

Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:

Committee Room 4 – Tŷ Hywel

Meeting date: 12 February 2018

Meeting time: 15.00

For further information contact:

Gareth Williams

Committee Clerk

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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)–06–18 – Paper 1 – Statutory instruments with clear reports

Negative Resolution Instruments

2.1 SL(5)181 – The Accounts and Audit (Wales) (Amendment) Regulations 2018

2.2 SL(5)182 – The Tax Collection and Management (Reimbursement Arrangements) (Wales) Regulations 2018

3 Papers to note

3.1 The European Union (Withdrawal) Bill: Letter from the First Minister to the Secretary of State for Wales

(Pages 3 – 4)

CLA(5)–06–18 – Paper 2 – Letter from the First Minister to the Secretary of State for Wales

3.2 The European Union (Withdrawal) Bill: Letter from the Secretary of State for Wales to the Llywydd

(Pages 5 – 9)



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Cymru

National
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Wales

CLA(5)-06-18 – Paper 3 – Letter from the Secretary of State for Wales to the Llywydd, 16 January 2018

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

5 Progress on the EU (Withdrawal) Bill

(Pages 10 – 15)

CLA(5)-06-18 – Paper 4 – Progress on the EU (Withdrawal) Bill

6 The Powers in the EU (Withdrawal) Bill to make subordinate legislation: Draft Report

(Pages 16 – 46)

CLA(5)-06-18 – Paper 5 – Draft report

CLA(5)-06-18 – Paper 6 – Draft reply to Secretary of State for Wales

CLA(5)-06-18 – Paper 7 – Legal Advice

7 Public Health (Minimum Price for Alcohol) (Wales) Bill: Draft Report

(Pages 47 – 72)

CLA(5)-06-18 – Paper 8 – Draft report

CLA(5)-06-18 – Paper 9 – Legal Advice Note

Date of the next meeting

26 February 2018

Statutory Instruments with Clear Reports

Agenda Item 2

12 February 2018

SL(5)181 – The Accounts and Audit (Wales) (Amendment) Regulations 2018

Procedure: Negative

These Regulations are made under sections 39 and 58(2) of the Public Audit (Wales) Act 2004 (“the 2004 Act”) and amend the Accounts and Audit (Wales) Regulations 2014 (“the 2014 Regulations”).

The 2014 Regulations make provision with respect to the accounts and audit of local government bodies in Wales whose accounts are required to be audited in accordance with Part 2 of the 2004 Act.

The 2014 Regulations require larger relevant bodies to publish certain notices in local newspapers. These Regulations remove that requirement and replace it with a requirement to display a notice in at least one conspicuous place in the area of the body.

Regulation 4 removes the requirement for county or county borough councils to include in their statement of accounts, the accounts for pension funds administered in accordance with the Local Government Pension Scheme Regulations 2013.

The 2014 Regulations require local government bodies to prepare their statement of accounts by 30 June following the year to which the statement relates and to publish it by 30 September of that year. Regulations 5 and 8 change the timetable for local government bodies to prepare and publish their statement of accounts.

Parent Act: Public Audit (Wales) Act 2004

Date Made: 22 January 2018

Date Laid: 29 January 2018

Coming into force date: 1 April 2018



SL(5)182 – The Tax Collection and Management (Reimbursement Arrangements) (Wales) Regulations 2018

Procedure: Negative

These Regulations describe the provisions that must be included in reimbursement arrangements made by a person making a claim under section 63 (claim for relief of overpaid tax) of the Tax Collection and Management (Wales) Act 2016. In addition, regulation 6 describes the records that the claimant must keep relating to the reimbursement arrangements and regulation 8 makes provisions in respect of penalties (penalties relating to record-keeping and reimbursement arrangements).

Parent Act: Tax Collection Management (Wales) Act 2016

Date Made: 24 January 2018

Date Laid: 29 January 2018

Coming into force date: 1 April 2018



Ein cyf/Our ref: MA-L/FM/0044/18

Rt Hon Alun Cairns MP
Secretary of State for Wales
Gwydyr House
London
SW1A 2NP

5th February 2018

Dear Alun

I am writing in response to your letter of 16 January, in respect of the European Union (Withdrawal) Bill.

I was very disappointed that there were no agreed amendments to Clause 11 during Commons consideration, but I note your commitment to bring forward amendments in the House of Lords. It is of course essential that these amendments are agreed with the Welsh and Scottish Governments, and I know that discussions at official level are continuing.

I also note the Government amendments to clauses 7 and 10. I welcome the replacement of the requirement for consent of UK Ministers with a requirement for consultation in relation to the powers in clause 7, although I note that the same amendment has not been made in clauses 8 and 9, and I am not clear about the reasoning for the retention of these restrictions. (I am in any event aware of the House of Lords Constitution Committee's recommendation that clause 9 be omitted from the Bill). I also welcome the amendments enabling Welsh Ministers to modify directly applicable EU law in areas of devolved competence, although I also note they are based on an assumption that Clause 11 will continue in its current form, which will not be acceptable to the Welsh Government or to the Assembly; the official level discussions must produce a better solution.

I have considered the specific questions in your letter in respect of the Committee stage amendments of the Bill. In respect of the statutory requirement to produce explanatory material alongside SIs made under the relevant powers in Schedule 2 of the Bill, the information envisaged to be included in the statements is material that we would expect to provide in any event. I therefore have no strong view as to whether such a requirement should be placed on the face of the Bill; but I am aware that the Constitution Committee has made further recommendations about the content of supportive explanatory material. If the UK Government is minded to accept these, I will need to consider the Welsh position afresh. I would be grateful to be kept informed of your developing thinking in respect of that

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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.

recommendation, and in respect of the applicability of the requirements to SIs made under the joint procedure.

In respect of the requirement to submit negative resolution SIs to a 'sifting' committee, I consider that this is properly a matter for the National Assembly for Wales to determine, as is the applicability of this requirement to SIs made under the joint procedure.

In respect of the "made affirmative" procedure, our view is that in principle this should be available to Welsh Ministers and the Assembly, to match the flexibility available to UK Ministers.

Finally, our officials have also been discussing the correction of deficiencies in the Government of Wales Act 2006. I welcome the commitment to use Orders in Council to make correcting amendments which fall outside competence. I have considered the various means by which the small number of deficiencies which are within our competence might be corrected, and I believe the best solution in this case would be for the corrections to be made by the Withdrawal Bill. I have asked my officials to work with yours to develop the necessary amendments.

I am copying this to the Presiding Officer, the Chair of the Assembly's External Affairs and Additional Legislation Committee, the Chair of the Assembly's Constitutional and Legislative Affairs Committee and to the Chair of the Welsh Affairs Committee in Parliament.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Carwyn Jones', with a stylized, flowing script.

CARWYN JONES



Rt Hon Alun Cairns MP
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Presiding Officer
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16 January 2018

EUROPEAN UNION (WITHDRAWAL) BILL

Ahead of Commons Report stage for the European Union (Withdrawal) Bill today and tomorrow, I am writing to provide you with an update on amendments made to the Bill at Committee and to highlight amendments that the Government has tabled for Report stage consideration.

You will be aware of our continuing commitment to improve clause 11 of the Bill; whilst it has not been possible to bring forward an amendment at Commons Report, we have reaffirmed our commitment to amend this provision in the House of Lords and discussions continue between the UK Government and the devolved administrations to enable us to do so.

Committee stage amendments

As I noted in my letter of 10 December, amendments at Committee stage modified the scrutiny procedures for SIs made using powers in the Bill. The first of these amendments concerned the explanatory memoranda produced to accompany regulations made using powers under the Bill. It places requirements on UK Government Ministers to include information in those memoranda.

The second amendment modified Schedule 7 to require Ministers of the Crown to lay Statutory Instruments (which they are proposing to make under the negative procedure using the three principal powers in the Bill) before the Commons for consideration by a committee. You will also wish to note that the Government has tabled consequential amendments relating to these matters ahead of Report stage of the Bill.

These amendments do not place requirements on the Welsh Ministers and do not apply to the Assembly. Nonetheless I have asked my officials to discuss these provisions with yours to ascertain the Welsh Government's and the Assembly Commission's views on these and I understand that these conversations are

progressing well. I am interested in your views on whether these provisions should apply to Assembly scrutiny of Welsh Ministers' use of powers in the Bill. I attach a detailed list of questions that we have asked the Welsh Government at Annex A and would also welcome any views you may have.

Clause 10 amendments

We have listened to the arguments put forward by the Welsh Government and the Scottish Government on the powers in Clause 10 and have brought forward two amendments for Report stage.

The first amendment would change the requirement for the devolved administrations to seek the consent of the UK Government in exercising the deficiencies power to a consult requirement. This is in line with the amendment published by the Welsh and Scottish Governments. The second Government amendment would provide that, where a framework is not required in a given area, the devolved administrations should be able to use the powers in the Bill to correct deficiencies in direct retained EU law in that area.

We recognise the importance of working with the devolved administrations to ensure the Bill works for all parts of the UK and these amendments demonstrate our willingness to make improvements to it. We are also continuing discussions with the devolved administrations on how we can best manage the task of preparing the statute book for exit day. My colleagues and I continue to be grateful for the constructive engagement of the Welsh Government on these issues.

Clause 7 amendments

We have tabled amendments to Clause 7 to make absolutely clear the scope of the power in this clause given speculation on the ways it could be used. These amendments ensure the correcting power can still make all the changes required to deliver a functioning statute book.

We have tabled amendments which restrict the scope of the power to correct deficiencies in retained EU law by making the list of deficiencies in clause 7(2) exhaustive rather than illustrative. This means that the correcting power can be used only if deficiencies arise in the circumstances listed.

To ensure the scope of the power matches the range of deficiencies identified there are two further amendments:

- Firstly, a 'sweeper' provision to enable deficiencies similar to those listed to be treated in the same way as those listed.. For example, where 'Member States' public authorities' are referred to the 'sweeper' provision will mean that EEA-EFTA public authorities could also be included.
- Secondly, providing a power for UK Ministers to add to the deficiencies list through an SI requiring the approval of both Houses of Parliament.

These amendments do not place requirements on Welsh Ministers. However, they will apply to corrections made by Welsh Ministers using the powers conferred by Clause 10 and Schedule 2. I have asked my officials to discuss these provisions with yours.

This list of deficiencies applies across the UK. The UK Government believes it is important that there is consistency between jurisdictions in the UK, so any additional types of deficiencies would also apply to devolved ministers' powers. We would expect to consult with colleagues in the devolved administrations where we identify additional deficiencies before adding new types of deficiency as this would affect devolved ministers' powers.

The UK Government would consider closely any suggestions for additional categories of deficiencies from the devolved administrations. We would expect to accept any proposals the devolved administrations make to ensure devolved ministers are able to make the appropriate changes to prepare their laws for exit day.

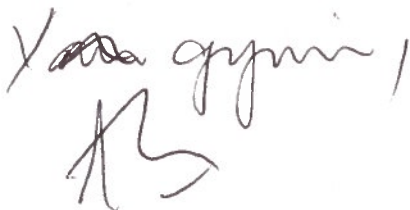
Rights of challenge based on the general principles of EU law

Throughout Committee Stage we listened carefully to the views of MPs across the House, including those who called for greater legal certainty as we leave the EU.

Therefore, we have brought forward amendments to clarify the position regarding rights of challenge under the general principles of EU law. These amendments will, in some cases, allow a legal challenge to be brought for up to three months after exit day on the basis of incompatibility with the general principles of EU law.

Any challenge must relate to a cause of action that occurred before exit day and may be made against either administrative action or domestic legislation other than Acts of Parliament. The effect of this amendment will allow courts, tribunals and other public authorities to disapply or quash the offending enactment or conduct.

I am writing in similar terms to the Presiding Officer and I am copying this letter to the Chair of the Assembly's External Affairs and Additional Legislation Committee, the Chair of the Assembly's Constitutional and Legislative Affairs Committee and to the Chair of the Welsh Affairs Committee in Parliament.



Rt Hon Alun Cairns MP
Secretary of State for Wales
Ysgrifennydd Gwladol Cymru

Annex A

The amendments described in the attached letter do not, largely, have any effects on the devolved administrations. If the devolved administrations would like similar provisions to be made for them in the Bill, this would be possible and the UK Government would expect to make these changes at committee stage in the House of Lords. We would therefore need your decisions in principle by Second Reading in the House of Lords to allow time to work up mutually acceptable drafting.

We expect the Bill to enter the House of Lords this week and Lords Second Reading is scheduled for 30 and 31 January, with committee stage likely to commence in mid-late February. This annex therefore sets out a list of questions that we believe need to be answered quickly in order to proceed with any amendments to bring the devolved administrations and devolved legislatures within the scope of the provisions. Officials in DExEU will be happy to further discuss any of these with your officials if that would be helpful to your decision making process.

Explanatory Material

- Would you like devolved authorities to be statutorily bound to produce explanatory material alongside SIs made under the relevant powers in schedule 2 of the Bill?

If so:

- Should this explanatory material relate to the changes being made by the SI?
- Should this explanatory material relate to the relevant equalities duties?
- Should this requirement only apply to SIs made under the powers in Schedule 2 parallel to those in clauses 7(1), 8 and 9?

Sifting

- Would you like devolved authorities to be required to submit negative SIs for a committee of the relevant legislature to consider the appropriateness of the negative procedure?

If so:

- Should this only apply to the SIs made under the powers in schedule 2 parallel to those in clauses 7(1), 8 and 9?
- Should the other provisions of relating to a sifting committee (e.g. timing, non-binding, remedies) parallel those applying in the UK House of Commons?

Joint procedure

- Currently the sifting procedure and the requirement to produce explanatory material do not apply to SIs made via the joint procedure - do you have any views on this approach?

Other outstanding technical matters

The “made affirmative” procedure

In the Bill as introduced we included a “made affirmative procedure” which could be used by UK ministers in certain urgent cases where there was not sufficient time to go through the normal draft affirmative procedure before the instrument needed to be in force (see paragraphs 4 and 13 of Schedule 7 to the Bill). This procedure would involve making an instrument which will cease to have effect one month after the instrument is made unless the instrument is debated and approved within one month of being made.

As this was an unusual legislative procedure we did not apply it to the powers conferred on any of the devolved administrations on introduction, but instead sought views from each administration on whether they thought the procedure would be useful and appropriate in the context of their legislature.

- Would you like the “made affirmative” procedure to be available for powers exercised by Scottish Ministers?

Defined terms and the Interpretation and Legislative Reform (Scotland) Act 2010:

In the Bill as introduced the only amendments we made to the defined terms in the Interpretation and Legislative Reform (Scotland) Act 2010 were to preserve the defined terms from the European Communities Act. However in the Interpretation Act 1978 we introduced several new defined terms related to withdrawal that the UK Government thought would be useful in relation to its future legislation - these include the following new terms added by para 11(e) of Schedule 8 of the EU (Withdrawal Bill):

- “retained EU law”
- “retained direct EU legislation”
- “retained EU obligation”
- “exit day”.

The Interpretation Act was also amended to alter the definition of “enactment” so that going forward its meaning would include retained direct EU legislation.

We did not include these in ILRA on introduction as we thought it was a matter for the Scottish Government as to whether these new definitions should be included and we wrote to offer to include any of these new definitions in ILRA if you thought it would be suitable to include them

- Would you like any of these new defined terms (or the new meaning of “enactment”) to be included in the amendments to ILRA?
- Are there any other issues relating to EU-exit and interpretation legislation that you think it would be useful to address in the European Union (Withdrawal) Bill?

Agenda Item 5

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

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Agenda Item 6

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