



Eich cyf/Your ref:  
Ein cyf/Our ref:

Mike Hedges AM  
Chair of Climate Change, Environment and Rural Affairs Committee  
SeneddCCERA@assembly.wales

22 March 2019

Dear Mike,

I am writing in response to your letter dated 28 February about scrutiny of legislative consent memorandums, in which you sought clarity on how the Welsh Government determines whether or not it is appropriate for the UK Parliament to legislate in areas of devolved competence, and about the Welsh Government's legislative programme for the rest of this Assembly and whether it is the intention to make time available for Welsh legislation arising from Brexit.

Specifically, you asked for clarification on the following points:

### **The principles underpinning the Welsh Government's approach to the use of the legislative consent process**

The Welsh Government's position remains as set out by the previous First Minister in his letter to the Constitutional and Legislative Affairs Committee on 15 November 2011.

That is, we follow the principle that primary legislation in devolved areas should be enacted by the National Assembly. However, it is necessarily the case that there are, and will continue to be, circumstances in which it is sensible and advantageous if provision which would be within the Assembly's legislative competence is sought for Wales in UK Parliament Bills, with the consent of the Assembly. Such provision will not infrequently include conferring new delegated powers on the Welsh Ministers.

Taking provision in a UK Bill can enable pragmatic solutions to be reached in a timely fashion, while simultaneously respecting the legislative competence of the Assembly through the legislative consent process. It can be a matter of practical good government for such provisions to be included in a UK Bill.

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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.

Examples of situations where such an approach would be appropriate could include:

- *When the UK Government's legislative proposal would also be appropriate for Welsh circumstances but there is no time available for similar provisions to be brought forward in the Assembly.*

This applies to the Agriculture Bill, which you mentioned in your letter, in that the UK Government's legislative proposal was appropriate and the circumstances deemed it practical to include the provisions to be able to provide certainty to Welsh farmers. Although the provisions in the UK Agriculture Bill would not be required for the 2019 CAP scheme year, depending on the nature of our exit from the European Union, we may face a legislative gap for the 2020 scheme year if legislation is not in place to continue to make Direct Payments. This would mean the Welsh Government would not have the power to support farmers in 2020 and beyond. Given this risk, we deemed it prudent to ensure the required powers are in place in good time, providing much-needed reassurance to Welsh farmers that the necessary law will be in place to enable the Government to continue to support them post-Brexit.

- *Where the interconnected nature of the relevant Welsh and English administrative systems mean that it is most effective and appropriate for provision for both to be taken forward at the same time in the same legislative instrument.*
- *Where the devolved provisions in question are minor or technical and non-contentious.*

This applies to the Animal Welfare (Service Animals) Bill, which you also mentioned in your letter.

- *Where the UK Bill covers both devolved and reserved matters and the UK Parliament route must be taken in order to achieve the policy objective.*
- *Where the legislative competence of the Assembly and/or the powers of the Welsh Ministers would be extended in a way that could not be achieved through an Assembly Act, given the limits on the Assembly's legislative competence.*

This applies to the Fisheries Bill, which you also mentioned in your letter, because it would extend the Assembly's legislative competence on fisheries matters to the Welsh zone beyond Wales.

I concur with the previous First Minister's observation that it would be most unwise for the Welsh Government to adopt a self-denying ordinance in such circumstances. Indeed this applies even more in our current predicament, when Brexit has created an urgency to ensure immediate arrangements are in place while preserving our ability to create new systems in the future.

### **The actions the Welsh Government is planning to take if the UK Agriculture and Fisheries Bills are not passed by the end of March 2019**

In such uncertain times it would have been desirable to be able to provide certainty to stakeholders before the UK leaves the European Union. The delays in the Parliamentary timetable mean it is very unlikely the UK Agriculture Bill will achieve Royal Assent before the end of March 2019. Nonetheless, I expect the necessary powers to be in place before 2020, meaning we are still able to provide Welsh farmers with the reassurance that law will be in place allowing the Government to support them when we leave the European Union.

On the UK Fisheries Bill, alongside the suite of correcting statutory instruments (SIs), contingency SIs are being introduced in the event that the UK exits the EU at the end of March and the Fisheries Bill has not been enacted. The contingency SIs will allow us to control the activities of foreign fishing vessels. This is not an ideal solution but provides a bridge to the new regime which the Bill will introduce.

### **Confirmation that time will be made available to bring forward Welsh Bills arising from Brexit before the end of this Assembly**

As the Minister for Environment, Energy and Rural Affairs has previously stated, the powers being taken for Welsh Ministers in the UK Agriculture Bill are intended to be transitional until our own primary legislation can be brought forward. We remain committed to bringing forward a Wales Agriculture Bill as soon as practicable and appropriate. Officials are currently reviewing the responses to the Brexit and Our Land consultation and the Minister has confirmed her intention to undertake a further consultation on a White Paper in the summer. As I am sure the Committee would expect, we are working closely with stakeholders and giving proper consideration to their views to ensure legislation is fit for purpose.

In regards to a Welsh Fisheries Bill, it is clear we will at some stage need to put the provisions onto the Welsh statute book. The Minister for Environment, Energy and Rural Affairs made clear that the powers we are seeking are transitional. However, until the UK Fisheries Bill has passed through Parliament it is difficult to commit to a timetable. We are dependent on a number of provisions, and in particular the extension of the Assembly's legislative competence.

In the case of Environmental Principles and Governance we issued a consultation on 18 March that seeks views on how to maintain effective, coherent environmental governance after the UK leaves the European Union. The consultation will run for twelve weeks and we are planning for all potential outcomes including the potential need for Welsh primary legislation.

I am copying this letter to the Llywydd and to the Chair of the Constitutional and Legislative Affairs Committee.

Yours sincerely

A handwritten signature in black ink that reads "Mark". The letters are cursive and slightly slanted to the right.

**MARK DRAKEFORD**