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Arweinydd y Tŷ a'r Prif Chwip
Leader of the House and Chief Whip



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref MA-L/JJ/0880/17

Mr M Antoniw AM
Chair of the Constitutional and Legislative Affairs Committee
National Assembly for Wales

4 January 2018

Dear Mick,

Thank you for your letter of 14 December about the use of subordinate legislation making powers included in the UK Government's European Union (Withdrawal) Bill (*the Bill*).

Building on work undertaken earlier in 2017, following the introduction of the Bill in July officials have been giving detailed consideration to the need to bring forward subordinate legislation under the powers conferred on the Welsh Ministers by Schedule 2 to the Bill. As you will be aware, the conferral of these powers has been proposed in order to allow the Welsh Ministers to correct deficiencies in EU-derived domestic legislation within Welsh devolved competence that arise as a consequence of the UK's withdrawal from the EU. The powers are restricted in a number of key ways, to which we have set out clearly our opposition. Were changes to be made to the Bill this could affect the ways in which the powers might be used.

As you say in your letter, it is difficult to provide at this time a definitive number for the statutory instruments that will need to be made by the Welsh Ministers using the powers set out in Schedule 2. The work that we are currently undertaking seeks not only to identify the existing legislation and determine whether, and in what way, it might be deficient, but also to decide how any deficiencies should be dealt with and how the 'correcting instruments' are to be produced, organised and processed. These factors (many of which cannot be addressed with precision at this stage) will all affect the scope and scale of the necessary subordinate legislation. Information that we are currently awaiting from the UK Government will also have an effect on this work.

Thus far, over 600 EU-derived domestic legislative instruments that fall within Welsh devolved competence have been identified. Work is continuing at pace to determine what needs to be done with each of these but they are likely to fall into three broad categories:

- those that contain no deficiencies;

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

- those that contain deficiencies and which it is appropriate to deal with by way of a 'standalone' correcting instrument; and
- those that contain deficiencies and which it is appropriate to deal with by way of more general correcting instruments.

As part of this work, we are also considering the impact that the introduction of any agreed UK frameworks could have.

You will be aware that Royal Assent of the Bill is some months away, and we and others are pressing for significant changes to be made to it that would alter the range of retained EU law which the Welsh Ministers may correct. In addition, the UK Government is either intending to introduce, or has already introduced, a series of other Bills that will repeal or revoke and replace retained EU law, potentially resulting in the removal in some instances of what would otherwise be subject of the powers contained in Schedule 2 to the Bill. These, and other variables, make it more difficult still to give a precise forecast of the number of statutory instruments that will require amendment.

My expectation, however, is that more detail in relation to the scope and scale of the subordinate legislation will be available by mid-February 2018. I will, therefore, look to provide an update to you following that point.

Yours sincerely



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