-----------------------Pecyn dogfennau cyhoeddus -----------------------

Agenda - Y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol

Lleoliad:	I gael rhagor o wybodaeth cysylltwch a:
Ystafell Bwyllgora 2 - Y Senedd	**Alun Davidson**
Dyddiad: Dydd Llun, 2 Rhagfyr 2019	Clerc y Pwyllgor
Amser: 14.00	0300 200 6565
	SeneddMADY@cynulliad.cymru

1 Cyflwyniad, ymddiheuriadau, dirprwyon a datgan buddiannau

(14.00)

2 Papurau i'w nodi

(14.00-14.05)

2.1 Papur i'w nodi 1: Tystiolaeth ysgrifenedig gan Dr Jack Simson Caird mewn perthynas â chraffu ar fframweithiau polisi cyffredin y DU gyfan a chraffu ar gytundebau rhyngwladol

(Tudalennau 1 - 3)

2.2 Papur i'w nodi 2: Papur ar gytundebau rhyngwladol gan Ricardo Pierera

(Tudalennau 4 - 9)

2.3 Papur i'w nodi 3: Ymateb gan y Cwnsler Cyffredinol a'r Gweinidog Brexit i'r Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol ynghylch y newid yng nghyfansoddiad Cymru - 27 Tachwedd 2019

(Tudalennau 10 - 13)

3 Cynnig o dan Reol Sefydlog 17.42(vi) a (ix) i benderfynu gwahardd y cyhoedd o weddill y cyfarfod

(14.05)

4 Craffu ar fframweithiau polisi cyffredin - trafod yr adroddiad drafft

(14.05-14.25) (Tudalennau 14 - 36)

Cynulliad Cenedlaethol Cymru | National Assembly for Wales

5 Craffu ar gytundebau rhyngwladol – trafod yr adroddiad drafft

(14.25–14.45) (Tudalennau 37 – 52)

6 Gwaith dilynol ar barodrwydd ar gyfer Brexit – trafod gohebiaeth at y Cwnsler Cyffredinol a'r Gweinidog Brexit

(14.45–15.05) (Tudalennau 53 – 59)

7 Strategaeth ryngwladol ddrafft Llywodraeth Cymru – trafod yr adroddiad drafft

(15.05–15.25) (Tudalennau 60 – 74)

8 Blaenraglen waith

(15.25–15.40) (Tudalennau 75 – 78)

Written evidence to the External Affairs and Additional Legislation Committee of the National Assembly for Wales

Dr Jack Simson Caird – Bingham Centre for the Rule of Law

1. I am writing in relation to the Committee's inquiries on *UK-wide common policy frameworks: scrutiny of non-legislative framework agreements* and *international agreements: a suggested approach to engagement and scrutiny*. In this submission I make a number of observations based my experience of analysing the Brexit process in the UK Parliament.

2. In order to scrutinise both non-legislative framework agreements and international agreements – it is vital that the National Assembly Wales develops bespoke procedures which are designed to address the specific challenges associated with each form of agreement. The major challenge is respect of both is that these are both new challenges for the National Assembly for Wales and there is limited experience to draw upon and so that makes it vital to engage with the experience of equivalent legislatures in other countries when devising the relevant procedures.

3. If Assembly Members are to influence the executive's approach to negotiations on both non-legislative framework agreements and international agreements, the National Assembly Wales' scrutiny structures must be in place well in advance of the relevant negotiations beginning.

4. Just as in the legislative process, the primary moment for substantive influence for Assembly Members is before the Executive's negotiating position has been finalised and anything has been formally presented. As a result, the scrutiny framework should ensure that it grants opportunities for the executive's position to be analysed well in advance of the relevant negotiations starting. The structure should ensure that there are opportunities for scrutiny and formal consent: before formal negotiations have begun, during the negotiations and after the negotiations have concluded and the final agreement has been published. The experience of the meaningful vote veto in the House of Commons highlights the value of having a scrutiny structure which front-loads the process so that it can established whether there is a majority on the executive's negotiating position at the early stages of the process.

5. For each of the different phases of the process, there is a difficult balance to be struck between formal veto powers for the legislature, for example for Assembly Members to approve or reject the executive's negotiating mandate, and informal scrutiny processes such as regular scrutiny sessions with the relevant minister. In my view, in both the contexts of scrutiny of non-legislative framework agreements and international agreements, it is vital that the National Assembly for Wales is granted formal veto powers in order to ensure that informal scrutiny mechanisms are effective. There are at least three formal veto powers that should be considered: a scrutiny reserve for relevant committees to clear the positions of the executive on negotiations on matters within their remit; a formal power for the National Assembly to approve or reject the executive's negotiating mandate; and a power to approve or reject any agreement after it has been concluded but before it has been formally adopted or ratified.

6. There will be understandable reluctance from the executive to agree to grant the National Assembly any of these legally binding veto powers. However, it should be stressed that if

these veto powers are built around a scrutiny framework which facilitates early engagement and consensus building, then some of these concerns can be assuaged. In fact it may be in the executive's interest to grant these veto powers to ensure that Assembly Members are engaged in the relevant negotiations and are then committed to the process of legislative implementation, which they are almost certainly going to be required to participate in.

7. The National Assembly for Wales will need legally binding veto powers in relation to some of the executive's positions on both non-legislative framework agreements and international agreements because otherwise it is unlikely that the informal scrutiny structures described in the committee's briefing documents will be effective. Written and oral questioning of ministers in relation to both non-legislative framework agreements and international agreements will be much more effective if the executive knows it is reliant on the consent of the National Assembly or a committee of the National Assembly in order to deliver its preferred outcome in the relevant negotiations.

8. Legally binding vetoes are particular important for incentivising the executive to share information that can enable effective parliamentary scrutiny. In the absence of a legally binding veto, there is little incentive for the executive to share detailed information on its position at the early stages of negotiations. As part of any scrutiny framework, it is important that the National Assembly for Wales secures particular rights to be granted information in relation to the negotiations on both non-legislative framework agreements and international agreements. The European Parliament's right, set out in Article 218(10) of the TEFU that it 'shall be immediately and fully informed at all stages of the procedure' on negotiations agreements with non-Member States, is an example that the National Assembly could seek to replicate. That treaty right reflects the fact that there is political agreement within the EU that it is important the European Parliament is engaged in, and consents to, any agreement negotiated by the European Commission.

9. A broadly-framed right to be informed would be a good starting pointing for negotiating a detailed, and non-legally binding, framework to govern how and when the executive shares information with the National Assembly and its committees.[1] I would argue that such a framework is a necessary pre-condition for committees to efficiently organise and arrange effective subject-based inquiries that can inform and supervise the negotiations. As part of this framework, the National Assembly should specific exactly how the explanatory material it requests from the executive, should be presented and what issues it should address. To do this I would suggest that National Assembly agrees a list of standards which must be addressed by the relevant explanatory material.[2] For example, in the context of non-legislative frameworks, it may be important that any explanatory material specifies in detail

[1] I discussed the role of such a framework in the context of Westminster here: Oral evidence to the Liaison Committee's inquiry on the effectiveness and influence of the select committee system inquiry 8 May 2019; written evidence on the effectiveness and influence of the select committee system inquiry: scrutinising Brexit to the Liaison Committee 1 May 2019.

[2] For examples of the standards that could be specified and the debate around standards see: 'The Constitutional Standards of the House of Lords Select Committee on the Constitution' Constitution Unit University College London (Third Edition) (2017) (with R Hazell and D Oliver); 'Public legal information and law-making in Parliament' in A Horne and G Drewry (eds) Parliament and the Law (2nd edition) (Oxford: Hart 2018); 'Parliament's Constitutional Standards' in A Horne and A Le Sueur (eds) Parliament: Legislation and Accountability (Oxford: Hart 2016) (with D Oliver).

the extent to which the frameworks will rely on legislation which is already in place and whether they will require legislation to be enacted in order to be effective.

10. Delegated powers to make secondary legislation are central to how Brexit is being managed and implemented by the UK Government.[3] There are already a number of broadly framed powers on the statute book to legislate in areas formerly covered by the EU's competences. If the Withdrawal Agreement is ratified and a Future Relationship treaty is negotiated, the number of delegated powers in these areas is likely to increase through implementing legislation. The difficulties this presents for parliamentary scrutiny are well-established, however, the problems are particularly acute in the context of the role of the devolved legislatures in implementing non-legislative framework agreements and international agreements. It is a major technical challenge to analyse the substance of delegated legislation and evaluate its implications for non-legislative framework agreements, international agreements and how they relate to devolved competences. This sort of work is resource intensive and low-reward in the sense that by the time the secondary legislation has been proposed there is almost no chance to influence the policy to which they relate. The net result is that it is vital that the National Assembly, in relation to both non-legislative framework agreements and international agreements, focuses on acquiring powers that can ensure meaningful scrutiny at the early stages of the process where they can have meaningful input.

[3] I have covered this issue in the Westminster context here: Written evidence to the House of Commons EU Scrutiny Committee – on Post Brexit Parliamentary Scrutiny 30 August 2019; Oral evidence to the House of Commons EU Scrutiny Committee – on Post Brexit Parliamentary Scrutiny 4 September 2019.

Eitem 2.2

UK-South Korea free trade agreement

Research carried out by: Dr. Ricardo Pereira, Senior Lecturer in Law, Cardiff University, Law School, under the Brexit Research Framework Agreement

Introduction

The 2011 EU-Korea Free Trade Agreement (FTA) is a post-Lisbon free trade agreement and covers most substantive areas of the EU common external commercial competencies such as trade in goods, services and IP rights. The agreement was provisionally applied from 1st July 2011 and came fully into force on 13th December 2015 following formal ratification. In 2019 the UK government has negotiated a FTA with the South Korean government to give continuity to the existing trade relations between the two countries post-Brexit.

Changes introduced to the 2019 UK-South Korea free trade agreement

There are some notable differences between the 2011 EU-South Korean FTA and the 2019 UK-South Korea FTA, although many of the provisions concerning the elimination of tariffs and non-tariff barriers remain unchanged.

The most significant changes relate to technical and transitional legal matters aimed at ensuring a smooth transition between a EU-wide trade regime to a UK-Korea bilateral trade regime.[1] This includes modifications introduced to the UK-South Korea FTA aimed at:

- removing and replacing references to the 'European Union' to reflect the fact that is no longer a party;[2]
- changing the territorial application of the agreement;[3]
- modifying to the composition of the institutions and committees established under the EU-Korea FTA. This was done to reflect the fact that that agreement will no longer apply to the UK post-Brexit;[4]

[1] See further, Department for International Trade, *Continuing the United Kingdom's Trade Relationship with the Republic of Korea Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Korea,* September 2019, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/830134/UK-South_Korea_trade_agreement.pdf (accessed 1 November 2019)

[2] Ibid, para. 39.

[3] See Article 15.15 of the 2019 UK-Korea FTA (Korea

[4] Department for International Trade, note 1 above, para. 44. For example Article 15.2 of the UK- Korea Free Trade Agreement removes reference to the Joint Customs Cooperation Committee established under the Customs Agreement between the EU and Korea No. 1 (2019), London 22 August 2019 (consolidated version), available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/831988/UK_Korea_Free_Trade_Agreement_v1.pt1.pdf (accessed 1 November 2019).

- addressing amendment clauses and subsequent negotiations to be carried out by Trade Committee created by the agreement;[5]
- governing the entry into force and provisional application of the agreement in the event that the EU-Korea FTA ceases to apply to the UK after Brexit;[6]
- removing references to EU legislation that will cease to apply to the UK post Brexit;[7]
- inserting a review clause establishing that both Korea and the UK will commence a subsequent negotiation to build on this agreement no later than two years following the date of entry into force of this agreement.[8]

There were other significant substantive changes to the scope of the agreement as regards Tariff Rate Quotas ('TRQs'), Rules of Origin ('RO'), Technical Barriers to Trade ('TBT'), Intellectual Property ('IP') (including geographical indication); and government procurement concerning the operation of WTO's Government Procurement Agreement ('GPA').

TRQs allow a certain quantity of a product to enter the market at a zero or reduced tariff rate.[9] To reflect the fact that the UK is a smaller importer and exporter than the EU28, TRQs administered by the UK and by FTA partners in 'continuity agreements' have been re-sized. The UK and Korean governments have agreed to set quotas to a sufficient level aimed at providing for continuity of almost all historical trade flows from UK exporters.

As regards rules of origin, as one of the EU member states all UK content is currently considered as "originating" in the EU and UK exports are designated as "EU origin." After Brexit goods originating in the UK will no longer be of 'EU origin. To address these implications and to provide maximum continuity for business, it has been agreed in the UK-Korea Free Trade Agreement that EU materials and processing can be recognised (i.e. cumulated) in UK and Korea exports to one another for 3 years after entry into force.[10] However, after the first 3 years the UK would need to reach an agreement with South Korea in order to maintain existing tariff-free access for UK goods with significant EU components.[11]

Although changes to the TBT provisions brought under the UK-Korea FTA have been limited to non-substantive technical changes with no trade impact, the UK Government added a side minute stating that the UK intends for a limited time to continue to accept Korean goods that meet EU regulatory requirements.[12] This is an interesting development given that UK government's official position is that it

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[5] See Article 15.5.2 of the UK-Kora FTA. See also, ibid para. 46

[6] See Department for International Trade, note 1, paras. 47 and 51.

[7] Ibid 58

[8] Ibid, para. 60. See also, Article 15.5bis of the UK-Korea FTA.

[9] Ibid, para. 65.

[10] Ibid, para. 75.

[11] See also, Jung-a, Rovnick, Giles, *South Korea agrees deal with UK for post-Brexit trade,* Financial Times 10 June 2019

[12] Department for International Trade, note 1 above, para 90.

wishes to maintain regulatory autonomy when negotiating FTAs with other countries post-Brexit.

Other more significant changes relate to the protection of intellectual property rights (particular artist resale), including geographical position,[13] and public procurement. As regards the latter, the UK-Korea Free Trade Agreement has retained the commitments on public procurement that were set out in the EU-Korea Free Trade Agreement. Yet since the UK intends to accede to the GPA in its own right post-Brexit (see the Trade Bill 2017-2019),[14] the UK-Korea Free Trade Agreement will rely on the UK's GPA Schedules once they come into force. [15]

However, arguably the most significant and remarkable difference between the EU-Korea and UK-Korea FTA is that the latter no longer includes legally binding provisions relating to environmental protection, human rights and labour standards, which appear instead in a non-binding *UK-Republic of Korea joint statement on shared values, ever growing partnership*.[16] This difference is particularly notable given that the 'second wave' of EU FTAs negotiated with third countries from the mid 2000s (particularly developing countries) have tended to include clauses on environmental standards, labour rights and human rights.[17] This significant reform under the UK-Korea FTA may be a reflection of three main interconnected factors:

1) the UK's weaker negotiating position when negotiating post-Brexit FTAs with its trading partners, given that the EU is a bigger market and holds a stronger bargaining position when negotiating FTAs
2) The short timeframe available for negotiation of the 'continuity' FTAs. This arguably has placed the UK in a weaker negotiating position.
3) A final factor is the current UK government's position in relation to environmental standards, labour rights and human rights (to be contrasted with the Labour Party's position which emphases the importance of those standards both domestically and in the UK's external relations).

Yet as discussed above a review clause in the UK-Korea FTA foresees enables the parties to renegotiate their commitments under the agreement within two years from the entry into force of the agreement. Hence is possible that the clauses relating to environmental, labour and human rights standards in the EU-Korea FTA will be re-introduced into the UK-Korea agreement in future.[18]

In contrast, the EU-Korea FTA provisions on customs and trade facilitation,[19] competition and subsidies,[20]

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[13] Ibid, paras 98-99 and 101-102. See also Article 10.10. of the UK-Korea FTA.

[14] https://services.parliament.uk/bills/2017-19/trade.html (accessed 1 November 2019)

[15] 107-108

[16] See *UK-Republic of Korea joint statement on shared values, ever growing partnership*., in Department for International Trade, note 1 above.

[17] Stephen Woolcock, 'EU Policy on Preferential Trade Agreements in the 2000s: A Reorientation towards Commercial Aims', *European Law Journal*, Vol. 20, No. 6, November 2014, 718-732

[18] See Article 15.5.2

[19] Department for International Trade, note 1, para. 85.

[20] Ibid, para. 111.

services[21] (including audio-visual services),[22] trade remedies,[23] sanitary and phytosanitary measures,[24] have largely been transitioned into the UK-Korea FTA with minor or no modifications.

It is also notable that the EU-Korea FTA does not contain an investment chapter,[25] unlike other post-Lisbon FTAs negotiated by the EU with third countries such as the EU-Singapore FTA. It is likely that the two parties will continue to rely on the investment protection provisions under the 1976 Korea – UK bilateral investment treaty (BIT), but it is also possible that they may wish to renegotiate the UK-Korea FTA for the purposes of inserting an investment chapter.

3. The impacts of UK-South Korea FTA in the UK and Wales

For the most part, the UK government's own assessments of the impacts of UK-Korea FTA have focused on the implications of not ratifying the agreement, rather than the impacts that the agreement – taking account of the modifications highlighted above - would have on the UK or the devolved administrations. It is expected that if the 'continuity agreement' with South Korea is ratified before Brexit, the status quo of the UK-Korea trade relations will be largely maintained, subject to any subsequent amendments to or renegotiations of the treaty. Yet since that the UK-Korea FTA does not include chapters on sustainable development, human rights or labour rights, this could lead to the lowering of those standards - in so far as the bilateral UK and South Korean trade relations are concerned - and hence to a race to the bottom.

According to the UK government's assessment, not being able to ratify the UK-Korea Free Trade Agreement would result in UK businesses losing the preferences negotiated in the EU-Korea Free Trade Agreement.[26] This would include the re-imposition of many tariffs, returning to Most Favoured Nation (MFN) treatment with Korea (that is, trading on WTO terms). This could lead to the reversal of the benefits derived from trading under preferences within the Free Trade Agreement, such as the increases in trade flows between the UK and South Korea since the adoption of the EU-Korea FTA.

Moreover, in relation to TRQs the UK government's own assessment suggests that without transitioning rules or any other mitigating actions, goods exported to Korea from the UK that are currently covered by TRQs in the EU-Korea Free Trade Agreement could face MFN tariffs.[27] The extent of this impact will depend

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[21] Ibid, para. 115-116

[22] Ibid. para. 122-123

[23] Ibid. para. 54-55

[24] Ibid, para. 96

[25] Ibid, 125. However, Article 7.16 of the EU-Korea Free Trade Agreement provided for a review of the investment legal framework to begin no later than three years after the entry into force of this Agreement. These changes may be reflected in the UK-Korea Free Trade Agreement (see Article 15.5bis).

[26] Department for International Trade, note 1, para. 24.

[27] Ibid., 69.

on a number of factors, including existing trading patterns and the behavior and responsiveness of domestic consumers and businesses to the change in tariff.[28]

In relation to the rules of origin, it should be noted that the UK-Korea FTA provides only for rules governing trade between the UK and Korea and does not contain provisions addressing either party's direct trade with the EU, including, for example, where UK and Korea-based exporters use content from each other in exports to the EU.[29] According to the UK Government, if cumulating EU content for the UK and Korea were not permitted under the UK-Korea Free Trade Agreement at entry into force, some UK and Korean based exporters might find themselves unable to access preferences as they are currently able to under the EU-Korea Trade Agreement.[30] UK exporters to Korea who rely on EU content might have to revert to paying MFN tariff rates, if they continued using EU content, or they might have to review and reassess their existing supply and value chains as a result of this immediate change to existing terms. According to the UK government, the impact of this would vary across sectors.[31]

Furthermore, the British government has estimated the impacts of the UK-Korea FTA in relation to some specific measures or sectors, such as agriculture. In relation to 'Agricultural Safeguard Measures,' under Annex 3 of the EU-Korea Free Trade Agreement they should gradually be reduced to zero over a number of years. These measures have been transitioned to the UK-Korea Free Trade Agreement and have been resized to reflect the fact that the UK is a smaller importer and exporter than the EU28.[32] Although the UK government does not expect this change to have any impact, it may be pertinent for the Welsh Government and legislature to conduct further studies assessing the impacts of those changes to the bilateral trade relations in agricultural commodities between Wales and South Korea.

4. Concluding remarks

Although the UK-Korea FTA may mitigate some of economic impacts of Brexit as far as the bilateral trade relations between the two countries is concerned, there are still some areas of uncertainty, not least whether the agreement will be ratified by the British and South Korean Parliaments ahead of the anticipated Brexit date of 31st January 2020.

The UK-Korea FTA only introduces incremental solutions to transitional legal issues surrounding important areas such as TRQs and Rules of Origin, although these could have significant implications for UK/Welsh trade with South Korea. However, the most notable changes in the UK-Korea FTA relate to the transfer of the provisions on environmental protection, labour rights and human rights protection to a non-binding intergovernmental statement. This development could lead to the lowering of those standards and race to the bottom. However, the existence of the EU-South Korea FTA - and subject to the outcome of the current Brexit negotiations, a future UK-EU FTA – could mitigate concerns over a possible race to the bottom in the trade relations between UK and South

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[28] Ibid

[29] Ibid, 79.

[30] Ibid, 78.

[31] Ibid, paras. 71 and 78.

[32] Ibid.

Korea as regards environmental, labour and human rights standards.

Finally, it should noted that one of the impacts of the adoption of the UK-Korea FTA is that it can only lower tariffs between the two countries, and could not mitigate the impacts that a 'hard Brexit' may have in so far as the (MFN) tariffs applicable to EU-UK trade are concerned.

Eitem 2.3

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

Llywodraeth Cymru
Welsh Government

Mick Antoniw AC
Cadeirydd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
Cynulliad Cenedlaethol Cymru
Bae Caerdydd
CF99 1NA

27 Tachwedd 2019

Annwyl Mick

Diolch ichi am eich llythyr dyddiedig 18 Hydref ac am groesawu fy nghyhoeddiad ar ffurf Datganiad Ysgrifenedig ar 18 Medi ynglŷn ag achosion cyfreithiol yn deillio o addoedi Senedd y DU. Codwyd amryw o faterion pwysig gennych hefyd mewn perthynas â'ch ymchwiliad i gyfansoddiad Cymru sy'n newid.

Nodwyd gennych fod sylw yn cael ei roi yn 'Diwygio ein Hundeb: Cydlywodraethu yn y DU' i'r cwestiwn, yng nghyd-destun Confensiwn Sewel, sut y gellid diffinio na ddylai Senedd y DU "fel arfer" geisio deddfu ar gyfer tiriogaeth, mewn perthynas â materion sydd o fewn cymhwysedd deddfwrfa ddatganoledig y diriogaeth honno, heb gydsyniad pendant y ddeddfwrfa honno. Mae'r ddogfen bolisi honno yn amlinellu barn Llywodraeth Cymru ar y mater a byddwn yn parhau i fynd ar ei drywydd gyda Llywodraeth y DU. Byddaf yn rhoi'r diweddaraf ichi am y cynnydd i'r perwyl hwn. Byddem hefyd yn croesawu rhagor o drafodaeth â'r Pwyllgor am y ffordd y gellid defnyddio'r dystiolaeth yr ydych chi wedi'i derbyn a'r ystyriaeth yr ydych chi wedi'i rhoi ar gyfer llywio trafodaethau rhynglywodraethol.

Gofynnoch saith gwestiwn penodol, sydd wedi'u hatgynhyrchu isod ynghyd â'm hatebion innau:

C1: A allwch chi egluro sut y mae'r cytundeb rhynglywodraethol wedi bod yn sail i sicrhau y bu cydsyniad y Cynulliad yn rhan annatod o sicrhau y gall ein llyfr statud weithio'n iawn?

Gwahoddodd Llywodraeth Cymru y Cynulliad i gydsynio â Bil yr Undeb Ewropeaidd (Ymadael) yn rhannol ar y sail bod y Cytundeb Rhynglywodraethol yn ailadrodd ymrwymiad Llywodraeth y DU i beidio fel arfer â defnyddio pwerau i ddiwygio deddfwriaeth ddomestig mewn meysydd sydd wedi'u datganoli heb gytundeb Llywodraeth Cymru. Yn sgil penderfyniad y Cynulliad i roi ei gydsyniad i'r Bil, cafodd camau i graffu ar y trefniant hwn eu hymgorffori yn Rheol Sefydlog 30C.

At hynny, mae'r Cytundeb Rhynglywodraethol, a'r cydweithio a ddeilliodd ohono, wedi sicrhau nad yw Llywodraeth y DU wedi cyflwyno rheoliadau o dan adran 12 o Ddeddf yr

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

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

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Undeb Ewropeaidd (Ymadael) i gyfyngu ar gymhwysedd y Cynulliad Cenedlaethol. Yn ein barn ni, mae hyn yn gryn gyflawniad oherwydd, fel y byddwch yn cofio, byddai'r Bil gwreiddiol wedi atal y Cynulliad Cenedlaethol rhag deddfu mewn unrhyw fodd yn ymwneud â chymhwysedd datganoledig lle y bu cyfraith yr UE yn berthnasol cyn hynny.

C2: Pam mae cytundebau rhynglywodraethol yn briodol ar gyfer delio â deddfwriaeth sylfaenol sy'n cael ei phasio gan ddeddfwrfeydd?

Mae cytundebau rhynglywodraethol yn ffordd dryloyw o bennu'r egwyddorion y mae llywodraethau yn bwriadu ufuddhau iddynt, a'r mecanweithiau y maent yn bwriadu eu defnyddio, wrth gydweithio ar gyfer gweithredu deddfwriaeth sylfaenol sy'n cael eu pasio gan ddeddfwrfeydd. Maent yn adlewyrchu'r rhyngysylltiad sydd rhwng cyfrifoldebau llywodraethau'r DU a'r rôl y maent yn ei rhannu wrth lywodraethu'r DU.

C3: O ran Bil Amaethyddiaeth y DU a'n hystyriaeth o femoranda cydsyniad deddfwriaethol Llywodraeth Cymru, eglurodd Ysgrifennydd y Cabinet dros Ynni, Cynllunio a Materion Gwledig fod Llywodraeth Cymru wedi gwneud cytundeb â Llywodraeth y DU. Mae ein hadroddiad ar yr ail femorandwm cydsyniad deddfwriaethol wedi mynegi pryder ynghylch y dull a ddefnyddiwyd. Yn eich barn chi, a ddylai cytundebau o'r fath hefyd fod yn destun cydsyniad ffurfiol gan y Cynulliad Cenedlaethol yn y dyfodol?

O ran eu natur, cyfrifoldeb y gweithrediaethau perthnasol yw cytundebau rhynglywodraethol, a dylai hynny barhau. Ni ddylai cytundebau rhynglywodraethol fod yn ddarostyngedig i gydsyniad deddfwrfeydd. Mae Llywodraeth Cymru yn ymrwymo i ystod o gytundebau, rhai ohonynt sy'n ei rhwymo mewn cyfraith a rhai nad ydynt yn gwneud hynny, ac ni fyddai'n briodol yn gyfansoddiadol o ystyried y gwahanu pwerau i'r Cynulliad gydsynio i'r rheini. Fodd bynnag, gall Aelodau graffu arnynt wrth reswm, ac maent yn gwneud hynny.

Pan fo cysylltiad rhwng cytundebau rhynglywodraethol â deddfwriaeth sylfaenol y mae cydsyniad y Cynulliad yn cael ei geisio ar ei chyfer, byddem yn rhagweld y byddai ystyried y cytundeb rhynglywodraethol perthnasol yn rhywbeth i'r Cynulliad ymgymryd ag ef. Yn fwy na hynny, byddem hefyd yn rhagweld y byddai'r Cynulliad yn parhau i graffu ar y modd y caiff cytundebau rhynglywodraethol eu gweithredu o dan y mecanweithiau y cytunwyd arnynt yn y cytundeb rhyng-sefydliadol rhwng y Cynulliad a Llywodraeth Cymru.

C4: Pa risgiau sy'n gysylltiedig â chytundebau rhynglywodraethol o ystyried nad ydyn nhw'n rhwymo'n gyfreithiol, a sut y gall Llywodraeth Cymru geisio amddiffyn setliad datganoli Cymru pe bai gwahanol lywodraethau yn diystyru'r cytundebau hyn yn y dyfodol?

Nid yw'r defnydd o gytundebau rhynglywodraethol yn effeithio ar y setliad datganoli, oherwydd maent yn gweithredu o fewn y setliad presennol. Yn ein barn ni, mae defnyddio cytundebau rhynglywodraethol yn golygu bod gennym fwy o ddylanwad mewn penderfyniadau ac felly rydym yn gallu diogelu buddiannau Cymru, y mae'r Cynulliad yn ein dwyn i gyfrif amdanynt.

C5: Pa mor gynaliadwy yw'r defnydd o gytundebau rhynglywodraethol a fframweithiau cyffredin dros y tymor hwy? Os gall llywodraethau newydd y dyfodol ddiystyru neu derfynu fframweithiau cyffredin anneddfwriaethol, sut mae hyn yn ffordd briodol ymlaen? Byddai'n ddefnyddiol pe baech yn cadarnhau y bwriedir i fframweithiau cyffredin deddfwriaethol ac anneddfwriaethol fod yn ddatrysiad tymor hir.

Ers 2017, mae un Llywodraeth y DU ar ôl y llall wedi ymrwymo i Fframweithiau Cyffredin ac, hyd yma, ni fydd unrhyw amharodrwydd i gymryd rhan. Cynsail Fframweithiau Cyffredin yw'r gydnabyddiaeth glir o fanteision gweithio rhynglywodraethol mewn meysydd sydd o ddiddordeb cyffredin. Maent yn adeiladu ar berthnasoedd hirdymor rhwng swyddogion ar

draws y DU a sefydlwyd ers datganoli. Ond maent hefyd yn ffurfioli'r perthnasoedd hyn ac yn sicrhau bod eglurder mewn perthynas â'r cyfrifoldebau newydd sy'n dod i'r amlwg yng nghyd-destun penderfyniad y DU i ymadael â'r UE. Mae fframweithiau deddfwriaethol ac anneddfwriaethol ac elfennau fframwaith yn rhannau pwysig o'r berthynas hirdymor hon. Bwriedir i'r fframweithiau fod yn ymrwymiad hirdymor gyda darpariaeth a mecanweithiau penodol ar gyfer eu hadolygu a'u diweddaru, a dylai deddfwrfeydd a llywodraethau'r dyfodol allu rhoi proses ail-negodi ar waith. Bydd y darpariaethau ar gyfer adolygu ac asesu, a'r gweithdrefnau monitro yn eu galluogi i esblygu ac addasu i safbwyntiau polisi sy'n datblygu.

C6. Sut mae defnyddio cytundebau rhynglywodraethol a fframweithiau cyffredin yn effeithio ar gymhlethdod y setliad datganoli i ddinasyddion?

Yn gyntaf, mae angen cydnabod mai dim ond mewn cyd-destun lle mae'r DU wedi ymadael â'r UE y bwriedir i gytundebau rhynglywodraethol a fframweithiau cyffredin o'r fath weithredu. Byddai ymadael â'r UE wrth gwrs yn golygu bod gan Lywodraeth Cymru a'r Cynulliad ran fwy uniongyrchol mewn meysydd o'r gyfraith sydd o fewn cymhwysedd datganoledig. Yn y cyd-destun hwn, nod cytundebau rhynglywodraethol a fframweithiau cyffredin yw rhoi sicrwydd ynghylch effaith y setliad datganoli ar gyfer dinasyddion. Mae dinasyddion yn derbyn amrywiaeth o wasanaethau wedi'u datganoli a rhai sydd heb eu datganoli yng Nghymru, ac mewn gwirionedd mae cyfrifoldebau sydd wedi'u datganoli a rhai sydd heb eu datganoli yn effeithio ar ei gilydd. Yn y cyd-destun hwn, mae agwedd gryno, a chlir, sydd wedi ei chyhoeddi a bod trwy broses graffu, tuag at y ffordd y mae Llywodraeth Cymru yn gweithio gyda llywodraethau eraill y DU ar feysydd sydd o ddiddordeb cyffredin, ac sy'n cael effaith ar ddinasyddion, yn gam pwysig ymlaen. Mae cytundebau rhynglywodraethol sy'n defnyddio iaith glir yn golygu nad oes unrhyw ddryswch ac maent yn cynnwys mecanweithiau ar gyfer osgoi anghydfodau a all helpu i symleiddio ac egluro prosesau er mwyn helpu dinasyddion i ddeall yn well ac i ennyn eu diddordeb.

C7: Mae o leiaf 20 achlysur pan fydd Llywodraeth y DU wedi diwygio deddfwriaeth sylfaenol mewn meysydd datganoledig trwy ddefnyddio pwerau is-ddeddfwriaeth o dan Ddeddf yr UE (Ymadael) 2018, ac mae hyn yn cael ei wneud (bron bob amser) gyda chytundeb Llywodraeth Cymru, ond heb gydsyniad ffurfiol y Cynulliad Cenedlaethol.

> *(i) Byddem yn ddiolchgar am eich barn ar oblygiadau'r dull hwn i unrhyw achosion o ddiwygio Confensiwn Sewel yn y dyfodol.*
>
> *(ii) Sut mae'r dull a ddefnyddiwyd gan Lywodraeth Cymru o beidio â chyflwyno cynigion cydsyniad offeryn statudol priodol yn gyson â chynnig 5 o Diwygio ein Hundeb.*

Fel yr eglurodd y Prif Weinidog ichi yn ei lythyr dyddiedig 23 Awst, er nad yw Rheolau Sefydlog yn rhoi unrhyw rwymedigaeth ar Weinidogion i gyflwyno cynnig mewn perthynas â Memoranda Cydsyniad Offeryn Statudol, nid yw Llywodraeth Cymru wedi newid ei hagwedd gyffredinol. Mewn amgylchiadau arferol, rydym yn bwriadu parhau i gyflwyno cynigion ar gyfer Memoranda Cydsyniad Offeryn Statudol. Fodd bynnag, o ran Offerynnau Statudol (OSau) sy'n gysylltiedig â Brexit, roedd materion ymarferol i'w hystyried mewn perthynas â'r amserlen.

Eglurodd y Prif Weinidog hefyd mai'r rhaglen o gywiriadau i'r llyfr statud oedd cyd-destun y dull a fabwysiadwyd gennym, er mwyn sicrhau ei bod yn parhau i weithio ar ôl i'r DU ymadael â'r UE. Nid ymgymerwyd â'r fath ymrwymiad erioed o'r blaen: roedd nifer yr OSau cywiro y bu'n rhaid inni fynd i'r afael â hwy, a'r amserlenni cyfyng oedd yn gysylltiedig â hwy, yn golygu'n syml nad oedd ein trefniadau arferol mewn perthynas ag ymgymryd â Memoranda Cydsyniad Offeryn Statudol yn ymarferol. Datblygom ffordd o weithio a oedd yn sicrhau ein bod yn mynd i'r afael â Memoranda Cydsyniad Offeryn Statudol yn gysylltiedig â

Brexit mewn modd amserol, gan sicrhau hefyd eu bod yn cael eu dwyn i sylw'r Cynulliad. Wrth benderfynu peidio â chyflwyno Memoranda Cydsyniad Offeryn Statudol ein hunain mewn perthynas â'r darnau hyn o is-ddeddfwriaeth, roeddem yn hynod ymwybodol hefyd pan fyddai unrhyw Aelod o'r farn y dylai Memorandwm Cydsyniad Offeryn Statudol fod yn destun dadl yn y Cynulliad, byddai'n agored iddynt gyflwyno cynnig.

Pe byddai Confensiwn Sewel yn cael ei ddiwygio, yn unol â'n cynigion yn 'Diwygio ein Hundeb', byddem yn disgwyl i hynny ddigwydd gan gadw'r heriau yr ydym wedi eu hwynebu yn y cyd-destun hwn, yn ogystal â barn eich Pwyllgor, mewn cof.

Hyderaf fod yr ymatebion hyn o gymorth. A fyddech cystal â rhoi gwybod imi os oes unrhyw beth arall y gallaf ei wneud i helpu gyda'ch ymchwiliad, gan gynnwys cyfarfodydd pellach a/neu sesiynau briffio technegol gyda fy swyddogion. Mae goblygiadau cyfansoddiadol swyddogaethau newydd Llywodraeth Cymru, a'r ffaith y bydd mwy a mwy o weithio rhynglywodraethol, a threfniadau rhyngwladol yn cael eu datblygu yn faterion pwysig. Rwy'n gwybod bod eich Pwyllgor chi a'r Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol yn rhoi ystyriaeth ofalus i'r goblygiadau ar gyfer y Cynulliad ac ar gyfer craffu rhyngseneddol, ac rwy'n croesawu hynny.

Rwy'n anfon copi o'r llythyr hwn at Gadeirydd y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol ac at y Prif Weinidog.

Cofion

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

Eitem 4

Yn rhinwedd paragraff(au) vi o Reol Sefydlog 17.42

Mae cyfyngiadau ar y ddogfen hon

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