

Cynulliad Cenedlaethol Cymru / National Assembly for Wales
Y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol / The External
Affairs and Additional Legislation Committee
Bil y Diddymu Mawr / The Great Repeal Bill
EAAL(5) GRB 11
Ymateb gan Gymdeithas y Cyfreithwyr / Evidence from The Law Society

1. The Law Society welcomes this inquiry by the External Affairs and Additional legislation Committee ("the Committee") into the Great Repeal Bill and its implications for Wales.
2. The Law Society has previously welcomed the announcement that a Great Repeal Bill would be introduced as a positive step to ensuring Parliament is able to debate and decide upon substantive changes to legislation. As the Prime Minister states in her foreword, the White Paper is an essential step in the Brexit process. It is also crucial to delivering a smooth transition for the UK's exit from the EU with all that that implies for legal certainty for businesses and citizens alike.
3. Maximising Parliamentary scrutiny of changes remains a key Law Society objective for the integrity of the legislative process.
4. The White Paper signals that one outcome of the Great Repeal Bill process will be a significant increase in the decision making power of each devolved administration, but what this process will look like is not entirely clear. The White Paper says only that there will be 'intensive discussions' to establish where 'the common frameworks provided by EU rules through UK legislation' should be preserved; there is no reference to the 'consent' of the devolved administrations, for example.
5. The White Paper does not provide for the participation of either the Welsh Ministers or the National Assembly for Wales ("the National Assembly") in the passing of the Great Repeal Bill however there should be a formal opportunity for scrutiny and a process for meaningful engagement e.g. through the laying of the Committee's report on the Great Repeal Bill and providing for Assembly Members and staff from the Committee to give evidence to Parliamentary committees during the scrutiny process in Westminster.

The 'common frameworks'

6. The interface of the common frameworks and the wider devolved law-making powers should be considered. As the common frameworks will restrict the powers of the devolved administrations legislative competence will be restricted. Discussions over common frameworks and their scrutiny should include the Welsh Ministers and the National Assembly in respect of Wales. There should be a formal procedure to take account of the role of the National Assembly in scrutinising the legislation for creating the frameworks whatever form they take.

Scrutiny and control of delegated powers

7. In areas of competence the National Assembly holds the power to grant, and therefore scrutinise, powers to Welsh Ministers but many new secondary

lawmaking powers will be granted following the Great Repeal Bill. The White Paper sees “an opportunity to determine the level best placed to take decisions ..., ensuring power sits closer to the people of the UK than ever before. It is the expectation of the Government that the outcome of this process will be a significant increase in the decision making power of each devolved administration.” [For footnote para 4.5] However, there is no provision for the involvement of the National Assembly for Wales, Scottish Parliament or Northern Ireland Assembly in the scrutiny of these laws. With regard to the extent of the powers there is no formal role for the devolved administrations. It is vital that a mechanism for bringing together the ‘devolved nations’ and the UK Government and Parliament is devised.

8. The Great Repeal Bill deals with the immediate aftermath of withdrawal and sketches out a process for 'correcting' legislation in order for the law to carry on functioning but it is the future landscape which is of greater interest. It is not clear what the common frameworks there will be. If the common frameworks are only applicable where there are on-going arrangements with the EU how will other frameworks be negotiated and decided for the future where powers are devolved but a common approach is necessary for the UK to continue to function.
9. The Joint Ministerial Committee has no formal process for bringing forward legislation being a consultative rather than an executive body with the new Joint Ministerial Committee on EU Negotiations being the focus for working together. The Memorandum of Understanding should be revised to include a formal process for post-EU legislation and the form and, thereafter, the content of the new common frameworks to be considered.
10. The constraints that are to be placed on the delegated powers provided to Ministers will be debated within the legislative procedure in the UK Parliament. The extinguishing of EU law within our legal system affects the constitutional arrangements in place as devolution has been effected within the wider framework of the EU.

Legislative Procedures

11. The White Paper recognises that Parliament will need to be satisfied that the procedures in the Bill for making and approving secondary legislation are appropriate. However there is no acknowledgement that the devolved legislatures have an interest.
12. Given the volume of legislation action to create new processes should be taken now. In addition to the existing procedures in the Standing Orders it should be possible for secondary legislation to be produced in draft and where an affirmative procedure is being followed that amendments are possible so that no pieces of secondary legislation are entirely lost where minor changes are necessary e.g. for corrections.
13. The timeframe for ‘re-legislating’ is an important factor. We welcome the acknowledgement that powers proposed under the Bill do not need to exist in perpetuity. With this in mind, we support Baroness Fookes' suggestion of a

sunset clause in her evidence to the Select Committee on the Constitution¹. The ability of the Welsh Government to respond to the challenge of drafting new legislation across the breadth of EU legislation should be taken into account in any decision on this. The need to legislate bi-lingually is additional factor to consider with regard to timing.

Opportunities to contribute to the legislative processes established by the Great Repeal Bill

14. In the first instance stakeholders will be greatly assisted in their engagement with the legislation if there is a single, clear 'portal'. The Law Society recommends a dedicated website for consequential legislation either as a 'microsite' within the Parliamentary website and linked, for example to the National Assembly's site for consequential Welsh subordinate legislation or as a joint stand-alone site. The site could then cover all legislation brought forward across the UK as a consequence of the Great Repeal Bill. In this way wherever the legislation is made there will be open access for citizens and stakeholders wherever they are located.

¹[Legislating for the United Kingdom's withdrawal from the European Union, Para 3.25, Footnote 13](#)
[The importance of time limiting delegated powers was raised by Baroness Fookes \(Chair of the House of Lords Delegated Powers and Regulatory Reform Committee\) in an evidence session held by the Lords Constitution Committee on 25 January 2017, as part of the Committee's inquiry on the Legislative Process, Q131](#)