



Rt Hon. Mark Drakeford AM
First Minister of Wales

PS.FirstMinister@gov.wales

18 April 2019.

Dear Dr Drakeford,

Arrangements for devolved legislation before and after Brexit

I am writing at the request of Cytûn's Wales & Europe Working Party, which met recently, regarding concerns which we have about the legislative arrangements resulting from the departure of the UK from the European Union. The Working Party includes representation (in person or electronically) of all the Christian denominations which are members of Cytûn and of a number of other Christian organisations active in the field. Our member denominations have between them some 150,000 adult members in every community in Wales, and meaningful contact with many more adults, children and young people across the country.

We welcome the decision of the Minister for the Environment, Energy and Rural Affairs to engage in public consultation regarding some of the regulations under the European Union (Withdrawal) Act 2018 which she has laid before the Assembly. Although the consultation period allowed has been brief, we believe that this is good practice – and something which has not been seen in Westminster.

On the other hand, we have read the recent report by the Assembly's Constitutional and Legislative Affairs Committee about "the scrutiny of regulations under the European Union (Withdrawal) Act 2018" (February 2019), and have also been monitoring the progress of the Agriculture Bill and the Fisheries Bill, laid before the Westminster Parliament, which give significant powers to Welsh Ministers with no sunset clause. In the light of this we cannot but agree with the Committee's comment, "While we accept that the Welsh Government is under time and resource pressure, we believe that it has not got the balance right between permitting the UK Ministers to act on behalf of the Welsh Ministers and making its own legislation" (para 19). We would note:

1. That this mode of operating is contrary to the aspirations expressed by Welsh Government during the lengthy discussions regarding the EU Withdrawal Act 2018 that it wished to retain the Assembly's legislative competence in every devolved field during the process of transferring EU legislation to the UK. In particular, when your predecessor, Carwyn Jones AM, met with our Working Party in June 2017, he, like us, was very keen that future arrangements should fully respect the result of the 2011 referendum and the words on the ballot paper that the Assembly would in future legislate in devolved areas "without needing the UK Parliament's agreement".
2. It is inevitable that legislation relating to devolved matters will receive little scrutiny in Westminster, as this is not within the usual remit of MPs, while the Assembly is unable to scrutinise such legislation. As a result, the two governments can agree with one another to legislate with no scrutiny by either parliament, which is contrary to the parliamentary tradition of the UK as a whole, as well as contrary to the devolution settlement.
3. We appreciate the time pressure on the Government, especially when a departure with no agreement on 29 March 2019 seemed likely, but as it has turned out Westminster has failed to complete passage of either the Agriculture Bill or the Fisheries Bill. We believe that the provisions

contained in the schedules pertaining to Wales could have been laid as Welsh Bills, been scrutinised and possibly passed by the Assembly during the period which they have spent in Westminster.

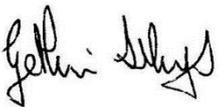
4. Primary and secondary legislation from Westminster is available in English only, while the Assembly legislates bilingually. This use of Westminster to legislate in devolved areas means that there are now substantial gaps in the legislation available in Welsh.
5. Taken together, it appears that these decisions have meant a substantial transfer of power from the legislature to the Government, at a crucial time in our history.

We are even more concerned at the decision to recommend that the Assembly give Legislative Consent (which it has) to two UK bills relating to departure from the EU on the basis of inter-governmental understandings regarding the operation of this legislation following exit from the EU. This has been achieved by "non-legislative commitments in the UK Parliament" (Supplementary LCM to the Trade Bill, Feb 2019, para 8) in the case of the Trade Bill and through a memorandum of understanding in the case of the Healthcare (International Arrangements) Bill. Both mean that arrangements regarding these important matters will be discussed by the two governments, but not necessarily by either parliament. It must be anticipated that the arrangements in these two bills, if they pass, will be in force for many years, thus removing the Assembly's right to scrutinise in a timely fashion provisions that would otherwise have required subordinate legislation in the Assembly in order to be enacted. We believe that this means that there will be a permanent transfer of power from the Assembly to the Government, not only the temporary transfer seen in the case of the statutory instruments under the European Union Withdrawal Act 2018.

We believe that consideration should be given to statutory arrangements, agreed by both parliaments, for the interaction of the two governments, to take the place of the ad hoc JMC arrangements. We believe that the recommendations of part 2 of the Silk Commission report would be a good starting point for such arrangements, although the changes introduced by the Wales Act 2017 and by departure from the European Union might mean that some aspects would require refreshed consideration.

We would be very grateful if you could provide us with an explanation of the Welsh Government's policy in this regard, and especially whether you foresee that any of these arrangements regarding subordinate legislation, primary legislation, memoranda of understanding or non-legislative commitments will establish precedents for proceeding in other devolved areas in future.

Yours faithfully,



Gethin Rhys (Revd)
on behalf of Cytûn's Wales and Europe Working Party

Cc: Mick Antoniw AM, Chair, Constitutional and Legislative Affairs Committee
David Melding AM
Jeremy Miles AM (Counsel General and Brexit Minister)
David T C Davies MP (Chair of the House of Commons Welsh Affairs Committee)
Lady Taylor of Bolton (Chair, House of Lords Constitution Committee)
Wales Civil Society Forum on Brexit
Elin Jones AM (Llywydd)
Lord Lisvane
Brexit Civil Society Alliance (UK).