

Agenda – External Affairs and Additional Legislation Committee

Meeting Venue:	For further information contact:
Committee Room 2 – Senedd	Alun Davidson
Meeting date: 18 March 2019	Committee Clerk
Meeting time: 14.00	0300 200 6565
	SeneddEAAL@assembly.wales

1 Introductions, apologies, substitutions and declarations of interest

(14.00)

2 Papers to note

(14.00–14.05)

2.1 Paper to note 1 – Correspondence from the Auditor General for Wales to stakeholders regarding a consultation on their three-year forward work programme – 7 March 2019

(Pages 1 – 7)

2.2 Paper to note 2 – Correspondence from Jeremy Miles AM to the Chair regarding the Welsh EU Exit SI programme – 11 March 2019

(Pages 8 – 11)

2.3 Paper to note 3 – Draft clauses proposed by the Welsh Government to the Withdrawal Agreement Bill – 11 March 2019

(Pages 12 – 15)

2.4 Paper to note 4 – Correspondence from Eluned Morgan AM to the Chair regarding the UK Trade Bill: Supplementary Legislative Consent Memorandum EAAL Report – 12 March 2019

(Pages 16 – 17)

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

(14.05)



- 4 Monitoring the EU negotiations**
(14.05–14.25) (Pages 18 – 38)
- 5 Preparing for Brexit – Implications for Wales arising from the UK Government's 'no deal' planning**
(14.25–14.40) (Pages 39 – 46)
- 6 Scrutiny of international agreements**
(14.40–14.50) (Pages 47 – 85)
- 7 Subsidiarity monitoring: Amendment of Standing Orders**
(14.50–15.00) (Pages 86 – 88)
- 8 Preparation for the scrutiny session with the First Minister of Wales on 25 March 2019**
(15.00–15.15)

Agenda Item 2.1

Archwilydd Cyffredinol Cymru
Auditor General for Wales

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Reference: AC/092/caf

Date issued: 7 March 2019

Dear Colleague

Consultation on three-year forward programme of work

During December 2018 and January 2019, I [consulted](#) on proposals to inform the development of a three-year programme of audit work. I am very grateful to the many organisations and individuals who responded.

I made clear at the time that, with this being my first programme of work as Auditor General, I am keen to ensure that it covers the big issues facing Welsh public services, as well as enabling us to offer detailed commentary on governance, management and service delivery. The proposals that I consulted on were anchored in the following themes:

- Key risks and opportunities facing Welsh public services, such as austerity, demographic change, Brexit, digital and public service transformation;
- Governance and management of Welsh public bodies; and
- Delivery of key programmes, projects and services.

Around 180 organisations or individuals were invited to provide views and we received a total of 55 responses. Those responses were predominantly from the organisations that we audit but also from a variety of other sources including representative bodies, the third sector, Public Accounts Committee members and committee clerking teams from the National Assembly, unions and professional bodies.

The responses that we received helped us prioritise a number of the proposed studies and indicated support for/interest in a wide variety of the topics that we had included in our consultation. Unsurprisingly, the balance of responses reflected the direct relevance to the organisations responding to some extent. Nevertheless, it is clear that many of those responding welcomed the opportunity to provide comments on a cross-sector basis and looking more than one year ahead. Alongside the responses to the consultation, my thinking about how we take our work forward has

been informed by the very many conversations that I have been having over the past six months with Chief Executives and senior officers across our audited bodies and other partner organisations.

I emphasised as part of the consultation the importance of retaining flexibility within my programme to respond to any emerging or unanticipated issues. Nevertheless, mapping out a medium-term plan for my work will provide a clearer line of sight for the various stakeholders. I will be providing fuller details of my plans over a three-year horizon following some further engagement activity.

In the meantime, I have appended to this letter an overview of new work that I intend to take forward in 2019-20 as part of my programme of national studies. This includes thematic local audit work across specific sectors and work to follow up on previous studies. For completeness, I have also provided details about work in progress prior to the consultation that will run into 2019-20.

When deciding on the specific plans for individual pieces of work, we will consider comments raised through the consultation and engage with relevant external parties. Please do not hesitate to contact us if there are any further thoughts about the topics that we have prioritised for 2019-20 that you would wish us to take into account.

I made clear as part of the consultation that I am keen to produce shorter, sharper reports, make more use of data analytics, issue more real-time commentary on the big issues facing public services, and use different media to communicate our messages. This is all with the wider aim of exploiting our unique perspective, insight and knowledge base, building on our already positive reputation and being more visible in the way we engage with the bodies we audit and the people of Wales more generally. We are already taking the learning from positive recent examples to help develop our future approaches, including tailoring more of our work to reflect the perspectives of citizens and service-users.

Once again, I am very grateful for the time that has been spent considering and responding to our consultation and look forward to working with you as we take forward our audit programme.

Yours sincerely



ADRIAN CROMPTON
Auditor General for Wales

Annex: 2019-20 programme of national studies work

Work already in progress prior to the recent consultation¹

Improving the well-being of young people	We are drawing together data to provide an overview of relevant trends and will also be highlighting key lessons for the Welsh Government to learn based on our review of issues including young parents, young adult carers, homelessness, mental health, jobs and skills.
Primary care services	Following on from our Picture of Primary Care report , we will be building on local audit work to consider whether health boards are well placed to implement the strategic vision for primary care.
Integrated Care Fund	This cross-sector review has considered whether the Integrated Care Fund is being used effectively to deliver sustainable services that achieve better outcomes for service-users.
Orthopaedic services	We are following up our 2015 report to examine the extent to which previous audit recommendations have been implemented at a national and local level. The focus of the work will be on elective services, although the impact of emergency/unplanned demand on these services will also be considered.
Quality governance arrangements in NHS bodies	As an extension of our structured assessment work at NHS bodies we are examining quality governance arrangements at NHS bodies, with a particular focus on the arrangements underpinning the work of quality and safety committees.

¹ This list includes work already in progress prior to the consultation that will run into 2019-20.

Tackling violence against women, domestic abuse and sexual violence	<p>In the context of the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 and the national strategy, this work is considering whether local authorities are collaborating effectively with their partners to prevent violence against women and domestic abuse.</p>
Planning services	<p>In the context of the Planning (Wales) Act 2015, this work is considering how well local planning authorities are delivering their planning services and whether services are supporting sustainable development and delivering for the long-term well-being of local communities.</p>
First point of contact assessments	<p>This work is considering whether local authority first point of contact assessment and processes are meeting the needs of service users and carers in line with the Social Services and Well-being (Wales) Act 2014.</p>
A465 (Section 2) road improvement	<p>We are undertaking this work in the context of wider concerns about cost and time overruns. We are planning to publish an initial 'interim findings' report.</p>
Well-being of future generations	<p>We will be continuing work to discharge the Auditor General's duties under the Well-being of Future Generations (Wales) Act 2015 to examine and report on the extent to which relevant public bodies have acted in accordance with the 'sustainable development principle' when setting and taking steps to meet 'well-being objectives'.</p>

New work that we plan to take forward in 2019-20, building on the consultation²

<p>Picture of public services</p>	<p>We plan to adopt this as a theme for different pieces of commentary-based work over a three-year period.</p> <p>Reflecting proposals set out in our work programme consultation, in 2019-20 this could include plans for work on a UK comparative spending analysis and commentary on examples of changing approaches to public services. It could also include further commentary on NHS finances.</p>
<p>Brexit</p>	<p>Following our February 2019 report, we will be taking forward further work to consider how public bodies are responding to the implications, risks and opportunities of Brexit.</p> <p>This is likely to then continue as a theme for further work in 2020-21 and 2021-22.</p>
<p>Preventing fraud and corruption</p>	<p>We are already taking work forward to provide an initial overview report to inform a planned Public Accounts Committee inquiry. We may then take forward further work to consider in more detail the effectiveness of public bodies' arrangements.</p>
<p>Administration of student finance</p>	<p>We plan to consider issues relating to the overall administration of the student finance system, including the implementation of the new arrangements introduced from September 2018 and the Welsh Government's modelling of future repayments. This work may also draw on the results from data-matching work as part of the National Fraud Initiative.</p>
<p>Fuel poverty / energy efficiency</p>	<p>This work will look at progress in tackling fuel poverty. The work will consist how fuel poverty/home energy efficiency programmes integrate with wider anti-poverty work.</p>

² There may also be additional outputs throughout 2019-20 arising from other follow-up work on previous audit topics, from examinations undertaken in response to issues of public or parliamentary concern, or from local performance audit work where there are issues or learning of wider relevance.

Welsh Government workforce	This study would look at how the Welsh Government is planning its workforce in light of the changing environment in which it operates. We may extend the work to consider wider workforce management issues.
Welsh Government ICT	This work would look at the basis for the Welsh Government's decision to bring its core IT service in-house from early 2019, including expected costs and benefits and the extent to which the new arrangements are delivering in line with expectations.
Digital resilience	As described in our consultation, this would look at how public bodies are ensuring that their IT systems are resilient, robust and secure so that, in the event of serious incidents, systems can be recovered quickly and services can keep running. It could also incorporate some more general issues reflective of the proposal in our consultation on ICT asset management .
Welsh Community Care Information System (WCCIS)	We touched on plans for the WCCIS in our 2018 report on informatics systems in NHS Wales. This study will look at the effectiveness of the national and local implementation arrangements and would consider whether the investment to date has provided value for money. Our consultation identified this as a potential topic for the period 2020-21 or 2021-22, but we plan to bring this forward.
Impact of austerity on local authority discretionary services	This study will focus on judging how well local authorities understand, plan for and meet the needs of those people in need of discretionary services. The review will look at the scale of changes in discretionary provision across Welsh local authorities.
Financial sustainability in local government	We will be taking forward local audit work across all local authorities on this topic. This work will examine medium and longer term financial strategy, budget management, cost pressures, efficiency and savings plans, and levels and use of reserves. We anticipate reporting the findings from that work in some way at a national level.
Commercialisation in local authorities	This study will look at the work of councils to create a strong commercial outlook, how they are developing commercial skills, their policies, vision, monitoring and reporting abilities and broader delivery infrastructure.

Public Service Boards	As a refinement to the proposal in our consultation on regional working in local government, this work will focus on issues relating to the performance of Public Service Boards as vehicles for improving the well-being of citizens.
Grants management	Building on the proposal in our consultation, this work will reflect on how the Welsh Government has been managing changes to grant schemes but as part of a wider look at how grant management arrangements have developed since our 2011 report .
Collaborative arrangements for managing local public health resources	We will be examining whether NHS Wales has worked collectively to address the issues we identified through previous local audit work at Public Health Wales NHS Trust.
NHS waiting times	We intend to follow up on our 2015 report and are likely to incorporate consideration of the topic from our consultation on procedures of limited clinical value . There are also links to our ongoing work on orthopaedic services.
Covering teachers' absence	We intend to follow up on developments since our 2013 report, including in response to the Ministerial Supply Model Taskforce's 2017 report .

Agenda Item 2/A

Y Cwnsler Cyffredinol a Gweinidog Brexit
Counsel General and Brexit Minister



Llywodraeth Cymru
Welsh Government

David Rees AM
Chair
External Affairs and Additional Legislation Committee
National Assembly for Wales

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11 March 2019

Dear David,

I am writing to you following my appearance at the External Affairs and Additional Legislation Committee on 4 February to provide you with more detailed information about the Welsh EU Exit SI programme, the progress to date and possible future SIs relating to EU Exit.

By the week of my appearance, 29 proposed negative procedure statutory instruments had been laid before the National Assembly for consideration by the Constitutional and Legislative Affairs Committee (CLAC) for sifting, as required for SIs proposed for the negative procedure to be made under the EU (Withdrawal) Act 2018. Of these 29, the committee agreed that 27 should be made by the negative procedure. All of these have now been laid before the National Assembly. Three further SIs have been made under the negative procedure but not using powers under the EU (Withdrawal) Act. All of these negative SIs are being laid in time for them to come into force by 29 March.

CLAC considered two of the proposed negative SIs should be subject to the affirmative procedure and the Welsh Government accepted both recommendations, laying a draft of the first as affirmative on 19 February and the second on 5 March. Including these, we have laid 11 affirmative SIs to be considered by the National Assembly ahead of exit day. For ease of reference, I have attached a table of all the EU Exit SIs laid before the National Assembly to date.

Additionally, we are anticipating up to eight SIs, which are intended to come into force after 29 March. The majority of these would make amendments to Welsh law in consequence of UK legislation, which has not yet been made. For example, we may need to make amendments to the Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014 but these are dependent on the Immigration and Social Security Co-ordination (EU Withdrawal) Bill, which is undergoing Parliamentary scrutiny. Further SIs may be required as a result of emergency legislation made in response to a no deal exit on 29 March, should that situation occur.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

The remainder of the SIs are unrelated to UK legislation currently in Parliament and will come into force after exit day as their provisions do not need to take effect until a later date. We are endeavouring to lay these at the earliest opportunity to enable scrutiny of the complete picture of EU Exit SIs.

I hope this information is of use to the committee in providing a more detailed context for your consideration.

I am copying this letter to Mick Antoniw AM, chair of the Constitutional and Legislative Affairs Committee.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Jeremy Miles'.

Jeremy Miles AM

Y Cwnsler Cyffredinol a Gweinidog Brexit
Counsel General and Brexit Minister

List of Welsh EU Exit Statutory Instruments Laid in the National Assembly to date

Negative Procedure

1.	The Elections (Wales) (Amendment) (EU Exit) Regulations 2019
2.	The Environmental Damage (Prevention and Remediation) (Wales) (Amendment) (EU Exit) Regulations 2019
3.	The Environmental Noise (Wales) (Amendment) (EU Exit) Regulations 2019
4.	The Equality Act 2010 (Statutory Duties) (Wales) (Amendment) (EU Exit) Regulations 2019
5.	The Animal By-Products and Transmissible Spongiform Encephalopathies (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019
6.	The Livestock (Records, Identification and Movement) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019
7.	The Radioactive Contaminated Land (Modification of Enactments)(Wales) (Amendment) (EU Exit) Regulations 2019
8.	The Flood and Water (Amendments) (England and Wales) (EU Exit) Regulations 2019
9.	The Environmental Assessment of Plans and Programmes and the Environmental Impact Assessment (Miscellaneous Amendment) (Wales)(EU Exit) Regulations 2019
10.	The Service Charges (Consultation Requirements) (Wales) (Amendment) (EU Exit) Regulations 2019
11.	The Zoonotic Disease Eradication and Control (Amendment) (Wales) (EU Exit) Regulations 2019
12.	The Exotic Diseases in Animals (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019
13.	The Equine Identification (Wales) (Amendment) (EU Exit) Regulations 2019
14.	The Nutrition (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019
15.	The Trade in Animals and Related Products (Amendment) (Wales) (EU Exit) Regulations 2019
16.	The Learner Travel (Wales) (Amendment) (EU Exit) Regulations 2019
17.	The Air Quality Standards (EU Exit) (Wales) Regulations 2019
18.	The Food and Feed Hygiene and Safety (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019
19.	The Food and Feed Regulated Products (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019
20.	The Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2019
21.	The Fisheries and Marine Management (Amendment) (Wales) (EU Exit) Regulations 2019
22.	The Food Standards and Labelling (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019
23.	The Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019
24.	The Local Government Finance (Amendment) (EU Exit) (Wales) Regulations 2019
25.	The Marketing of Seeds and Plant Propagating Material (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

26.	The Teachers' Qualifications (Amendment) (Wales) (EU Exit) Regulations 2019
27.	The Town and Country Planning (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019
28.	The Education (Student Finance) (Amendment) (EU Exit) (Wales) Regulations 2019 (Not made under Section 8 of the European Union (Withdrawal) Act 2018)
29.	The Sea Fish Licensing (Wales) Order 2019 (Not made under Section 8 of the European Union (Withdrawal) Act 2018)
30.	The Sea Fishing (Licences and Notices) (Wales) Regulations 2019 (Not made under Section 8 of the European Union (Withdrawal) Act 2018)

Affirmative Procedure

1.	The Local Authorities Capital Finance and Accounting Wales (Amendment)(EU Exit) Regulations 2019
2.	The Common Agricultural Policy (Amendment) (Wales) (EU Exit) Regulations 2019
3.	The Food (Miscellaneous Amendments) (Wales) (EU Exit) (No. 2) Regulations 2019
4.	The Food (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019
5.	The Animal Health and Welfare (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 (Changed to Affirmative after sifting)
6.	The Plant Health (Forestry)(Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019
7.	The Plant Health (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019
8.	The Seed Potatoes (Wales) (Amendment) (EU Exit) Regulations 2019
9.	The Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2019 (Changed to Affirmative after sifting)
10.	The Welsh Tax Acts (Miscellaneous Amendments) (EU Exit) Regulations 2019
11.	Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

Reflecting principles established by an amended Political Declaration on the future relationship between the UK and EU in law

DRAFT CLAUSES

1 Nature of arrangements for the future relationship with the EU

- (1) A Minister of the Crown must seek to negotiate with the EU arrangements for the future relationship between the United Kingdom and the EU consistent with the parameters established by the Political Declaration, and which include in particular –
- 5 (a) a system for free movement of goods, persons, services and capital, subject to safeguard measures exercisable in the event of serious economic, social or environmental difficulties, between the United Kingdom and the EU (and, with the agreement of the other EEA states, across the European Economic Area);
- 10 (b) a customs union with the EU (customs arrangements which include a common external tariff and no tariffs, fees, charges, quantitative restrictions, or checks on rules of origin);
- (c) mechanisms for ensuring that competition is not distorted;
- (d) regulatory alignment on matters relating to the environment, employment rights and social policy;
- 15 (e) close co-operation in other fields including research and development, education and culture.
- (2) Before commencing negotiations with the EU, a Minister of the Crown must publish a document (a “negotiating mandate”) that sets out Her Majesty’s Government’s objectives for the arrangements the Minister is seeking to negotiate in accordance with subsection
- 20 (1).
- (3) Before publishing the negotiating mandate the Minister of the Crown must consult the Welsh Ministers to seek their views about a draft of the negotiating mandate.
- (4) The negotiating mandate must be –
- (a) laid before each House of Parliament, and
- 25 (b) sent to the First Minister of Wales, who must lay it before the National Assembly for Wales.
- (5) In this section and in section 3 the reference to the “Political Declaration” is to the political declaration setting out the framework for the future relationship between the United Kingdom and the EU, agreed between Her Majesty’s Government and the EU and
- 30 published on [date of publication of amended Political Declaration].

2 Reporting on progress of negotiations on future relationship agreement

(1) A Minister of the Crown must make a statement to report on progress made in meeting the objectives set out in the negotiating mandate, which must include, in particular, information about—

- (a) any concern the Minister has that an objective may not be agreed, or
- (b) opposition expressed by the EU in the negotiations to any of the objectives.

(2) A statement made by a Minister of the Crown under subsection (1) must be made at least every three months and—

- (a) laid before each House of Parliament, and
- (b) sent to the First Minister of Wales, who must lay it before the National Assembly for Wales.

3 Procedure if no agreement on future relationship 8 months before the end of the transition period

(1) This section relates to any of the objectives set out in the negotiating mandate and applies if 8 months before the end of the transition period—

- (a) the Prime Minister makes a statement that no agreement in principle on the objective can be reached, or
- (b) there is no agreement in principle on the objective.

(2) A Minister of the Crown must make a statement setting out how Her Majesty's Government proposes to proceed within the period of 14 days beginning with—

- (a) the day on which the statement mentioned in subsection (1)(a) is made, or
- (b) (if no statement is made) the day that is 8 months before the end of the transition period.

(3) The Minister of the Crown must—

- (a) lay the statement made under subsection (2) before each House of Parliament,
- (b) send the statement to the First Minister of Wales who must lay it before the National Assembly for Wales and, within the period of seven sitting days beginning with the day on which the statement is made, move a motion for the National Assembly to take note of it, and
- (c) make arrangements for—
 - (i) a motion, to the effect that the House of Commons has considered the statement, to be moved by a Minister of the Crown within the period of seven sitting days beginning with the day on which the statement is made, and
 - (ii) a motion for the House of Lords to take note of the statement to be moved by a Minister of the Crown within the period of seven sitting days beginning with the day on which the statement is made.

4 Parliamentary approval of future relationship agreement

(1) An agreement determining the United Kingdom's future relationship with the EU (a "future relationship agreement") may be ratified only after each of the following events has taken place –

(a) a Minister of the Crown has consulted the Welsh Ministers to seek their views about the future relationship agreement;

(b) a Minister of the Crown has prepared the documents mentioned in subsection (2) and –

(i) laid them before each House of Parliament, and

(ii) sent them to the First Minister of Wales who must lay them before the National Assembly for Wales and table a motion for the National Assembly to take note of the future relationship agreement;

(c) the future relationship agreement has been approved by a resolution of the House of Commons on a motion in neutral terms moved by a Minister of the Crown;

(d) a motion for the House of Lords to take note of the future relationship agreement has been tabled in the House of Lords by a Minister of the Crown and –

(i) the House of Lords has debated the motion, or

(ii) the House of Lords has not concluded a debate on the motion before the end of the period of five sitting days beginning with the first sitting day after the day on which the House of Commons passes the resolution mentioned in paragraph (c),

(e) the motion tabled by the First Minister of Wales in accordance with paragraph (b) (ii) –

(i) has been debated by the National Assembly for Wales, or

(ii) the National Assembly for Wales has not concluded a debate on the motion before the end of the period of five sitting days beginning with the first sitting day after the day on which the House of Commons passes the resolution mentioned in paragraph (c).

(2) The documents referred to in subsection (1)(b) are –

(a) a statement that political agreement has been reached, and

(b) a copy of the future relationship agreement.

(3) This section does not affect the operation of Part 2 of the Constitutional Reform and Governance Act 2010 (ratification of treaties) in relation to the withdrawal agreement.

(4) In this section "ratified" is to be construed in accordance with section 25 of the Constitutional Reform and Governance Act 2010 .

5 Procedure if Parliamentary approval not obtained

(1) This section applies if the House of Commons decides not to pass the resolution mentioned in section 4(1)(c).

(2) A Minister of the Crown must, within the period of 21 days beginning with the day on which the House of Commons decides not to pass the resolution, make a statement setting out how Her Majesty's Government proposes to proceed.

- (3) A statement made under subsection (2) must –
- (a) be laid before each House of Parliament, and
 - (b) be sent to the First Minister of Wales who must –
 - (i) lay the statement before the National Assembly for Wales,
 - (ii) table a motion for the National Assembly to take note of the statement, and
 - (iii) move the motion within seven sitting days beginning with the day on which the statement was received.
- (4) A Minister of the Crown must make arrangements for –
- (a) a motion, to the effect that the House of Commons has considered the statement, to be moved by a Minister of the Crown within the period of seven sitting days beginning with the day on which the statement is made, and
 - (b) a motion for the House of Lords to take note of the statement, to be moved by a Minister of the Crown within the period of seven sitting days beginning with the day on which the statement is made.

6 Meaning of “sitting day”

- (1) In sections 3, 4 and 5, “sitting day” means –
- (a) in relation to the House of Commons, a day on which the House of Commons is sitting (and a day is only a day on which the House of Commons is sitting if the House begins to sit on that day);
 - (b) in relation to the House of Lords, a day on which the House of Lords is sitting (and a day is only a day on which the House of Lords is sitting if the House begins to sit on that day);
 - (c) in relation to the National Assembly for Wales, any working day falling within a week in which the Assembly sits in plenary.
- (2) For the purposes of subsection (1)(c), “working day” means any day unless it is –
- (a) a Saturday or a Sunday,
 - (b) Christmas Eve, Christmas Day, Maundy Thursday or Good Friday,
 - (c) a day which is a bank holiday in Wales under the Banking and Financial Dealings Act 1971, or
 - (d) a day appointed for public thanksgiving or mourning.



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA/EM/0263/19

David Rees AM (Chair)
Chair of External Affairs and Additional Legislation Committee
National Assembly for Wales
Cardiff Bay
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SeneddEAL@assembly.wales

12 March 2019

Dear David,

UK Trade Bill – Supplementary Legislative Consent Memorandum EAAL Report

I would like to thank you, and all the members of the External Affairs and Additional Legislation Committee, for taking the time to consider the Legislative Consent Memorandum for the UK Trade Bill for a second time.

As I am sure you will appreciate the timescales for consent around the Trade Bill LCM have been incredibly tight and therefore I am unable to provide a detailed response to all your recommendations on this occasion. However, the debate on the consent motion for the Bill will be held later today and I hope that this will provide an opportunity to discuss some of your points further.

You have concluded that your concerns about the scope of the power to be granted to Welsh Ministers have not been addressed. Whilst I appreciate these concerns, there are still uncertainties around the UK's exit from the EU and I believe the possible additional flexibility that broader powers provide may be useful in the future. Moreover, if Parliament has not constrained the powers of UK Ministers to act, including within devolved competence, then I would hope you would agree the same should apply to Welsh Ministers.

With regards to your concerns around the lack of a statutory requirement for the UK Government to obtain devolved consent when making regulations in devolved areas, I am satisfied with the non-statutory assurances given by the UK Government. The nature of the assurances given are identical to those received in the context of the EU (Withdrawal) Act which I note were sufficient to persuade the National Assembly to provide legislative consent for that Bill. As I said when I appeared before your Committee on 4 March, if this

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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.

commitment were to be broken Welsh Government would then look again. We have every expectation that such an outcome is unlikely.

I also note your concerns regarding the impact that concurrent powers and a duty to consult might have on the Assembly's legislative competence. I assure you that both issues are under consideration in the context of discussions between Welsh Government and the UK Government about how to resolve any unintended consequences on legislative competence.

With regards to the Clause 1 powers to implement the WTO General Agreement on Procurement being subject to affirmative procedure, this is an issue on which we take different views. The GPA was renegotiated very recently and may not change much in substance for years to come, so the nature of the provision made under clause 1 powers is likely to be minor or technical. Given this, my view is that the negative procedure is adequate.

I note the Committee's view that extending the duration of the Welsh Ministers' clause 2 powers is a matter that should be for the Assembly to scrutinise, rather than UK Parliament. I do not disagree with that position as a matter of principle but at the same time not everything we think sensible or appropriate is necessarily worthy of the resources needed to pursue it. Judgments have to be made about where to dedicate resources and the current circumstances did not meet that threshold.

Lastly, I note your conclusion that the Bill should be amended to protect the Government of Wales Act 2016 from amendment by UK Ministers utilising powers under this Bill. As I think my predecessor may have mentioned previously, we do not believe that the powers in clauses 1 are wide enough to allow amendment of the Government of Wales Act 2006, and so cannot see that an amendment is needed.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'M. E. Morgan'.

Eluned Morgan AC/AM

Gweinidog y Gymraeg a Chysylltiadau Rhyngwladol
Minister for International Relations and the Welsh Language

Agenda Item 4

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Agenda Item 7

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