



Mick Antoniw AM
Chair
Legislation, Justice and Constitution Committee
National Assembly for Wales
Ty Hywel
Cardiff Bay
CF99 1NA

12 February 2020

Deu Mick,

I am writing in response to your letter of 23 January following my oral evidence session of 13 January on your 'Wales' Changing Constitution' inquiry and the Legislative Consent Memorandum on the European Union (Withdrawal Agreement) Bill. I, too, found the session valuable.

You asked for clarification in relation to a number of issues and I have provided further information below.

Intergovernmental agreements

You acknowledged that the Trefnydd has made a commitment that we will provide an update on progress with the Order in Council to be made under section 109 of the Government of Wales Act 2006 which we anticipate will remove the requirement for Minister of the Crown consent to repeal concurrent powers created in Brexit legislation. We will provide that update in due course.

You welcomed my offer to consider a greater role for the Senedd in scrutinising intergovernmental agreements and any further thoughts I have on their continued use and duration. I will also respond on those matters in due course.

Regulations under the European Union (Withdrawal Agreement) Act 2020

You asked for my assessment of the volume of and timescales for subordinate legislation under the European Union (Withdrawal Agreement) Act 2020 and whether the Welsh Government intends to make its own regulations or consent to statutory instruments made by the UK Government. I am afraid that it is simply too early to provide any details. However, I am happy to reiterate the commitments I have made that the Welsh Government will provide as much advance notice as possible of the statutory instrument programme arising from the Act and that we will seek to make our own regulations wherever feasible.

Statutory Instrument Consent Memorandums (SICMs)

You asked for clarification of the circumstances in which it may not be practicable to table statutory instrument consent motions. Circumstances similar to those we faced in the aftermath of the European Union (Withdrawal) Act 2018 would qualify in my view.

You also asked for confirmation that my commitment to table statutory instrument consent motions as far as is reasonably practicable will apply in respect of the UK Government using powers derived from all Brexit-related Acts of the UK Parliament. I can confirm that my commitment in fact goes beyond that; it applies to all regulations to which Standing Order 30A applies.

Section 38 of the European Union (Withdrawal Agreement) Act 2020

Finally, you asked for my observations on what is now section 38 ('Parliamentary sovereignty') of the European Union (Withdrawal Agreement) Act 2020. As you know, during the legislative consent debate in Plenary on 21 January the Counsel General and Brexit Minister associated the Welsh Government with the remarks made by Carwyn Jones AM during that debate. The Counsel General and Brexit Minister stated that the section "asserts a form of parliamentary sovereignty that we in this place should not be quick to support, because it fundamentally misunderstands the changed constitution of Wales and of the United Kingdom".

Best wishes,

Mark

MARK DRAKEFORD