

Rt Hon Alun Cairns MP  
Secretary of State for Wales

16 February 2018

Dear Alun,

### **EU (Withdrawal) Bill**

Below we set out our response to the issues you raised in your letter to the Llywydd dated 16 January 2018. In brief, we welcome the amendments but note the relatively small effect they will have when compared to the constitutional principles that remain a matter of contention. In other words, we do not believe that these relatively minor concessions will be enough to secure the consent of the National Assembly for Wales in relation to the Bill. We also question why many of the proposed amendments were not included on the face of the Bill as it was introduced in the House of Commons.

### **Committee stage amendments – scrutiny of regulations**

We respond to the question of what scrutiny procedures should apply to regulations in devolved areas in our report *Scrutiny of regulations made under the European Union (Withdrawal) Bill*.

### **Clause 10 amendment – requirement to consult**

We welcome confirmation that the duty of the Welsh Ministers to obtain the consent of the UK Government will change to a duty to consult the UK Government. However, we note the considerable difference that remains between the powers given to UK Ministers and the powers given to the Welsh Ministers under the Bill, including in devolved areas. That difference highlights one of the many ways the Bill fails to respect devolution.



## **Clause 10 – power to amend direct EU legislation**

As part of our general scrutiny of statutory instruments, we regularly note that where a statutory instrument relates in some way to an EU Regulation, the Bill imposes limits on what the Assembly and the Welsh Ministers can do in respect of the EU Regulation, even if the EU Regulation deals with a devolved area like food, water, agriculture, fisheries and the environment.

We welcome any increase in powers in relation to such EU Regulations and direct EU legislation in general. However, such increase is still dependent on agreement around common frameworks. We would welcome an update from the UK Government as to its latest thinking around common frameworks and the progress of discussions with the Welsh Government around common frameworks.

## **Clause 7**

Again, we welcome the amendment to the clause 7 powers (and its knock-on effect on the powers given to the Welsh Ministers under Schedule 2). However, we again note that this seems a small concession in the scheme of the regulation-making powers contained in the Bill.

## **Rights of challenge based on the general principles of EU law**

We welcome that challenges based on general principles (such as non-discrimination, proportionality and the right of children to be protected) will be allowed for three months after exit. However, we note that Acts of the UK Parliament will not be open to challenge during that three month window, but Acts of the National Assembly (and Acts of the Scottish Parliament and Acts of the Northern Ireland Assembly) will be open to challenge.

We regret that the UK Government's default position is to rely on the sovereignty of the UK Parliament; that approach does not always result in a fair and balanced distribution of legislative power across the United Kingdom. As we note in paragraphs 17 and 30 our report on the LCM for the Bill:

"Devolution has fundamentally changed the UK constitution. While it is widely recognised in Wales, Scotland and Northern Ireland that the UK Constitution has moved on from a London-centric model, it is not always clear that the UK Government recognises that the UK constitution has moved on in the same way".



"The Bill in its intention to revive the supremacy of the UK Parliament, appears to do so at the expense of devolution."

I would be happy to discuss this letter and accompanying report with you if that would be helpful.

I am copying this letter to the Llywydd, the First Minister, the Chair of the External Affairs and Additional Legislation Committee and the Chair of the Welsh Affairs Select Committee of the House of Commons.

Yours sincerely



**Mick Antoniw AM**

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

