

Mr Charles Walker MP  
Chair  
Procedure Committee  
House of Commons

11 May 2018

Dear Mr Walker

### **European Union (Withdrawal) Bill**

We have been giving consideration to the amendments agreed at the House of Lords report stage in relation to the European Union (Withdrawal) Bill ("the Bill") and the sifting mechanism that is to apply to regulations made under its provisions. We have identified a discrepancy between the timing offered to Westminster committees and the timing offered to the National Assembly for Wales committees. I have enclosed a letter which I have today sent to the Secretary of State for Wales on this matter.

I am aware that your Committee is on the next phase of its inquiry on the scrutiny of secondary legislation under the Bill, and is now considering the operation in the House of Commons of the scrutiny mechanism provided for in the Bill. I would like to draw your attention to our report on the **Scrutiny of regulations made under the European Union (Wales) Bill** and, specifically, to paragraphs 54 to 58. In these paragraphs we comment on the ability for UK Ministers, acting alone, to use their broad powers to make regulations in devolved areas. With regards to these regulations, we believe the sift committee at the National Assembly (this is likely to be the Constitutional and Legislative Affairs Committee) should be given some role in the scrutiny of regulations made by UK Ministers in devolved areas that are laid before the UK Parliament only.



It would be helpful to know whether your report is likely to consider formal mechanisms by which we would be notified of UK Ministers using their consequential powers under clause 22 of the Bill in devolved areas.

The Intergovernmental Agreement agreed between the Welsh Government and the UK Government deals with consent for regulations made by UK Ministers under "clauses 7, 8 and 9" (as they then were). However, there is no reference to clause 22. We are concerned that clause 22 consequential regulations could impact on devolved matters without our knowledge.

I am copying this letter to Lord Trefgarne, Chairman of the House of Lords Secondary Legislation Scrutiny Committee.

Yours sincerely,

A handwritten signature in black ink that reads "Mick Antoniw". The signature is written in a cursive style with a horizontal line underneath the name.

**Mick Antoniw**

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



Rt Hon Alun Cairns MP  
Secretary of State for Wales

11 May 2018

Dear Secretary of State

### **European Union (Withdrawal) Bill**

We have been giving consideration to the amendments agreed at the House of Lords report stage in relation to the European Union (Withdrawal) Bill ("the Bill") and the sifting mechanism that is to apply to regulations made under its provisions.

As drafted, the Bill gives Westminster committees 10 sitting days to carry out a sift. "Sitting day" is defined as meaning, in respect of either House, a day on which that House sits.

We understand that the House of Commons usually sits Monday to Thursday, with some Fridays being sitting days (we believe 11 May, 15 June, 6 July, 26 October, and 23 November are agreed sitting Friday dates). Where the House of Commons sits Monday to Thursday, the 10 day sitting period could actually last 19 calendar days. For example, if regulations were laid on Thursday 29 November, the clock would not start running until the following Monday and would stop running at the end of Tuesday 18 December. We understand that the House of Lords arrangements follow a similar pattern, and it's agreed sitting Friday dates are 11 May, 29 June, 20 July and 7 September.

The National Assembly for Wales does not use the term "sitting days". We note that, as a result, paragraph 4 of Schedule 7 does not refer to the Assembly sift being carried out within a certain number of sitting days. Instead, the Assembly has been given a fixed "14 days" (i.e. 14 calendar days excluding any time the Assembly is dissolved or in recess for more than four days). This is the maximum period available to the Assembly to sift and is considerably shorter than the time that could be available to Westminster committees.



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Naturally, we are concerned at the lack of consistency between the timing offered to Westminster committees and the timing offered to committees of the National Assembly for Wales. Given the considerable task we all have of scrutinising the UK's exit from the EU, every day is important.

I would therefore be grateful if you could explain why this discrepancy exists, and what scope there is to amend the Bill to ensure there is parity of treatment for scrutiny committees across all institutions. One option to consider would be to amend the Bill to provide the National Assembly's sifting committee with the ability to discharge its responsibility within 14 calendar days or the equivalent amount of days afforded to the House of Commons and House of Lords, whichever is the greater.

At this point in time, it is uncertain the extent to which this disparity may cause problems, particularly because of uncertainties surrounding the scrutiny of joint and composite instruments.

A further issue relating to the sifting process regards the acceptance by the House of Lords on 8 May 2018 of amendment 70 (tabled in the name of Lord Lisvane and now paragraph 3 of Schedule 7), which ensures that the sifting committees' decisions are binding on Ministers save where a House of Parliament resolves otherwise. Please could you let us know whether it is the UK Government's intention to mirror these provisions for the sifting committee in the National Assembly. You may recall that the National Assembly unanimously endorsed a recommendation in similar terms on 7 March 2018.

Please could you also explain how the former Devolution Guidance Note 9 has been amended as compared to the new Devolution Guidance Note: Parliamentary and Assembly Primary Legislation Affecting Wales and the reasons for the changes. We have noted a number of instances where provision is not as it was previously; for example please would you explain what exceptions you expect will apply to the SICM rule, as noted in paragraph 109 of the new Devolution Guidance Note.

Finally I would be grateful to know when the UK Government intends to reflect both the UK exiting the EU and the Intergovernmental Agreement on the EU (Withdrawal) Bill and the Establishment of Common Frameworks within the Devolution Guidance Notes and whether they will then be subject to full public consultation in line with recommendation 4 of our report *UK governance post-Brexit*.

I am copying this letter to Chloe Smith MP, Minister for the Constitution, Elin Jones AM, the Presiding Officer of the National Assembly for Wales, the Rt Hon Carwyn Jones AM, First Minister, and Julie James AM, Leader of the House and Chief Whip.



I would be grateful for a response in respect of the sifting process by Friday 18 May 2018 and in respect of the Devolution Guidance Notes as soon as possible thereafter.

Yours sincerely,

A handwritten signature in black ink that reads "Mick Antoniw". The signature is written in a cursive style with a horizontal line underneath the name.

**Mick Antoniw**

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

