

Rt Hon Alun Cairns MP
Secretary of State for Wales

Mr Robin Walker MP
Parliamentary Under Secretary of State for Exiting the
European Union

9 November 2017

Dear Secretary of State and Minister

European Union (Withdrawal) Bill: Questions not reached on 6 November 2017

Thank you for appearing at the meeting of the External Affairs and Additional Legislation Committee and the Constitutional and Legislative Affairs Committee on 6 November 2017.

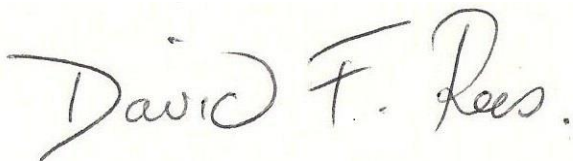
Following the above meeting, I am writing to seek your response to a number of questions that we were unable to reach in the time available.

The questions are enclosed with this letter.

I would be grateful for an early response to these questions, given that the Committee Stage of the Bill's passage through the House of Commons is due to begin next week.

I am copying this letter to members of the Constitutional and Legislative Affairs Committee and intend to publish it on the Assembly's website.

Yours sincerely



David Rees AM

Chair of the External Affairs and Additional Legislation Committee



Questions not reached on 6 November 2017

Ministerial powers to make corrections

Question 1

Why does the European Union (Withdrawal) Bill ('the Bill') only provide Devolved Ministers with a power to correct EU-derived domestic legislation, whilst providing a broader power for UK Ministers to correct the entire body of EU retained law?

Question 2

In its open letter to Members of Parliament, the External Affairs and Additional Legislation Committee concluded that:

"restricting the involvement of the Welsh Ministers and the Assembly to correcting only EU-derived domestic legislation in devolved areas makes for a less efficient exit process."

The Committee's reasoning for this is:

"Welsh Government and Welsh public bodies are responsible for implementing EU law in devolved areas, and have been for 20 years. They hold the knowledge that is required to make sensible corrections to EU law in devolved areas. If UK Ministers were to seek to make corrections in devolved areas, they would need to seek the expert input of the Welsh Government and Welsh public bodies before drafting such corrections. Enabling the Welsh Ministers and the Assembly to correct all aspects of EU-derived law in devolved areas is a more efficient, and constitutionally appropriate, approach to correcting EU-derived law in devolved areas."

What is your response to this view?

Concurrent powers

Question 3

Why do UK Ministers need concurrent powers to correct EU derived domestic legislation in Welsh devolved policy areas?

Question 4

The External Affairs Committee concluded that such powers are not constitutionally appropriate and that the Assembly should be accountable *"for scrutinising the legislation for which it is accountable to the electorate for delivering"*.

What is your response to this view?



Question 5

Do you intend to table amendments to remove the UK Ministers' concurrent powers from the Bill, as suggested by External Affairs and Additional Legislation Committee?

Question 6

If you do not intend to table amendments to remove these concurrent powers from the Bill, will you consider tabling amendments to provide duty to consult both the Assembly and Welsh Ministers on the face of the Bill?

Legislative consent

Question 7

Please explain why you do not believe that the Assembly's consent is required for Clauses 7 and 9 of the Bill.

Question 8

Will the UK Government proceed with the Bill if it does not obtain the consent of the devolved legislatures?

Question 9

Do you believe that you can obtain the consent of the Assembly without having accepted the Welsh Government's amendments?

Question 10

If EU 'continuity bills' are introduced in Scotland and Wales, would the UK Government seek to challenge these in the Supreme Court or to revoke them by an Act of Parliament?

Scope of Ministerial powers

Question 11

Will you bring forward amendments to narrow the scope of the powers proposed for ministers?

Question 12

Does the Bill allow for the term 'exit day' to be defined differently for different clauses in the Bill?

Question 13

Why does the UK Government consider it appropriate for Ministers to have the power to amend the Bill itself (using the powers provided to them by Clause 17)?

Question 14

Do you intend to table amendment to Clause 17 to restrict the power of UK Ministers to amend the Bill?



Scrutiny procedures

Question 15

Why doesn't the Bill allow the Assembly to determine its own procedures for the scrutiny of subordinate legislation arising as a consequence of the Bill?

Question 16

Why didn't you consult the Assembly, prior to the Bill's introduction, about the scrutiny procedures for delegated legislation to be made by the Welsh Ministers?

Question 17

Do you agree that scrutiny procedures set for Westminster by the Bill may not be suitable or operable in the devolved legislatures?

Common policy frameworks

Question 18

How will you ensure that discussions on common policy frameworks will be transparent and open to scrutiny by all UK legislatures?

Question 19

What role will stakeholders have in the development and agreement of common policy frameworks and what consultation mechanisms will be put in place?

Question 20

The JMC (EN) Communiqué from 16 October states: *"It will be the aim of all parties to agree [...]"*.

Does this allow scope for a common policy framework to be imposed by the UK Government in the event of one of the parties not agreeing?

