

Agenda – External Affairs and Additional Legislation Committee

Meeting Venue:	For further information contact:
Committee Room 2 – Senedd	Alun Davidson
Meeting date: 6 January 2020	Committee Clerk
Meeting time: 13.30	0300 200 6565
	SeneddEAAL@assembly.wales

Private pre-meeting

(13.15–13.30)

1 Introductions, apologies, substitutions and declarations of interest

(13.30)

2 Scrutiny session with the First Minister

(13.30–15.00)

(Pages 1 – 37)

Mark Drakeford AM, First Minister

Des Clifford, Welsh Government

Rob Parry, Welsh Government

Ed Sherriff, Welsh Government

3 Papers to note

(15.00–15.05)

3.1 Paper to note 1: Correspondence from the Minister for International Relations and the Welsh Language to the Chair regarding Assembly scrutiny of international agreements – 9 December 2019

(Pages 38 – 39)

3.2 Paper to note 2: Correspondence from the Chair of the Committee on Assembly Electoral Reform to the Chair regarding potential implications for Assembly committees of any change in the size of the Assembly – 16 December 2019

(Pages 40 – 41)



- 3.3 Paper to note 3: Correspondence from the Secretary of State for Exiting the EU to the Counsel General and Brexit Minister regarding the European Union (Withdrawal Agreement) Bill – 18 December 2019**
(Pages 42 – 46)
- 4 Motion under Standing Order 17.42(vi) and (ix) to resolve to exclude the public from the remainder of the meeting**
(15.05)
- 5 Scrutiny session with the First Minister – consideration of evidence**
(15.05–15.20)
- 6 Approach to scrutiny of EU (Withdrawal Agreement) Bill**
(15.20–15.50) (Pages 47 – 71)
- 7 Consideration of forward work programme**
(15.50–16.15) (Page 72)

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Llywodraeth Cymru
Welsh Government

David Rees AM
Chair, External Affairs and Additional Legislation Committee
National Assembly for Wales
Cardiff Bay
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9 December 2019

Dear David,

Thank you for your letter of 7 October enclosing your discussion paper on Assembly scrutiny of international agreements. I am sorry for the delay in replying, but I thought it important that before doing so I gave due consideration to your paper in the light of our work on the Withdrawal Agreement Bill and related matters. I read the paper with interest and am grateful for the consideration you have been giving to this matter.

The Welsh Government set out detailed proposals for a robust approach to scrutiny of UK-EU negotiations, with a strong role for the Assembly, in the draft clauses for the Withdrawal Agreement Bill which we published on 11 March. The clauses can be found at: <https://gov.wales/sites/default/files/inline-documents/2019-03/draft-clauses.pdf>. These clauses have wider relevance beyond the specific context of negotiations with the EU.

I am pleased that the proposals set out in your discussion paper chime with our views. As you identify, your approach will rely on the UK Government ensuring that the Welsh Government has a meaningful role in the process. This remains the subject of intergovernmental discussion. We will need to revisit the detail of your proposals once the position is clearer, to ensure that any scrutiny arrangements that are put in place reflect how the negotiations process will work in practice. For example, it is our understanding that the “deviation from the mandate that might emerge during negotiations” to which you refer should not be possible in practice – a change in the mandate generally needs Ministerial agreement and this largely takes place in between negotiating rounds.

I note that you propose that Assembly consent should be required at two stages in the process: agreement of a negotiating mandate, and ratification. Whilst we are keen to facilitate Assembly scrutiny throughout the process, we are concerned that requiring Assembly consent would blur the roles of the legislatures and the executives involved and would not reflect the constitutional settlement.

It is for the executive branch of government, in light of views expressed by the relevant legislature, to agree negotiating mandates, and to be held to account for those.

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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.

Furthermore, even fully federal constitutions do not give governments below federal level a veto over trade agreements. Doing so would of course make the role of the federal government in conducting international negotiations unworkable.

I am nevertheless firmly of the opinion that the Assembly's views should be taken into account before the agreement of a treaty which impacts on Wales, especially where the agreement covers policy areas within the Assembly's legislative competence. It is therefore imperative that the Assembly should receive information relating to international agreements which cover policy areas within devolved competence, and/or affect Wales, at the same time as the UK Parliament.

However, I do not consider that acceding to international agreements would adjust the devolved competence of the Assembly. Therefore the application of a consent convention, similar to the Sewel convention which the paper envisages under option 1, would not necessarily fit with the constitutional position in respect of international agreements. The Sewel convention applies where the UK Parliament is performing a function that the Assembly could also perform or where the UK Parliament is modifying the Assembly's legislative competence. Ratifying international agreements does not fit into either of those categories.

Under our current constitutional arrangements the conduct of international relations is a matter for the executive. This is true of the UK and also Wales. The Sewel convention, which is a convention between legislatures, is therefore not directly relevant to the conduct of such relations. Where there is domestic implementing legislation needed pre-ratification then the Assembly will play a key role, either by scrutinising and passing legislation to implement any obligations in relation to Wales, or giving consent to an UK Bill which implements the international agreement for the entire of the UK, where that Bill contains provision within the legislative competence of the Assembly or modifies the legislative competence of the Assembly.

I hope that these observations are helpful and I look forward to continuing engagement with you on this matter.

I am copying this letter to the Counsel General and Brexit Minister, and to the Chair of the Constitutional and Legislative Affairs Committee.

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

Committee Chairs
National Assembly for Wales

16 December 2019

Dear Chair,

Committee on Assembly Electoral Reform

As you will be aware, the **Committee on Assembly Electoral Reform** was established by the National Assembly for Wales in September 2019 with a remit to examine the recommendations of the **Expert Panel on Assembly Electoral Reform**. I am writing to invite your views on the potential implications for Assembly committees of any change in the size of the Assembly.

In particular, we would welcome the views of your Committee on:

- Whether the current size of the Assembly has given rise to any implications or limitations for your Committee's work or the way in which you approach policy, legislative and financial scrutiny of the issues within your remit.
- How any recent or anticipated changes to the Assembly's powers or responsibilities, or the broader constitutional context, might affect your Committee's remit or how you undertake your role.
- Any implications an increase in the size of the Assembly might have for the work of Assembly committees, including the support services they receive.

We would also welcome information about how your Committee assesses the impact of its scrutiny work, and examples of effective scrutiny or missed opportunities. It would be helpful to receive your response **by Monday 27 January 2020**.



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I will be making an oral statement in Plenary on Wednesday 8 January 2020 to provide an update on the Committee's work. In the meantime, if you have any questions about the work of the Committee, or would find it helpful to meet to discuss these issues, please contact the Committee clerk, Helen Finlayson, at seneddreform@assembly.wales or on 0300 200 6341.

Yours sincerely,



Dawn Bowden AM
Chair, Committee on Assembly Electoral Reform

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



Agenda Item 3.3



Rt. Hon. Steve Barclay MP
Parliamentary Under Secretary of State
for Exiting the European Union
9 Downing Street
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correspondence@dexeu.gov.uk

Jeremy Miles AM
Counsel General and Brexit Minister
The Welsh Government
5th Floor
Tŷ Hywel
Cardiff Bay
CF99 1NA

18 December 2019

Dear Jeremy,

I am writing to inform you that tomorrow the UK Government will introduce the European Union (Withdrawal Agreement) Bill (the 'Bill') in the UK Parliament. I am writing in similar terms to Mike Russell MSP, Cabinet Secretary for Government Business and Constitutional Relations in the Scottish Government. The Permanent Secretary of the Department for Exiting the European Union has also written to David Sterling, Head of the Northern Ireland Civil Service. An embargoed copy of the Bill has been shared with your officials.

Following the election result, the House of Commons can now vote on this Bill before Christmas and we can leave the European Union in January. Passing this Bill will allow us to respect the result of the referendum, move on to focus on other priorities and bring the country together.

Much of the content of this letter will be familiar from James Duddridge's letter in October. Nevertheless, I want to take the opportunity to reiterate the Government's position: i.e. that the Bill does what is necessary in domestic law to meet the international obligations set out in the EU Withdrawal Agreement, the separation agreement we have concluded with EEA EFTA states, and the agreement on citizens' rights with Switzerland. In addition, the Bill also contains measures, not directly related to the implementation of the Withdrawal Agreement, which provide additional assurances regarding the UK's exit from the EU.

As you are aware, parts of the Bill will affect the competence of devolved institutions and will legislate in devolved areas. This letter therefore seeks the consent of the National Assembly for Wales for certain clauses of this Bill: I have set out in the Annex to this letter the clauses for which the UK Government is seeking legislative consent.

Following your letter of 23 October, I would also like to clarify the basis on which we are seeking the consent of the National Assembly.

Following the Sewel Convention and associated practices, the UK Government is seeking the consent of the National Assembly for those provisions in this Bill which legislate with regard to devolved matters or alter the competence of the devolved institutions.

The conduct of international negotiations and the approval of international agreements resulting from those negotiations, including the Withdrawal Agreement, is a reserved matter, and will be considered by the UK Parliament, including by MPs representing constituencies in Wales. The implementation of those agreements, where it would otherwise fall within devolved competence, is devolved.

In line with the tests set out above, National Assembly consent is not sought for the obligations in the Withdrawal Agreement, but for the manner in which provisions in this Bill implement those obligations in devolved domestic law.

I would again like to welcome the engagement that has taken place between our administrations to develop this Bill. The consideration of how we legislate to implement the Withdrawal Agreement in devolved areas has been a joint endeavour and our governments discussed the Bill at successive meetings of JMC(EN). As you will recall, drafting on the Bill was first shared with you in November 2018. From then on, our officials worked collaboratively on the issues you raised in initial correspondence on the Bill in January 2019. That work resulted in the UK Government making the significant changes set out in James Duddridge's letter of 20 October 2019, including giving devolved ministers a strong role in relevant appointments to the board of the IMA.

I note that in previous correspondence you were content with these changes but would have liked to see further changes to the Bill (including one change on a clause for which we are seeking legislative consent). I have addressed these in the Annex to this letter.

You have my assurance that the UK Government remains committed to fully engaging with the National Assembly and supporting its inquiries on the Bill.

I hope you will be able to support this request seeking legislative consent from the National Assembly and that you will be able to recommend that the National Assembly gives its consent. I look forward to continuing to work with you as this essential Bill moves through its parliamentary passage.

I am copying this letter to the Secretary of State for Wales, the Minister for the Cabinet Office and the Chancellor of the Duchy of Lancaster.

Yours sincerely,

Two handwritten signatures in blue ink, one on the left and one on the right, positioned above the typed name of the Secretary of State.

SECRETARY OF STATE FOR EXITING THE EUROPEAN UNION

ANNEX

Clauses for which we are seeking legislative consent

Powers in the Bill

You have asked that the power conferred on UK ministers by clause 21 and devolved authorities by clause 22 are restricted so that they cannot amend the Government of Wales Act 2006.

The Government has committed to a wide range of obligations as part of the Protocol in order to avoid a hard border on the island of Ireland. It is imperative that the powers to implement the Protocol are drafted in a way which allows the UK Government to fully meet its international obligations. The power conferred on UK ministers by clause 21 and devolved authorities by clause 22 are therefore drafted to ensure that the UK can fulfil all of these obligations.

When the powers are used to amend primary legislation or retained direct principal EU legislation, the Regulations will be subject to the affirmative procedure in order to provide appropriate scrutiny. In addition, where any regulations made under these powers seek to, for example, establish a public authority or create or widen the scope of a relevant criminal offence, they will also be subject to the affirmative procedure.

We have also committed that we will not normally use the power for UK Ministers in areas of devolved competence without the consent of the relevant devolved administration. The Government respects and will continue to uphold the devolution settlement.

Other provisions

Extension to the Implementation Period

Thank you for your comments on clause 30, *Approval of the extension of implementation period*. The UK Government has been explicit in ruling out any extension to the implementation period beyond the current end date of 31 December 2020. As such, the Bill includes a provision to deliver on this commitment. It is in the interests of both the UK and EU to agree the future relationship, and we will be able to reach a deal by December 2020.

Preparations for Future Partnership Negotiations

The UK Government remains committed to involving the Welsh Government in preparations for future partnership negotiations, as set out in correspondence from the last Government.

The Chancellor of the Duchy of Lancaster and I wrote to you on 3 October setting out principles for working with the devolved administrations on preparations for future partnership negotiations, recognising your responsibilities to observe international obligations and implement them in areas of devolved competence. These principles will

ensure that views from the whole of the United Kingdom are taken into consideration, as you set out.

The Chancellor of the Duchy of Lancaster and I will write separately in response to your letter of 17 October on the detail of the principles.

Parliamentary Sovereignty

I am grateful for your comments on clause 36 of the Bill relating to Parliamentary sovereignty. The sovereignty of Parliament is a fundamental principle of the UK's domestic legal order. The Government's firm position is that Parliament is, and has always been, sovereign and membership of the EU did not change this; but the UK's withdrawal from the EU will enable Parliament to set aside a self-imposed constraint on how to exercise that sovereignty.

As we prepare for the next phase of the UK's relationship with the EU, the Government wants to recognise the sovereignty of Parliament and make clear that this Bill does not in any way derogate from it.

I understand the strongly held and diverging views about the future of the UK constitution. The UK Government recognises the central role that devolution plays in our constitutional arrangements and is committed to continuing to respect the devolution settlements and the associated constitutional conventions and practices.

LCM Analysis

The UK Government is seeking legislative consent for the following provisions of the Bill:

- The clause giving effect to the implementation period and related provisions, as this will alter the competence of the Welsh Government and the National Assembly for Wales;
- The conferral on UK Ministers of supplementary powers to make provision in connection with the implementation period as this legislates in areas of the National Assembly's legislative competence;
- The conferral on the Welsh Ministers of supplementary powers to make provision in connection with the implementation period within devolved competence (as defined in the Bill), and amendments to the powers exercisable by the Welsh Ministers in Part 1 of Schedule 2 and Part 1 of Schedule 4 to the EU (Withdrawal) Act, as these will alter the competence of the Welsh Ministers;
- Clauses 5 and 6 (general implementation of the remainder of the Withdrawal Agreement and of related EEA EFTA separation agreements) as these alter the competence of the Welsh Ministers and the National Assembly for Wales;
- In relation to the citizens' rights provisions in the Bill, the conferral on the UK Ministers and Welsh Ministers of powers to make provision within devolved competence (as defined in the Bill) in relation to social security coordination (in the context of reciprocal healthcare), mutual recognition of professional qualifications and

equal treatment, as these will legislate in areas of the National Assembly's competence and alter the competence of the Welsh Ministers;

- The clauses establishing the Independent Monitoring Authority (IMA), as these legislate in areas of the National Assembly's legislative competence and alter the competence of the Welsh Ministers;
- The conferral on UK Ministers of a power to implement the other separation issues as this legislates in areas of the National Assembly's legislative competence;
- The conferral on the Welsh Ministers of a power to implement the other separation issues so far as that is within devolved competence (as defined in the Bill), as this will alter the competence of the Welsh Ministers;
- The financial provision in clause 20 as this modifies the competence of the Welsh Ministers;
- The conferral on UK Ministers of a power to implement the Protocol on Ireland/Northern Ireland as this legislates in areas of the National Assembly's legislative competence; the conferral on the Welsh Ministers of a power to implement the Protocol on Ireland/Northern Ireland, as this will alter the competence of Welsh Ministers;
- The conferral on the Welsh Ministers of ancillary fee charging powers as these will alter the competence of the Welsh Ministers;
- Provisions in Schedule 5 including:
 - giving effect to the mass deferral of statutory instruments which come into force by reference to exit day, and conferring on Welsh Ministers the power to disapply or make different provision in particular cases. These provisions will alter the competence of the Welsh Ministers; and
 - the provision dealing with the protected enactment status of amendments to the EU (Withdrawal) Act, as this will modify the competence of the National Assembly.

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

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Agenda Item 7

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

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