

Agenda – External Affairs and Additional Legislation Committee

Meeting Venue:

Committee Room 2 – Senedd

Meeting date: 8 July 2019

Meeting time: 13.30

For further information contact:

Alun Davidson

Committee Clerk

0300 200 6565

SeneddEAAL@assembly.wales

Private pre-meeting

(13.15–13.30)

1 Introductions, apologies, substitutions and declarations of interest

2 Scrutiny session with the First Minister of Wales

(13.30–15.00)

(Pages 1 – 51)

Mark Drakeford, First Minister of Wales

Des Clifford, Welsh Government

Simon Brindle, Welsh Government

3 Paper(s) to note

(15.00–15.05)

3.1 Paper to note 1 – Correspondence from the Chair of the Climate Change, Environment and Rural Affairs Committee to the Chair regarding their report on rethinking food in Wales – food branding and processing – 20 June 2019

(Page 52)

Climate Change, Environment and Rural Affairs Committee report:

Rethinking food in Wales – food branding and processing

<http://www.assembly.wales/laid%20documents/cr-ld12574/cr-ld12574-e.pdf>



- 3.2 Paper to note 2 – Correspondence from the Counsel General and Brexit Minister to the Chair regarding intergovernmental relations and common frameworks – 3 July 2019**
(Pages 53 – 55)
- 3.3 Paper to note 3 – Correspondence from the Counsel General and Brexit Minister to David Lidington MP, Minister for the Cabinet Office and Chancellor of the Duchy of Lancaster regarding intergovernmental relations – 3 July 2019**
(Pages 56 – 58)
- 3.4 Paper to note 4 – Correspondence from the First Minister to the Llywydd regarding international relations which bind the UK – 3 July 2019**
(Pages 59 – 60)
- 4 Motion under Standing Order 17.42(vi) to resolve to exclude the public from the remainder of the meeting**
(15.05)
- 5 Scrutiny session with the First Minister – consideration of evidence**
(15.05–15.20)

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Agenda Item 3.1

David Rees AM
Chair External Affairs and Additional Legislation Committee

20 June 2019

Dear David

Please find enclosed a copy of the Climate Change, Environment and Rural Affairs Committee's report, *Rethinking food in Wales: Food Branding and processing*, which was published on 18 June 2019.

I would like to draw your attention to Chapter 5 of the report, which focuses on the impact of post-Brexit immigration policy on the food and drink industry, and the tourism and hospitality industry.

I hope this will be of use to your Committee in its on-going work, *Changes to freedom of movement after Brexit - the implications for Wales*. I will, of course, forward the Welsh Government's response to you as soon as it is available.

Yours sincerely



Mike Hedges AM
Chair of Climate Change, Environment and Rural Affairs Committee



Jeremy Miles AC/AM
Y Cwnsler Cyffredinol a Gweinidog Brexit
Counsel General and Brexit Minister

Agenda Item 3.2



Llywodraeth Cymru
Welsh Government

Mick Antoniw AM, Chair,
Constitutional and Legislative Affairs Committee

David Rees AM, Chair,
External Affairs and Additional Legislation Committee

Mike Hedges AM, Chair,
Climate Change, Environment and Rural Affairs Committee

National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

3 July 2019

Dear Chairs,

As part of the Welsh Government's commitment to keep you fully informed about and engaged in our joint work with other governments on intergovernmental relations and Common Frameworks, and building on ongoing discussions, technical briefings and evidence sessions, I am writing to draw your attention to the [publication](#) by the UK Government of material emerging from the Intergovernmental Relations (IGR) Review and the separate but linked work on Frameworks. In particular we are today publishing an outline of the first of our Common Frameworks on Hazardous Substances. We will be publishing plans for engagement and further publication of Frameworks in due course.

I welcome today's publications and progress on Frameworks, and the commitment to the further work on dispute resolution for which I have been calling. But I remain concerned about the lack of substantive progress on IGR and the pace of that work. My concerns are shared by the Scottish Government and I enclose a joint letter to the UK Government which sets out in more detail our expectations for further work.

A Written Statement will issue to Assembly Members tomorrow morning.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
PSCGBM@gov.wales / YPCCGB@llyw.cymru

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.

We would of course be happy to explore these matters further with your Committees, and will in any case update you on further developments.

A handwritten signature in black ink, appearing to read 'Jeremy Miles', with a stylized, cursive flourish at the end.

Jeremy Miles AM

Y Cwnsler Cyffredinol a Gweinidog Brexit
Counsel General and Brexit Minister

Agenda Item 3.3

Cabinet Secretary for Government Business and
Constitutional Relations
Michael Russell MSP

 Scottish Government
Riaghaltas na h-Alba
gov.scot

T: 0300 244 4000
E: scottish.ministers@gov.scot

Jeremy Miles AC/AM
Y Cwnsler Cyffredinol a Gweinidog Brexit
Counsel General and Brexit Minister


Llywodraeth Cymru
Welsh Government

The Rt Hon David Lidington CBE MP
Minister for the Cabinet Office and
Chancellor of the Duchy of Lancaster
Cabinet Office
70 Whitehall
London
SW1A 2AS

3 July 2019

Dear David,

We welcomed the opportunity at JMC(EN) on 28 June to consider progress on the Intergovernmental Relations Review commissioned by JMC(P) on 14th March last year and your intention to publish the draft principles for relations as set out in your statement today. However, the proposed principles for relations bear little meaning without any firm commitments for further reform. It has taken far too long to make this limited progress. Delay now poses a serious risk to UK governance, for example by holding up the fruitful collaboration on common frameworks, which so far is making an important contribution to the development of relations.

The review is taking place against the backdrop of three years of mismanaged negotiations with the European Union. Those have led to a situation in which we are likely to be facing the prospect of a catastrophic no-deal Brexit, unless the UK Government alters course and offers people a choice. The Welsh and Scottish Governments are clear that the decision on EU exit must now be put back to the people and we have called on the UK Parliament to legislate for a referendum. If such a referendum is held we will argue strongly that the UK should remain in the EU.

Whether or not the UK leaves the EU, there is an urgent need for fundamental reform of the relationship between our governments. Even before the referendum there was a widespread consensus that the intergovernmental structures are weak and ineffective. The experience of repeated failures to involve the devolved governments properly in the negotiations further demonstrates how urgent that task of reform has become.

Given this background, it is deeply disappointing that the intergovernmental relations review commissioned fifteen months ago has made so little progress. This, in our view, is almost entirely due to the lack of a commitment to reform on the part of the UK Government. The

Welsh Government set out a comprehensive set of proposals over two years ago. The Scottish Government has set out its own proposals on a number of occasions and will shortly do so again in a dedicated publication.

Against this backdrop, we therefore urge that a meeting of Heads of Government at JMC(P) be convened as soon as practicable in order to discuss these proposals and agree a programme of reform with a clear timetable. That programme will of course be essential if the draft principles are to have any practical effect.

That programme of reform must include:

- reformed machinery which is robust enough to bear the weight of intergovernmental working now required and as replacement for the current inadequate architecture;
- a strengthened dispute resolution process which both reflects the discussion on the use of independent advice and arbitration and delivers real parity of participation – a fundamental shortcoming of the current arrangements;
- arrangements which guarantee respect for devolved responsibilities, in contrast to the statements being made by candidates for leadership of your party which are clearly incompatible with devolution and threaten to undermine co-operation between our governments;
- arrangements to provide certainty that decisions made by devolved institutions, including in relation to legislation on devolved matters, are fully respected.

The Supreme Court judgment in the Reference of the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill put beyond doubt that legislating to regulate the domestic consequences of international agreements is within devolved competence. There is therefore a need for our involvement in agreeing UK-wide positions; our governments and our legislatures must be fully involved in the negotiation and agreement of any international agreements which will affect devolved interests.

We need to make real progress on the international relations element of the Review. This is urgent: by early November, the UK could be embarking on the future relations negotiations with the EU27, or new international trade agreements, or both. Indeed discussions are already under way with trading partners which will have an impact on future trade arrangements. The Scottish and Welsh Governments have made clear how we expect to be involved in these matters now and into the future. It is absolutely vital that we have agreed the way forward before any UK negotiating mandates are set, and any negotiations proceed.

There is, of course useful precedent to draw upon in the current practice of joint working to agree a UK-wide approach on EU business as a reasonable starting point. Though not by any means perfect, this recognised that, given the way EU law impacts on devolved competence, the UK position needs to be negotiated with the devolved administrations to ensure it fully reflected the interests of all parts of the UK in terms of the development of critical EU policies like the Common Agricultural Policy or the Structural Funds. Negotiations on the future relationship will be fundamentally different in scale, scope, intensity and pervasive impact on devolved interests and therefore arrangements for our involvement need to recognise this. We must build on those precedents which exist but need to see a step change in approach to the future partnership, and to all international negotiations which impact on devolved competence, so that our roles and responsibilities are fully respected. It is deeply regrettable that the UK Government appears to be resisting its responsibility to agree negotiating mandates with the devolved institutions and to involve us fully in relevant international negotiations as they unfold.

The Scottish and Welsh Governments and our Parliaments cannot be expected to co-operate on implementing obligations in devolved areas where we have not been fully involved in the determination of those obligations.

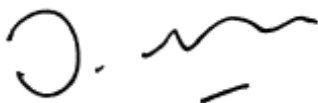
The practical necessity for such arrangements has been at the heart of the devolution settlement since its inception.

Our experience of the JMC(EN) is that it has not lived up to its terms of reference. As the way of working we agreed to has not materialised, an agreed programme for reform must include a specific commitment to secure the substantive improvements in working practice required to give effect to that remit.

More generally, whilst we recognise and are grateful to you for your personal commitment to seeking to ensure positive and constructive relations, it is essential that we are similarly assured that delivery of the reforms we have described are a top priority for the incoming Prime Minister and Cabinet. It will not be possible to establish effective working relations without firm commitments to change the current dynamic.

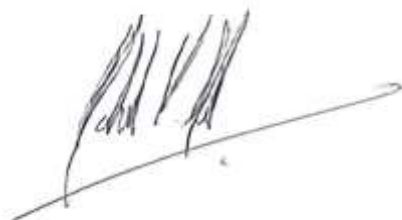
Delivering reforms which are capable of changing the current dynamic will require a shift of devolution culture and capability across the UK Government. We note reports that the current Prime Minister is to visit Scotland tomorrow to announce a review of the way UK Government departments approach devolution. We sincerely hope that the remit of any review will focus on the step change required within the UK Government, and will fully respect the boundaries of the devolution settlement.

Yours sincerely



Jeremy Miles AM

Y Cwnsler Cyffredinol a Gweinidog Brexit
Counsel General and Brexit Minister



Cabinet Secretary for Government Business and Constitutional Relations
Michael Russell MSP

Ein cyf/Our ref: MA-L/FM/0506/19 D4

Elin Jones AM
Llywydd
National Assembly for Wales

llywydd@assembly.wales

3 July 2019

Dear Elin,

International obligations which bind the UK

I am writing to seek the views of the Business Committee on the National Assembly's engagement with international obligations which bind the UK. This issue has recently arisen in the context of the UK's efforts to conclude bilateral agreements with other EU countries to secure reciprocal voting rights in local government elections. However, the issue is one which can be anticipated to arise often, should we leave the EU, and which has broader constitutional implications.

The UK Government alerted us to these negotiations rather late in the day, after an agreement with Spain had been agreed in principle.

From the standpoint of current policy, this is unproblematic: it aligns fully with the commitment of the Welsh Government and a large majority in the National Assembly to extend the franchise for local government and National Assembly elections to all foreign nationals as part of our aim to make Wales a welcoming nation. Moreover, it will require no specific action on the part of the Welsh Government and the National Assembly.

However, in concluding agreements which bind all parts of the UK to extend the franchise to nationals of certain other countries the UK Government is effectively constraining both legislative and executive competence of the devolved institutions in future, since a future National Assembly with a different political outlook would be unable to legislate to remove the franchise from such citizens.

In the specific case of these agreements, there is a mechanism by which these reciprocal voting rights treaties can be modified, and we have emphasised the need for a process to

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
YP.PrifWeinidog@llyw.cymru • ps.firstminister@gov.wales

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request the use of this mechanism to remove Wales from the agreement should a future Welsh Government or National Assembly adopt a different policy position from ours.

Nevertheless, the broader constitutional principle which is at play here will be relevant across all the international agreements the UK may seek to make in the future, both with the EU and with third countries more widely, which intersect with devolved competence.

We have emphasised to the UK Government that the Welsh Government must be fully engaged in the negotiation of such agreements in order to ensure that commitments are not made on our behalf without our agreement. Discussion on these points is ongoing, not least in the context of the Inter-Governmental Relations Review.

The UK Government has in any event already committed to initiating an exchange of Ministerial letters in all cases where proposed international agreements intersect with devolved competence in order to provide sufficient opportunity for the Welsh Government to signal any difficulties we might have with what is proposed. We have also emphasised the importance of ensuring we have an opportunity to engage with the Assembly in advance.

It is on this last point that I would particularly welcome views from the Assembly. I am keen that either before or during the exchange of Ministerial letters on international obligations which bind the UK, the Assembly and/or its committees have the opportunity to express a view. I am keen to work with you to establish a process or procedure for this.

I am copying this letter to the Chairs of the Equality, Local Government and Communities, the External Affairs and Additional Legislation, and the Constitutional and Legislative Affairs Committees, as well as to the Counsel General and Brexit Minister, the Minister for Finance and Trefnydd, and the Minister for International Relations and the Welsh Language.

Best wishes,

Mark

MARK DRAKEFORD