



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

9 December 2019

Dear David,

Thank you for your letter of 7 October enclosing your discussion paper on Assembly scrutiny of international agreements. I am sorry for the delay in replying, but I thought it important that before doing so I gave due consideration to your paper in the light of our work on the Withdrawal Agreement Bill and related matters.

I read the paper with interest and am grateful for the consideration you have been giving to this matter.

The Welsh Government set out detailed proposals for a robust approach to scrutiny of UK-EU negotiations, with a strong role for the Assembly, in the draft clauses for the Withdrawal Agreement Bill which we published on 11 March. The clauses can be found at: <https://gov.wales/sites/default/files/inline-documents/2019-03/draft-clauses.pdf>. These clauses have wider relevance beyond the specific context of negotiations with the EU.

I am pleased that the proposals set out in your discussion paper chime with our views. As you identify, your approach will rely on the UK Government ensuring that the Welsh Government has a meaningful role in the process. This remains the subject of intergovernmental discussion. We will need to revisit the detail of your proposals once the position is clearer, to ensure that any scrutiny arrangements that are put in place reflect how the negotiations process will work in practice. For example, it is our understanding that the “deviation from the mandate that might emerge during negotiations” to which you refer should not be possible in practice – a change in the mandate generally needs Ministerial agreement and this largely takes place in between negotiating rounds.

I note that you propose that Assembly consent should be required at two stages in the process: agreement of a negotiating mandate, and ratification. Whilst we are keen to facilitate Assembly scrutiny throughout the process, we are concerned that requiring Assembly consent would blur the roles of the legislatures and the executives involved and would not reflect the constitutional settlement.

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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.

It is for the executive branch of government, in light of views expressed by the relevant legislature, to agree negotiating mandates, and to be held to account for those. Furthermore, even fully federal constitutions do not give governments below federal level a veto over trade agreements. Doing so would of course make the role of the federal government in conducting international negotiations unworkable.

I am nevertheless firmly of the opinion that the Assembly's views should be taken into account before the agreement of a treaty which impacts on Wales, especially where the agreement covers policy areas within the Assembly's legislative competence. It is therefore imperative that the Assembly should receive information relating to international agreements which cover policy areas within devolved competence, and/or affect Wales, at the same time as the UK Parliament.

However, I do not consider that acceding to international agreements would adjust the devolved competence of the Assembly. Therefore the application of a consent convention, similar to the Sewel convention which the paper envisages under option 1, would not necessarily fit with the constitutional position in respect of international agreements. The Sewel convention applies where the UK Parliament is performing a function that the Assembly could also perform or where the UK Parliament is modifying the Assembly's legislative competence. Ratifying international agreements does not fit into either of those categories.

Under our current constitutional arrangements the conduct of international relations is a matter for the executive. This is true of the UK and also Wales. The Sewel convention, which is a convention between legislatures, is therefore not directly relevant to the conduct of such relations. Where there is domestic implementing legislation needed pre-ratification then the Assembly will play a key role, either by scrutinising and passing legislation to implement any obligations in relation to Wales, or giving consent to an UK Bill which implements the international agreement for the entire of the UK, where that Bill contains provision within the legislative competence of the Assembly or modifies the legislative competence of the Assembly.

I hope that these observations are helpful and I look forward to continuing engagement with you on this matter.

I am copying this letter to the Counsel General and Brexit Minister, and to the Chair of the Constitutional and Legislative Affairs Committee.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'M. E. Morgan', with a long horizontal flourish extending to the right.

Eluned Morgan AC/AM

Gweinidog y Gymraeg a Chysylltiadau Rhyngwladol
Minister for International Relations and the Welsh Language