

Mr Charles Walker MP
Chair, Procedure Committee
House of Commons
London
SW1A 0AA

25 April 2017

Dear Mr Walker

DELEGATED POWERS IN THE 'GREAT REPEAL BILL' INQUIRY

I refer to the request for submissions to your inquiry on the delegated powers in the Great Repeal Bill following the publication of the UK Government's White Paper.

We would like to draw your attention to some of our initial thoughts and concerns as we start to consider the impact that exiting the EU will have on law making in Wales. These are set out below. However, as you will appreciate, with so many current unknowns, it is a difficult task to give definitive views on such a complex issue.

Accountability for changing legislation in devolved areas

Our starting point is always that the National Assembly must be the legislature responsible for legislating in devolved areas. This includes passing primary legislation in devolved areas, and delegating powers to the Welsh Ministers to make subordinate legislation as the National Assembly considers appropriate (we recognise that many devolved matters remain in Acts of the UK Parliament, but they are still devolved matters and any changes to such Acts of the UK Parliament are a matter for the National Assembly).

Because of the circumstances and time constraints that exist in relation to exiting the EU, we are concerned about how the Great Repeal Bill will approach the issue of amending legislation in devolved areas, including by means of powers delegated to UK Ministers. In particular, our interest focuses on whether such amendments would occur with or without the National Assembly's consent. If, as we would fully expect, consent is required (in



accordance with *Devolution Guidance Note 9: Parliamentary and Assembly Primary Legislation Affecting Wales* and the National Assembly's Standing Order 30A – Consent in relation to Statutory Instruments made by UK Ministers), the way in which the Bill provides for that consent to be sought will be important.

From our perspective, it is a significant matter of constitutional propriety for the National Assembly to have a role in any changes that are made to legislation in devolved areas.

Procedures for making subordinate legislation

We believe that the National Assembly should have the right to take final decisions on the procedures to be applied to subordinate legislation that needs to be made in devolved areas by the Welsh Ministers to give effect to the UK's exit from the EU. The procedures could in our view be set out in one or more Acts of the National Assembly; the number and extent of such primary legislation would be determined by the number of UK Bills (including the Great Repeal Bill) that will be needed to effect the UK's exit from the EU.

Given that areas such as agriculture, fisheries, environment, food etc. are devolved, we would expect to see a substantial amount of subordinate legislation being laid before the National Assembly for scrutiny. Not only should the National Assembly control the procedures that will apply to scrutinising this substantial amount of subordinate legislation, but it should also be allowed to control the timescale for scrutinising that subordinate legislation. The National Assembly must be given adequate time for proper scrutiny.

Breadth of "consequential etc." powers given to the Welsh Ministers

We are taking a close interest in the breadth and extent of consequential powers taken by the Welsh Ministers to amend primary legislation in Wales. We are therefore interested in whether such powers will be provided to the Welsh Ministers through the Great Repeal Bill and if so their precise nature.

We note that the White Paper talks of the Bill potentially giving the devolved ministers a power to amend devolved legislation to correct law that will no longer operate appropriately, "*in line with*" the power it proposes should be held by UK Ministers. It is unclear whether the phrase "*in line with*" is significant; in our view, it could potentially hold a different meaning to "*equivalent to*".

In addition, we are keen to learn what wording will be used to define the powers that will be given to the Welsh Ministers (and other devolved ministers) to correct law. For example,



will the drafting rely on familiar terms such as “consequential” or will bespoke drafting be used? While we are concerned about the breadth and extent of powers that may be given to the Welsh Ministers, we also recognise the need for the Welsh Ministers to be given the right tools to perform necessary functions, but they should always be subject to appropriate National Assembly scrutiny and control.

Sunset clauses

We support the use of sunset clauses in the Great Repeal Bill such that relevant powers to correct the statute book are time-limited. They should cease to have effect, perhaps no later than 6 months after the day of the UK’s withdrawal. We would need to see strong evidence in favour of a longer period, particularly if, against the rationale we highlight above, the Bill were to include significant powers to amend legislation in devolved areas in a manner that the National Assembly opposed.

Our thinking is likely to develop as more detail emerges about the precise drafting of the Great Repeal Bill but in the meantime I hope you find this submission of use.

Yours sincerely

Huw Irranca-Davies

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Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

