

STATEMENT BY THE WELSH GOVERNMENT

TITLE **Legislation related to leaving the EU**
DATE **25 February 2020**
BY **Jeremy Miles AM, Counsel General and Brexit Minister**

I thought it would be helpful to update Members on both recent developments and prospects in relation to legislation arising from our exit from the EU.

I will, firstly, consider the matter of the Withdrawal Agreement Act and the implications for the Sewel Convention.

Members will recall that, on the 21st of last month, this Senedd followed the Welsh Government's recommendation in refusing consent for that legislation.

As has been rehearsed already in the Senedd, the reasons for this were principally constitutional – the threat this legislation poses to the Senedd's competence and the Welsh Government's capacity to influence the forthcoming negotiations which will have serious consequences for devolved policy areas. We did all we could to improve the Bill, both before its introduction and then working closely with Members of the House of Lords to put forward amendments which would have made it acceptable from a devolution perspective, but ultimately could not persuade the Government. Our decision here in the Senedd mirrored similar votes in the Northern Ireland Assembly and the Scottish Parliament, the first time that all three legislatures had refused consent for a single piece of UK parliamentary legislation. Notwithstanding this, the UK Government pushed the Bill to Royal Assent with Parliament over-riding the views of the three legislatures.

This could have developed into a major constitutional crisis, threatening the foundations of devolution. However, in correspondence the Secretary of State for DExEU described the circumstances as "singular, specific and exceptional" and the Chancellor of the Duchy of Lancaster described them as "unique". There were similar comments by Lord Callanan, Minister of State at DExEU, in third reading in the Lords and in a written statement issued by the Chancellor of the Duchy of Lancaster.

I subsequently wrote to both Stephen Barclay and Michael Gove recognising these encouraging signs that the UK Government recognised the graveness of this step and was interpreting the Sewel 'not normally' as 'only in the most exceptional circumstances'. On this basis, I reminded them that we had called, in 'Reforming our Union', for codification of the convention by setting out the circumstances and criteria under which the UK Government might in extremis proceed with its legislation, notwithstanding a lack of devolved legislative consent and called for the UK Government to engage in a further discussion of this.

So, while the UK Government's decision to proceed with the Withdrawal Agreement Bill without the consent of the devolved legislatures is of significant concern, it would appear that the UK Government and ourselves believe it should be ring-fenced as a special case. We now need to build on that.

Moving on, Members will be aware that almost all EU law continues to apply in the UK during the transition period, but the Welsh Government has been considering whether powers to keep pace with EU legislation beyond the transition period are practical and necessary. We do not at this point see an urgent need to bring forward a Senedd Bill containing powers to keep pace with EU legislation at this stage. There are a number of reasons for this.

Perhaps the principal one is that we have concerns as to whether providing Welsh Ministers with wide powers to keep pace with all EU legislation within devolved competence through a portmanteau Bill would be acceptable to this Senedd. It would not be consistent with the views expressed by members in the past therefore the bar for proposing such an approach would be set high.

There are also other available means of enabling Wales to keep pace where we consider it necessary.

First, Welsh Ministers already have powers to keep pace with technical modifications to EU tertiary legislation either through functions created in the EU Exit SIs as part of the corrections programme or through existing domestic powers. Analysis of the availability of existing powers will need to be undertaken in response to specific EU legislative proposals as they are being developed.

For more significant EU legislation, the legislative process in the EU would provide more than enough time to enable a Bill to be introduced and passed by the Senedd if that was considered necessary.

The context for this analysis is important. The Welsh Government remains committed to the Common Frameworks process which we believe should both allow and manage policy divergence between the UK and the Devolved Governments, or indeed between each of the Devolved Governments. We intend to follow the common frameworks process through to its end before concluding where we might need and be able to follow developments in future EU legislation.

Nevertheless, I want to assure Members we will keep the position under review.

Finally, –Members should be aware that a significant body of secondary legislation will be required during this year, although we cannot quantify it in advance of knowing how the negotiations with the EU, and indeed with other third countries, will proceed. In any event, there will be demands from the usual work to implement EU law that comes into force this year; the further correcting SIs which are needed to ensure that retained EU law ‘works’ in the context of the end of the transition period; and secondary legislation needed to implement the new regimes being established by UK Bills and the Withdrawal Agreement Act itself.

Work is already well underway to determine the amount of legislation which will be necessary to the extent that we can determine at this point in time, and I will, of course, keep Members updated.

Check against delivery

Embargoed until after Jeremy Miles AM, Counsel General and Brexit Minister, has delivered the statement.