

Elin Jones AM
Llywydd

3 May 2018

Dear Llywydd,

Resourcing for Brexit scrutiny

Thank you for your letter, dated 16 March, regarding resourcing for Brexit scrutiny. The Committee considered the letter at its meetings on 19 March, 23 and 30 April and, in response to the points you raise, offer the following comments.

1. The extent to which Brexit is likely to affect your Committee's work

The Constitutional and Legislative Affairs Committee has taken, and will continue to take, an active role in scrutinising constitutional and legislative matters related to the UK's withdrawal from the European Union.

European Union (Withdrawal) Bill

We have committed a significant amount of time to the consideration of the European Union (Withdrawal) Bill (the Bill), including reporting on the Welsh Government's Legislative Consent Memorandum and the scrutiny procedures for regulations made under the Bill. Following the Welsh Government's announcement that it had reached an agreement on the Bill, we have begun our consideration of the supplementary Legislative Consent Memorandum for the Bill, which was laid before the National Assembly on 27 April. We will aim to lay a report before the Assembly in time for a debate on a Legislative Consent Motion.

With regards to the scrutiny of regulations arising from the EU (Withdrawal) Bill, our responsibilities under Standing Order 21 will impact on the Committee's workload. On 7



March, the Leader of the House and Chief Whip wrote to me with regards to subordinate legislation that will be required to allow the Welsh Ministers to correct deficiencies in EU-derived domestic legislation within Welsh devolved competence. The Leader of the House has indicated that the Welsh Government's current analysis has identified approximately 400 instruments with deficiencies, some of which may be dealt with by amalgamated correcting instruments. However, that analysis was based on the current form of clause 11 of the Bill and the Leader of the House has committed to provide us with an update once a clearer picture has emerged about its final form.

We are considering operational matters relating to the scrutiny of subordinate legislation made under the Bill and may report on these as we indicated in our recent report on this subject.

Law Derived from the European Union (Wales) Bill

We also devoted time to the scrutiny of the Law Derived from the European Union (Wales) Bill, taking evidence from the Cabinet Secretary for Finance before reporting to the National Assembly ahead of the Stage 1 debate. Following the Bill's referral to the Supreme Court, we had planned to keep a watching brief so as to assess any subsequent impact on constitutional matters and the devolution settlement more generally. Should the National Assembly pass a Legislative Consent Motion for the EU (Withdrawal) Bill resulting in the reference to the Supreme Court being withdrawn (as set out in the Welsh Government's agreement with the UK Government), the Bill may need to proceed to Royal Assent and the Welsh Government may, subsequently, use the repeal mechanism in the LDEU (Wales) Act. If that is the case, this Committee will scrutinise those necessary draft regulations under the super-affirmative procedure set out in the Bill (Act).

Other Brexit-related UK Bills

At the appropriate time, scrutiny of Brexit-related UK Bills will be required, for example the Fisheries and Agriculture Bills. Our consideration would not consider the policy context, but the Bills' impact on the devolution settlement.

Interparliamentary Forum on Brexit

You will be aware that, as Chair of the Constitutional and Legislative Affairs Committee, I attend regular meetings of the Interparliamentary Forum on Brexit. The most recent meeting was held at the end of March in Edinburgh, at which representatives of committees across all the UK institutions provided updates on the work of their respective



committees. These meetings are proving very useful and will continue for the foreseeable future.

Our clerking team is also in regular contact with the clerks of the other parliamentary committees with responsibility for scrutinising constitutional matters and subordinate legislation. Common themes are emerging and we intend to continue this close, and productive, interparliamentary working, particularly as regards operational matters relating to the scrutiny of subordinate legislation.

Future work

The constitutional implications of Brexit are inextricably linked to the devolution settlement. As such, we have already given thought to potential work streams covering the Sewel Convention and Common Frameworks. In the longer term, and as a result of any learning from the implementation of Brexit related subordinate legislation, we believe there may be scope to look more widely and thoroughly at the scrutiny procedures for subordinate legislation.

As will be apparent, the constitutional and legislative implications of Brexit are a moving picture. Our intention is to concentrate on these aspects, while maintaining a focus on our responsibilities as required by Standing Orders in relation to the scrutiny of primary and subordinate legislation; for example, in the short to medium term, the Childcare Funding (Wales) Bill and the Welsh Government proposed Legislation (Wales) Bill.

Our work on a Commissioners Bill is progressing in the background, and while we would like to give it a higher priority, it will be picked up when a suitable time arises.

Resource implications

We will aim to work within our existing resources and ensure that we manage our workloads accordingly.

Our Committee relies heavily on the support of Legal Services in undertaking the functions assigned to it under Standing Order 21 to check that statutory instruments are lawful, are correctly translated, do not breach human rights or EU law etc. The volume of additional Statutory Instruments (SIs) that will require scrutiny will represent a significant increase in workload. Much will depend on the final form of clause 11 of the EU (Withdrawal) Bill, but the work of scrutinising SIs is likely to double (at least) between now and exit day, with a very likely overspill into the transition period and beyond.



Moreover, despite the additional volume of Brexit SIs required, we understand that the Welsh Ministers will continue to make SIs in other areas which do not relate to Brexit.

Once the operational implications of scrutinising larger volumes of subordinate legislation become clearer, we will reassess administrative and legal staffing arrangements, which may result in more resources being required. If meetings of the Interparliamentary Forum on Brexit become more frequent, and I am in a position to participate, and interparliamentary co-operation increases, additional consideration of the financial impact will be needed.

2. Any issues around Members and Committee capacity which you can foresee, such as timetabling of meetings, and membership.

In your role as Chair of the Business Committee you will be aware that I wrote to request approval for the Constitutional and Legislative Affairs Committee to start its meetings earlier than usual, as and when required, in order to accommodate longer meetings (as dictated by business need), or to hear from Welsh and UK Government Ministers who may not otherwise be available. This was as a result of the need to address the ever increasing constitutional matters related to the UK's withdrawal from the European Union in a timely manner. In light of the Business Committee's decision, we will now make requests on a case-by-case basis.

Following our consideration of the regulation making powers in the EU (Withdrawal) Bill, we recommended that our Committee acts as the sifting committee as currently envisaged under the Bill. This recommendation has been supported in principle by the Welsh Government who agree that it would be appropriate for the Constitutional and Legislative Affairs Committee to assume this function. Should the Business Committee designate our Committee as the sifting committee, subject to the number of pieces of subordinate legislation arising and their timing, we may need to consider whether one meeting per week is sufficient.

Review of Standing Orders

We understand that Business Managers agreed to consult with their groups about a review of Standing Orders at its meeting on 24 April and in particular to consider whether the composition of the CLA Committee should be reviewed in light of the Statutory Instruments coming forward relating to Brexit. We note that Business Managers agreed that this should be considered before any decisions are taken on a review of Standing Orders and we await correspondence from the Business Committee on these matters in due course.



I welcome your commitment to maintaining constructive dialogue with the Assembly Committees on these important matters.

Yours sincerely,

A handwritten signature in black ink that reads "Mick Antoniw". The signature is written in a cursive style with a horizontal line underneath the name.

Mick Antoniw

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

