

Mark Drakeford AM
Cabinet Secretary for Finance

20 July 2018

Dear Mark,

EU law in Wales: What happens during the Brexit transition?

Since the start of June, the External Affairs and Additional Legislation Committee has been considering the arrangements that need to be made in Wales, and the Assembly in particular, to prepare for the Brexit transition period.

This has been, in the large part, as exercise in determining what we can reasonably anticipate in terms of how EU law will operate during the transition period, as we await further details of the UK Government's proposals.

The evidence we received has been published and is available from our website.

At this point in time, we are marshalling our consideration of the transition period into three areas:

1. The legal mechanism for maintaining EU law during the transition period;
2. The Assembly's role in scrutinising draft EU law during the transition period; and
3. The inter-governmental routes available to the Welsh Government to make representations in relation to EU law during transition.



Legal mechanism

In terms of the legal mechanism for maintaining EU law during the transition period, the evidence we have received suggests that the Withdrawal Agreement and Implementation Bill ('the WAIB') will provide for a mechanism that, to a large extent, replicates relevant provisions of the European Communities Act 1972. The information we have received from you confirms that the WAIB "will give effect to the implementation period".

You have stated that you "would expect there to be a high degree of similarity between the practice now and during transition and that this would include the role played by the Welsh Government".

We have agreed the following principle that should underpin the legal mechanism provided:

In terms of the transposition, implementation and enforcement of EU law in Wales, we expect there to be a high degree of similarity between the practice now and during transition insofar as the role of the Welsh Government and the National Assembly for Wales are concerned i.e. for the Assembly and Welsh Government to have full powers of transposition and implementation, in relation to Wales, over non-reserved policy areas.

I would be grateful for your response to this principle. It will act as the starting point for our assessment of the WAIB's provisions that relate to the transition period, once published.

The Assembly's scrutiny role

It is clear that the Assembly's arrangements for the scrutiny of EU law will need to change in time for the transition period.

According to the text of the draft Withdrawal Agreement, subsidiarity monitoring arrangements, the most formal aspect of the Assembly's scrutiny of draft EU laws, will cease in March 2018. These arrangements currently rely on interaction with



the European scrutiny arrangements in the UK Parliament and are ultimately based on Article 5 of the Treaty on European Union.

We intend to liaise with our colleagues in both Houses of Parliament to explore the extent to which we can continue to interact with Parliament's European scrutiny arrangements during the transition period.

Of crucial importance to us is the provision of EU documents. We note that, under the draft Withdrawal Agreement, the UK Parliament will continue to receive documents directly from the EU's institutions during the transition period. We will be discussing the onward passage of this documentation to the devolved legislatures with colleagues in both Houses.

We are currently considering the level of information we might wish to receive from the Welsh Government during the transition period.

I enclose copies of the correspondence we have sent to committees in both Houses.

Inter-governmental relations relating to the EU during transition

We appreciate that work on reforming inter-governmental relations is currently underway, under the auspices of JMC Plenary.

Details of the institutional arrangements for governing the EU-UK relationship have yet to be agreed and, consequently, the role for the devolved governments and legislatures in these arrangements is unclear.

We are pleased to note that, during transition, the UK Government anticipates maintaining the current system of involving devolved administrations in developing the final UK Government position on draft EU laws that impact on devolved areas.

In the absence of further information at this point in time, we have agreed a principle to underpin our future scrutiny of this detail as it emerges:



As minimum, there should be no diminution of the Welsh Government's participation in the UK representation to the EU during transition, whatever form that representation ultimately takes.

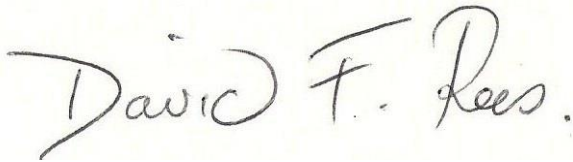
I would be grateful for your response to this principle.

Once the role of the devolved governments becomes clearer, we will be able to consider our approach to scrutiny of these arrangements.

I have written in similar terms to the Parliamentary Under Secretary of State for Exiting the European Union. I have copied this letter to the Chair of the Assembly's Constitutional and Legislative Affairs Committee in light of its work on inter-institutional relations.

I look forward to your response.

Yours sincerely,



David Rees AM, Chair of the External Affairs and Additional Legislation Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

Enc.: Letter to Sir William Cash MP, Chair of the European Scrutiny Committee, House of Commons; Letter to Lord Boswell, Chair of the European Union Select Committee, House of Lords.

CC: Mick Antoniw AM, Chair of the Constitutional and Legislative Affairs Committee, National Assembly for Wales.

