

# Agenda – External Affairs and Additional Legislation Committee

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Meeting Venue:

Committee Room 2 – Senedd

Meeting date: 25 March 2019

Meeting time: 14.00

For further information contact:

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Committee Clerk

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## Private pre-meeting

(13.45–14.00)

## 1 Introductions, apologies, substitutions and declarations of interest

(14.00)

## 2 Scrutiny session with the First Minister of Wales

(14.00–15.30)

(Pages 1 – 46)

Mark Drakeford, First Minister

Des Clifford, Welsh Government

Piers Bisson, Welsh Government

## 3 Paper(s) to note

(15.30–15.35)

### 3.1 Paper to note 1 – Correspondence from the Secretary of State for Wales to the Chair regarding the future of regional funding after Brexit – 12 March 2019

(Page 47)

### 3.2 Paper to note 2 – Correspondence from the Constitutional and Legislative Affairs Committee Chair to Committee Chairs regarding inter-institutional relations agreement between the Assembly and Government – 15 March 2019

(Pages 48 – 49)



- 3.3 Paper to note 3 – Correspondence from the Brexit Minister to the Chair regarding 11 March meeting follow up – 18 March 2019**  
(Pages 50 – 58)
- 3.4 Paper to note 4 – Correspondence from Robin Walker MP to the Chair regarding invitation to appear before the Committee – 18 March 2019**  
(Page 59)
- 3.5 Paper to note 5 – Correspondence from the First Minister to the Chair in response to the Committee's letter regarding the Assembly's role in legislating for Brexit – 20 March 2019**  
(Pages 60 – 64)
- 4 Motion under Standing Order 17.42(vi) to resolve to exclude the public from the remainder of the meeting**  
(15.35)
- 5 Scrutiny session with the First Minister of Wales – consideration of evidence**  
(15.35–15.50)
- 6 Scrutiny of international agreements**  
(15.50–16.00) (Pages 65 – 74)
- 7 Preparing for Brexit – Consideration of draft correspondence to the Counsel General and Brexit Minister**  
(16.00–16.05) (Pages 75 – 79)

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

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# Agenda Item 3.1



**Rt Hon Alun Cairns MP**  
Secretary of State for Wales  
Ysgrifennydd Gwladol Cymru

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

Ref: 167SUB 19

12 March 2019

*Dear David,*

Thank you for your letter on the future of regional funding after Brexit.

The UK Government recognises the importance of reassuring communities on the future of local growth funding once we have left the European Union and providing clarity on the UK Shared Prosperity Fund (UKSPF).

As Secretary of State, I am working to protect Wales' interests and to ensure that Wales benefits to the greatest degree from the UK Shared Prosperity Fund. Since the referendum I have engaged with stakeholders from all sectors across Wales on how the country can benefit from the UK leaving the European Union. I am particularly keen to consider how organisations at the local level, including local authorities, can have the greatest influence over spending decisions under the UK Shared Prosperity Fund.

We will be consulting shortly on these issues and the Committee's evidence would be very helpful to inform our thinking on the design of the fund. I therefore hope that the Committee will be able respond positively as part of that process.

*Xanws,  
AC*

**Rt Hon Alun Cairns MP**  
Secretary of State for Wales  
Ysgrifennydd Gwladol Cymru

Committee Chairs

15 March 2019

Dear Chairs

### **Inter-Institutional relations agreement between the National Assembly for Wales and the Welsh Government**

In February 2018 we issued our report ***UK governance post-Brexit***. Its purpose was to examine existing inter-governmental relationships to determine whether they are fit for purpose and to assess whether they need to change.

The final recommendation of our report was that the Welsh Government enters into an agreement with the Constitutional and Legislative Affairs Committee to support its scrutiny of Welsh Government activity in this area.

The Committee reached an agreement with the Welsh Government and in January this year, laid a **report** before the Assembly, which incorporated the agreement.

Following the debate held on the report and agreement last week, I thought it would be appropriate to write to all Chairs, drawing attention to the agreement, so that committees can assess how they may wish to use it in scrutinising the Welsh Government.

The agreement is available on our website and I will ensure it is made available to committee clerks.

Yours sincerely





**Mick Antoniw**

Chair

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



# Agenda Item 3.3

Y Cwnsler Cyffredinol a Gweinidog Brexit  
Counsel General and Brexit Minister



Llywodraeth Cymru  
Welsh Government

David Rees AM  
Chair of the External Affairs and Additional Legislation Committee  
National Assembly for Wales  
Cardiff Bay  
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18 March 2019

Dear David,

I am writing in response to the action points from the External Affairs and Additional Legislation Committee's meeting on 11 March.

Following the Committee's request for the agendas of the UK Government's EU Exit and Trade (Preparedness) Cabinet Committee, I have written to David Lidington, Chancellor of the Duchy of Lancaster on this matter. I will, of course, update the Committee when I receive a response.

Committee members sought information on the economic impact of 'no deal' and also a number of figures for Wales. I attach a paper, which has been prepared by the Chief Economist following the Chancellor's Spring Statement, on the possible economic implications of a 'no deal' Brexit on Wales. Please note that we are sharing this paper with the Committee informally at this point, it will be published in the coming days.

As requested by the Committee I attach a copy of my letter to Professor Manning, Chair of the Migration Advisory Committee, in respect of the call for evidence on the shortage occupation list.

Finally, the Committee asked for information on the additional funding I mentioned for Local Authority Resilience Forums. On 11 March we announced up to £500k of funding for Local Resilience Fora (LRF) across Wales. Primarily, the funding will help LRFs enhance their limited capacity to fulfil their roles in the command, control and co-ordination arrangements for Operation Yellowhammer in Wales.

I look forward to continuing to engage with the Committee as we continue to move closer to the date of the UK's exit from the European Union.

Yours sincerely,

**Jeremy Miles AM**

Y Cwnsler Cyffredinol a Gweinidog Brexit  
Counsel General and Brexit Minister

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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.



# Economic analysis of UK government's proposals for EU exit

## Supplementary note

18 March 2019

### Purpose and wider context

A paper published by the Welsh Government on 4 December<sup>1</sup> reviewed the results of the economic analysis provided by the UK Government on the longer run economic consequences of the UK leaving the European Union. The UK Government's conclusions were compared with those of independent analysts. The paper also included a brief summary of some key conclusions about possible shorter run effects of a "no-deal" scenario as set out by the Office for Budget Responsibility (OBR) and the Bank of England.

This note updates that analysis, drawing on material released more recently, and with a particular focus on the shorter run economic effects of a no-deal Brexit.

This note does not consider the direct impacts on specific sectors and businesses that may arise from new tariff and non-tariff barriers or from exposure to imports that result from the UK Government's policy on tariffs in the event of a no-deal Brexit announced on 13 March 2019<sup>2</sup>. Neither does the note consider geographical differences in impacts across Wales.

While differences in the presence of sectors with high levels of exports to the EU can provide some indication of variation in effects, analysis has indicated that often the particular circumstances facing individual business and the characteristics of the business can be more important than the sector to which they belong<sup>3</sup>. Furthermore, outcomes will be also influenced by: supply chain effects; impacts on imported inputs; foreign direct investment; and, by the potentially large macroeconomic consequences. However, especially adverse effects are most likely in places where affected businesses represent a very large share of local employment and where the local economy is less resilient.

The Welsh Government has based its assessment of the likely economic effects of a no-deal Brexit on a range of evidence rather than a single Welsh model. This reflects the close integration of the economy in Wales with the rest of the UK; the limited data currently available on intra-UK trade flows; and, the major methodological challenges associated with macroeconomic modelling, particularly in this context.

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<sup>1</sup> <https://beta.gov.wales/economic-analysis-uk-governments-proposals-eu-exit>

<sup>2</sup> An assessment of the impact of new trade barriers on sectors and businesses was undertaken for the Welsh Government by Cardiff University and is available here: <https://gov.wales/topics/businessandconomy/economic-action-plan/eu-transition-and-economic-prospects-for-large-and-medium-sized-firms-in-wales/?lang=en>. Work is underway to assess the impact of the UK Government's recently announced policy on tariffs in the event of a no-deal Brexit.

<sup>3</sup> See analysis referenced at footnote 2.

Whilst quantification of the size of an impact is difficult, the direction of impact can be predicted with some reasonable certainty based on established empirical economic relationships. The evidence suggests that economies becoming less open tends to result in lower trade and foreign direct investment which in turn tends to reduce productivity.

Weakening productivity tends in turn to lead to a lower real exchange rate which then passes through into higher prices for consumers. Tax changes, such as tariffs, also tend to be passed through to higher consumer prices further reducing economic welfare.

## Long term effects

The broad conclusions about the longer run economic effects of leaving the EU without a deal, and trading on World Trade Organisation (WTO) terms, remain unchanged from those described in the paper published in December.

In summary, there is a strong consensus amongst independent mainstream economists that a reduction in access and openness to the EU single market will reduce the UK economy's productive capacity and its rate of growth, with the extent of the economic losses being broadly proportional to the degree of access the UK retains to the EU single market<sup>4</sup>.

This analysis indicates that a no-deal Brexit that leads to a longer term arrangement whereby the UK trades with the EU under WTO rules could result in economic output (GDP) in the UK being up to around 10% lower than it otherwise would have been.

The UK Government's own analysis is broadly consistent with these results<sup>5</sup>. This estimates that the UK economy would be 6-9% smaller in the long term in a no-deal scenario (after around 15 years) than it otherwise would have been. The analysis suggests that there would be some variation across the UK, although the variation is limited and the UK Government notes that the modelling should be seen as indicative of orders of magnitude rather than providing reliable point estimates. With these caveats, the impact on Wales is estimated to be broadly similar to that on the UK as whole – the recent UK Government publication on the *Implications for Business and Trade of a No Deal Exit on 29 March 2019*<sup>6</sup> refers for example to a negative impact on the economy in Wales of 8.1 per cent. The publication emphasises that this analysis does not account for any short term disruptions, which would be likely to have additional short and long run economic impacts in an immediate no deal scenario.

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<sup>4</sup> See for example:

<https://www.instituteforgovernment.org.uk/sites/default/files/publications/2018%20IfG%20%20Brexit%20impact%20%5Bfinal%20for%20web%5D.pdf>

<sup>5</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/760484/28\\_November\\_EU\\_Exit\\_-\\_Long-term\\_economic\\_analysis\\_\\_1\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/760484/28_November_EU_Exit_-_Long-term_economic_analysis__1_.pdf)

<sup>6</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/781768/Implications\\_for\\_Business\\_and\\_Trade\\_of\\_a\\_No\\_Deal\\_Exit\\_on\\_29\\_March\\_2019.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/781768/Implications_for_Business_and_Trade_of_a_No_Deal_Exit_on_29_March_2019.pdf)

Analysis indicates that the negative economic effects of a no-deal exit, as described above, could be offset by unilateral tariff reduction, although any such offsetting effects would be relatively small. The UK Government's modelling suggested that maximum tariff reduction (to zero for all goods) might increase UK GDP by a little under one per cent. Of course, such a scenario would create both winners and losers with a high level of economic dislocation over the short to medium term. Since the UK Government's analysis has been published, the UK Government has now published its initial proposals for tariffs in the event of a no-deal Brexit. Whilst it is proposed that many tariffs are reduced or set to zero, some new tariffs have been introduced for trade with the EU in areas that would previously have been exempt.

It is challenging to estimate the overall economic effects of the proposed tariffs but is likely to mean that any offsetting effects on growth from tariff reductions are likely to be smaller than the UK Government's original estimate of a little under one per cent.

### **Short term effects**

Should the UK leave the EU without a deal there is a wide range of potential scenarios - all with strongly adverse economic implications for both the UK and Wales. These adverse effects will come on top of the reduction in economic growth – of around 2% – that the OBR and others have attributed to the referendum result to date. However, the strength and nature of future effects will depend heavily on the specific circumstances that apply in the period after leaving. It is therefore not sensible to seek to produce a single numerical forecast for Wales.

Key factors will be the length of the period that people expect to elapse before there are further changes to the UK's trading relationships with the EU and other trading partners, expectations about what those changes might be, and the implications of any political uncertainty. These factors would be expected to have major but unpredictable implications for business investment decisions and consumer behaviour. A deep and protracted recession is one plausible outcome.

The nature and scale of any impacts will also depend heavily on any macroeconomic measures taken by the UK Government and the Bank of England to prepare for and mitigate negative effects, and on the ways in which new trade barriers (such as customs checks) are imposed in practice. Moreover, Brexit is taking place against a backdrop of slowing global economic growth. The level of preparedness of businesses and infrastructure (such as ports, excise and customs systems and transport operations) will be important in determining how the economy adjusts to new barriers. This combination of factors means that although scenario modelling can give some estimates of orders of magnitude, precise predictions in these areas is impossible.

Both the Office for Budget Responsibility (OBR) and the Bank of England have considered the potential short to medium term economic effects on the UK of a no-deal Brexit.

In its assessment of the impact of the short term effects of such an exit, published in autumn 2018<sup>7</sup>, the OBR stressed the lack of any relevant precedent while explicitly noting that: “the ‘Three-Day Week’ introduced in early 1974 was associated with a fall in output of a little under 3 per cent that quarter, so it may be reasonable to expect very large short to medium term negative effects from ‘no-deal’”.

In the most recent Economic and Fiscal Outlook, published on March 13 2019<sup>8</sup>, the OBR again noted that “an abrupt, disorderly exit could have a severe short-term impact on the economy” but did not quantify this impact. (It also reduced its expected GDP growth rate for 2019 to 1.2 per cent (from 1.6 per cent), or 0.6 per cent per head, in part reflecting Brexit uncertainty. This forecast, which - on a per head basis - is less than a third of the long run trend rate of growth, is still predicated on the assumption of an orderly transition. An orderly transition of course remains the policy of the UK Government, and the OBR is mandated to base its forecasts on government policy.)

The Governor of the Bank of England, addressing the House of Lords Economic Affairs Select Committee on 5 March<sup>9</sup>, noted that preparedness measures that had been put in place had reduced the Bank’s estimates of the shorter run (around two to three year) economic costs associated with its more adverse scenarios for a no-deal exit. These now lay in the range 5 per cent to 6.5 per cent in terms of lower GDP (in comparison to what would have been expected had the UK continued to grow in line with expectations prior to the referendum).

The Governor cautioned on the uncertainty and “false precision” inherent in such quantified estimates. However, for illustrative purposes, the scale of the impact estimated by the Bank of England under these adverse scenarios would, in very broad terms, be comparable to that of the recession of 2008-9.

Evidence on the close integration of the economy in Wales with the rest of the UK, and previous experience, indicate that an impact of a broadly similar order of magnitude could be expected in Wales. (While the greater exposure of Welsh exports to EU markets might be expected to imply that impacts would be somewhat greater in Wales it is difficult to make an evidence-based assessment of such differential effects for the reasons described above.)

If the impact of an adverse scenario were of this magnitude, experience of the last recession suggests that it might result in a reduction in employment in Wales of around three percent, with some of this reduction reflected in higher unemployment and the remainder in higher inactivity. This would be equivalent to around 40-50 thousand fewer people in work.

There would of course be a range of other adverse consequences, including lower real wages and incomes, reduced job creation, lower business investment<sup>10</sup> and

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<sup>7</sup> <https://obr.uk/forecasts-in-depth/the-economy-forecast/brexit-analysis/>

<sup>8</sup> [https://cdn.obr.uk/March-2019\\_EFO\\_Web-Accessible.pdf](https://cdn.obr.uk/March-2019_EFO_Web-Accessible.pdf)

<sup>9</sup> <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/economic-affairs-committee/Gov-BoE-2019/oral/97544.html>

<sup>10</sup> There is no official data on business investment in Wales so it is not possible to produce estimates of the scale of this particular effect.

lower business formation. The last two factors would in turn have longer run implications for future productivity growth.

The sudden introduction of new trade barriers would of course affect some sectors more than others, with particularly strong effects on agriculture and food, especially over the shorter term.

As noted above, analysis undertaken by Cardiff University for the Welsh Government has also described how new trade barriers could affect other sectors. The research highlighted particular risks for sectors such as aerospace, automotive and the process and chemical sectors. However, the authors concluded the heterogeneity of responses of firms within sectors means that firm characteristics rather than sectors is the more appropriate perspective for considering potential Brexit related impacts.

**Jeremy Miles AC/AM**  
Y Cwnsler Cyffredinol a Gweinidog Brexit  
Counsel General and Brexit Minister



Llywodraeth Cymru  
Welsh Government

Professor Alan Manning  
Chair of the Migration Advisory Committee

[MAC@homeoffice.gsi.gov.uk](mailto:MAC@homeoffice.gsi.gov.uk)

01 March 2019

Dear Alan,

I am writing to you in respect of the call for evidence on the shortage occupation list. We welcome the opportunity to respond to the proposal in the UK Government's White Paper: *The UK's future skills-based immigration system* that the Migration Advisory Committee (MAC) should consider whether the composition of the Shortage Occupation List (SOL) needs to be different for Wales.

The Welsh Government has been proactive in seeking to contribute and shape the development of migration policy in the UK emphasising the importance and benefits of migration to Wales. I wanted to write to you directly to set out the strategic Welsh Government perspective.

Migration has been good for Wales' economy and after EU exit we will continue to need migration both from the UK to the EU and vice versa. The Welsh Government believes that Wales' future prosperity is intrinsically linked with our ability to secure full and unfettered access to the Single Market and we have proposed a flexible, but managed, approach to migration, which is compatible with this goal and which would continue to give preference to EEA and Swiss migrants while linking immigration more closely to employment. We do not believe that a narrow and restrictive approach to migration is in Wales' best interests, and a future migration system must be flexible enough to allow workers access across all skills levels to move, with as few restrictions as possible, between the UK and the EU. The comments below in respect of the issue of a SOL need to be set in this context and should not be misinterpreted as a move away from our preferred approach.

There is growing evidence of skills and labour shortages in specific sectors and while Wales has lower levels of immigration overall than the UK average certain services and sectors in Wales are particularly reliant on migrant workers, such as, social care, food production including veterinary surgeons, tourism, and higher education. Within these sectors will be very specific vulnerabilities. Data limitations mean that it has not always been possible to disaggregate at a Wales level occupations which may be at particular risk. We

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are doing further work and analysis to explore the labour market in Wales and we will share that with you in due course.

The most vulnerable sector is likely to be manufacturing across all skill levels and also social care where an increasing proportion of new entrants to the sector are EU citizens and the sector has very low average salaries. We would ask MAC to consider extending a Welsh SOL to occupations such as, for example, social care workers, where salaries and required skill/qualification levels would be below the new thresholds.

In the health sector we have significant skills shortages and so to lose the flexibility to employ EU workers would present us with significant challenges. In addition, lack of flexibility for the health workforce to move between the EU and the UK will inhibit the innovation in a sector where change is rapid and advances in research and techniques can effectively be transferred by members of a mobile workforce for the benefit of Wales. We have already seen across the UK a reduction in those wishing to come from the EU to undertake their medical training as a result of the uncertainty around Brexit and this is likely to feed through into reduced numbers of EU citizens in the substantive workforce in future years. We are undertaking more detailed analysis on this workforce but anticipate that we would seek some specific additions to the SOL in respect of the health workforce.

Wales and the UK have become increasingly dependent on EU27 veterinary graduates. This is partly because of an over-supply of vets in some EU 27 countries but also because of differential salary levels. In addition, the history, culture and education systems of many EU countries has meant that many EU27 vets are more inclined, and probably better equipped, to work in public health roles. There has also been an increasing regulatory requirement for veterinary certification of the health and safety of animal produce and for veterinary oversight of the welfare of animals in the food supply chain. A consequence of this increased veterinary role, greater access to the UK labour market and professional engagement with public health work has led to a situation where the UK is highly dependent on EU 27 vets in public health and state veterinary medicine roles in particular. For example, in the UK, 95% of the vets working in official inspection and certification roles in abattoirs are EU27 graduates. The figure in Wales is 100%. APHA, the GB government agency responsible for animal health and welfare regulatory delivery and enforcement and for much animal disease surveillance and research, is also highly dependent on EU vets. Yet vets in the public health sector may fail to meet a future salary threshold.

The UK Government's White Paper broadly rejected any regional differentiation, with the exception of the possible expansion of the Shortage Occupation List to Wales and Northern Ireland (and the continuation of the enhanced Shortage Occupation List in Scotland). We welcome options for a spatially-differentiated approach that would be more fitting to Wales' needs including a dedicated SOL established by the MAC. We would be grateful for greater clarity on how the SOL would in practice operate under the new system. If the other changes envisaged by the White Paper are implemented, such as the abolition of the cap and the resident labour market test, and the reduction in the minimum skill level then the SOL would arguably be largely redundant except with respect to the salary threshold.

Given this, we see the offer of a separate SOL for Wales as an implicit recognition that one salary threshold may not be suitable to meet the future needs of the whole of England and Wales. But as the MAC itself has recognised, the outlier here is London and the south-east of England. Moreover, an abrupt ending of freedom of movement from the EU will likely dramatically increase the range of occupations which are in short supply.

The profile of detailed sectors and occupations expected to be affected in Wales is likely to be similar to the UK as a whole. This in turn means that the creation of a new, separate SOL for Wales, while welcome, may on its own be unlikely to address our concerns.

Thus, while we welcome the offer of a separate SOL for Wales, a higher priority for the Welsh Government will be to secure a salary threshold well below the £30,000 level. Such an approach - for which there is broad support from a wide variety of business organisations - would significantly mitigate the economic impacts of the White Paper proposals.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Jeremy Miles', written in a cursive style.

**Jeremy Miles AM**

Y Cwnsler Cyffredinol a Gweinidog Brexit  
Counsel General and Brexit Minister





Department  
for Exiting the  
European Union

**Robin Walker MP**  
Parliamentary Under Secretary of State for  
Exiting the European Union  
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## Agenda Item 3.4

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David Rees AM  
Chair  
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18<sup>th</sup> March 2019

*Dear David,*

### **INVITATION TO APPEAR BEFORE THE COMMITTEE**

I am writing in response to your letter of 14 March inviting me to appear before the External Affairs and Additional Legislation Committee on Monday 1 April 2019.

I would like to thank you for the invitation, and I would be happy to appear before the Committee. As you mentioned in your letter, events will continue to unfold this week and I would therefore be grateful for your ongoing flexibility as to the exact timing of my appearance. My officials would be happy to work with the Committee clerks to finalise a date for my appearance.

Many thanks again for your invitation.

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



Llywodraeth Cymru  
Welsh Government

Dai Rees AM  
Chair, External Affairs and Additional Affairs Committee  
National Assembly for Wales  
Cardiff

20 March 2019

Dear David,

I am writing in response to your letter regarding the Assembly's role in legislating for Brexit.

I have noted your support for the report published by the Constitutional and Legislative Affairs Committee. I have also noted your concern about whether UK SIs were creating new policies, the use of concurrent powers, and the legislative consent process for primary legislation.

I attach the letter I sent to the Committee in reply to the progress report, which sets out the government's position on the points raised in your letter.

Best wishes,

**MARK DRAKEFORD**

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Mick Antoniw AM  
Chair, Constitutional and Legislative Affairs Committee  
National Assembly for Wales  
Cardiff

11 March 2019

Dear Mick

I am writing in response to your letter regarding your progress report on the scrutiny of regulations under the EU (Withdrawal) Act.

I would first like to take the opportunity to thank you for your Committee's scrutiny of the proposed negative Welsh SIs laid for sifting. The Committee has been fair and reasonable in its recommendations and I appreciate the support in the progress of this challenging work so that these SIs can come into force on exit day.

I was also heartened to see, in your report, the indication that the Assembly would manage, if necessary, any increase in workload arising from the UK's withdrawal from the EU. I had been concerned about being able to secure the necessary plenary and, particularly, committee time for all of the affirmative SIs that are required for EU exit, but based on your letter I can see that we should be able to proceed with confidence that the Assembly will have the capacity to scrutinise and debate these SIs before exit day.

The report laid in the Assembly addresses some issues that are general to the scrutiny of the exit SIs, and others that are specific to individual SIs. In terms of matters relating to specific SIs, these have already been addressed in detailed letters to you, so I will not return to those again here. Instead, I will address the points that apply more generally to the programme of legislating for EU exit.

I have read the Committee's report very carefully. I have to tell you that it simply does not match my daily experience of grappling with the extraordinary circumstances of Brexit and pursuing the Welsh Government's priority of protecting the welfare of citizens, as far as possible, in the event of a no deal Brexit. That has meant acting in the here-and-now to ensure immediate arrangements are in place, while preserving our ability to create new systems in the future.

I do not accept the National Assembly has been marginalised or bypassed. Co-operation

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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.

with the UK Government in order to deliver an operable statute book, rather than marginalisation, is what has been happening. The context here is that, as you know, we are still having to work on the basis that 'no deal' is a real possibility. In July 2018 we were all working to a timetable in which the UK Government said it would reach an agreement at the October European Council, and that would have meant that much of the legislation could have been deferred to the transition period. As it is we have had to shoehorn it all into a highly compressed timescale. This is an unprecedented legislative exercise. The Welsh Government, or indeed the other Devolved Administrations, has never attempted anything on this scale since devolution began. Never has an entire Member State left the EU and a legislative exercise on this scale in the UK, in such a compressed time period, has probably never happened before.

The Report suggests that the Committee does not share this view, or our concern as to whether or not we have a functioning statute book on 30 March if No Deal really does happen.

I also reject the assertion that the Welsh Government has been complicit in a reduction in legislative competence through the use of concurrent powers. You will know that there has been an exchange of Ministerial correspondence with the Wales Office about a s109 Order to address the unintended restrictions on the Assembly's competence created by powers conferred in EU Exit SIs, and other legislation, which engage paragraphs 8, 10 and 11 of Schedule 7B of the Government of Wales Act. Officials are examining the issue in detail and considering how it can best be resolved. In the meantime, we operate within the law as it stands today.

More broadly, as the Committee knows, leaving the EU will mean that the UK will have to operate in a different way internally. Transferring functions to be exercised within the UK rather than on an international basis will inevitably mean that the UK Government and the Devolved Administrations will need to find new ways of working in order to manage these functions. There is a broader constitutional debate to be had than simply the future operation of Schedule 7B – a debate for which the Welsh Government has consistently called, at UK level

The report contains some detailed criticisms of the written statements issued under SO30C. The Committee has been diligent in writing to the Welsh Government about concerns with specific written statements. The templates and guidance issued to the officials preparing SO30C statements have been revised.

It has, however, become clear that we have a different understanding of the purpose of these written statements. Our interpretation of SO30C was that the purpose of these written statements was to notify the National Assembly that EU Exit SIs had been laid in Parliament. Members could then consider the SIs (and the supporting documents) laid in Parliament as they wished. Our approach has therefore been to provide a notification which brings the salient points of each SI to the attention of the Assembly. The contents of our statements relate to the requirements set out in SO30C.3, which itself originates from your Committee's report of July 2018 and recommendations 7 and 8 in particular.

It would appear from correspondence and the Committee's progress report that the Committee Members are more concerned with scrutinising the Welsh Ministers' rationale for giving consent and in scrutinising the Statements, rather than the SIs themselves. I had assumed that the SIs and EMs to which the notifications refer would be of more interest to Members, and the Statements have been drawn up accordingly.

Indeed, SO30C is very specific that the written statement is a notification, and has a clear list of points that the written statement must include. These changes to Standing Orders

were discussed at length between Welsh Government officials and Assembly clerks over last summer, with a shared understanding that these written statements were to notify Assembly Members of SIs laid in Parliament, rather than to convey a detailed policy rationale for the giving of consent. If it had been foreseen that the Committee would wish to take that approach, SO30C could have been worded differently and could have required that the statement included the information that would facilitate that approach (such as an overview of the policies within the SIs, a justification of why a UK approach was preferred over a Welsh approach etc).

I hope, following the action taken regarding the templates and guidance for officials, SO30C statements are now providing the Committee with the information that supports the approach to scrutiny that it has chosen to take, though we have been following the procedures agreed with the Assembly last summer.

I have noted that the Committee would prefer the Welsh Ministers to lay motions for all Statutory Instrument Consent Memorandums.

Standing Orders make it clear that it is the choice of Ministers or Members to lay a motion. That Suzy Davies AM was able to lay a motion to debate the Marine Environment SICM indicates that the Standing Orders are operating as intended. As I indicated above, as your report states that the Assembly would, if necessary, have been able “to manage any increase in workload” arising from Brexit, I am encouraged that Assembly Members would have the resources at their disposal to draft a memorandum and lay a motion in the Assembly if they felt that this was essential.

I note that the Committee feels the balance between Welsh SIs and UK SIs is not right. That is a matter of judgement. It is a matter of fact that we have communicated consistently since September 2018 that we anticipate around 150 EU Exit SIs to be made in Parliament in areas devolved to Wales and around 50 EU Exit SIs to be laid in the National Assembly. Those projected numbers, for both UK and Welsh SIs, have since declined, but only very slightly, as the process has developed. The Committee might not agree with the balance but it cannot have been surprised at it.

It should also not be a surprise to the Committee that the UK EU Exit SIs have preceded the Welsh SIs, and so they will have inevitably seen more UK SIs than Welsh SIs at the start of the scrutiny period. We have been very clear from the beginning of the process that almost all the Welsh SIs are interdependent with the UK SIs and cannot be laid ahead of them.

We have a difference of view about the consistency between the course of action taken by Welsh Ministers and the provisions of the Intergovernmental Agreement. The SIs to which we have consented do not make new policies. Rather they put existing approaches on to a domestic footing. In each case the approach taken is to ensure that the underlying policy remains in place, through agreement with the UK Government. Therefore, even if there are policy choices being made, these are limited to what is necessary to ensure the law operates successfully on exit day.

To give an example, EU law may currently stipulate that a particular function is to be exercised by an EU institution. Evidently, after the UK has left the EU the institution in question will no longer exercise that function in relation to the UK.

A decision is necessary to identify a domestic equivalent to the EU body. The Committee appear to regard this as a policy choice. It is clearly not. The policy is to locate a function with a responsible body. The identification of that body is the mechanical expression of that policy, which remains consistent throughout.

You also raise the issue of directly applicable EU law. None of the regulations laid in the National Assembly have so far amended this body of EU law. SIs amending directly applicable EU law are being considered on a case-by-case basis and the Welsh Ministers have kept this approach under review. In the cases seen so far, the Welsh Government's approach has been to retain a UK-wide approach, rather than create new policies and delivery structures in the immensely constrained circumstances of Brexit.

Powers to amend directly applicable EU law were included in the EU (Withdrawal) Act at the request of the Welsh Government to ensure parity between the powers being conferred on the Welsh Ministers and UK Government Ministers. Having the powers to amend directly applicable EU law means that taking a UK-wide approach has been a conscious policy choice rather than one we are compelled to accept due to a lack of powers to do otherwise. It also gave the Welsh Ministers the flexibility to consider how best to make legislation addressing directly applicable EU law.

Finally, you raise the point that the approach that has been adopted makes the Welsh statute book less accessible. It must be recognised that this legislation is made in the context of leaving a well-established international legal system and replacing it with a UK-wide one where it has not necessarily been agreed what will happen in the longer term. We have endeavoured to preserve clarity and accessibility as much as possible, indeed, one reason for using UK SIs for UK-wide systems is to provide greater accessibility of law by having one SI for the UK rather than four separate SIs across all the administrations. Ultimately, our priority has been the protection of citizens and businesses. A part of the move to the new situation of a post-Brexit world will be to enhance the accessibility and clarity of the law while putting the longer term solutions in place.

Yours sincerely

A handwritten signature in black ink that reads "Mark Drakeford". The signature is written in a cursive, slightly slanted style.

**MARK DRAKEFORD**

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