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Counsel General and Minister for European Transition



Llywodraeth Cymru
Welsh Government

David Rees,
Chair,
External Affairs and Additional Legislation Committee

27 May 2020

Dear David,

Thank you for your letter of 7 May, requesting an update on the EU/UK negotiations and the implications of Covid-19 for issues related to the UK's exit from the EU in advance of the Committee session on 2 June. The attached note sets out information on the specific points requested, and I look forward to discussing in more detail with the Committee on 2 June.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'J. Miles' with a stylized flourish.

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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.

UK-EU Future relationship negotiations

1. Can you please provide us with an update on the level of involvement the Welsh Government has had with the UK-EU future relationship negotiations, including involvement in the drafting of (and/or consultation on) the UK's draft legal texts that have been shared with the EU, and, any official-level involvement in the negotiations?

As I set out in my Written Statement of 7 May, UK Government engagement with the Devolved Governments on the negotiations remains deficient: despite the promises of improved engagement as the future relationship negotiations got underway, Ministerial engagement has become even more inadequate. The UK Government has failed despite their formal commitment in the terms of reference of the Joint Ministerial Committee (EU Negotiations) to seek agreement with the Devolved Governments on the negotiations to provide us with meaningful opportunities to influence. While we continue to take any opportunities that we can to press our case on specific points and to speak up for what we believe is in Wales' interests in these negotiations, we simply do not have the enhanced role in the second phase of negotiations (on the future relationship) that we had expected and had been promised. There had been no meetings of JMC (EN) for several months, though one took place last week. Ministerial engagement has taken the form of telephone calls with the UK Government's Paymaster General, Penny Mordaunt MP. These short calls are welcome but limited in their effectiveness and therefore I continue to press for structured, collective and detailed discussions involving all three Devolved Governments and the UK Government on the negotiations, and in particular on changes to the UK Government's negotiating position

At official level some useful discussions are happening across some departments (those where a stronger historic relationship existed) but we are not equals within a genuine UK team.

We have not been involved in the drafting of the UK's legal text. We repeatedly pressed the UK Government to share drafts of these texts with us, so that we could provide insight into whether the detailed provisions will be practical and deliverable within a devolved context, as well as being able to comment from a policy perspective. However, we only received sight of the legal text less than 24 hours before publication. This is wholly unacceptable.

2. Are there any plans for a virtual or other type of meeting of the Joint Ministerial Committee on EU Negotiations ("JMC(EN)") prior to the UK-EU summit on 30 June 2020?

A meeting of the Joint Ministerial Committee (EU Negotiations) was arranged for 21 May via telephone/video conference following requests by the devolved governments. This was the first meeting since January.

3. Have the Welsh Government's negotiation priorities changed at all, in light of the COVID-19 crisis?

The Welsh Government's overall priorities have not changed. We want to prioritise the relationship with the EU over other potential Free Trade Agreements, given the massive gulf between the potential damage to our GDP from a far looser trade relationship with the EU and the UK Government's own assessment of the potential benefits of improved trading relationships with the USA and other of its priority countries. And we want to minimise the rupture to our economy which would be caused by leaving the transition period without a comprehensive trade agreement.

However, we recognise that given the UK Government's Parliamentary majority and the mandate it has adopted for the EU negotiations, a number of our more detailed priorities are in practical terms no longer 'on the table'.

We have therefore kept a live consideration of our negotiation priorities in the light of the circumstances in which we find ourselves: the covid-19 crisis, the progress of the negotiations, and our relationship with the UK Government. The Covid-19 pandemic has impacted on the timetable for the UK/EU negotiations. Two negotiation rounds have been lost with time spent trying to work up a new schedule and process for undertaking future rounds using videoconference. In addition significant resources within Welsh Government as well as in the UK Government have necessarily been diverted from EU exit work to support our response to the pandemic.

Although the criteria by which the initial priorities for the negotiations were identified remain relevant, the current circumstances in which negotiations are now progressing will have implications for what is achievable. Within the set of our existing priorities, we will focus our efforts on priority areas where the UK Government will be looking to us to use our powers to implement. The Cabinet Sub-Committee on European Transition considered this at its latest meeting earlier this month.

4. What is the Welsh Government's view on the EU's draft legal text?

We have given the EU's draft legal text careful consideration. It gives a clear insight into the EU's priorities which are logical in their own terms and which reflect the agreement contained in the Political Declaration.

Implementation of the Withdrawal Agreement

5. Can you please provide us with an update on:

- ✦ **the extent to which the Welsh Government has been involved in discussions on the implementation of the Withdrawal Agreement, including the Ireland-Northern Ireland Protocol?**
- ✦ **the infrastructure that will need to be put in place in Wales as a consequence of the Withdrawal Agreement; and**
- ✦ **the capacity of the Welsh Government to implement the elements of the Withdrawal Agreement it is responsible for delivering.**

Most aspects of the Withdrawal Agreement are not the responsibility of the Welsh Government as they cover citizens' rights, the financial settlement and other matters that

are outside of devolved competence. However, we are very concerned by some of the potential implications of the Northern Ireland protocol. The UK Government committed to a joint work stream at JMC(EN) in January but was not implemented. The UK Government published documents on the operation of the NI protocol, and it is most concerning that we did not have sight of these documents or any opportunity to comment on matters that would directly affect Wales, such as operations at Welsh ports and impact on road and rail usage for freight transport.

Welsh Government

6. In light of your additional role in relation to the exit strategy for COVID-19, can you please provide us with an update on how this interacts with your EU transition responsibilities?

Responding to the Covid-19 pandemic continues to be the immediate priority of the Welsh Government, and we maintain that the negotiations on the future UK / EU relationship should be paused and an extension to the transition period sought. My role in relation to leading and coordinating work on the recovery phase from Covid-19 has similarities to my role in relation to European Transition, both in nature but also in policy content: after all, we confront two unprecedented crises but will only have one future. We have found that work done preparing for no deal in 2019 has been valuable in putting in place measures to respond to Covid-19. Moreover, the responses needed at the end of the transition period will inevitably need to build from continuing interventions related to Covid-19, for example in relation to support for businesses and vulnerable communities.

7. What, if any, changes have occurred to the EU Transition team within the Welsh Government as a consequence of this change to your responsibilities, and as a consequence of responding to the COVID-19 pandemic more generally?

Across the Welsh Government as a whole, including the European Transition Team and other groups, there has been significant refocusing and redeployment of staff resource to reflect the immediate absolute priority of the Covid-19 pandemic. The picture continues to evolve fluidly and rapidly. Overall, it has meant a reduction in capacity to focus on EU exit issues, as it has in the UK Government and the other Devolved Governments, and we therefore continue to focus available resources on the highest priority areas and responsibilities.

Preparedness for the end of the transition period

8. Can you provide us with an update on the Welsh Government's preparations for the end of the transition period, please?

In relation to preparedness overall, at the end of transition we need to be able to implement any deal reached on the future UK/EU relationship, or manage the implications if no such deal is agreed. We may not know until well into the autumn, or even later, which scenario we face.

Work on preparedness for 'no deal' in 2019 was based on four main strands:

- Participating in UK-wide preparedness projects;
- WG actions over and above UK-wide work (including communications);
- Ensuring a functioning statute book; and

- Participating in the 'Operation Yellowhammer' civil contingencies response.

Many, but not all, of the issues related to a 'no deal' scenario remain relevant, and we continue to undertake work within the first three strands above. On the fourth, the extent of any civil contingencies response planned at a UK level is not known, though the UK Government has said it has no plans to stand back up Operation Yellowhammer. Recent UK Government announcements (e.g. introducing further import controls) give rise to further preparedness requirements that were not needed in 2019.

Key areas of preparedness work (relevant whether or not a comprehensive deal is achieved by the end of transition) include:

- Border checks and operations (involving reserved and devolved responsibilities);
- Implications of new border frictions, critically at English channel crossings, for supply chains for medicines, food and for manufacturing more generally – which is further complicated by the UK Government's intention to introduce further checks and controls on inbound traffic, which they were not intending to do last year;
- The NI Protocol's impact on borders and the UK 'internal market';
- 'Internal' operations (new Wales or UK functions, which are particularly relevant in the areas of environment and agriculture and the situation in relation to future EU programmes such as Horizon and Erasmus+ or potential replacement schemes);
- 'External' readiness of people and companies for new travel and trading rules (including in relation to data); and
- The accumulation of impacts on specific sectors and communities in Wales.

Implementation and preparedness issues also arise from UK trade deals with other countries but at present the timing and impact of any deals is uncertain.

Covid-19 has already affected both the capacity of the UK Government and the Welsh Government to prepare for the end of transition. More fundamentally, the scale of the immediate crisis has significantly affected the ability of people, businesses and other organisations to consider, let alone take action to prepare for, the end of transition. The risks of this will multiply if significant changes to trade and supply chains hit already fragile businesses which have not been able to prepare fully and are still suffering from the impact of the pandemic – with potentially serious implications across Wales.

We have repeatedly pressed the UK Government to work with the Devolved Governments on the preparations for the end of the transition period, as happened – eventually – in respect of preparations for a 'no deal' scenario in 2019. We have only just now started to see some very limited and high level information on its overall preparedness work, including an invitation received last week to join the (UK Government's) Transition Period Readiness Portfolio Board. As we made clear during the work on a 'no deal' scenario previously, it is not possible for the Welsh Government to prepare Wales for whatever situation we face at the end of transition period in isolation from the UK Government's work in England or at a UK level. Moreover, the UK as a whole cannot be properly prepared if the UK Government does not work effectively with the Devolved Governments. As such, the UK Government's reluctance to share information and to work with the Devolved Governments, and the months of time lost for joint preparedness work as a result, is profoundly concerning.

Common Frameworks

9. Can you please provide us with an update on progress with the Common Frameworks Programme?

The January to March 2020 s12 report has recently been published, and reflects the progress being made intergovernmentally around Common Frameworks. The committee will note this was before covid-19 pressures. There remains extensive work required in relation to 'Common Frameworks' by the end of 2020. Officials from all four administrations have been working together to consider how to deliver the most important Framework areas. However, even achieving this by the end of this year will be difficult.

More broadly, work in relation to Common Frameworks and the 'UK internal market' serves to illustrate powerfully how inter-governmental relations and devolution / constitutional issues could well grow significantly in breadth and complexity in the future. There is much work to do in a short period of time to resolve potential challenges and maintain a positive economic and constitutional landscape within the UK.

The combination of the general demands of the Frameworks programme covering many policy areas, as well as two phases of in depth no deal planning and delays caused by the general election, meant that the completion of the programme by the end of the transition period in December 2020 was always challenging. Officials across the four governments of the UK are working together to structure the programme to ensure key deliverables are achieved in the appropriate timescale, and I will keep the Committee updated on this.

Brexit legislation

10. Can you please provide an update on progress and preparation of Brexit-related legislation, including:

- ✦ the impact of the coronavirus on the timetabling and passage of UK Brexit Bills in relation to Wales; and
- ✦ an assessment of the number of Statutory Instruments associated with EU transition that need to be passed before the end of the transition period i.e. the end of 2020.

The Trade Bill was introduced in Parliament on 19 March 2020, with second reading in the House of Commons scheduled for 20 May. A Legislative Consent Memorandum was laid by the Minister for International Relations and the Welsh Language on 2 April; it was referred to the External Affairs and Additional Legislation Committee and the Legislation, Justice and Constitution Committee for scrutiny. The Committees will report later this summer with a debate scheduled for after the summer recess.

The Agriculture Bill passed Third Reading in the House of Commons on 13 May and will now proceed to the House of Lords. The intention is for the Bill to receive Royal Assent before summer recess. A Legislative Consent Memorandum was laid on 12 February and the CCERA Committee and also the LJC Committee reported on this Bill on 14 May.

For the Fisheries Bill, introduced in the House of Lords on 29 January, there are at present no confirmed dates for it to progress beyond Committee Stage. However, we understand Defra is anticipating the Bill could enter Report stage in the Lords early next month. The timetable has obviously been impacted by the pandemic, but at present the Bill is still expected to gain Royal Assent this year. We continue to work with the UK Government as the Bill progresses. A Legislative Consent Memorandum was laid on 12 February and CCERA and LJC Committees are due to report on 21 May, with a debate on the Legislative Consent Motion scheduled for 8 July.

The Environment Bill was introduced in the House of Commons on 30 January and was in Committee Stage on 19 March. A Legislative Consent Memorandum was laid on 26 January and the date for CCERA and LJC Committees to report on the Bill has been moved to 2 July.

In general, there remains a high degree of uncertainty about future legislation relating to the end of transition, with relatively limited information available from the UK Government on the scope and nature of the legislation needed, in particular on the implementation of the Withdrawal Agreement and related agreements, and with even less certainty regarding a possible treaty on the future relationship with the EU. We have asked the UK Government to share a credible plan for how all the necessary legislation can be passed by the end of December, but no such plan has been shared. The successful implementation of the Withdrawal Agreement requires a cross-UK approach, or at least understanding, and this cannot be achieved without input from the UK Government. We are very aware that there is likely to be a significant programme of SIs required and we will continue to press the UK Government to work with us on such legislation and to ensure that the devolution settlement is properly respected.