



David Rees MS
Chair
External Affairs and Additional Legislation Committee
Senedd Cymru

15 September 2020

Dear David,

I am writing further to my commitment to provide the Committee with an update of Welsh Government preparedness activity over the summer. This letter covers the main areas of work across preparedness including:

- Work with the UK Government, including the Border Operating Model;
- Welsh Government actions on preparedness; and
- Legislation.

As the negotiations between the UK Government and the EU continue there remains a great deal of uncertainty regarding the future relationship between the UK and the EU. At best the approach the UK Government has adopted, prioritising the notion of sovereignty over the needs of the economy and our communities, means the UK will have a far more distant economic and social relationship with the EU. With little over three months until the end of the transition period and fundamental differences remaining between the UK Government and the EU the risk of the UK trading with the EU under nothing more than the general terms of trade as set out by the World Trade Organisation remain uncomfortable high.

With the UK Government ruling out the possibility of extending the transition period the only certainty we have is that there will be significant changes at the end of the year.

Work with the UK Government

We have continued to stress the need for the UK Government to work with the Devolved Governments on end of transition planning. We learnt from the no deal planning that effective joint work and sharing of all relevant information is essential for all parts of the UK to be as ready as possible for the changes in our relationship with the EU at the end of this year.

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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.

While it had been clear for some time that the UK Government was developing a series of priority projects these were only shared with the Devolved Governments at the start of the summer - four months after we had asked for sight of these. We now have the details of around 70 of its preparedness projects which in its assessment have a devolved interest of some sort. We have now been able to establish contact with lead departments and begin work at official level on the actions required of all governments of the UK.

However, we know that there are many more projects which at present we are unsighted on. This has hindered our ability to understand any interdependencies between projects and our ability to see this work as a complete programme of activity and not a series of discrete projects. As a result of sustained pressure by the Welsh Government and the other Devolved Governments, the UK Government has now committed to sharing some level of detail about its overall preparedness programme. At the same time the UK Government has now also confirmed that Welsh Government officials will be invited to all meetings of the Transition Portfolio Board (the UK's cross-government forum to bring together all end of transition work) when previously officials were only invited on a monthly basis.

At Ministerial level we have again been calling for enhanced engagement and joint decision making. Over the summer I have made repeated representations to the UK Government to invite Welsh Ministers to the UK Government's Cabinet sub-committee for end of transition planning (XO) – as we were in the second half of last year. The Chancellor for the Duchy of Lancaster has recently agreed that ministers from the Devolved Governments will be invited to relevant meetings of the XO sub-committee. To complement attendance at XO the UK Government has also set up Quadrilateral meetings led by the Paymaster General to discuss readiness issues.

We very much welcome the commitments – albeit belated - by the UK Government that it will step up its communication and engagement with us, and we will press them to ensure that these commitments are matched by a demonstrable changes in how they engage and work jointly with us.

Border Operating Model

You also asked specifically about the extent of our engagement with the UK Government's draft Border Operating Plan before it was issued. The Welsh Government had very little direct input into the development of the Border Operating Model and prior to publication we were given only a very short time to comment on its content. This inevitably impacted upon the level of scrutiny we could apply to the document. In essence we were provided the opportunity to comment on the text rather than be part of a genuine process of joint work on border issues. Nonetheless, a number of our comments were reflected including:

- Official Veterinary checks on exported animal products acknowledged
- Waste clarified as a good for purposes of border arrangements
- Basel Convention (shipments of waste) obligations acknowledged
- The role of the Devolved Governments in relation to pesticide imports acknowledged

An updated iteration of the Border Operating Model was shared with Welsh Government officials at the end of last week. According to current timelines, the intention is for the Operating Model to be formally published at the start of October, following a consultation with stakeholders in mid-September. It is likely that this will be the final version of the Operating Model before the end of the transition period. The Devolved Administrations were allocated approximately three working days to provide comments on the new draft, as well as a series of supporting documents that will later be incorporated within the Operating

Model. While this represents a slight improvement compared to the previous round of engagement, we remain of the view that such an amount of time is insufficient for the purposes of conducting a comprehensive analysis of the proposals outlined by the Operating Model, of which a number intersect with devolved areas of responsibility. Furthermore, we were once again disappointed by the reactive and limited role that was offered us in the development of the Operating Model, as opposed to being able to proactively co-design the terms of the post-transition border regime on a genuine pan-UK basis. Nevertheless, our policy teams were able to provide their thoughts on the latest changes to the Operating Model, and we were pleased that our colleagues at NRW were also able to evaluate the implications of the proposed arrangements from a more operational perspective. These responses were collated by the central team and passed on to the relevant channels at Defra; we now await the publication of the Operating Model to assess the extent to which our contributions were accommodated.

Welsh Government end of transition planning

In addition to joint work on UK wide projects we have also been developing Welsh specific actions to help manage our economy, our communities and public services through the end of the transition period. While much of this activity will be familiar to the Committee from the no deal action plan published last year it is important to highlight two significant factors which change the planning requirements for end of transition as compared to planning for a No Deal exit in 2019.

First, regardless of whether an agreement on the UK's future relationship is reached with the EU, the Withdrawal Agreement provided some important safeguards including in respect of the rights of citizens which means that the risks of UK citizens returning to the UK in large numbers is much reduced. This means a number of actions that would have been needed in the context of last year's no deal planning no longer form part of our end of transition planning.

Secondly, Covid-19 has had unprecedented impacts on society, the economy and public services. As a result, many of the no deal actions intending to mitigate the forecast economic downturn and protect vulnerable communities from the impact of a no deal exit last year have already been deployed as part of the Covid-19 response.

Reflecting the circumstances we expect to face at the end of the transition period, we have identified a range of Wales-specific actions that are likely to be needed in addition to the UK wide interventions in place. The ultimate programme of actions will need to reflect the nature of any agreement between the UK Government and the EU on the future relationship and complement existing Welsh Government policy including the Covid-19 recovery work. A further report on this work will be published later this year.

Legislation

As I stated earlier this year, a very significant amount of secondary legislation will be required by the end of transition. Covid-19 has also had a major impact on this area of work.

However, based on the most recent estimate we have had of UK Government statutory Instruments in devolved areas related to EU transition, specifically in the areas of further corrections to retained EU law and for the implementation of the Withdrawal Agreement and the EEA/EFTA Separation Agreement and the Swiss Citizens' Rights Agreement, around 45 UK SIs will require formal consent through correspondence with the Welsh Ministers.

Estimated timescales are being revised by the UK Government and we have sought assurance that the programme will not be compacted further towards the end of this year.

We have much less certainty regarding the legislation to implement a possible treaty on the future relationship with the EU and for Free Trade Agreements with third countries. There is also remaining uncertainty about the SIs relating to the Ireland/Northern Ireland Protocol. We continue to press for more details from the UK Government for how all the necessary legislation can be passed by the end of December.

The successful delivery of the necessary legislation requires a cross-UK approach, or at least understanding, and this cannot be achieved without co-operation from the UK Government.

In terms of the Welsh SIs to be made for further corrections and implementation of the Withdrawal Agreement and related agreements and post-transition domestic regimes, the current estimate is around 30, though that is still subject to change based on further discussions around the Ireland/Northern Ireland Protocol. As with the previous programme of correcting SIs, a number will be dependent on the content of UK legislation and so their timing will be affected by progress elsewhere.

I look forward to discussing the details of our preparedness work with you on 17 September.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Jeremy Miles', with a stylized, cursive script.

Jeremy Miles AS/MS

Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd
Counsel General and Minister for European Transition