

Mark Drakeford AM
First Minister of Wales
National Assembly for Wales

28 February 2019

Dear First Minister of Wales

Scrutiny of Legislative Consent Memorandums

Since November 2018, the Committee has undertaken scrutiny of three Legislative Consent Memorandums, two of which are Brexit-related. Given you have overall responsibility for constitutional affairs, the Committee agreed I should write to you:

- seeking clarification on how the Welsh Government determines whether or not it is appropriate for the UK Government to legislate in areas of devolved competence, and
- seeking clarity about the Welsh Government’s legislative programme for the rest of this Assembly and whether it is your intention to make time available for Welsh legislation arising from Brexit.

On 11 January, you wrote to the Llywydd explaining that the Welsh Ministers are seeking delegated powers under Brexit-related UK Bills in preference to bringing forward Bills to the Assembly. This is because the Welsh Government “would not have been able to bring this volume of legislation before the Assembly in such a compressed time period”. You point out that if all Brexit legislation in devolved areas was to be made in Wales, “then between September 2018 and March 2019 it would have required an additional...4-6 Bills to be laid in the Assembly.”



We would like to raise a number of points in relation to the above.

Firstly, it appears that this assertion is based on the premise that all of the legislative provisions within these Bills would be required for exit day. We do not believe this is correct. In the case of the UK Agriculture Bill, any legislative gap arising from Brexit would occur after the 2020 CAP scheme year. Consequently, primary legislation is not required by March 2019. Similarly, the UK Fisheries Bill contains provisions that go beyond those necessary to establish a UK common approach before Brexit.

For both UK Bills, it is not necessary for all of their provisions to be passed before Brexit. The provisions that go beyond those necessary to ensure continuity in the immediate post Brexit period could have been captured in Welsh Bills. It is clear, therefore, that there was no requirement for these Bills to be laid in the Assembly before the end of March 2019.

Secondly, during its recent scrutiny of several LCMs, the Committee has found it difficult to discern a rationale for the Welsh Government's decision that it is appropriate for the UK Government to legislate in an area of devolved competence. For example, the Welsh Government has sought to use the UK Agriculture Bill as a vehicle to introduce fundamental and wide-ranging changes to the system of financial support for agriculture. Conversely, the Animal Welfare (Service Animals) Bill includes narrow, non-contentious provisions that could have been brought forward in a Welsh Bill.

I would be grateful if you could clarify whether the Welsh Government's approach to the use of the Legislative Consent process is underpinned by any principles and, if so, what they may be.

What actions are you planning to take if the UK Agriculture and Fisheries Bills, which you state must be passed by Parliament by the end of March 2019, are not passed by that date?

The second matter the Committee wishes to address relates to the Welsh Government's Legislative Programme.

In your predecessor's Statement on the Legislative Programme in July 2018, he gave a commitment "to continue to keep under review the need for Brexit-related Bills over the coming 12 months". He also said that "there has been space created in the legislative programme to ensure that there is room to develop Brexit Bills".



The Minister for Environment, Energy and Rural Affairs has assured the Committee she intends for Welsh Bills in relation to Agriculture and Fisheries to be introduced and to have been passed by the end of the Fifth Assembly. The Minister has also given a commitment to bring forward legislation to address the environmental governance gap arising from Brexit at the first opportunity.

The Committee would be grateful if you could confirm that the Welsh Government's position has not changed on this matter and that time will be made available to bring forward Welsh Bills arising from Brexit before the end of this Assembly.

I am copying this letter to the Llywydd and the Chair of the Constitutional and Legislative Affairs Committee.

I look forward to receiving a response from you in due course.

Yours sincerely,

A handwritten signature in black ink that reads "Mike Hedges". The signature is written in a cursive style.

Mike Hedges AM

Chair of Climate Change, Environment and Rural Affairs Committee

cc Llywydd and the Chair of Constitutional and Legislative Affairs Committee

