

Y Gwir Anrh/ Rt Hon Mark Drakeford AC/AM
Prif Weinidog Cymru/First Minister of Wales



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref: EJ/CE
Ein cyf/Our ref:FM -/00858/18

Elin Jones AM/AC
Llywydd
National Assembly for Wales
Tŷ Hywel
Cardiff Bay
Cardiff
CF99 1NA

Llywydd@assembly.wales

11 January 2019

Dear Elin

I am writing in response to your letter of 4 December to my predecessor as First Minister, regarding the scrutiny of Brexit-related legislation and how to ensure that the National Assembly can play a full part in legislating for Brexit.

The Welsh Government's approach reflects the real and pressing need to respond to the extraordinary circumstances surrounding Brexit, rather than any attempt to limit or frustrate the Assembly's role as a legislature.

I can confirm that the corrections to the legislation made in Wales by the Assembly and the Welsh Ministers, so that the Welsh statute book remains operable at the point of EU exit, are being delivered in up to 50 SIs, to be made by the Welsh Ministers, and are being laid in the Assembly. This will facilitate the full scrutiny of the Assembly and will ensure that the corrections are made in both official languages.

However, it has been necessary to work with the UK Government on other aspects of the process of legislating for Brexit.

It is indeed the case that the Welsh Ministers are seeking delegated powers under three Brexit Bills currently before the UK Parliament, and that we are pursuing this approach in preference, under the circumstances, to bringing forward Bills to the Assembly. I agree that the Legislative Consent procedure set out in Standing Order 29 does not allow Members to carry out the same detailed level of scrutiny that they are able to do for an Assembly Bill. However, when we talk about taking legislative decisions on grounds of efficiency, it must be recognised that this not just an administrative convenience. We simply would not have

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
YP.PrifWeinidog@llyw.cymru • ps.firstminister@gov.wales

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.

been able to bring this volume of legislation before the Assembly in such a compressed time period. The Welsh Government will, as far as is possible in the timescales involved, seek to enable Assembly scrutiny through timely and responsive engagement.

As you know, since May 2016, the Assembly has passed ten Bills (of which one is awaiting Royal Assent), and there are currently four Bills in front of the Assembly for consideration. In terms of subordinate legislation, in a typical year around 150 SIs are laid in the Assembly.

If we had taken the decision that all EU Exit legislation in devolved areas was to be made in Wales, then between September 2018 and March 2019 it would have required an additional 200 SIs and 4-6 Bills to be laid in the Assembly. Even if it were possible to suspend all other business of the Government and the Assembly for this period, the Brexit legislation programme would have required six months of the Assembly's and the Government's time to be spent making more legislation than is normally made in a year in Wales. It would only be possible to pass the necessary Bills in that time by following a fast track procedure which would limit their scrutiny by the Assembly.

I currently expect 140-150 UK Government EU Exit SIs to be made in areas devolved to Wales ahead of exit day, though this number is subject to change as SIs are merged or disaggregated and new ones emerge. Almost all of these will require the consent of the Welsh Ministers through the process set out in the Intergovernmental Agreement.

The Welsh Ministers only consent to the UK SIs where there is no divergence on policy between Wales and the UK, and on that basis the SIs are not politically sensitive. These SIs are for the purpose of making the corrections so that the statute book will be operable at the point of EU exit and are being made by the UK Government, with the consent of the Welsh Ministers.

The Scottish Government is adopting the same approach as we have in Wales with a similar number of SIs being taken forward by the UK Government on behalf of Scotland.

Your letter mentions the use of concurrent powers. Decisions on who should exercise powers currently conferred on EU entities after exit are being considered in the context of each SI, depending on the nature of the power in question, and whether factors exist that mean that it is not desirable for an administration to exercise that power without the involvement of another administration. Our default position is that where there is a function within an area devolved to Wales, the relevant function should be conferred on the Welsh Ministers or on an appropriate public body in Wales. However, there are a number of circumstances where the default position may not be appropriate or practical. These are likely to arise, for example, where:

- The cross-border nature of service provision requires close co-operation across both nations, for the benefit of citizens or to avoid placing unnecessary burdens on organisations. This could be due to the way people or goods travel across the border, or the particular geographical features of the border.
- The devolved and non-devolved aspects of policy delivery are so intertwined, that it is not workable for the devolved elements to be delivered without reference to the non-devolved elements, or vice versa.

In these cases, there is a range of options for how functions can be exercised, and Ministers are reaching a decision on each individual UK Government SI following a full consideration of all of the relevant issues. One result of requiring the involvement of both administrations in exercising functions is the creation of concurrent powers.

The Assembly has amended Standing Orders to facilitate scrutiny of the UK EU Exit SIs, to which my officials have responded by laying 76 written statements about them when they are laid in Parliament and also 14 Statutory Instrument Consent Memoranda. I understand that the Constitutional and Legislative Affairs Committee is intending to produce a report on the written statements laid so far. I look forward to receiving that report and to considering any improvements the Committee recommends.

I am copying this letter to the Chairs of the Assembly's committees, the Minister for Finance and Trefnydd and the Counsel General Designate and Brexit Minister.

I hope that the contents of this letter provide reassurance that the decisions made by Welsh Ministers are designed to balance the extraordinary set of demands created by Brexit, and that the Welsh Government remains committed to providing the greatest possible practical opportunities for scrutiny of those legislative actions which have a material, rather than simply technical, purpose. We remain committed, of course, to keeping all this under review and greatly welcome the dialogue on these matters which your letter has prompted.

Yours sincerely

A handwritten signature in black ink that reads "Mark Drakeford". The signature is written in a cursive, slightly slanted style.

MARK DRAKEFORD