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for Exiting the  
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Huw Irranca-Davies AM  
Chair, Constitutional and  
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National Assembly for Wales  
Cardiff, CF99 1NA

26<sup>th</sup> October 2017

*Dear Huw,*

### **EUROPEAN UNION (WITHDRAWAL) BILL**

Thank you for your letter of 31 July and for your comments on the devolution provisions of the European Union (Withdrawal) Bill. I am responding on behalf of the Secretary of State for Exiting the European Union. I apologise for the delay in responding and I hope this letter addresses your concerns.

#### **The appropriateness of the transitional arrangement and the differences between the powers of UK Ministers compared to Welsh Ministers**

As you know, the Bill will replicate the common UK approach created by EU law in UK law and maintain the scope of devolved decision-making powers immediately after exit. The provisions in the Bill that prevent the modification of retained EU law replicate the existing limit on devolved institutions legislating or otherwise acting incompatibly with EU law. By preventing problematic or uncoordinated divergence, the Bill maximises certainty for businesses and individuals across the country.

As you recognise, this is a transitional measure while consultation and decisions are taken on where it may be in our shared interests to continue to have common approaches. It is the aim of the UK Government to retain common frameworks only where they are needed, and as I have expressed repeatedly, it remains our expectation that the outcome of this process will be a significant increase in the decision-making power of each devolved administration. The First Secretary and the Secretary of State for Exiting the European Union want to work closely and constructively with the Welsh Government and the other devolved administrations on this.

You referenced the difference between the powers given to UK Ministers and Welsh Ministers in relation to modifying retained direct EU legislation in otherwise devolved areas. Amending such legislation is not currently within the competence of the devolved administrations and the Bill does not change that. Where a matter is by

agreement released from the temporary competence restriction, the relevant devolved legislature(s) will be able to modify the retained direct EU legislation in the area that has been released. In the meantime, whilst these discussions are taking place with devolved administrations we will seek to minimise any changes to the frameworks we have replicated.

### **Scrutiny of secondary legislation**

I agree that scrutiny of the Welsh Ministers' exercise of delegated powers is a matter for the Assembly. The Bill proposes scrutiny arrangements for all instruments brought forward under the Bill, as is appropriate when new powers are introduced. Currently, the scrutiny arrangements for instruments made by Welsh Ministers are equivalent to those for instruments made by Ministers of the Crown. However, as you know, the Government of Wales Act 2006 (as amended) gives the Assembly the power to vary Assembly scrutiny arrangements provided in enactments including in Acts of Parliament. This Bill preserves that for the powers it delegates to Welsh Ministers.

We want to work closely with the devolved legislatures to ensure that they are satisfied that they are able to undertake the appropriate level of scrutiny over the use of the powers in the Bill. It is important that we can strike the right balance between the need for robust legislative oversight and ensuring our law works correctly when we leave the EU.

### **Scope of the powers under clauses 7, 8 and 9**

You raised a number of concerns in relation to the scope of the delegated powers in the Bill. The exact number of statutory instruments which will be required will depend partly on the outcome of the negotiations. As such, more detail will be available on the steps needed as the negotiations progress.

This inability to set out in advance how the powers will be used is part of the reason why we have chosen to constrain the powers in a number of ways, to reassure Parliament and the devolved legislatures that these powers will only be used for the purpose for which they were designed.

The need for these powers has been widely recognised. We have placed a number of limitations and restrictions on the powers. For example, the correcting power and power to implement the withdrawal agreement will be time limited. We have set out the proposed limitations on each of the powers in the delegated powers memorandum published alongside the Bill<sup>1</sup>. However, it is essential that the powers in the Bill are broad enough to capture all of the necessary corrections and provide the necessary flexibility to cater for a range of negotiated outcomes.

You expressed concern about the appropriateness of UK Ministers and Welsh Ministers making regulations that could amend legislation made by the National

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<sup>1</sup> available at [https://publications.parliament.uk/pa/bills/cbill/2017-2019/0005/delegated%20powers%20memorandum%20for%20European%20Union%20\(Witdrawal\)%20Bill.pdf](https://publications.parliament.uk/pa/bills/cbill/2017-2019/0005/delegated%20powers%20memorandum%20for%20European%20Union%20(Witdrawal)%20Bill.pdf).

Assembly for Wales. Corrections to the law will be needed in all types of legislation. If Welsh Ministers were not able to correct Acts of the Assembly this would result in a statute book that no longer operated as intended.

It is therefore right that devolved ministers have the power to correct all domestic legislation in devolved areas so that they can ensure the statute book continues to function on exit day. All secondary legislation made under the powers in the Bill will be subject to the usual scrutiny procedures of the UK Parliament and the National Assembly for Wales.

Making sure the statute book works for exit day will be a joint endeavour. The Government wants to work closely with the devolved administrations throughout the exit process to deliver laws that function correctly across the UK in time for exit. The UK Government will not normally make corrections to devolved domestic legislation without the agreement of the relevant devolved administration.

You also raised concerns relating to the ability of UK Ministers to make regulations that could change the powers of the National Assembly for Wales. While the powers in the Bill are capable of amending the Government of Wales Act (GoWA), we are clear that wherever possible we will use existing powers in GoWA to, for example, correct any deficiencies in that Act, and we will do so in consultation with the Welsh Government.

The scope of the Bill's correcting power is significantly reduced by correcting, on the face of the Bill, as many deficiencies in GoWA as possible. This is an exceptional step, which we have only taken for the devolution settlements as we recognise their importance. We intend for more substantive corrections, for example to reservations in the new Schedules 7A and 7B, to be made, as far as possible, using the existing mechanisms in GoWA (e.g. section 109 orders). We consider this to be a better approach: it will allow us more time to consult with the Welsh Government on the changes, as well as provide a formal role for the Assembly in approving the amendments.

### **The Charter of Fundamental Rights**

You enquired whether there will be any rights or principles that will not be converted into UK law. There are, of course, rights in the Charter that are intrinsically linked to being part of the EU. These include rights like standing for election or voting in European Parliament elections or the right to petition the European Parliament. These will naturally fall away as a consequence of our exit from the EU.

However, I want to assure you that the Government is clear that the removal of the Charter from UK law is not intended to affect the substantive rights that individuals already benefit from in the UK. This is because the Charter of Fundamental Rights did not create any new rights. Instead it was intended to catalogue the rights that already existed in EU law - and as you reference in your letter this law is being converted into UK law on the point we exit the EU.

The Charter also only applies to Member States when acting within the scope of EU law. We will not be a member state, nor will we be acting in the scope of EU law, once we leave the EU.

The Charter of Fundamental Rights is also only one element of the UK's human rights architecture. Most of the rights protected in the Charter are also protected in other international instruments, notably the European Convention on Human Rights, but also UN and other treaties too.

I hope you find that our response has addressed the principal concerns you raise and explains the Government's position. I regret that the Secretary of State for Exiting the European Union is unable to attend the proposed joint meeting of the your committee and the External Affairs Committee. I have however discussed this matter with the Secretary of State for Wales, who would welcome the opportunity to give evidence to your committee on the Bill. As Parliamentary Under Secretary of State, with responsibility for devolution in my department, I would be happy to support him at this session.

I am copying this letter to the First Secretary of State, the Secretary of State for Wales and the Chair of the External Affairs and Additional Legislation Committee.

A handwritten signature in blue ink, appearing to read 'Robin Walker', written in a cursive style.

**ROBIN WALKER MP  
PARLIAMENTARY UNDER SECRETARY OF STATE  
FOR EXITING THE EUROPEAN UNION**