

Julie James AC/AM
Arweinydd y Tŷ a'r Prif Chwip
Leader of the House and Chief Whip



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA/L/JJ/ 0198/18

Mick Antoniw AM/AC
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
CF99 1NA

27 March 2018

Dear Mick

I am writing to notify you of the Welsh Government's formal response to the Committee's recent report on the scrutiny of regulations made under the European Union (Withdrawal) Bill. I attach a table which sets out our response to each recommendation.

I am grateful to the Committee for their work on this matter.

Yours sincerely,

A handwritten signature in blue ink that reads "Julie". The signature is fluid and cursive, with a large initial 'J'.

Julie James AC/AM
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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.

**Welsh Government response to the Constitutional and Legislative Affairs Committee
- Scrutiny of regulations made under the European Union (Withdrawal) Bill**

| Recommendation | Response |
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| <p>Recommendation 1. We recommend that the sifting mechanism currently included in the Bill should be extended to cover all regulations that are made under the Bill and are laid before the National Assembly, and that a committee of the National Assembly is responsible for making a recommendation as to the appropriate procedure for the regulations.</p> | <p>AGREE: This is properly a matter for the Assembly to consider and agree with the UK Government and Parliament. The Welsh Government agrees that the exercise of delegated powers should be subject to appropriate and proportionate scrutiny. We also believe that, in respect of the provisions relating to the exercise and scrutiny of delegated powers, the powers and duties on Welsh Ministers should be in line with those which apply to UK Ministers. Therefore, the Welsh Government would be content for equivalent sifting requirements to apply to instruments laid before the Assembly, as to instruments laid before Parliament.</p> |
| <p>Recommendation 2. The recommendation made by the sifting committee under recommendation 1 should be binding, save where the National Assembly resolves otherwise. This requirement should be reflected on the face of the Bill.</p> | <p>REJECT: The Welsh Government recognises this is primarily a matter for the National Assembly to consider and agree with the UK Government and Parliament. However, we are not persuaded that the recommendation made by the sifting committee should be binding. We agree that the exercise of delegated powers should be subject to appropriate and proportionate scrutiny and we have demonstrated our commitment to robust scrutiny through the approach we have taken in the LDEU Bill. We also believe that in the vast majority of cases Welsh Ministers will accept the recommendation of the sifting committee that a set of regulations should be subject to the affirmative procedure rather than negative procedure. However, there may be situations where – for reasons of urgency – Welsh Ministers will need to act more quickly than the affirmative procedure provides for, and it is essential the government retains the flexibility to do so, notwithstanding the recommendations of the sifting committee. The Welsh Government also believes there is a case for maintaining consistent arrangements between the National Assembly and the UK Parliament, particularly for joint and composite instruments where both the Assembly’s and Parliament’s sifting committees would be making recommendations on the appropriate procedure.</p> |

| Recommendation | Response |
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| <p>Recommendation 3. We recommend that the sifting criteria set out in paragraph 35(b) of this report are applied to all regulations that are made under the Bill and are laid before the National Assembly, and that the criteria should be set out in the Standing Orders of the National Assembly</p> | <p>REJECT: The Welsh Government recognises that the sifting committee will need to agree criteria by which it performs the sifting process. However, these criteria will need to be consistent with the final framework for the sifting mechanism, and the Assembly needs to maintain some flexibility in this regard. The Welsh Government is therefore not persuaded that the criteria should be included in Standing Orders.</p> |
| <p>Recommendation 4. We recommend that the Bill is amended in line with paragraphs 44 to 46 of this report, which include endorsements of recommendations made by the House of Lords Constitution Committee and the House of Lords Delegated Powers and Regulatory Reform Committee.</p> <p>The amendments proposed at paragraphs 44-46 are:</p> <ul style="list-style-type: none"> • That the affirmative procedure should apply to any measure which involves the making of policy • That the affirmative procedure should apply to regulations made under clauses 7, 8, 9 and 17 that amend or repeal primary legislation 46 • That the Government of Wales Act 2006 should be included in the list of enactments in clause 7(7) that cannot be amended by regulations | <p>AGREE: The Welsh Government believes, in respect of the provisions relating to the exercise and scrutiny of delegated powers, that the powers and duties on Welsh Ministers should be in line with those which apply to UK Ministers. We are supportive of the EUW Bill being amended in the way proposed by CLAC (paragraphs 44-46).</p> |
| <p>Recommendation 5. We recommend that this Committee—the Constitutional and Legislative Affairs Committee—should be the sifting committee for the National Assembly for Wales and that the Assembly’s Standing Orders are amended accordingly.</p> | <p>AGREE IN PRINCIPLE: This is a matter for the Assembly. The Welsh Government agrees it would be appropriate for CLAC to assume this function. However, we do not believe it is necessary for Standing Orders to be amended to reflect this.</p> |
| <p>Recommendation 6. We recommend that the sifting mechanism should apply to regulations under Categories 1, 2 and 3 identified in this report, namely all regulations made under the Bill containing devolved provisions that are laid before the National Assembly.</p> <ul style="list-style-type: none"> • Category 1: regulations made by the Welsh Ministers acting alone using their powers under Schedule 2, laid | <p>AGREE: The Welsh Government agrees that the sifting mechanism should apply to the categories of regulations set out by CLAC, although it notes the potential logistical challenges in respect of joint and concurrent regulations, where both the National Assembly and Parliamentary sifting committees will be considering the same set of regulations.</p> |

| Recommendation | Response |
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| <p>before the National Assembly for Wales only;</p> <ul style="list-style-type: none"> • Category 2: regulations made by the Welsh Ministers and UK Ministers acting jointly under Schedule 2, laid before both the National Assembly for Wales and the UK Parliament; • Category 3: regulations made by the Welsh Ministers and UK Ministers using their concurrent powers (under Schedule 2 and clauses 7, 8 and 9, respectively) in composite regulations, laid before both the National Assembly for Wales and the UK Parliament; • Category 4: regulations made by UK Ministers acting alone using their powers under clauses 7, 8, 9 and 17, laid before the UK Parliament only. | |
| <p>Recommendation 7. We recommend that the made affirmative procedure for urgent cases should also apply to regulations made by the Welsh Ministers (whether acting alone or acting with UK Ministers in composite regulations or acting with UK Ministers in joint regulations) in order for there to be consistent treatment of ministers of all governments.</p> | <p>AGREE: The Welsh Government believes that the made-affirmative procedures for urgent cases should be available in respect of regulations made by Welsh Ministers, to match the flexibility available to UK Ministers, and consistent with the principle of consistent treatment of ministers of all governments.</p> |