

# Agenda – Constitutional and Legislative Affairs Committee

---

Meeting Venue:

Committee Room 1 – The Senedd

Meeting date: 25 June 2018

Meeting time: 14.30

For further information contact:

Gareth Williams

Committee Clerk

0300 200 6362

[SeneddCLA@assembly.wales](mailto:SeneddCLA@assembly.wales)

---

## 1 Introduction, apologies, substitutions and declarations of interest

## 2 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3

(Pages 1 – 2)

CLA(5)–18–18 – Paper 1 – Statutory instruments with clear reports

Negative Resolution Instruments

### 2.1 SL(5)229 – The Regulated Services (Omissions from the Published Register) (Wales) Regulations 2018

## 3 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3 but have implications as a result of the UK exiting the EU

Negative Resolution Instruments

### 3.1 SL(5)227 – The Hazardous Waste (Miscellaneous Amendments) (Wales) Regulations 2018

(Pages 3 – 4)

CLA(5)–18–18 – Paper 2 – Report

### 3.2 SL(5)228 – The Marine Licensing (Exempted Activities) (Wales) (Amendment) Order 2018

(Pages 5 – 6)



CLA(5)–18–18 – Paper 3 – Report

## **4 Papers to note**

### **4.1 Letter from the Cabinet Secretary for Energy, Planning and Rural Affairs: SL(5)208 – The Agricultural Wages (Wales) Order 2018**

(Pages 7 – 8)

CLA(5)–18–18 – Paper 4 – Letter from the Cabinet Secretary for Energy,  
Planning and Rural Affairs, 13 June 2018

### **4.2 Correspondence relating to the EU (Withdrawal) Bill and the Inter- Governmental Agreement**

(Pages 9 – 14)

CLA(5)–18–18 – Paper 5 – Letter from the Chair to the Cabinet Secretary for  
Finance, 19 June 2018

CLA(5)–18–18 – Paper 6 – Letter from the Cabinet Secretary for Finance to the  
Chair, 19 June 2018

CLA(5)–18–18 – Paper 7 – Response to the Cabinet Secretary for Finance, 21  
June 2018

### **4.3 Letter from the Llywydd: UK Governance post Brexit**

(Pages 15 – 16)

CLA(5)–18–18 – Paper 8 – Letter from the Llywydd, 20 June 2018

### **4.4 Correspondence relating to the External Affairs and Additional Legislation Committee's Inquiry into EU Law in Wales: Brexit Transition**

(Pages 17 – 24)

CLA(5)–18–18 – Paper 9 – Letter from the Chair of the External Affairs and  
Additional Legislation Committee, 20 June 2018

CLA(5)–18–18 – Paper 10– Letter from the Secretary of State for Exiting the  
EU to the External Affairs and Additional Legislation Committee, 20 June  
2018

CLA(5)–18–18 – Paper 11 – Letter from the Cabinet Secretary for Finance to  
the External Affairs and Additional Legislation Committee, 19 June 2018

**5 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:**

**6 Justice Commission for Wales: Draft evidence**

(Pages 25 – 27)

CLA(5)–18–18 – Paper 12 – Draft evidence

**7 Childcare Funding (Wales) Bill: Draft Report**

(Pages 28 – 54)

CLA(5)–18–18 – Paper 13 – Draft Report

**8 The Powers in the EU (Withdrawal) Bill to make subordinate legislation – operational matters: Draft Report**

CLA(5)–18–18 – Paper 14 – Draft Report (to follow)

**9 EU (Withdrawal) Bill: Update**

(Pages 55 – 66)

CLA(5)–18–18 – Paper 15 – EU (Withdrawal) Bill: Update

**Date of the next meeting**

2 July 2018

## Statutory Instruments with Clear Reports

25 June 2018

### SL(5)229 – The Regulated Services (Omissions from the Published Register) (Wales) Regulations 2018

#### **Procedure: Negative**

---

These Regulations are made under section 38 of the Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”) and apply in relation to Wales.

Section 38(1) of the Act provides that the Welsh Ministers must maintain a register of service providers. Section 38(2) of the Act sets out the information that must be contained in an entry on the register in respect of a service provider. Section 38(5)(a) of the Act enables the Welsh Ministers to omit prescribed information from the published register in prescribed circumstances.

Regulation 3 sets out the information that the Welsh Ministers may omit from the published register and the circumstances when they may do so.

**Parent Act:** Regulation and Inspection of Social Care (Wales) Act 2016

**Date Made:** 11 June 2018

**Date Laid:** 13 June 2018

**Coming into force date:** 04 July 2018



## SL(5)227 – The Hazardous Waste (Miscellaneous Amendments) (Wales) Regulations 2018

### Background and Purpose

---

These Regulations amend legislation which refers to Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives.

The amendments made by these Regulations are necessary in order to implement Council Regulation (EU) 2017/997 of 8 June 2017 amending Annex III to Directive 2008/98/EC of the European Parliament and of the Council as regards the hazardous property HP 14 'Ecotoxic'.

### Procedure

---

Negative.

### Technical Scrutiny

---

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

### Merits Scrutiny

---

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

### Implications arising from exiting the European Union

---

These Regulations implement and enforce EU obligations in respect of hazardous waste and are necessary to update the EU method for classifying waste as 'ecotoxic'. Therefore, these Regulations will form part of retained EU law after exit day.

The Intergovernmental Agreement on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks states that "environmental quality - chemicals" is a policy area likely to be subject to clause 15 regulations under the EU (Withdrawal) Bill. Therefore, the law covered by these Regulations is likely to be an area of EU law that is frozen while common frameworks are put in place.

### Government Response

---

No government response is required.

### Legal Advisers

### Constitutional and Legislative Affairs Committee

14 June 2018



## SL(5)228 – The Marine Licensing (Exempted Activities) (Wales) (Amendment) Order 2018

### Background and Purpose

---

This Order amends the Marine Licensing (Exempted Activities) (Wales) Order 2011 (“the 2011 Order”), which refers to Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (“the Waste Framework Directive”).

The Waste Framework Directive was amended by Council Regulation (EU) 2017/997 of 8 June 2017 amending Annex III to Directive 2008/98/EC of the European Parliament and of the Council as regards the hazardous property HP 14 ‘Ecotoxic’.

Article 2 of this Order amends the definition of the Waste Framework Directive in article 3 of the 2011 Order to refer to that Directive as last amended by Council Regulation (EU) 2017/997.

Article 3 revokes the Marine Licensing (Exempted Activities) (Wales) (Amendment) Order 2016.

### Procedure

---

Negative.

### Technical Scrutiny

---

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

### Merits Scrutiny

---

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

### Implications arising from exiting the European Union

---

These Regulations update references to the Waste Framework Directive, to reflect changes made to the Waste Framework Directive. These Regulations implement EU law and will therefore form part of retained EU law after exit day.

The Intergovernmental Agreement on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks states that various elements of “environmental quality” and “fisheries management” are policy areas likely to be subject to clause 15 regulations under the EU (Withdrawal) Bill. Therefore, the law covered by these Regulations is likely, in part or in whole, to be an area of EU law that is frozen while common frameworks are put in place.

### Government Response

---

No government response is required.

### Legal Advisers

**Constitutional and Legislative Affairs Committee**

**15 June 2018**



Ein cyf/MA L LG 308 18

Mick Antoniw AM  
Chair, Legislative and Constitutional Affairs Committee  
National Assembly for Wales  
Cardiff Bay  
Cardiff  
CF99 1NA  
[SeneddCLA@assembly.wales](mailto:SeneddCLA@assembly.wales)

13 June 2018

Dear Mick,

### **The Agricultural Wages (Wales) Order 2018**

Thank you for your letter of 23 May 2018 which raised questions concerning the laying of the above Order.

I can assure you that every effort was made to complete the legal and policy considerations of what is a complex Order in time to meet requirements.

The proposal for the Order had originally been submitted by the Agricultural Advisory Panel in November 2017 to meet its aspiration for the Order to come into force on 1 April 2018, the same date increased national minimum and living wage rates take effect.

This ambitious timetable allowed three - four months for the Welsh Ministers to consider each provision of the draft Order, translate and finalise the bilingual draft Order and, if so minded, to approve and make the draft Order.

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:  
0300 0604400

[Gohebiaeth.Lesley.Griffiths@llyw.cymru](mailto:Gohebiaeth.Lesley.Griffiths@llyw.cymru)  
[Correspondence.Lesley.Griffiths@gov.wales](mailto:Correspondence.Lesley.Griffiths@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.

Changes to the National Minimum Wage rates intended to take effect on 1 April 2018 were published in November 2017, after the Panel had submitted the draft Order to the Welsh Ministers for approval. The proposed National Minimum Wage rates were higher than anticipated and, in some respects, higher than the agricultural minimum wage rates proposed by the Panel in the draft Order. Section 3(5) of the Agricultural Sector (Wales) Act 2014 prevents agricultural minimum wage rates being prescribed in agricultural wages order which are lower than the national minimum wage rates.

The Panel informed the Welsh Ministers of its intention to reconsider the agricultural minimum rates proposed in the draft Order. As a result a revised draft Order was submitted by the Panel to the Welsh Ministers approximately two months later in January 2018.

It remained the Panel's intention the draft Order would come into force on 1 April 2018, the same date increased National Minimum Wage rate changes would take effect. The revised timetable allowed the Welsh Ministers less than half of the time originally allocated for the consideration, translation and finalisation of the bilingual draft Order and its approval and making, if a coming into force date of 1 April 2018 was to be met without breaching the 21 day rule.

It was not until mid-March the draft Order was fully considered, translated and the bilingual version settled, which meant it was not possible to approve and make the Order to bring it into force on 1 April 2018 without breaching the 21 day rule. There was never an intention to breach the 21 day rule and the decision to do this, rather than delay the bringing into force of the Order, was taken reluctantly and at a very late stage. Once that decision was made, the Order was finalised to include the coming into force date, made on 27 March and registered with the National Archives. The Order was then laid on Thursday 29 March. I am informed that due to unforeseen technical difficulties experienced with Welsh Government IT systems, it was not possible to lay the Order before 3pm.

I fully support this Government's commitment to making our laws accessible from the first possible opportunity. I understand the timetable for bringing forward future agricultural wages orders is being reviewed. All opportunities for expediting the consideration of such orders will be explored.

Regards,

A handwritten signature in black ink that reads "Lesley". The signature is written in a cursive style with a large, sweeping flourish at the end.

**Lesley Griffiths AC/AM**

Ysgrifennydd y Cabinet dros Ynni, Cynllunio a Materion Gwledig  
Cabinet Secretary for Energy, Planning and Rural Affairs

Mark Drakeford AM  
Cabinet Secretary for Finance

19 June 2018

Dear Mark

The **Intergovernmental Agreement on the Withdrawal Bill** states that the UK Government commits to not bringing forward legislation that would alter areas of policy for England in so far as the devolved legislatures are prevented from doing so as a result of restrictions imposed on their competence by UK Ministers under powers in the European Union (Withdrawal) Bill (“the Bill”).

A new clause proposed by Sir Oliver Letwin MP during the House of Commons’ consideration of Lords amendments which relates to the maintenance of environmental principles and was supported by the UK Government, requires the Secretary of State to publish a draft Bill within six months of the Bill being passed. Should restrictions in relation to the environment be imposed on the National Assembly’s devolved competence between the Bill coming into force and a draft environment Bill being published, the UK Government could potentially be in breach of the assurances made in the Intergovernmental Agreement by bringing forward legislation in a policy area subject to restrictions.

During consideration of Commons reasons and amendments yesterday afternoon, the House of Lords agreed with the Commons in their amendment 3A, as originally proposed by Sir Oliver Letwin.

I would be grateful if you could:

- let the Committee know whether the Welsh Government has been involved in discussions with the UK Government on the implications of the amendment; and
- clarify whether in your view the amendment has the potential to breach the Intergovernmental Agreement.



I am copying this letter to the Chair of the External Affairs and Additional Legislation Committee.

Yours sincerely,

A handwritten signature in black ink that reads "Mick Antoniw". The signature is written in a cursive style with a horizontal line underneath the name.

**Mick Antoniw**

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.  
We welcome correspondence in Welsh or English.



Mark Drakeford AM/AC  
Ysgrifennydd y Cabinet dros Gyllid  
Cabinet Secretary for Finance



Llywodraeth Cymru  
Welsh Government

Mick Antoniw AM  
Chair, Constitutional and Legislative Affairs Committee  
National Assembly for Wales

Dear Mick,

19 June 2018

Thank you for your letter of 19 June in respect of the Intergovernmental Agreement, and the Oliver Letwin amendment to the European Union (Withdrawal) Bill relating to environmental principles, which was agreed by Parliament on Monday 18 June.

The UK Government is very clear that the draft Bill which the Secretary of State will be required to produce will apply only in England, or to reserved matters. In addition, the amendment requires the Bill to set out a series of cross-cutting environmental principles; it does not oblige the UK Government to produce a Bill which sets out a legislative framework in relation to one of the specific policy areas set out in the Annex to the Intergovernmental Agreement.

As such, on this basis I do not believe that the amendment has the potential to breach the Intergovernmental Agreement, but Welsh Government officials will continue to engage closely with UK Government colleagues as they develop the draft Bill, and will be reminding them of the need to ensure that they are compliant with the Agreement.

Best wishes,  
Mark

**Mark Drakeford AM/AC**  
Ysgrifennydd y Cabinet dros Gyllid  
Cabinet Secretary for Finance

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:  
0300 0604400  
[Gohebiaeth.Mark.Drakeford@llyw.cymru](mailto:Gohebiaeth.Mark.Drakeford@llyw.cymru)  
[Correspondence.Mark.Drakeford@gov.wales](mailto:Correspondence.Mark.Drakeford@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.

**Pack Page 11**

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.

Mark Drakeford AM  
Cabinet Secretary for Finance

21 June 2018

Dear Mark

Thank you for your letter of 19 June and your swift response to the Committee's queries regarding the recent amendment to the European Union (Withdrawal) Bill (originally proposed by Sir Oliver Letwin MP) and the potential implications for the **Intergovernmental Agreement**.

In your letter you said:

---

"The UK Government is very clear that the draft Bill which the Secretary of State will be required to produce will apply only in England, or to reserved matters. In addition, the amendment requires the Bill to set out a series of cross-cutting environmental principles; it does not oblige the UK Government to produce a Bill which sets out a legislative framework in relation to one of the specific policy areas set out in the Annex to the Intergovernmental Agreement. (...) As such, on this basis I do not believe that the amendment has the potential to breach the Intergovernmental Agreement..."

---

In order to understand fully how the Intergovernmental Agreement operates and given its constitutional significance, I would be grateful for further clarification.

It would be helpful if you could explain why the single fact that the draft Bill will apply only in England is a reason why there would be no potential breach of the Intergovernmental Agreement, given that the Intergovernmental Agreement states that the temporary preservation will apply in England?

The Intergovernmental Agreement provides that the 24+ policy areas will be temporarily preserved in England as well as the rest of the UK and says that "temporary preservation" will be given effect by the UK Government committing to not bringing forward legislation that would alter areas of policy. Setting



environment principles in an England-only Environment Bill could alter environment law or, at a minimum, influence future policy direction.

It would also be helpful if you could indicate whether your understanding of the position is shared by the UK Government.

I am copying this letter to the Chair of the External Affairs and Additional Legislation Committee.

Yours sincerely,

A handwritten signature in black ink that reads "Mick Antoniw". The signature is written in a cursive style with a horizontal line underneath the name.

**Mick Antoniw**

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.





**Elin Jones AC, Llywydd**

Cynulliad Cenedlaethol Cymru

**Elin Jones AM, Presiding Officer**

National Assembly for Wales

## Agenda Item 4.3

Mick Antoniw AM  
Chair  
Constitutional and Legislative Affairs Committee  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

Your ref:  
Our ref: EJ/RT

20 June 2018

Dear Mick

### **Update on Speakers' Conference proposal**

The Constitutional and Legislative Affairs Committee recommended in its report on **UK Governance post-Brexit** that the Llywydd should seek:

*to establish with the other Speakers and Presiding Officers of UK legislatures, a Speakers' Conference with the aim of determining how best to develop UK inter-parliamentary working, particularly as a means of scrutinising the impact of withdrawal from the European Union on the constitutional framework of the UK.*

I discussed your recommendation with my fellow Speakers at our recent Speakers' quadrilateral meeting, with a view to establishing a shared understanding of the proposal, gauging the appetite for further work in this area, and considering possible next steps.

We recognise the potential value of a Conference such as that recommended by your Committee, and are open to considering the matter further. However, we were all agreed that a Conference such as that recommended by your Committee would need to be separate from the existing quadrilateral meetings, which serve a different purpose.

Croesewir gohebiaeth yn Gymraeg neu Saesneg / We welcome correspondence in Welsh or English

**Cynulliad Cenedlaethol Cymru**

Bae Caerdydd, Caerdydd, CF99 1NA

Llywydd@cynulliad.cymru

www.cynulliad.cymru

0300 200 7403

**National Assembly for Wales**

Cardiff Bay, Cardiff, CF99 1NA

Llywydd@assembly.wales

www.assembly.wales

0300 200 7403



**Elin Jones AC, Llywydd**

Cynulliad Cenedlaethol Cymru

**Elin Jones AM, Presiding Officer**

National Assembly for Wales

During our discussions, we reflected on the very different positions and traditions in which each Speaker operates, and agreed that this would need to be taken into account as these issues are taken forward.

We also noted the work of the House of Commons Public Administration and Constitutional Affairs in its inquiry into devolution and exiting the EU. Consideration of how inter-parliamentary working could be progressed through various means would usefully be informed by any recommendations made in due course by that Committee, as well as by the views and recommendations of other committees across the legislatures and interparliamentary bodies such as the interparliamentary forum on Brexit.

I believe further consideration of the potential implications with regards to purpose, mandate and membership of any Speakers' Conference would be valuable. This would be assisted by any further expert advice or research which your Committee might be able to provide.

I would be happy to share any further advice or more detailed recommendations you may wish to make with my fellow Speakers in due course.

Yours sincerely

Elin Jones AM  
Llywydd

Mick Antoniw AM  
Chair, Constitutional and Legislative Affairs  
Committee

20 June 2018

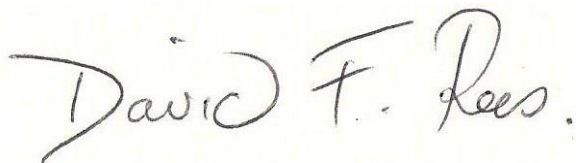
Dear Mick,

### EU Law in Wales: What happens during the Brexit transition?

As part of our inquiry into EU law in Wales during the Brexit transition, we wrote to both the Welsh and UK Governments with a series of questions based around the inquiry's terms of reference.

We received responses today and will be considering them at our meeting on 25 June 2018. I wanted to share them with you and the Constitutional and Legislative Affairs Committee as aspects of these letters may be pertinent to your work on inter-governmental relations.

Yours sincerely,



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.





**Department  
for Exiting the  
European Union**

**Robin Walker MP**  
Parliamentary Under Secretary of State  
for Exiting the European Union  
9 Downing Street  
SW1A 2AG

+44 (0)20 7004 1249  
[psrobinwalker@dexeu.gov.uk](mailto:psrobinwalker@dexeu.gov.uk)  
[www.gov.uk](http://www.gov.uk)

David Rees AM  
Chair  
External Affairs and Additional Legislation Committee  
National Assembly for Wales  
Cardiff Bay  
Cardiff  
CF99 1NA

20<sup>th</sup> June 2018

*Dear David,*

**EXTERNAL AFFAIRS AND ADDITIONAL LEGISLATION COMMITTEE - INQUIRY INTO  
EUROPEAN LAW IN WALES DURING THE IMPLEMENTATION PERIOD**

Thank you for your letter outlining the Committee's new inquiry "European Union Law in Wales: What happens during the Brexit transition period?".

As you know from my previous appearances in front of your committee, I am keen to engage with the Welsh Government and the National Assembly as we continue preparations for exiting the EU, and progress the programme of exit legislation.

I have responded to the Committee's questions below, but would stress that some of the detail of the process is still being developed and, of course, is ultimately subject to the final Withdrawal Agreement with the EU. I would be happy to provide further information to the committee at a later stage when more detail has been confirmed, particularly the content of the Withdrawal Agreement and Implementation Bill (WAIB).

**ROBIN WALKER MP**  
**PARLIAMENTARY UNDER SECRETARY OF STATE**  
**FOR EXITING THE EUROPEAN UNION**

**What process will be followed for the transposition, implementation and enforcement of EU law during transition?**

We have been very clear that the implementation period will provide continuity and certainty to businesses and citizens as we leave the EU. While the UK will no longer be a member state, the UK and the EU have agreed in the draft Withdrawal Agreement that common rules will remain in place and continue to apply in the UK, with a few exceptions, during the time-limited implementation period. This will ensure that both sides only have to prepare for one set of changes as we move towards our future relationship with the EU. The WAIB will implement the major elements of the Withdrawal Agreement in domestic law, including giving effect to the implementation period.

**What role do you anticipate for the Welsh Government in this process?**

As with all legislation, the UK Government will continue to consult with the Welsh Government on the development of the WAIB and parts that will impact on devolved matters, and will seek the consent of the National Assembly for Wales where appropriate.

**Will there be an intra-UK intergovernmental structure established to support this process (such as the current JMC Europe)?**

There are a number of inter-governmental structures that already exist to facilitate and involve the devolved administrations in the process of the UK's exit from the EU. At the last meeting of the Joint Ministerial Committee (Plenary) officials were remitted to review the existing range of intergovernmental structures to ensure they are fit for purpose in light of EU exit.

**How will the two withdrawal Bills (the EU (Withdrawal) Bill and the Withdrawal Agreement and Implementation Bill) interact with regards to the transition period?**

The WAIB will be used to implement the major elements of the Withdrawal Agreement in domestic law. It will be this Bill - not the EU (Withdrawal) Bill - that will give effect to the implementation period, including making changes to other legislation if necessary. It is possible that some provisions in other EU exit Bills, including in the EU (Withdrawal) Bill, may not take effect until the end of the implementation period. The EU (Withdrawal) Bill remains crucial because it provides for continuity in the law when EU rules and regulations cease to apply.

**How will the views of the Welsh Government on draft EU laws in devolved areas be presented to the European Union during the transition period?**

At present, the devolved administrations work closely with UK Government departments in developing the final UK Government position on draft EU laws which impact on devolved areas. We anticipate maintaining this system during the implementation period. The Inter-Governmental Relations review commissioned by JMC(Plenary) may further refine this process.

**Will the Welsh Government be represented on the EU-UK Joint Committee established under the WA?**

Arrangements for the Joint Committee are still being determined and it will be comprised of representatives from both the UK and the EU who have the necessary expertise and experience. As now, the UK Government will have responsibility for negotiating and representing the UK as a whole, engaging fully with all of the devolved administrations.



David Rees AM  
Chair, External Affairs and Additional Legislation Committee  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

19 June 2018

Dear David,

Thank you for your letter regarding the External Affairs and Additional Legislation Committee's inquiry: **European Union law in Wales: What happens during the Brexit transition?** I am grateful for the Committee's ongoing work in making sure that the implications of the UK leaving the European Union are fully considered and appropriate preparations are made in order that devolution and Welsh interests are protected.

The UK Government is yet to set out substantively how transition will work and, despite sustained pressure from the Welsh Government for clarity, many of the issues raised in your letter are ones where we simply do not know what the UK Government intends. Once we know more, subject to handling any confidential issues, we will look to share information and engage further with the Assembly.

As you know, in our White Paper the Welsh Government argued that a transitional period was essential as it would be impossible to both negotiate a withdrawal agreement and put in place the basis of a future relationship with the EU within two years.

We therefore very much welcomed the agreement at the March European Council on the arrangements for a transition period to December 2020, subject to the satisfactory negotiation of a comprehensive Withdrawal Agreement.

During the proposed transition period, the UK would retain all the principal benefits of membership of the EU but would lose its rights to political representation in the EU's

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:  
0300 0604400  
[Gohebiaeth.Mark.Drakeford@llyw.cymru](mailto:Gohebiaeth.Mark.Drakeford@llyw.cymru)  
[Correspondence.Mark.Drakeford@gov.wales](mailto:Correspondence.Mark.Drakeford@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.

institutions. This will enable the UK to maintain Single Market participation and membership of the Customs Union while future trading relationships are explored and negotiated. This progress is to be welcomed and will save our businesses, citizens and public services from a dangerous cliff edge when we formally leave the EU. It will provide businesses with the confidence to plan for the medium term.

However, in return the UK will be required to continue to be bound all elements of the *acquis* during the transition period and reflect any changes in EU legislation or administrative decisions which occur while we are in transition. This raises some very complex issues about how EU decisions will be transmitted to and implemented within the UK once the European Communities Act has been repealed. And, as I have said, the UK Government has, as yet, not published information on how these issues are to be addressed.

I would therefore encourage the Committee, in parallel with seeking evidence from the Welsh Government, to seek clarification from the UK Government.

With this caveat, in terms of your specific questions, I will answer these as far as I am able to provide information, given the Welsh Government's current understanding.

- **What process will be followed for the transposition, implementation and enforcement of EU law during transition? / What role should the Welsh Government have in this process?**

At the moment we simply do not know how the UK Government propose to do this.

In principle, we would expect there to be a high degree of similarity between the practice now and during transition and that this would include the role played by the Welsh Government.

However, the recent Intergovernmental Agreement on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks has set out the specific procedures to be followed in the areas where the National Assembly for Wales agrees that common frameworks are to be established.

- **What preparatory steps will the Welsh Government need to take before the transition period begins?**

We will continue to work closely with the UK Government to press them for all the information that will allow us to prepare for and deliver effectively for the transition.

As you will know, we announced our £50 million EU Transition Fund earlier this year. The Fund was established to help business, public services and other partner organisations in Wales plan for and prepare for the impacts of Brexit. This new fund is part of our Brexit plans to directly help businesses and public services prepare for the significant changes ahead both before and during the

transition period. The fund will work alongside our existing financial support and help our partner organisations reach out to the world.

- **Will there be an intra-UK intergovernmental structure established to support this process (such as the current JMC Europe)?**

Again, at the moment, we have not had any clear information from the UK Government on this issue. It is possible that, as the UK will no longer be represented in the Council of Ministers, the UK Government will prefer to work through the JMC (European Negotiations) than the current JMC (Europe). In any event, I hope that we can continue to work across the UK in a constructive way, as we have endeavoured to do to date.

We have been engaging with the UK Government to ensure greater involvement from the devolved administrations in negotiations on the UK's future relationship with the EU. A new Ministerial Forum on EU negotiations has been established to provide an opportunity for the devolved administrations to contribute to the development of a UK negotiating position and met for the first time on 24 May in Edinburgh. This is a development we welcome.

As you know, the Welsh Government believes that the entire machinery of JMC needs to be overhauled on the basis of a shared governance model and in the longer term replaced by a Council of Ministers. At the JMC (Plenary) in March, a commitment was given that officials would review the current Memorandum of Understanding (MOU) to ensure the JMC is for purpose following Brexit. Officials from the four UK administrations met in May to begin detailed work on this review, and this will continue over the coming months. An interim report is expected later in the year.

We will be pressing the UK Government to work collaboratively with us and the other Devolved Administrations to explore the best inter-governmental structures for future engagement on EU issues, which in the near term could include an ongoing role for JMC(E), and/or use of JMC(EN) or potentially the new Ministerial Forum.

- **How will the two withdrawal Bills (the European Union (Withdrawal) Bill and the Withdrawal Agreement and Implementation Bill) interact with regards to the transition period?**

The UK Government has not yet published its proposals for the Withdrawal Agreement and Implementation Bill (WAIB), but it is our understanding that this will need to put mechanisms in place to deliver the UK's commitments in terms of the transition period. We will, however, need details of the WAIB's content before making a full assessment of the impact it will have. In initial official level conversations we have asked for a substantive Ministerial discussion on the WAIB to seek to allow us to understand and influence its development. We will look to provide more information to the Committee as soon as we are in a position to.

- **How will the views of the Welsh Government on draft EU laws in devolved areas be presented to the European Union?**

We will continue to take every opportunity to ensure that the interests of Wales are respected, both informally via existing networks and also by attending groups already in existence where possible.

- **Will the Welsh Government be represented on the EU-UK Joint Committee established under the Withdrawal Agreement?**

Our starting position is that we should have the opportunity to be part of the UK representation, as the Concordat on Co-ordination of European Union Policy Issues within the Memorandum of Understanding sets out in relation to attendance at Council of Ministers meetings. We will be asking the UK Government for clarity on this issue.

I hope you will appreciate that current uncertainties mean the full picture in respect of transition is yet to emerge. I would be happy to provide more information to the Committee, should you require it, when more detail on the UK Government's position is available.

Best wishes,

Mark.

**Mark Drakeford AM/AC**

Ysgrifennydd y Cabinet dros Gyllid  
Cabinet Secretary for Finance

Document is Restricted

# Agenda Item 7

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted

Document is Restricted