sailings that enable them to deliver goods at the start of the working day is reflected in the timetable of sailings offered by ferry operators for driver-accompanied traffic. On the longer North Sea crossings, served by a single sailing on each route, all ferries arrive between 0800 and 0900. The busier of the two daily services at Harwich arrives at 0630. At Portsmouth, three ferries typically arrive within an hour of 0700. All lorries leave the port immediately on disembarkation, pausing only for so long as it necessary for their driver's passport to be looked at, in order to fulfil their delivery slots inland.

Horticultural traffic from Holland (which represents some 10% of *all* traffic from Holland) offers an instructive case study. Buyers for UK supermarkets, DIY stores and florists order plants and blooms from Dutch auction houses in the afternoon; and the stock is despatched overnight for display and sale in the UK outlet the following day. In many instances, this trade is served by dedicated vehicles which return to Holland within a maximum of 24 hours (and now carrying empty flower cages and trollies), so as to be ready for their next delivery run to the UK. Punctuality is critical to this trade, and it relies absolutely upon predictable journey times: certainty that lorries will not be delayed at the port is an integral part of this.

Just-in-time logistics are strikingly evident on the Irish Sea, reflecting the fact that many large retailers treat the British Isles as a single market and serve their outlets in the UK and the Republic from the same distribution depots. Here, too, the overnight sailings are the busiest, but the arrivals are earlier, so that the lorries can reach the supermarkets and high-street shops before the start of the trading day. Both large ferries on the main route from Dublin to Holyhead arrive within a few minutes of one another, at 0530 daily, discharging 400 lorries at once which then drive straight out of the port and on to the A55 as a single pulse of traffic. Similarly, four large ferries (two from Liverpool and two from Holyhead) arrive in Dublin at separate neighbouring terminals at 0600 daily, all with loads for immediate onward delivery.

Filling retail shelves before the shops open, keeping factory production lines running, and ensuring the uninterrupted functioning of every other business that relies on just-in-time logistics for its supply chain depends on all those lorries leaving the port immediately, free from either the reality or the risk of being delayed in the port pending clearance.

Time-sensitivity of cargo

Like the Dutch flowers, a significant proportion of the cargo carried in lorries on ferries is itself perishable: approximately 30% of traffic inbound to the UK from the Continent. The proportion is higher on routes across the Irish Sea, where up to 45% of lorries contain perishable food, meat/poultry, fruit/veg, mushrooms, flowers/plants, and fish.

Much other cargo, although not perishable, is equally time-sensitive. Up to 25% of lorries on ferries inbound from the Continent can be carrying industrial goods (including automotive parts, metal, and machinery), presumably destined for UK factories – the proportion on the Irish Sea is lower. Lorries carrying building materials, destined for UK construction sites, can account for a further 15%. Up to 4% of lorries on some sailings can be carrying airfreight, as airlines find it more efficient to send cargo between some airport hubs by road rather by air.

Between 15% and 30% of lorries are stated by their driver to be carrying groupage loads. Among specific single loads, the following import cargo types are significant (each representing more than 3% of the lorries on a typical sailing, and as high as 15% on some sailings): chemicals, electricals, household goods, paper, pharmaceuticals, and plastics. Typically, some 5% of lorries are declared to be carrying hazardous goods. The time-sensitivity of these loads will depend on the supply chain of which they are part.

Only a very small proportion of traffic, less than 3% in total, is clearly not time-sensitive: such as waste for recycling/reprocessing and household removals.

Quite apart from any considerations about the disruption of supply chains, therefore, a significant proportion of the cargo carried as ro-ro freight is at risk of being spoiled if it is delayed at ports, pending clearance.

Given the nature of such cargo, this is as much (if not even more) a matter of health controls as of customs controls. It should be noted that no ferry terminals have any facilities for animal health or phytosanitary controls.

Cargo declarations

The cargo information in the previous section is based on statements made to ferry operators by lorry drivers when checking-in for a sailing. Under merchant shipping law, hauliers are required to provide such information as is necessary for the safe stowage and carriage of cargo. In respect of the 5% of vehicles containing goods classified as hazardous, this information is highly detailed: describing the nature and quantity of the goods and identifying the hazard (whether toxic, flammable, corrosive, etc).

In respect of the remainder of traffic, the information provided by a haulier is usually very limited. Typically, it is provided orally by the driver at the check-in kiosk at the port of embarkation, and is recorded by the check-in clerk either by typing in a free text box or by selecting one of a drop-down menu of frequent cargo descriptions on the ferry operator's manifesting system. As freight travels either on a turn-up-and-go basis or on the basis of a lorry turning up and claiming one of the slots reserved for its haulier, the check-in is the first point at which the ferry operator encounters the lorry or trailer and thus the first (and the only) point at which there is an opportunity for collecting such cargo information.

In most instances, it is apparent that the driver's own knowledge about the cargo in the back of his lorry is limited; he is clearly well aware of where he collected the load and he *may* also be aware of where he is to deliver it, but he is not reliably aware of the composition of the load itself unless it is hazardous. Nor is it usual for a driver to carry supporting documents relating to the goods; the tiny proportion of lorries carrying goods under TIR/Transit or goods in excise-suspension, with TADs/ADs supplied by the shipper, are an exception. There is also often a language barrier between the check-in clerk and the driver, where the latter speaks only limited English, French, or Dutch, etc.

Except in the case of goods under Transit, there is no capability within the logistics chain for ro-ro freight to provide the type of detailed declaration that is required in relation to goods that are subject to customs control. At either end of the supply chain, the supplier and/or buyer/receiver of the goods would presumably be in a position to provide much of the data that such declarations require (at least in relation to the nature, value, and origin of the goods, if not the specialist customs classifications and codings), but no-one in the supply chain between them is able to do so. Nor is there any mechanism for those at the either end of a supply chain to feed such information into the logistics chain: hauliers do not have manifesting systems, ferry operators' systems are not capable of handling such data, and there is no contact between ferry operators and those at the start and end of a supply chain who may hold the data.

It is therefore equally clear that the requirement on hauliers to provide a summary declaration on entry into the EU, which would be triggered automatically under the Union Customs Code if the UK

ceased to be part of the customs territory of the EU would result in virtually all UK exports to the EU being dead-stopped – because hauliers would be unable to fulfil such a requirement. Any comparable obligation that might be imposed on hauliers by HMRC in respect of inbound traffic would, similarly, result in the supply of goods to UK shops, factories, etc being dead-stopped. Requirements for animal/plant health certificates would have the same effect in respect of those lorries/trailers that were subject to them.

Any requirement on a ferry operator to provide a cargo declaration, either for departure from a UK port and entry to an EU port or vice versa, would likewise result in virtually all cargo being dead-stopped. Such a requirement would oblige ferry operators to make the provision of such information a contractual condition of carriage, and their customers (ie the hauliers) would be unable to fulfil such a condition, in the same way as they would be unable to provide the information directly to HMRC or its EU counterparts because they do not have it.

The present exclusion of shipborne lorry and trailer traffic between the UK and its EU neighbours from any requirement for summary declarations and the exclusion of ferries from any requirement for ships' reports is a function of the approval of all international ferry routes to/from the UK as regular shipping services within the customs territory of the EU (pursuant to articles 313-313f of the Implementing Provisions of the Community Customs Code). The exclusion of ro-ro traffic through the Channel Tunnel and across the Irish Land Boundary is a direct function of the fact that the UK is part of the customs territory of the EU.

The continued flow of the 40+% of the UK's trade that is carried as ro-ro freight also depends on the continued absence of any requirement to provide declarations (for any purpose) on entry into or departure from the UK, and equally on entry to or departure from the EU, as there is no capability within the supply chain to provide such declarations.

Conclusions

All land at ferry terminals is used for traffic proceeding to/from ships. There is no space for lorries or trailers to be held pending clearance away from the traffic flow before re-joining it, nor any space in which to build new control points or examination sheds. Such new facilities would necessarily encroach on the area available for the traffic flow and, given that all ports are for practical purposes already full, would reduce the capacity of the terminal. The maintenance of existing trade volumes therefore depends absolutely on avoiding a scenario where lorries or trailers need to stop in the port and await clearance before they can either be embarked on a ship or be driven out of the dock gate.

Filling retail shelves before the shops open, keeping factory production lines running, and ensuring the uninterrupted functioning of every other business that relies on just-in-time logistics for its supply chain depends on all those lorries leaving the port immediately, free from either the reality or the risk of being delayed in the port pending clearance.

Quite apart from any considerations about the disruption of supply chains, therefore, a significant proportion of the cargo carried as ro-ro freight is at risk of being spoiled if it is delayed at ports, pending clearance.

The continued flow of the 40+% of the UK's trade that is carried as ro-ro freight also depends on the continued absence of any requirement to provide declarations (for any purpose) on entry into or departure from the UK, and equally on entry to or departure from the EU, as there is no capability within the supply chain to provide such declarations.

The Chamber of Shipping
20 January 2017



Elin Jones AC, Llywydd

Cynulliad Cenedlaethol Cymru

Elin Jones AM, Presiding Officer

National Assembly for Wales

Agenda Item 3.3

The Rt Hon Alun Cairns MP
Secretary of State for Wales
1 Caspian Point
Caspian Way
Cardiff Bay
CF10 4DQ

Your ref:

Our ref: EJ/RT

21 June 2017

Dear Alun

Further to our conversation on Monday, I would like to offer you, formally, my congratulations on your reappointment as the Secretary of State for Wales.

As we discussed, there are important challenges and opportunities for Wales ahead and I hope that we will be able to continue our dialogue in the best interests of the people of Wales. I thought it would be useful to follow up on some of the issues discussed:

Brexit and the Great Repeal Bill

Responding to the challenges of Brexit is a high priority for me and the Assembly. I would like to stress the need for UK Government to engage with the Assembly as well as Welsh Government to ensure the interests of the people of Wales are reflected.

The Great Repeal Bill will have a huge impact on the National Assembly for Wales. The Assembly must therefore play a full part in overseeing negotiations and scrutinising effectively the Great Repeal Bill and the huge volume of further legislation that will follow.

Croesewir gohebiaeth yn Gymraeg neu Saesneg / We welcome correspondence in Welsh or English

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Elin Jones AC, Llywydd

Cynulliad Cenedlaethol Cymru

Elin Jones AM, Presiding Officer

National Assembly for Wales

I enclose the evidence I presented to the National Assembly's External Affairs Committee Inquiry into *The Great Repeal Bill White Paper: Implications for Wales*. You will be aware that the Committee report was published on Monday.

Brexit will result in fundamental changes to the way the UK is governed. As was my priority during the passage of the Wales Act 2017, I want to ensure there is no diminution of the Assembly's competence and freedom to legislate without UK Government consent. Where a UK approach is thought beneficial in devolved areas, this should be by common consent of all governments and parliaments, and aligned with the principle of subsidiarity.

In relation to the UK Government's role, I draw your attention to these matters of particular concern to me:

- Ensuring our legislative consent procedures are fit for purpose in relation to both primary and secondary legislation. In accordance with our Standing Orders, I expect that Assembly consent is sought to the exercise of UK Ministerial powers in devolved areas;
- Seeking a robust inter-parliamentary legislative consent convention to ensure that Parliament is aware of whether the Assembly has consented or not (to cover subordinate legislation too);
- Ensuring that we, not Westminster, determine the appropriate delegation of powers to Welsh Ministers and scrutiny procedures applied to SIs where the power is delegated in UK Bills to Welsh Minister;
- Ensuring the effective programming of Brexit-related legislation, and efficient use of Assembly time and resources, will necessitate close working and the sharing of timely information between the Assembly, Welsh Government, and UK Government. I welcome the commitment you gave to working with the Assembly to enable this work to progress smoothly.



Elin Jones AC, Llywydd

Cynulliad Cenedlaethol Cymru

Elin Jones AM, Presiding Officer

National Assembly for Wales

I look forward to meeting with you to discuss these matters.

Yours sincerely

Elin Jones AM
Llywydd

Enc

cc

Rt Hon Carwyn Jones AM, First Minister of Wales
Huw Irranca-Davies AM, Chair, Constitutional and Legislative Affairs Committee
David Rees AM, Chair, External Affairs and Additional Legislation Committee

Responding to the Great Repeal Bill and its implications for the National Assembly for Wales

Core principles of constitutional change

01. Throughout the recent passage of the Wales Act, my priority was to ensure that three key constitutional principles were respected. These are:

- that there should be no diminution of the Assembly’s competence and freedom to legislate without UK Government consent;
- that the Assembly should have the sovereignty to decide on its own procedures and to consent to any changes in its powers; and
- that the important organising principle of subsidiarity should be at the heart of the UK constitution.

02. These same principles apply in the context of the Great Repeal Bill and inform my submission to the Committee.

A voice for the people of Wales

03. As the democratically elected body that represents the interests of Wales and its people, the National Assembly has a crucial role in ensuring the voice of the people of Wales is heard in the legislative preparation for leaving the EU.

04. The National Assembly is responsible for a wide range of devolved policy areas, such as agriculture, environmental protection and transport, which are affected directly by EU law. The implications for devolved policy areas that affect fundamentally the lives of people in Wales mean that the Assembly must play a full part in overseeing the UK–EU Brexit negotiations. I would like to see us ensure this through;

- Ensuring all governments are held to account by the parliaments of the UK for their inter–governmental working; facilitating coordination of scrutiny between legislatures where possible. Depending on the proposals and options that emerge in the Great



Repeal Bill, this could also include an element of joint scrutiny of the legislative proposals;

- holding the Welsh Government to account and examining closely its own preparations for the UK's withdrawal from the EU.

Specific implications of the White Paper for the Assembly

05. The Assembly must scrutinise effectively the Great Repeal Bill and the huge volume of further legislation that will follow.
06. The UK Government's White Paper suggests that there may be a need for common UK policy frameworks in devolved areas like environment and agriculture. The UK Government also commits to "intensive discussions with the devolved administrations to identify where common frameworks covering the UK are necessary". This commitment to work with devolved administrations is welcome, but any proposal to share powers in areas of devolved competency should be agreed by the legislatures of the UK, not just the devolved governments.
07. Where a UK approach is thought beneficial in devolved policy areas, this must be by common consent of all UK parliaments. However, this should not result in new constraints on the Assembly's legislative competence beyond that agreed necessary (as indeed we are constrained now through EU law).

Scrutiny and oversight of the Great Repeal Bill

08. The White Paper states that Welsh Government Ministers will be given powers "in line" with the powers of UK Ministers to adjust the body of EU-derived law, which the Bill intends to transfer into UK law, so as to make it workable on the day the UK exits the EU.
09. As a matter of principle, it should be the National Assembly that decides whether or not to give the Welsh Ministers powers to make delegated legislation, on devolved matters, and what the nature of those powers should be. A large volume of legislation will be needed to make the body of EU-derived law, which the Bill intends to transfer into UK law, workable



after the UK leaves the EU. This will need to be achieved within tight timescales. Given this, I recognise the case for Welsh Government Ministers to be given delegated powers in this regard. But this should only be permitted if the Assembly has been properly consulted and is satisfied that the scope of those powers is appropriate.

10. Moreover, the National Assembly has responsibility for the effective scrutiny of the use that the Welsh Government makes of its powers. Therefore, it is also essential that the Assembly should be satisfied that the processes and procedures to which resulting Welsh Minister subordinate legislation are subject are appropriate.
11. To enable the Assembly to complete this work effectively, the Great Repeal Bill should ensure the Assembly has the freedom to determine its own scrutiny procedures. It would be wholly inappropriate for the Bill to set out procedures for the scrutiny of Welsh Government Ministers' secondary legislation, or to constrain the Assembly's ability to make decisions about its own internal scrutiny procedures in any way.
12. This approach is in line with both the core constitutional principles of sovereignty and subsidiarity, outlined above, as well as being essential to ensuring the effective and timely scrutiny of the legislation. The Assembly will, of course, need to consider how it balances its responsibility for effective scrutiny with the need for all the legislative changes to be made before the UK withdraws from the EU.

Legislative Consent Memoranda (LCMs)

13. It is crucial that the Assembly ensures that our own legislative consent procedures are fit for purpose in the context of Brexit, ensuring that the Assembly's consent is sought—and respected—for all legislation in devolved areas. This should include both primary and secondary legislation that is brought forward by UK Ministers, regardless of whether that secondary legislation uses "Henry VIII powers".
14. This will require the development of a robust inter-parliamentary legislative consent convention to ensure that the UK Parliament is aware



of whether the Assembly has consented or not, and respects the Assembly's decisions across all legislation, including subordinate legislation. In my view, the existing Legislative Consent convention (Sewel convention), and its manifestations in UK Government Devolution Guidance Notes, are not sufficient safeguards. It is essentially a government to government, rather than a parliament to parliament convention. I do not regard this as appropriate in this context.

15. This is a separate matter from the fact that, as we know from the recent Supreme Court judgment on the triggering of notice under Article 50 of the Treaty on European Union, the Sewel Convention is not enforceable through the courts, even in the statutory form which part of it now has as a result of section 2 of the Wales Act 2017. That is also a matter I wish to see resolved, as part of changes to the UK constitution as a result of Brexit.

16. It may also point to the need for the Assembly to adjust its own internal procedures so as to ensure that more time is devoted to the scrutiny of relevant UK Parliament Bills. I would welcome the Committee's thoughts on this point.

Implications for the Assembly and scrutiny of the Brexit legislation emanating from the Great Repeal Bill

17. If brought forward by a new UK Government, the Great Repeal Bill will have significant implications for the work of the National Assembly, both in terms of the volume of secondary legislation that will need to be considered and the timeframe within which it will need to be passed.

18. These are serious challenges but also provide an opportunity to demonstrate the Assembly's maturity and effectiveness as a legislature.

19. The Assembly will need to ensure that Members have the time, resources and support they need to undertake this important legislative work within the capacity constraints of the National Assembly.

20. The Assembly has already responded to the outcome of the EU referendum by creating the additional committee capacity required and



bolstering Commission staff support in key areas. The Assembly is in the process of scoping further the implications of the Great Repeal Bill for the institution and will continue this work over the coming months. This work is being taken forward by the Assembly Commission, the Business Committee and the Chairs of Committees who are looking at the Assembly's capacity from their different perspectives. The Commission is considering staff resource, the Business Committee our procedures and committee capacity, and the Committee Chairs in the Chairs' Forum are considering how they manage their committee work programmes.

21. The view of the committees and Members, and in particular the views of your committee and the Constitutional and Legislative Affairs Committee, will be very important in shaping these preparations and ensuring that the institution is in the best possible position to respond.
22. Ensuring the effective programming of Brexit-related and other legislation, and efficient use of Assembly time and resources, will also necessitate close working and the sharing of timely information between the Assembly and Welsh Government, and between the UK Government and all legislatures in the UK.

The implications for the UK constitution

23. The Great Repeal Bill (and Brexit more generally) will result in fundamental changes to the way the UK is governed.
24. The significant changes that are likely to unfold will present common challenges and opportunities for all legislatures within the UK. To that end I will continue to work closely with counterparts across the UK to share information, best practice and institutional knowledge on the responses to these challenges.
25. Given the volume of primary legislation likely to pass through the Houses of Parliament which will be of interest and relevance to Wales and related to areas of devolved competence, it will be important to ensure that good inter-parliamentary relationships are developed at all levels. I therefore note the evidence presented to you by the Cabinet Secretary for Finance



and Local Government that “withdrawal from the EU represents a fundamental constitutional change for Wales and the UK as a whole, one that will require new inter-governmental arrangements, based on full respect for devolution, to enable the development of UK-wide frameworks based on common consent by all four governments”. I would highlight, in addition to this, the importance of inter-parliamentary oversight of these arrangements.

Conclusion

26. In summary, the Great Repeal Bill and the preparations for the UK’s withdrawal from the EU bring complex challenges for the public policy areas for which the Assembly has responsibility and for the organisation of the Assembly itself.
27. Across the Assembly, your Committee and others are already undertaking important work in setting out the institution’s expectations of the Welsh Government and addressing the questions that need to be answered.
28. The National Assembly must be ready to play a full part in overseeing the Brexit negotiations, scrutinising the Great Repeal Bill and the huge volume of further legislation that will follow, and ensuring that the voice of the people of Wales is heard. This will stretch the already limited capacity of our legislature. The Welsh Government and the Assembly Commission will need to be innovative and radical in how we approach and support our legislative and scrutiny duties over the next few years.
29. As that process unfolds, I am determined to demonstrate and secure the National Assembly’s role as a strong, effective legislature for Wales.



Cynulliad Cenedlaethol Cymru
Y Pwyllgor Cyllid

National Assembly for Wales
Finance Committee

External Affairs and Additional Legislation Committee

15 June 2017

Dear Chair

Scrutiny of the draft Budget

I am writing following the Business Committee's consideration of their draft report on changes to Standing Orders in relation to scrutiny of the draft Budget, prior to the Standing Order changes and the Budget Process Protocol being considered in Plenary next week.

The changes to the Budget process are the culmination of a piece of work started by the Finance Committee in the Fourth Assembly; the devolution of fiscal powers in the Wales Act 2014 have meant that the Assembly's scrutiny now has to consider not just Welsh Government spending plans, but how these plans will be financed, through taxation and borrowing.

The main changes which are being proposed are that the budget scrutiny becomes a two stage process, whereby the higher level information which would be scrutinised by the Finance Committee is published prior to the detail needed by the policy committees, and more time is allowed for scrutiny. Specifically, it is hoped this additional time will allow the policy committees to undertake more detailed scrutiny of the spending in your portfolios, and you will no longer be required to report to the Finance Committee, you are able to report in your own right should you so wish.



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I have requested a discussion on these changes at the next Chairs' forum, to enable us to talk through the changes in more detail and we can consider how:

- the Committee scrutiny will work in practice,
- the Finance Committee can maintain an oversight role,
- we can work together to maximise public engagement,
- any training and development needs for committees can be met

Prior to consideration in Plenary the [proposed changes to Standing Orders have been tabled](#), as has the [revised protocol](#).

Should you have any queries on this please do not hesitate to let me know, and I look forward to discussing these changes further at the Chairs' Forum meeting on 12 July 2017.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Simon Thomas'.

Simon Thomas AM

Chair of the Finance Committee



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