

Mark Drakeford AM
First Minister of Wales

14 March 2019

Dear Mark,

The Assembly's role in legislating for Brexit

The External Affairs and Additional Legislation Committee agreed to write in support of the concerns expressed by both the Llywydd and the Constitutional and Legislative Affairs Committee in relation to the role of the Assembly in the process of legislating for Brexit.

We considered the Assembly's role in the process of legislating for Brexit during the first phase of our work as a committee, in the autumn of 2016.

We developed our position following publication of the UK Government's White Paper on legislating for Brexit, in March 2017.

At that time, we reported our concern that the role of the devolved legislatures had not been adequately considered and the process of legislating for Brexit posed risks in terms of the devolution settlement and the control of powers delegated to Welsh Ministers.

In responding to the EU (Withdrawal) Bill's publication in the autumn of 2017, we expressed further concerns about the role of the Assembly and the ability of the Welsh and UK Governments to manage the process of legislating for Brexit in devolved areas through the UK Parliament.



Whilst we believe we made some progress, including securing recognition of the role of devolved legislatures in the process on the floor of the House of Commons, our objectives for improving the EU (Withdrawal) Bill so as to ensure the Assembly's role were not met.

In recent months, we have considered the letter that the Llywydd sent to you in relation to legislating for Brexit and the role of the Assembly. This captured many of the concerns that we, as a Committee, have about the way in which the process of legislating for Brexit has been managed by the Welsh and UK governments. Whilst, on the basis of your response to the Llywydd, we might hold different views on the reason for the Welsh Government asking the UK Government and Parliament to legislate on its behalf, the net effect is the same – a diminished role for the Assembly in legislating for Brexit.

This is significant both in terms of limiting the ability of Assembly Members to play the full role that they were elected to perform and in distancing decisions on laws in devolved areas from the people of Wales. These laws, when passed to the UK Government for action, are made in English only.

The Constitutional and Legislative Affairs Committee leads on the scrutiny of subordinate legislation. However, we have maintained a keen interest in the process of legislating for Brexit and receive regular updates from our officials on progress and in our scrutiny of Ministers. This extends to monitoring all Brexit-related legislative consent issues, alongside the subordinate legislation being made in the Assembly and in Westminster.

The CLA Committee's recent report, *Scrutiny of regulations under the European Union (Withdrawal) Act 2018: Progress report*, further confirmed the concerns that we have about the use of concurrent powers.

We endorse this important report and add our support to the conclusions it draws.



We were particularly concerned to learn that two sets of regulations appear to be in breach of the Intergovernmental Agreement as the UK Government is utilising powers under the EU (Withdrawal) Act 2018 to enact new policy in devolved areas, particularly given the assurances given to us by Welsh Ministers that these powers will be used solely for technical changes.

Last week, we published our report on the Trade Bill Supplementary Legislative Consent Memorandum. In that report, we concluded that:

“When we consider the change to the devolution settlement, the CLA Committee’s view, and our own concerns about how the use of concurrent powers under the European Union (Withdrawal) Act 2018, we conclude that our original concern about the provision of concurrent powers was well founded.”

Whilst this letter has focused on the use of concurrent powers in the most part, our concerns extend to the use of UK Bills for Brexit-related legislation that could have been considered by the Assembly.

In relation to the legislative consent process for primary legislation, we characterise it as follows in our recent report on the Trade Bill:

“The legislative consent process does not allow for a nuanced interaction with the legislation under scrutiny. Rather, it offers a blunt and binary choice of granting consent for the provisions as drafted or rejecting them entirely.”

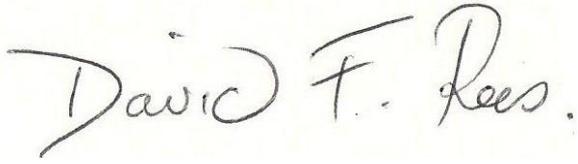
This stands in unfavourable contrast to the Assembly’s Bill scrutiny procedures, even under expedited circumstances.

We continue to monitor the process of legislating for Brexit and look forward to discussing some of these issues with you at our meeting on 25 March 2018.

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



Yours sincerely,

A handwritten signature in black ink on a light yellow background. The signature reads "David F. Rees." in a cursive style.

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.

