

Agenda – External Affairs and Additional Legislation Committee

Meeting Venue:

Committee Room 4 – Tŷ Hywel

Meeting date: 25 June 2018

Meeting time: 13.45

For further information contact:

Rhys Morgan

Committee Clerk

0300 200 6565

SeneddEAAL@assembly.wales

Private pre-meeting

(13.45–14.00)

1 Motion under Standing Order 17.22 to elect a Temporary Chair

(14.00–14.05)

2 Introductions, apologies, substitutions and declarations of interest

(14.05)

3 Hub Cymru Africa – evidence session

(14.05–15.05)

(Pages 1 – 43)

Cat Jones, Hub Cymru Africa

Aileen Burmeister, Fair Trade Wales

Kathrin Thomas, Wales for Africa Health Links Network

Fadhili Maghiya, Sub Sahara Advisory Panel

4 Papers to note

(15.05–15.10)

4.1 Paper to note 1 – Correspondence from Greg Hands MP, Minister of State for Trade Policy, regarding the implications of future trade policy – 11 June 2018

(Pages 44 – 45)

4.2 Paper to note 2 – Correspondence from the Llywydd to the First Minister regarding the EU (Withdrawal) Bill and environmental law – 14 June 2018

(Pages 46 – 47)



- 4.3 Paper to note 3 – Correspondence from Mick Antoniw, Chair of the Constitutional and Legislative Affairs Committee, to the Cabinet Secretary for Finance regarding the intergovernmental agreement on the EU (Withdrawal) Bill – 19 June 2018**
(Pages 48 – 49)
- 4.4 Paper to note 4 – Correspondence from the Cabinet Secretary for Finance to Mick Antoniw, Chair of the Constitutional and Legislative Affairs Committee, regarding the intergovernmental agreement on the EU (Withdrawal) Bill – 19 June 2018**
(Page 50)
- 4.5 Paper to note 5 – Correspondence from the Llywydd to Karl Heinz Lambertz, President European Committee of the Regions regarding the Committee of the Regions – 19 June 2018**
(Pages 51 – 52)
- 4.6 Paper to note 6 – Correspondence from the Cabinet Secretary for Finance regarding the inter-governmental agreement between the Welsh and UK governments – 19 June 2018**
(Pages 53 – 55)
- 4.7 Paper to note 7 – Correspondence from the Cabinet Secretary for Finance regarding the Brexit transition inquiry – 19 June 2018**
(Pages 56 – 59)
- 4.8 Paper to note 8 – Correspondence from Robin Walker MP, Parliamentary Under-Secretary for Exiting the EU, regarding the Brexit transition inquiry – 20 June 2018**
(Pages 60 – 62)
- 4.9 Paper to note 9 – Correspondence from the Cabinet Secretary for Economy to Angus MacNeil MP, Chair of the House of Commons Select Committee on International Trade, regarding UK trade strategy post Brexit – 21 June 2018**
(Pages 63 – 66)
- 5 Motion under Standing Order 17.42(vi) to resolve to exclude the public from the remainder of the meeting**
(15.10)

6 Hub Cymru Africa – consideration of evidence

(15.10–15.20)

7 Briefing on the European Union (Withdrawal) Bill

(15.20–15.30)

(Pages 67 – 78)

Document is Restricted

Document is Restricted

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

Document is Restricted

Document is Restricted

Agenda Item 4.1

Department for International Trade

Rt Hon Greg Hands MP

Department for International Trade
King Charles Street
Whitehall
London
SW1A 2AH

T +44 (0) 20 7215 5000
E enquiries@trade.gsi.gov.uk
W www.gov.uk

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

Our ref: MCDC2018/02651

E-mail: Rhys.Morgan2@assembly.wales

 June 2018

Dear David,

Thank you for your letter dated 16 May regarding the implications of future trade policy for Wales. I would be delighted to attend the meeting of the External Affairs and Additional Legislation Committee.

Firstly, let me assure you that we are committed to ensuring that the devolved administrations and legislatures have the opportunity to engage with and contribute to our trade policy.

We have established 14 Trade Working Groups across 21 countries, to explore the best ways of progressing our trade and investment relationships across the world. These working groups include engagement with the United States, the Andean Community (covers Peru, Colombia and Ecuador), Australia, Canada, China, the Gulf Cooperation Council (GCC – comprising Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the UAE), Israel, India, Japan, Mexico, New Zealand, Norway, Turkey and South Korea. In addition to seeking continuity for our existing EU trade agreements (where these are in place), these working groups also provide a forum to prepare for the negotiation of wholly new Free Trade Agreements (FTAs) with key partners as we leave the EU.

International relations is of course a reserved matter. That is why these working groups are delivered by the UK Government on behalf of the whole of the UK. Having said that, we are keen that the Devolved Administrations have a role supporting preparations for the negotiation of future trade agreements. It is precisely for this reason that my Department has established a programme of work with the Devolved Administrations to facilitate how your Government and the other Devolved Administrations can inform the development of an independent UK trade policy over the course of 2018, particularly where trade interacts with areas of devolved competence.

I welcome the opportunity to attend the External Affairs and Additional Legislation Committee to discuss this further. Given the Committee's role in examining the Trade Bill, I would also welcome the opportunity to discuss this Bill with the Committee in more detail. My officials will be in contact with the Committee clerks to make arrangements.

Yours,

A handwritten signature in blue ink, appearing to read 'Greg Hands', with a long horizontal stroke extending to the right.

RT HON GREG HANDS MP

Minister of State for Trade Policy
Department for International Trade

Rt Hon Carwyn Jones AM
First Minister of Wales
Welsh Government
Cardiff Bay
CF99 1NA

Your ref:
Our ref: EJ/CW

14 June 2018

Dear First Minister,

It has come to my attention that following Commons Consideration of Lords Amendments to the European Union (Withdrawal) Bill, the UK Government has backed an amendment in lieu (number 3A) relating to publishing a draft Bill preserving EU environmental law.

The amendment would appear to apply to the whole of the UK and to fall within the legislative competence of the Assembly. Therefore it would appear to be subject to the Sewel Convention and to the legislative consent procedure set out in Standing Order 29. If so, we would face the unprecedented situation of considering legislative consent as a Bill moves rapidly between the Houses of Parliament during its final legislative stage.

If Assembly consent is required before the House of Lords next sit on Monday afternoon, this would require the Assembly to be summoned at your request under Standing Order 12.3 and the suspension of the Standing Orders relating to notice of motions.

At its meeting on Tuesday, Business Committee discussed the potential for Legislative Consent Memoranda during ping pong, and agreed that the Assembly would do everything necessary to facilitate scrutiny of these if they materialise.

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

Given the potentially very tight timescales and the possibility that the Assembly would need to meet outside its usual Plenary times, I would be grateful if you could confirm as soon as possible whether or not you are intending to lay an LCM in respect of the amendment referred to above, so that I can keep Assembly Members informed.

I am copying this letter to the Chairs of the Constitutional and Legislative Affairs, External Affairs and Additional Legislation, and Climate Change, Environment and Rural Affairs Committees, and to Business Committee Members.

Yours sincerely,

Elin Jones AM
Llywydd

cc: Mick Antoniw AM, Committee Chair, Constitutional and Legislative Affairs
Committee
David Rees AM, Committee Chair, External Affairs and Additional Legislation
Committee
Mike Hedges AM, Committee Chair, Climate Change, Environment and Rural
Affairs Committee
Business Committee Members

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.



Agenda Item 4.4

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
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.

Back Page 50

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.



Mr Karl Heinz Lambertz
President
European Committee of the Regions
Rue Bellard
1040 Brussels
Belgium

Your ref:
Our ref: PO486/EJ/NM

19 June 2018

Dear Mr Lambertz

Thank you for your letter drawing my attention to the useful Resolution adopted by the Committee of the Regions on 16 and 17 May on the Implications of the United Kingdom's withdrawal from the European Union for the EU's local and regional authorities.

The conclusions reached in the resolution will, I am sure, be of great interest to Assembly Members and have been drawn to their attention. I particularly welcome the commitment the Committee made in the Resolution to begin internal preparations to ensure the maintenance of relationships between devolved legislatures and local governments in the UK and the Committee of the Regions following the UK's withdrawal.

I know that discussions on mechanisms to maintain these relationships have been on-going since March and warmly welcome the commitments made to date. You will know that the Assembly's External Affairs and Additional Legislation Committee is currently carrying out work to consider Wales' future relationship with the EU and its regions and I note that you will be meeting the Chair of this Committee to discuss the work further on 26 June 2018.

I remain concerned about the continued delays in the nomination and ratification of the Assembly's Committee of the Regions nominee, Mick Antoniw AM, by the UK Government. I note however, the personal commitment made by the UK

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

Government's Parliamentary Under-Secretary of State for Exiting the EU, Robin Walker MP, to the Assembly's External Affairs and Additional Committee to resolve the issue as a matter of priority. I hope that the Assembly will, in the near future, have a full member of the Committee to continue these important discussions on the future relationship between the Committee of the Regions and the National Assembly.

Yours sincerely

Elin Jones AM
Llywydd

cc David Rees AM, Chair, External Affairs and Additional Legislation Committee
Bethan Sayed AM, Committee of the Regions representative
Mick Antoniw AM, Committee of the Regions nominee

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



Llywodraeth Cymru
Welsh Government

Assembly Members

19 June 2018

Dear colleagues

As we reach the concluding stages of the EU Withdrawal Bill in the Houses of Parliament and ahead of the government debate on the second anniversary of the Brexit referendum in the National Assembly this week, I wanted to write to all Members to confirm the details of the Intergovernmental Agreement (IGA) the Welsh Government reached with the UK Government.

I also wanted to take this opportunity to address some continuing misunderstandings and correct some misleading statements made about the IGA.

The agreement confirms the inversion of Clause 11. The Bill as originally drafted would have retained all 'returning' EU powers over devolved policy areas at Westminster, with Ministers of the Crown able to release them to the devolved institutions to an extent and to a timescale which they alone determined.

Now, all powers over devolved policy areas are confirmed as remaining with the National Assembly. Moreover where the Assembly agrees that frameworks are required, a process has been established for these to be identified. When the EU law restriction ends, the devolved institutions will be able to exercise them without the current requirement to operate within EU frameworks. In these areas, our ability to exercise our devolved competence will increase.

No powers whatsoever have been withheld from the Assembly and none will be until the Assembly has had the opportunity to consider any draft regulations brought forward under the legislation.

The agreement sets out a collaborative process between the governments to identify where frameworks are needed and to develop these draft regulations which specify which EU powers will be 'frozen'. Moreover, it applies the Sewel convention to these secondary legislative powers – the National Assembly and the Scottish Parliament will be asked for their consent. The UK Government makes the same commitment not normally to proceed

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

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

Gohebiaeth.Mark.Drakeford@llyw.cymru
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.

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.

without this consent as currently applies to primary legislation, which touches on devolved policies.

The agreement contains further safeguards compared to Sewel – if the UK Government wishes to press on with making these regulations in the absence of consent, it has to present not just its own views but those of devolved Ministers about why their legislature has refused consent. And for the UK Government's view to prevail, both Houses of Parliament will need to agree.

The agreement puts onto the face of the Bill sunset clauses for the power to create regulations – two years from exit day – and any regulations made (a maximum of five years). After this date, all powers in devolved areas currently held by the EU will be exercised in Holyrood and Cardiff Bay. Any pooling of competence in areas where frameworks are to be agreed will therefore be temporary.

It gives an unequivocal guarantee that UK Ministers will not bring before Parliament any legislation relating to England to make changes to retained EU law in areas subject to regulations. This effectively establishes a level playing field across the UK – the effect of regulations will be to retain the current EU frameworks in operation across the whole UK until new frameworks are negotiated and agreed. This commitment will also provide a strong incentive to the UK Government to agree frameworks long before the five-year maximum term provided by the regulations.

Finally, there is an unequivocal statement in the agreement that the Sewel convention will apply to any UK Parliament primary legislation, which is used to put in place agreed UK-wide frameworks. This ensures there is no risk that the regulations will be used as the basis of arguing that as matters are temporarily beyond competence, Sewel does not apply.

I next want to set out clearly some of the things the agreement does not do:

- No powers have been given away– all powers currently exercised by the EU will come to Wales until such time as regulations are brought forward to put specific EU powers 'in the freezer' while frameworks are being developed. These regulations have not been drafted yet and they will come to the National Assembly to consider before they are laid in Parliament. The annex to the agreement lists areas within which regulations can be brought forward – in most cases, frameworks are likely to be needed in relatively narrow areas of current EU legislation within these areas;
- It does not allow the UK Government to do whatever it likes or to rewrite Welsh laws while things are 'in the freezer'. The only changes to retained EU law which can be made in these areas are narrow, technical ones needed to make the law operable after Brexit. The agreement means the UK cannot make changes to the current EU frameworks – even in respect of England – while things are in 'the freezer'. Frameworks will need to be negotiated and agreed between governments, and if they are not, at the end of the sunset period, the powers will come back to the National Assembly and it will be able to legislate as it sees fit;
- The sunset clauses do not mean the National Assembly will not be able to legislate in any of these devolved areas for seven or eight years. No such restrictions will exist until such time as they are agreed by the National Assembly. Where temporary restrictions are placed on competence, the agreement means no government – including the UK Government acting for England – can make any changes to the status quo. Nor can the sunset clause be extended by the Bill –it gives no such powers to Ministers, and to do so would need a new piece of primary legislation, to which Sewel would apply;

- Any restrictions placed on competence will only prevent us from legislating incompatibly with EU-retained law, exactly as we are prevented from legislating incompatibly with EU law now. Suggestions that these restrictions would have prevented us from passing such Acts as the Wellbeing of Future Generations Act are simply wrong. Such Acts were enacted within the constraints which have prevented us from legislating incompatibly with EU law since the National Assembly came into being;
- The agreement is not just a piece of paper which has no binding effect on the UK Government. It was painstakingly negotiated at a level of specific detail. It is a clear and unequivocal commitment from the UK Government and we have no reason to believe the UK Government will not adhere in full to the terms of the agreement. Our inter-governmental machinery is based on a Memorandum of Understanding, which has the same status, as does the fiscal framework.
- The agreement does not define consent as meaning the National Assembly has given a view, whether it is to give consent or refuse it. The reference to the 'consent decision' in the amendments is simply to allow action to be taken more quickly than the 40-day period envisaged, where all devolved legislatures have already expressed a view. The UK Government's commitment is not normally to lay regulations before Parliament without the consent of the National Assembly, not without a consent decision.

Finally, it has been suggested that it is a constitutional outrage that Parliament can just override the will of the National Assembly on devolved matters. However, this is the basis of the current constitutional settlement. The agreement gives additional safeguards to the way in which the Sewel convention operates.

I look forward to Tuesday's debate.

A handwritten signature in black ink that reads "Mark". The letters are cursive and slightly slanted to the right.

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

Agenda Item 4.7

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



Llywodraeth Cymru
Welsh Government

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

Dear David,

19 June 2018

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
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.

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.

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

Agenda Item 4.8


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
www.gov.uk

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

20th 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).

*Yours,
RW*

**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.



Angus MacNeil MP
Chair
House of Commons Select Committee on International Trade

21 June 2018

Dear Angus

I welcome the opportunity to give written evidence to your committee's inquiry into the appropriate level of transparency and scrutiny of UK trade strategy and negotiations post Brexit.

May I begin by stating that the Welsh Government believes it is imperative that the UK Government engages comprehensively and effectively with the devolved institutions on the development of trade policy, on mandates for specific trade negotiations and on the negotiations themselves to ensure the future UK trade relationships work in the interests of the whole of the UK. It is essential that there is fairness and transparency in how future trade agreements are reached

Wales is an outward-looking, globally trading nation and we have a significant interest in trade. Whilst we accept that international trade is a reserved matter, there are clearly devolved interests, such as agriculture, which intersect with UK trade policy and there are clear risks to Wales if the UK Government's future trade policy does not adequately represent the needs of Welsh industry. It is vital that Welsh Government is involved early in the process of negotiating any future free trade agreements so we can effectively share information and influence outcomes.

I must emphasise that underpinning all our answers to the specific questions you pose is the call for the establishment of a Council for Ministers, whose remit would include consultation on trade issues between the four administrations. In the meantime, and as an interim step pending the substantial reform of inter-governmental machinery we believe a Joint Ministerial Committee (JMC) on International Trade should be established to enable timely and comprehensive consultation on overall trade policy and individual trade negotiations.

In addressing the questions you raise, I would wish to stress that I am responding on behalf of the Welsh Government and do not presume to speak for the National Assembly as a legislature. I would anticipate that they would wish to respond separately

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

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

Gohebiaeth.Ken.Skates@llyw.cymru
Correspondence.Ken.Skates@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.

Turning now to your specific questions, our responses are:

1. Which documents pertaining to trade policy and negotiations should the Government make publicly available – and which should remain confidential?

Public interest in trade policy has increased in recent years. In developing trade policy for the UK going forward, the UK Government needs to ensure that it works with Devolved Administrations, consults with citizens and businesses and talks to civil society – ensuring that all stakeholders are included from the start.

We are supportive of the EU approach to transparency and would support a similar system being adopted in the UK. We propose the following:

- Publication of the negotiating mandate and any Impact Assessments that accompany the mandate.
- Publication of negotiating round reports – to keep the public up to date with progress.
- Publication of the negotiated agreement, without waiting for the full legal revision to be completed.

2. What level of access should Parliament and the devolved administrations and legislatures have to trade policy documents, including trade negotiation texts?

We have addressed above the issue of which documents should be publicly available.

Welsh Government fully understands that a certain level of confidentiality is necessary to protect the UK position in a negotiation, but our starting point is that there are well established protocols for sharing sensitive and confidential information between the UK Government and the Devolved Administrations on a privileged basis. We therefore believe that the UK Government should share with the Devolved Administrations trade policy documents and detailed updates on negotiations and on evolving negotiating strategy and tactics, especially insofar as they relate to areas of devolved competence. All parties need to work to build trust, allowing the sharing of documents in confidence. We propose the following mechanisms to help with this:

- The creation of a Joint Ministerial Committee on International Trade would be a big step to providing the governance structure needed to allow Ministers from the four administrations to work together to agree on priorities for trade negotiations, particularly in respect of areas of devolved competence.
- Supporting this forum with a Senior Officials level group would provide the forum for administrations to be able to openly share documents throughout the negotiations process.
- In areas of devolved competence Welsh Government should be part of the negotiations – whether that is ‘in the room’ or ‘in the room next door’.

3. How should the Government consult business and civil society groups on trade policy matters, including prospective and on-going trade negotiations?

Again we are supportive of the EU approach to consultation and would support a similar system being adopted in the UK. We propose the following:

- Formal consultation before the mandate is signed off and published – allowing stakeholders to comment on the mandate and impact assessments.

- Potentially, using the Joint Ministerial Committee on International Trade as a conduit for stakeholder consultation, particularly in respect of stakeholders in the devolved nations.
- A UK wide Advisory Group with representatives across businesses and civil society – ensuring that the UK Government has to take in to account the interests of stakeholders across the whole of the UK which would allow views on the mandate and negotiating round reports to feed back to negotiating teams.
- A stakeholder round table, including representation from the respective legislatures, in each of the four administrations, that feeds in to the Advisory Group – again allowing views on mandate and negotiating round reports to feed back to negotiating teams.

4. What role should Parliament and devolved administrations and legislatures have in drafting and/or approving the UK's negotiating mandate for trade negotiations?

A Joint Ministerial Committee on International Trade would provide the governance structure needed to allow Ministers from the four administrations to work together to agree a negotiating mandate for trade negotiations.

Despite trade being a reserved matter, trade has significant intersection with devolved powers in areas like environmental standards, economic development, agriculture and skills and qualifications. Hence decisions on the new trading relationships with the EU and wider world must be taken in close co-operation between the UK Government and Devolved Administrations in order to reflect the interests of the whole of the UK.

We would anticipate that the Welsh Government would be responsible for seeking the views of the National Assembly and informing the National Assembly of the representations it has made within the Joint Ministerial Committee on International Trade while respecting the confidentiality of matters under discussion.

5. What procedures should be in place for the UK Parliament and devolved administrations/legislatures to scrutinise trade agreements as they are being negotiated?

Again a Joint Ministerial Committee on International Trade and supporting Senior Officials Group would provide the governance structure needed to allow Ministers from the four administrations to scrutinise a negotiating mandate for trade negotiations in a strictly confidential way. We are also calling for Welsh Government officials to be part of the negotiations in areas of devolved competence.

We have also proposed that the UK adopts a European style remit to transparency and hence publishes negotiating round reports.

We would anticipate that the Welsh Government would formally consult the National Assembly (via appropriate Committees) on documents put into the public domain by the UK Government, notably the draft negotiating mandate and impact assessments in order to inform its input into inter-governmental discussions on trade issues.

6. What powers should Parliament and the devolved administrations and legislatures have over the ratification and implementing legislation of UK trade agreements?

We believe that any responsible UK Government would want to avoid major constitutional disputes over the implementation of trade agreements which might impact on, or require changes to policies within devolved competence. This is best achieved by early, full and meaningful consultation with the Devolved Administrations (and, through them, devolved legislatures) when agreeing – and, if necessary, departing from - negotiating mandates. A policy of inclusive policy development and ‘no surprises’ will ensure that trade agreements can be ratified and implemented without resorting to the legal powers which the UK Government currently possesses to force devolved institutions to comply with agreements which it has negotiated.

I look forward to reading the report of your inquiry in due course.

I am copying this letter to the Secretary of State for Wales, Alun Cairns; Cabinet Secretary for Economy, Jobs and Fair Work, Keith Brown MSP; The Minister for UK Negotiations on Scotland’s Place in Europe, Michael Russell MSP; David Sterling as Head of the Northern Ireland Civil Service as well as the Chairs of the External Affairs and Additional Legislation and the Economy, Infrastructure and Skills Committees of the National Assembly

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ken Skates', with a long, sweeping flourish above the name.

Ken Skates AC/AM

Ysgrifennydd y Cabinet dros yr Economi a Thrafnidiaeth
Cabinet Secretary for Economy and Transport

Document is Restricted