

Agenda – External Affairs and Additional Legislation Committee

Meeting Venue:

Committee Room 2 – Senedd

Meeting date: 3 June 2019

Meeting time: 13.30

For further information contact:

Alun Davidson

Committee Clerk

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Private pre-meeting (13.15–13.30)

- 1 Introductions, apologies, substitutions and declarations of interest**
(13.30)
 - 2 Scrutiny session with the Counsel General and Brexit Minister**
(13.30–14.30) (Pages 1 – 19)
Jeremy Miles AM, Counsel General and Brexit Minister
Simon Brindle, Welsh Government
Liz Lalley, Welsh Government
 - 3 Motion under Standing Order 17.42(vi) to resolve to exclude the public from items 4 and 7 of this meeting**
(14.30)
 - 4 Scrutiny session with the Counsel General and Brexit Minister – consideration of evidence**
(14.30–14.45)
-

Public meeting

- 5 Follow-up work on Brexit preparedness – evidence session 3**
(14.45–15.45) (Pages 20 – 26)
Andy Richardson, Food and Drink Wales
Ben Cottam, Federation of Small Businesses Wales



Cynulliad
Cenedlaethol
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National
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Wales

6 Paper(s) to note

(15.45–15.50)

- 6.1 Paper to note 1: Correspondence from Anthony Soars to the Chair regarding a new common charter for cooperation within and between these islands – 9 May 2019**

(Pages 27 – 31)

- 6.2 Paper to note 2: Correspondence from Mick Antoniw AM to Bruce Crawford MSP regarding legislating in devolved areas – 17 May 2019**

(Pages 32 – 37)

- 6.3 Paper to note 3: Correspondence from the First Minister to the Chair regarding fishing boats in Welsh waters – 23 May 2019**

(Pages 38 – 39)

- 6.4 Paper to note 4: Correspondence from Michael Gove MP to the Chair regarding forestry policy – 23 May 2019**

(Page 40)

- 6.5 Paper to note 5: Correspondence from Jeremy Miles AM to the Chair regarding revised frameworks analysis – 24 May 2019**

(Pages 41 – 47)

Private meeting

- 7 Follow-up work on Brexit preparedness – consideration of evidence**

(15.50–16.05)

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Agenda Item 5

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

Document is Restricted

Correspondence from Dr Anthony Soares, Centre for Cross Border Studies

Dear Mr Rees AM,

I am writing to you in your capacity as Chair of the External Affairs and Additional Legislation Committee to respectfully request an opportunity to appear before members of the Committee in order to inform them of the content and objectives of the New Common Charter for Cooperation Within and Between these Islands, and to seek the Committee's support.

The New Common Charter (attached) represents a grass-roots vision for cooperation between the island of Ireland and Great Britain, and between Northern Ireland and Ireland, and is the result of a process of intensive dialogue initiated in early 2015 involving community groups from all jurisdictions on these islands.

This work has been taken forward by the Centre for Cross Border Studies as part of its "Towards a New Common Chapter" project, and has involved Welsh organisations in its latter stages.

Those stages involve a process of engagement with political representatives and policy-makers across these islands, and begins today with an appearance before the Oireachtas Joint Committee on the Implementation of the Good Friday Agreement, which comes before Monday's appearance before the 58th Plenary Session of the British-Irish Parliamentary Assembly.

We would welcome, therefore, the opportunity to discuss with the Committee how the New Common Charter could become an important vehicle in repairing and sustaining North-South (Northern Ireland-Ireland) and East-West (island of Ireland-Great Britain) relations in whatever context we will be facing as a result of the UK's negotiations on its withdrawal from the European Union.

However, we would also hope to raise awareness of the vital need for political representatives to ensure appropriate structures and policies are in place to support ongoing cooperation between community organisations within and between these islands.

I would be grateful if you would kindly consider this request and inform me of the Committee's decision.

Kind regards,

Anthony

Dr Anthony Soares
Acting Director
Centre for Cross Border Studies

A New Common Charter

for cooperation within and between these islands

“An initiative to empower civic society to drive cross-border, North-South and East-West cooperation across these islands.”¹

Introduction

The vision for cooperation within and between these islands by grassroots community organisations we propose below was developed in the light of our critical engagement with what had been known as the “Common Chapter”. Following the 1998 Belfast/Good Friday Agreement, the devolved administration in Northern Ireland gave its approval to a section on cooperation with the Republic of Ireland in the *Northern Ireland Structural Funds Plan 2000-2006*. The same text was contained in the Republic of Ireland’s *National Development Plan 2000-2006* in a section on cooperation with Northern Ireland. This replicated text – the “Common Chapter” – set out the two Governments’ priorities for cooperation and how funds (particularly European Union funds) would be used to support it. It was understood that cross-border cooperation for the island of Ireland had three dimensions:

- cooperation along the border corridor and between Northern Ireland and the border counties of Ireland;
- North-South cooperation within the island of Ireland; and
- East-West cooperation between the island of Ireland and Great Britain, Europe and internationally.

Within the 2000-2006 period for which these plans were designed devolution in Northern Ireland was suspended, and following the restoration of the Northern Ireland Assembly in 2007 the Common Chapter was not revived.

What follows below, therefore, is the result of a sustained process of engagement by grassroots community organisations from Northern Ireland and the Republic of Ireland with the notion of cross-border, North-South, and East-West cooperation, and conversations with counterparts in England, Scotland and Wales. This has led to a vision of cooperation and what it should entail.

It comes about in recognition of the need for cross-border and cross-boundary cooperation to be independently valued and enacted at the grass-roots level, with people and

¹ This has been developed as a result of the “Towards a New Common Chapter” project, led by the Centre for Cross Border Studies (www.crossborder.ie), and generously funded by the Joseph Rowntree Charitable Trust, the Community Relations Council, and Ireland’s Department of Foreign Affairs and Trade’s Reconciliation Fund.

communities setting their own priorities and advocating for their inclusion in regional and local strategies. Without this engagement, it will continue to be hostage to the political environment and the time-limited pursuit of European funding, hampering the ability of cross-border and cross-boundary cooperation to contribute to the development of meaningful and productive relations among people and communities within and between these islands.

In a rapidly changing context, it is essential that community organisations are ready to contribute to the shaping of development plans at local and regional levels, and to identify and exploit possibilities for North-South and East-West cooperation that will be of benefit to them.

A New Common Charter

Recalling the “Common Chapter” on cross-border, North-South and East-West cooperation that existed in Ireland’s National Development Plan and Northern Ireland’s Structural Funds Plan, **we hereby propose a New Common Charter for Cooperation Within and Between these Islands** by grassroots community organisations that promotes social justice and equality, but do so:

- Acknowledging and respecting the differences that make these islands what they are, while also recognising and cherishing the relations between the people and communities that live in its different nations and regions;
- Recognising, valuing and accepting languages whose roots may cross the borders within and between our islands;
- Recognising that faith traditions are organised and followed by people and communities within and across these islands;
- Valuing the musical, literary and other artistic and cultural traditions and their expression that have spread across the world and whose development has been assisted through relations within and between these islands;
- Realising that whilst we can compete against each other, sport and sporting organisations also unite us within and between these islands; and
- Recognising that our islands are connected by family bonds that cross the borders that separate them.

We hereby propose a New Common Charter for Cooperation by grassroots community organisations within and between these islands which values how it can:

- Maintain and strengthen family ties and friendships that cross borders;
- Allow for the sharing of local resources and services across boundaries;
- Increase opportunities for the sharing between people and communities of information, knowledge of policy and best-practice within and across these islands;

- Widen our evidence-base to include what is happening across the borders that separate us;
- Improve policy-making by matching it to the realities on the ground and identifying cross-border opportunities to collaborate to solve shared problems or exploit common resources;
- Promote cross-border friendly relations between people and communities that give insight into the views of those from within and across these islands, and allow for difficult conversations to be had;
- Promote a civil society that values diversity and in which there is the ability to disagree respectfully;
- Facilitate the exploration and celebration of a community's culture and heritage with a view to future cooperation;
- Increase the protection and enjoyment of the environment;
- Encourage and develop community leadership;
- Contribute to our common safety and wellbeing;
- Explore economic opportunities;
- Discover and enhance tourism potentials;
- Exploit mutually beneficial links in education, including adult and community education, as well as higher education; and
- Engage with and support human rights, particularly for the most isolated and marginalised in our communities.

We believe that grass-roots community cooperation within and between these islands can usefully contribute to the following issues:

- Building inclusive communities;
- Capacity-building for community leadership in cooperation, especially for emerging leaders;
- Exploiting the potential of cross-border tourism, especially rural tourism, which includes not only the Northern Ireland-Ireland border, but also the Wales-England and Scotland-England borders;
- The exploration of histories and heritage that cross borders within and between these islands;
- Improving women's representation in decision-making structures;
- Promoting the need for affordable, accessible quality childcare and social care support;
- The promotion and support for gender equality proofing and gender budgeting;
- Advocating for the provision of affordable, accessible and regular transport services, especially in rural areas and border regions;

- Promoting the need to facilitate educational opportunities within and between these islands, including through the removal of any undue administrative and/or financial obstacles that may discourage the movement of learners across these islands;
- Advocating for the improvement of the value given to and the quality of vocational and non-university paths to careers; and
- Promotion and support for rural proofing and regionally balanced budgeting and resourcing.

We hereby commend this New Common Charter for Cooperation Within and Between these Islands, and call on community organisations, representative bodies and networks across these islands to indicate their support by undersigning it and promoting its contents.² We also call on political representatives across these islands to support and facilitate the achievement of this New Common Charter's objectives, ensuring that community organisations are encouraged and given the means to cooperate within and between these islands.

² To show your support for the New Common Charter, email Anthony Soares at the Centre for Cross Border Studies (a.soares@gub.ac.uk). Your organisation's name and logo will be added to the list of supporters appearing on the project website (<http://crossborder.ie/towards-a-new-common-chapter/>), and included in the network receiving updates on the New Common Charter's progress and work on the next steps.

Agenda Item 6.2

Bruce Crawford MSP
Convener
Finance and Constitution Committee
The Scottish Parliament

17 May 2019

Dear Bruce

Thank you for your letter of 26 March 2019 inviting our views on UK Ministers legislating in devolved areas as a consequence of UK Brexit legislation, and the scrutiny of international treaties and common frameworks.

Legislation

As regards legislation and the Legislative Consent Memorandum (LCM) process, while you will be familiar with some of the background, I think it would be helpful to set out the approach that has been adopted here and how it has developed.

Following the failure to reach an agreement on amendments to the Withdrawal Bill with the UK Government, the Welsh Government decided to introduce the Law Derived from the European Union (Wales) Bill, which was passed in March 2018. Along with the Scottish Government's UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill, it was referred to the Supreme Court for a ruling on legislative competence. However, in April 2018, the Welsh Government announced that it had come to an **Intergovernmental Agreement** with the UK Government on the Withdrawal Bill. As part of the agreement, both governments agreed that steps would be taken to repeal the Bill (once enacted) and that the reference to the Supreme Court would be withdrawn.

After the Legislative Consent Memorandum in relation to the Withdrawal Bill was debated and approved by the Assembly on 15 May 2018, the Secretary of State for Wales wrote to the Llywydd confirming that the reference to the Supreme Court would be withdrawn. As a result, the Bill proceeded to Royal Assent and became an Act on 6 June 2018. Following the procedure set out in the Act, the Act was



repealed on 22 November 2018 by the Law Derived from the European Union (Wales) Act 2018 (Repeal) Regulations 2018. The Committee's report on the Regulations noted:

"We note the significance of these Regulations and how the repeal would mean that important constitutional and legal matters (such as the continuation of EU-related Welsh law after exit and the powers of the Welsh Ministers to correct deficiencies in retained EU law) will be dealt with under the European Union (Withdrawal) Act 2018.

We also note that the repeal of the Act forms part of the Intergovernmental Agreement on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks."

The Intergovernmental Agreement between the UK and Welsh Governments provides that:

"The UK Government will be able to use powers under clauses 7, 8 and 9 to amend domestic legislation in devolved areas but, as part of this agreement, reiterates the commitment it has previously given that it will not normally do so without the agreement of the devolved administrations. In any event, the powers will not be used to enact new policy in devolved areas; the primary purpose of using such powers will be administrative efficiency."

Following on from our 2018 July report, **Scrutiny of regulations made under the European Union (Withdrawal) Act 2018: operational matters**, changes were made to the National Assembly's Standing Orders which included requirements for the Welsh Government to lay a written statement giving notification of any regulations made, or to be made, by a UK Minister acting alone within the legislative competence of the Assembly or the executive competence of the Welsh Ministers. As well as summarising the purpose of the regulations, the Welsh Government is required to explain its impact on the Assembly's legislative competence and why consent was given.

In addition, regulations by UK Ministers that amend primary legislation within the competence of the Assembly, trigger the Statutory Instrument Consent Memorandum (SICM) process.

In February 2019, we published a **progress report** on our scrutiny of regulations under the *European Union (Withdrawal) Act 2018* (the 2018 Act) and have **exchanged correspondence with the First Minister** about the concerns we



express in the report. In particular, we highlighted the Welsh Government giving consent to the UK Government making negative procedure regulations that restrict the legislative competence of the Assembly (albeit in narrow fields) without the Assembly having a role. In addition we expressed concern about the way in which the SICM process has been operating and recently exchanged correspondence with the Llywydd about our concerns.

Our Committee, along with others, such as the External Affairs and Additional Legislation (EAAL) Committee and Climate Change, Environment and Rural Affairs Committee, have reported on Legislative Consent Memoranda on Brexit Bills and expressed concerns about the approach adopted. For example, in our LCM report on the Agriculture Bill we said:

“In effect, the UK Parliament is delegating powers to the Welsh Ministers permitting them to act in devolved areas, despite not having been involved in the scrutiny of agriculture policy in Wales for almost a generation. In so doing, the National Assembly’s scrutiny function is being bypassed, a situation we find constitutionally unacceptable.”

In relation to the Trade Bill, the EAAL Committee concluded that:

“The legislative consent process does not allow for a nuanced interaction with the legislation under scrutiny. Rather, it offers a blunt and binary choice of granting consent for the provisions as drafted or rejecting them entirely.

Our consideration of the Trade Bill illustrates the often unsatisfactory balancing act that is required when considering questions of legislative consent.”

Overall, from our perspective, we believe that devolved legislatures should have a greater role in the scrutiny of UK legislation in devolved areas.

One particular issue that we believe needs to be addressed relates to how UK Bills in devolved areas is dealt with where issues of timing are an issue. Occasionally, debates on legislative consent motions take place without there having been time for a committee to scrutinise the accompanying legislative consent memorandum because of the constraints of time, often as a UK Bill approaches its final legislative stages.

Time constraints can also lead to other consequences. For example, in the Withdrawal Bill, the UK Government decided against making amendments to it in relation to Wales because of a lack of time to seek supplementary legislative



consent. The effect of this was to set out in legislation a small but constitutionally significant difference between the sifting process to be adopted in the Assembly and UK Parliament.

Our views feed into a wider issue regarding the extent to which the Sewel Convention retains any constitutional validity and whether it needs to be reviewed or alternatively replaced with new arrangements.

We are also becoming concerned at the extent to which agreements between the UK and Welsh Governments are being used to overcome situations where for example they cannot agree on whether matters are reserved or on amendments to UK Brexit legislation. Such agreements appear to have been entered into, or are in the process of being developed, in relation to the Bills on Agriculture and Fisheries, and the Healthcare (International Arrangements) (now the Healthcare (European Economic Area and Switzerland Arrangements) Act 2019).

To illustrate our concern, this is an extract from a recent Agriculture LCM. It covers the disagreement over whether clause 26 (WTO Agreement on Agriculture: regulations) of the Agriculture Bill (as introduced) requires consent:

“In summary, the clear onus is on seeking agreement. However, where that is not feasible there are strong mechanisms for the Welsh Ministers to exert their views. These arrangements will be codified in a Memorandum of Understanding and the Secretary of State will put this on record in a statement on the floor of the House of Commons. This is a good outcome providing a strong role and flexibility for the Welsh Ministers following extensive and highly collaborative working between Governments. It provides a valuable model which could be used in other areas where intergovernmental cooperation is needed and demonstrates both governments’ commitment to collaboration.”

International Treaties and Common Frameworks

As a result of our functions in relation to the scrutiny of subordinate legislation and also constitutional Bills introduced to the Assembly, we have not undertaken much work in this area but may look to do so later in the year.

That said, I think we will need to understand how the treaties and common frameworks will affect Wales. This will be particularly important as we have to legislate to implement obligations set out in treaties that are agreed at governmental level. Once a treaty is signed, Wales (and the rest of the UK) will have to comply with it and it will be too late to change the obligations it contains.



Alongside our work, the EAAL Committee has also been considering the implications for Wales of UK international agreements and UK trade policy more generally. In recent months, it developed a new procedure for the scrutiny of international agreements to handle the increase in the number of agreements being signed prior to the end of March 2019.

This new procedure centres on assessing whether UK international agreements engage devolved competence and whether they affect areas of devolved public policy. If initial assessments suggest that this is the case, the EAAL Committee takes a more detailed look at the agreements. Should issues of concern arise, it reports these to the Assembly and aims to draw them to the attention of the Welsh and UK Governments, and the committee counterparts in the other UK legislatures. Since the start of March 2019, the EAAL Committee has considered 26 agreements, reporting on six of them. It has also written to the UK Government with an initial view on the role of the Assembly in the development and scrutiny of international agreements.

As regards common frameworks, there is considerable uncertainty about the nature of both legislative and non-legislative frameworks, a point highlighted in recommendations we made in our LCM report on the Fisheries Bill.

Through Ministerial scrutiny sessions and correspondence, the EAAL Committee has also been pressing for greater transparency around the ongoing intergovernmental work to develop common UK policy frameworks, and for a more coherent programme of work to be communicated by governments.

It has considered the UK Government's recently published *Revised Frameworks Analysis* and is engaged in seeking a more detailed appraisal of the situation from the Welsh Government against each of the policy areas identified in the revised analysis.

Once further information is received from the Welsh Government, the EAAL Committee intends to develop a more detailed position on the scrutiny of non-legislative frameworks, in liaison with other Assembly committees.

We therefore believe there should be a much greater role for the devolved legislatures in scrutinising international treaties and common frameworks.

Conclusion

The issues you raise highlight the need for us to take a wider view on the impact of Brexit on the UK constitutional framework, which is likely to be put under considerable pressure over the next decade. We therefore welcome your letter, as



we believe that constructive collaboration between legislatures will be vital in helping to scrutinise and shape future constitutional arrangements and relationships. For that reason, we would welcome the opportunity to discuss these issues with you at an informal meeting between our committees.

Yours sincerely

A handwritten signature in black ink, reading 'Mick Antoniw', with a horizontal line underneath the name.

Mick Antoniw AM

Chair

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

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





Llywodraeth Cymru
Welsh Government

Dai Rees AM
Chair, External Affairs and Additional Affairs Committee
National Assembly for Wales
Cardiff

23 May 2019

Dear Dai,

I am writing in relation to a question from Mike Hedges AM at the External Affairs and Additional Legislation Committee on 29 April, I promised to provide a written response. The question was about control of fishing boats from other parts of Europe wishing to fish in British and Welsh waters.

The UK Fisheries Bill, when enacted, will revoke the automatic access of EU vessels to UK waters, reflecting new arrangements whereby access to British Fisheries will be negotiated through annual coastal state agreements.

The Bill will establish a licensing regime for non-UK vessels. Following our departure from the EU, vessels from coastal states with which the UK has an agreement and who wish to fish in the Welsh Zone (or wider UK Waters) will require an authorisation in the form of an annual licence. These will be issued by the Single Issuing Authority on behalf of Welsh Ministers and Fisheries Ministers from other UK administrations. At the point we are no longer bound by the Common Fisheries Policy, a new licensing system for foreign vessels will be launched and will provide us with greater control over the actions of foreign fishing vessels within Wales and the Welsh Zone than ever before.

Fishing opportunities in European waters (including UK waters) for 2019 were negotiated and agreed at the December 2018 EU Council meeting. Should we leave the EU during 2019, these opportunities (e.g. fish quota) are likely to continue to apply and EU vessels wishing to fish against these quotas in UK waters, would be able to do so subject to receiving a UK authorisation (licence). This will not lead to additional fishing opportunities in UK waters for EU vessels. Any continued fishing opportunities will be subject to annual coastal state negotiations between the UK and the EU. Third country vessels wishing to fish in UK waters and land into their home port would also need to meet increased controls before they are able to land their catch.

Bae Caerdydd • Cardiff Bay
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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.

While it is possible, moving Flag State is a difficult and expensive task, in part due to the restrictive nature of the UK licensing system. Any incoming vessel would need to purchase a UK license appropriate for their vessel, and the necessary fishing opportunities both of which are not readily available. Further, the vessel would then face the additional controls and possible tariff and non-tariff barriers facing UK registered fishing businesses exporting their catch to Europe.

Consequently, I would think it unlikely any European vessels would seek to base their operations in the UK as we leave the European Union.

I hope this information is helpful to the committee

I am also copying this letter to the Climate Change, Environment and Rural Affairs Committee as requested during the session.

Best wishes,
Mark

MARK DRAKEFORD

Agenda Item 6.4

Department for Environment Food & Rural Affairs

The Rt Hon Michael Gove MP
From the Secretary of State for Environment, Food
and Rural Affairs

Seacole Building
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David Rees AM
Chair of the External Affairs and
Additional Legislation Committee
Welsh Government
Cardiff Bay
Cardiff CF99 1NA

23rd May 2019

David Rees

Forestry Policy

Thank you for your letter of 9 May expressing the view of the External Affairs and Additional Legislation Committee that forestry policy is a devolved competence.

I note that this view is also specifically referring to the Explanatory Memorandum for the UK-Indonesia Voluntary Partnership Agreement on Forest Law Enforcement, Governance and Trade (FLEGT) in Timber Products (agreement CS Indonesia No.1/2019).

International forestry policy, in particular the FLEGT regime, is reserved. We recognise that domestic forestry policy is a devolved competence. The statement you refer to in the Explanatory Memorandum explains this division of responsibility using the phrase 'overall responsibility for UK forestry policy' to mean responsibility for UK's international forestry policy. I hope this clarifies any ambiguity.

With regard to your letter dated 12 March on fisheries policy, my officials will respond to you on this issue at a later date.

I am copying this letter to the Welsh Minister for Environment, Energy and Rural Affairs, the Chair of the Assembly's Climate Change, Environment and Rural Affairs Committee, and the Chair of the House of Lords EU Committee.

Thank you again for your letter.

With every good wish,

Yours

Mich

Michael Gove

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

Agenda Item 6.5



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA-P-CG-1216-19

David Rees AM
Chair
External Affairs and Additional Legislation Committee

24 May 2019

Dear David,

Thank you for your letter of 7 May and its annex. I attach responses to the questions you have raised.

I believe many of these issues were discussed during the Committee's technical briefing session with Welsh Government officials on 20 May. There has been strong progress in the Frameworks programme and in governance issues generally. Frameworks are the most advanced area of inter-governmental policy development for leaving the EU, but there remain some fundamental issues to be resolved before individual Frameworks can be subject to wider consultation and discussion and then brought to completion. In many cases, critical factors will be the terms on which we will be exiting the European Union and the extent to which we will be committed in the longer term to 'dynamic alignment' with the rules and regulations of the EU.

I look forward to speaking to the Committee on 3 June.

Yours sincerely,

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

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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.

Annex: Questions arising from consideration of the UK Government's Revised Frameworks Analysis

General

- 1. Can you please confirm that the Welsh Government is content with the analysis as published? For example, are you content that the policy areas have been framed appropriately?*

In April 2019 the UK Government released its revised analysis on the Framework areas. This put each policy area into one of four categories:

- those possibly needing a Framework underpinned by legislation;
- those requiring a non-legislative Framework;
- those needing no further action; and
- a fourth group which the UK Government considered to be reserved.

- 2. Does the categorisation of policy areas in the document reflect the Welsh Government's position in all cases?*

We broadly accept the allocations between these categories. We do not however agree with certain areas the UK Government classifies as reserved (see answer to Question 9). Two key areas – Agriculture and fisheries – are of such complexity and regulatory significance they have, from the beginning, been earmarked for legislation and related Bills are currently before Parliament. The UK Government has committed that new functions emerging from exiting the EU may eventually being covered by Frameworks as appropriate.

Policy areas where **no further action to create a common framework is required**

- 3. In relation to the 27 areas that intersect with Welsh devolved competence that have been identified as requiring no further action, can you please describe (for each area):*
 - how the Welsh Government arrived at its decision to agree that no further action is required;*
 - how cooperation between Governments will be managed in the future, in the absence of a framework; and*
 - the level of Welsh policy flexibility compared to that available under EU arrangements.*

Our approach in considering policy matters currently devolved but operating with the framework of EU law has been to preserve and expand the competence of the National Assembly in devolved areas wherever possible. Our default position has therefore been to assume that Frameworks are not necessary, except where there is a clear case that they are. In general terms, we therefore agree for the 27 areas no Frameworks are needed.

Where coordination with other UK administrations is regarded as potentially advantageous or necessary, we expect it to continue between officials on a day to day basis. The creation of Ministerial fora at a portfolio level also provides an additional platform for issues or information to be shared.

Policy areas where the UK Government thinks that common rules or ways of working will be needed and it expects to implement this through a non-legislative common framework agreement

4. *In relation to the 22 areas that intersect with Welsh devolved competence that have been identified as requiring non-legislative Frameworks, can you describe how the Welsh Government arrived at its decision in each of these areas?*
5. *Whilst we understand that you are currently unable to offer certainty on the forward programme for Common Frameworks, due to the situation in Westminster, are you able to give a broad indication of the likely timeframe for engagement on these Frameworks and whether there are certain areas that are being prioritised?*

We note that the revised Frameworks analysis document suggests that broader engagement will start 'from March 2019'.

The work programme for developing Common Frameworks has five phases.

The First phase (October 2017 - March 2018) focused on principles and proof of concept for a programme of joint work between the four UK administrations (Deep Dives) culminating in the UK Government publishing the first Common Frameworks Analysis in March 2018. This set out 153 areas where EU law intersected with devolved competence including:

- 24 areas where legislation may be needed in whole or in part;
- 82 areas where non-legislative Frameworks may be required; and
- 49 areas where no further action was identified.

Although the categorisation was established by the UK Government, the allocation was broadly seen as a useful basis for further work to clarify whether, in each policy area, the allocation is correct.

The second and current phase running from April 2018 has focused on clarifying the scope for each potential framework including whether a legislative or non-legislative approach is required, identifying relevant operational detail and looking at proposed governance arrangements.

Phase Two has also produced early thinking on the internal market, recognised a level of inter-dependency with the review of intergovernmental relations (IGR) and attempted to agree an approach on the Devolved Administrations involvement in trade negotiations

This work clearly demonstrates Common Frameworks form only one part of a much broader change which is needed in the way the governments of the United Kingdom work together. The Welsh Government document Brexit and Devolution (2017) makes a clear case for the sort of changes needed to strengthen the constitutional settlement: the need to build new working relationships between the national governments of the UK.

As explained in the recent technical briefing my officials gave the Committee, Phase 2 has taken longer because of the recent strong focus from all administrations to progress no deal preparations and the complexities of individual Frameworks areas. While no deal remains a possibility, this will continue to impact the long-term development of Common Frameworks.

Any engagement is likely to be undertaken in Phase 3 of the Frameworks programme which is intended to provide a period of review, consultation and more detailed policy development. It has been broken down into the following workstreams:

Workstream 1: Framework Development

- Policy teams to develop outputs in light of the further guidance on the UK internal market, governance and dispute resolution, and approach to Northern Ireland commissioned by JMC(EN);
- Explore in detail the interaction with the Future Economic Partnership and identify related timescales for implementation;
- Continue to explore further dependencies including the DA role in the negotiation of international obligations;
- Central teams and Ministers to consider the constitutional implications, consistency and compliance with the Frameworks principles of outputs as they are developed further;
- Further bilateral stakeholder engagement by individual administrations.

Workstream 2: Stakeholder Engagement

- Policy teams to test initial outputs through informal multilateral stakeholder engagement in specific policy areas without prejudice to Ministerial views and other stakeholder engagement as appropriate.

Workstream 3: Seeking Agreement

- Completed framework outlines submitted to policy Ministers and endorsed through relevant collective agreement processes and JMC(EN)

Phase 4 will cover preparation and implementation of final framework proposals. It includes:

- Collaborative work to prepare implementing legislation and non-legislative elements of individual Frameworks, including formal scrutiny of proposals
- Formal stakeholder consultation on proposals as appropriate;
- Take final framework proposals through primary legislation (where not already in train) and non-legislative mechanisms; and
- Communication of final Frameworks to stakeholders on a bilateral and multilateral basis as appropriate.

Phase 5 will comprise any post-implementation arrangements from December 2020 onwards. Final Frameworks themselves will go live, alongside any arrangements for review, ongoing operation and development.

6. Can you identify the policy areas where legislative action has occurred, or is planned, to make 'consistent fixes' to retained EU law? Where applicable to a policy area, please provide details of the legislation that has been used to make the 'consistent fixes' referred to.

It is not yet clear whether the Frameworks areas identified as potentially requiring legislation will in fact do so. It is expected that most of the Frameworks in these areas are likely to be underpinned by a Memorandum of Understanding or Concordat rather than legislation.

However, this will depend on key developments in the Brexit area, particularly the terms on which we exit the EU.

7. Can you provide an assessment of the level of Welsh policy flexibility compared to that available under current EU policy frameworks?

We continue to work with the UK Administrations on ensuring policy flexibility under a Frameworks regime and in many cases, depending on the UK's ongoing relationship to the EU's legislative and regulatory framework, the policy discretion of the Devolved Administrations will increase.

The October 2017 JMC EN principles on which the Frameworks programme is based states:

'Frameworks will respect the devolution settlements and the democratic accountability of the devolved legislatures, and will therefore:

- be based on established conventions and practices, including that the competence of the devolved institutions will not normally be adjusted without their consent;
- maintain, as a minimum, equivalent flexibility for tailoring policies to the specific needs of each territory as is afforded by current EU rules;
- lead to a significant increase in decision-making powers for the devolved administrations'.

Policy areas where future legislation may be needed

8. In relation to the 21 areas that intersect with Welsh devolved competence that have been identified as requiring legislation, can you please (for each of these areas):

- describe how the Welsh Government arrived at its decision to agree the need to legislate;*
- identify any legislative actions that have been taken to date to prepare for the establishment of legislative Frameworks e.g. through EU Exit statutory instruments, UK Bills or other legislative means;*
- provide details of any future legislative means that have been identified for the establishment of legislative Frameworks e.g. future Assembly Bills, UK Bills, or other legislative means; and*
- an assessment of the level of Welsh policy flexibility compared to that available under current EU policy Frameworks.*

Please see answer to question 6.

Policy areas that the UK Government believes are reserved

9. What is your position on legislative competence in relation to the policy areas listed on page 40 of the Revised Frameworks Analysis?

We do not believe State Aid or Food Geographical Indications are reserved areas. The discussion on these points is ongoing with the UK Government. We agreed that these are matters where there is a strong case for a common UK approach but this does not mean that it is conceded that these areas are reserved. Rather, collaborative arrangements should be established to facilitate the development and implementation of that common approach.

Crosscutting issues

10. What progress has been made to develop:

- governance arrangements for future Frameworks, including decision making and dispute resolution mechanisms;*
- a shared understanding of the UK internal market, including underpinning principles and governance structures which could be applied;*
- an understanding of the intersection between the work on Frameworks with EU negotiations, involvement in future free trade agreements, and international obligations; and*
- the evidence base to underpin the need for Frameworks.*

Each Common Framework area will require clear, robust governance structures between the four UK administrations which include effective decision-making arrangements, dispute resolution procedures, and a review and updating mechanism. This will be implemented through a three tier governance structure:

- Policy level coordination (official level) and oversight of specific policy and technical matters.
- Portfolio level (official and Ministerial level) where individual framework areas closely interrelate at a departmental level and require political oversight.
- Cross-government plenary level (Ministerial) oversight of intergovernmental issues.

Within the Environment, Energy and Rural Affairs portfolio, where the majority of Common Framework areas reside, we have already formally established an Inter-Ministerial Group between the Devolved Administrations and Defra. This group will oversee the development of governance arrangements and consider other portfolio-wide matters including the development of a UK wide position for further international and EU discussions.

We are seeking to progress similar arrangements in other portfolio areas, to formalise and increase the range and frequency of ministerial quadrilaterals and wider inter-ministerial discussions to deal with the implications of Brexit, including oversight of frameworks and other inter-governmental relationships.

At the cross-government level, the current JMC system needs strengthening so it is capable of decision making on substantive inter-governmental matters. The Inter-Governmental Relations Review is underway but progressing slowly with this matter due to be discussed at the next JMC (EN).

Economic regulation in devolved areas has to date been made in the context of EU membership. Brexit raises the question of the need and objectives of economic cooperation and coordination across the UK after exiting the EU, the link between domestic economic policies and the UK-EU negotiations on the future economic partnership, and the governance required to enable this.

The discussion on the meaningfulness and implications of the concept of a UK 'internal market' is also relevant in the context of trying to secure Welsh interests in UK-wide economic policy matters and the interaction between devolved and non-devolved policy.

The proposed Ministerial Quadrilateral on Business and Industry is an important step in moving towards a coherent cross-UK discussion of national economic objectives.

Although the process is being managed through clear and agreed project management disciplines, in reality the development of Frameworks is emerging as a complex ongoing intergovernmental process with significant impacts and dependencies. These include EU negotiations, involvement in future free trade agreements, and international obligations as well as the developing Ministerial Quadrilateral groups and the Internal Market.

Relationships and commitment to the process across the four UK governments remains clear, and we are working together to ensure our engagement with external stakeholders is proactive and coordinated.

In terms of the evidence base for the necessity of a particular framework, Ministers will only enter into a framework – through Legislation, a Memorandum of Understanding or Concordat, or other means - if it can be demonstrated that they are necessary in order to secure Welsh interests.

Scrutiny

We are currently considering a possible model for Assembly scrutiny of Frameworks, and hope to consult on this soon.

11. In the meantime, what discussions have taken place within the Welsh Government, and with the other governments in the UK, about how intergovernmental work on legislative and non-legislative Frameworks can be opened for scrutiny by the UK's legislatures?

As part of the phased work programme for the development of Common Frameworks, we will continue to work with the other three UK Administrations through the Frameworks Project Board to consider the appropriate time and approach for legislatures to have the opportunity to scrutinise this work. The Board is due to report to the JMC (EN) before summer recess on key issues in the Frameworks programme.