

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



Llywodraeth Cymru
Welsh Government

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

7 January 2020

Dear David

I am writing in response to your letter of 4 December regarding the External Affairs and Additional Legislation Committee's follow up work on Brexit preparedness. I welcome the work the Committee has undertaken in this area, and the following information sets out the Welsh Government's work to date in relation to the Committee's views and conclusions outlined below.

With the progress of the Withdrawal Agreement Bill in Parliament, it seems clear that there will not be a no deal exit at the end of this month. However, the issues you raise still remain very pertinent, not least in the context of the possibility of exiting the Transition period without a trade deal concluded.

Ports and transport

"Our previous work found that there was a risk of cargo and freight bypassing Welsh ports via an open Irish land border combined with frictionless transit from Northern Ireland to Scotland or England. Our understanding, and that of the sector, is that the revised Withdrawal Agreement, may reduce this risk".

"Of more pressing concern is the assessment of the potential impact of the revised Withdrawal Agreement on Wales' major Ro-Ro ports – particularly the port of Holyhead. The Chancellor of the Duchy of Lancaster, Michael Gove, told us that no impact assessment had been made and that it was 'difficult' to have an impact assessment with 'so many variables in play'"

- 1. "We recommend that the Welsh Government outlines the ways in which it is pressing the UK Government to conduct a full impact assessment of the revised Withdrawal Agreement on Welsh ports".**

Response: Accept

Financial implications: None from updating the Committee.

As you set out in your letter, the UK Government has not conducted a full economic impact assessment of any kind on their proposed Withdrawal Agreement, and UK Government officials were not prepared to engage on the policy questions raised by their proposal during the recent pre-election period for the General Election.

One key question that has a fundamental bearing on Welsh ports is related to the interaction between the land border between the Republic of Ireland and Northern Ireland, and the 'Irish Sea border' the Protocol on Ireland/Northern Ireland would impose. Whilst UK Ministers were unable to answer questions about whether there would be checks on ferry crossings from Northern Ireland to Great Britain in the final scrutiny sessions of the last Parliament, they continue to insist both that there will be no hard border on the island of Ireland and that there will be no checks on goods crossing from Northern Ireland to Great Britain by ferry. In light of the above and pending the Joint Committee's view on how to manage the Protocol, it would not be reasonable for checks to be imposed on goods travelling from the Republic of Ireland to Wales.

In terms of traffic travelling from the UK to the Republic of Ireland, the election claims of the Prime Minister that no checks will be necessary are simply incompatible with the legal text of the Withdrawal Agreement. However, here too, it would seem logical given the free circulation of goods on the island of Ireland, that the sort of controls and checks needed will be the same for goods travelling from GB to the Republic as they are for goods travelling from GB to Northern Ireland.

We have commissioned a small study from the Trade Policy Observatory at the University of Sussex to help us better understand the implications for Wales. Their independent report will be published in January. Officials within the Welsh Government continue to review the evidence we have available to help us understand the traffic and trade flows through Welsh ports, and to make sure the UK Government understands the impacts its decisions will have in Wales.

The Welsh Government will continue to take every opportunity, at Ministerial and official level, to press the UK Government for clarity on their proposals and in particular, to assess the impact on Welsh ports. We anticipate that an early meeting of the JMC (EN) will provide an opportunity to raise this again.

We would also hope that the Committee could press UK Ministers on this point, in the context of the legislative consent process for the Withdrawal Agreement Bill.

"In terms of new infrastructure at Welsh ports, we heard that clarity is needed as soon as possible on the need for new infrastructure arising as a result of the revised Withdrawal Agreement on Welsh ports".

- 2. "We recommend that the Welsh Government update us on preparations for new infrastructure at Welsh ports (to accommodate potential customs and other checks), including details of the financing of such infrastructure".**

Response: Accept

Financial implications: None from updating the Committee. We expect UK Government to meet the need for any new border infrastructure that would arise as a result of their decisions in respect of changes to border policy.

It is not yet clear how the UK Government and the Joint Committee will propose to manage the UK's border with Ireland under the Protocol. Whether there will be a need for new infrastructure at Welsh ports, and the nature of that infrastructure, will depend greatly on this, and also on the outcome of trade negotiations with the EU. Until we have this information, we are unable to make assumptions about where any such infrastructure would need to be located.

Since borders, immigration and customs are the responsibility of the UK Government however, the Welsh Government would expect them to work constructively with Welsh port authorities, and with the Welsh Government, to ensure appropriate border infrastructure is in place to facilitate the smooth flow of traffic to and from the ports, and that appropriate funding is invested to deliver modern, fit-for-purpose border infrastructure.

“We note that the creation of new Free Ports is a stated objective of the current Secretary of State for International Trade. We are clear that the Welsh Government must ensure that it has a developed, evidence-based view of the advantages and disadvantage of creating new Free Ports in Wales and the impact that the creation of Free Ports elsewhere in the UK may have on Wales”.

3. “We recommend that the Welsh Government commissions further research on the potential advantages and disadvantages of Free Ports for Wales and the impact that the creation of Free Ports elsewhere in the UK may have on the Welsh economy, in order to inform how it engages with the UK’s work in this area, and shares this work with the Committee on completion”

Response: Accept

Financial Implications: None at present. Any additional costs will be assessed as UK Government direction is clarified.

The question of free ports is separate from Brexit preparedness, but the incoming UK Government appear firmly committed to the concept.

This is a tool that, to some extent, the UK Government has had at its disposal within the EU but has chosen not to employ. However, we should be clear that free ports are not normally just a customs tool. Free ports models usually bring together a variety of regulatory levers including planning, environmental and employment regulation and therefore any proposals to approve a free port in Wales could have significant implications on a wide range of issues within devolved competence. Similarly any proposals to approve free ports in England could have an impact on Welsh competitiveness and attractiveness as a location for investment.

The Welsh Government is clear that while it is not opposed to free ports as a matter of principle, they must not be used as a back door to undermining social, environmental and employment standards. Free ports, if implemented, must be used to facilitate genuine, additional growth and development rather than simply displacing jobs and employment to new locations with lower regulatory standards outside our customs boundaries.

There are a number of free port models across the world which use these levers in different ways and combinations and differ fundamentally in their objectives and implementation. Until now, there has been very little information on the policy design and direction from the UK Government, and given the breadth of possible scenarios, until this clarity is provided, we are unable to fully assess the advantages and disadvantages of free ports in general.

The Welsh Government is happy to accept the recommendation on the basis that, as a substantive policy direction begins to emerge from the UK Government we will continue to develop our evidence base, engage stakeholders and seek the best available information to underpin our engagement with the UK Government on this agenda. However, we know that free ports would require some level of devolved interaction, and the UK Government must significantly develop and share its own evidence base, and treat us as an equal partner in designing the policy and objectives in order for us to develop the best possible fit for Wales.

4. “We ask that the Welsh Government update us on any engagement it has had with the Free Ports Advisory Panel, and for its view on whether the panel is giving adequate consideration to Welsh ports.”

Response: Accept

Financial Implications: None from updating the Committee.

The Free Ports Advisory Panel has not engaged with the Welsh Government, or any other Devolved Government in the UK. We have made clear that this panel should have no role in assessing and awarding free port status based on bids from port authorities. More widely, this bidding approach raises concerns about whether wider social, economic and environmental objectives will be appropriately considered, and ultimately the capability of using the bids from ports to drive a strategic approach to the designation of free ports.

It remains vital that the UK Government engages meaningfully with us to ensure that if a free port model is developed, it is one which works for Wales. Indeed, given their reliance on regulation within devolved competence and clear impact on regional economic development, free ports can only properly be delivered in collaboration between the Welsh and UK Governments. We will continue to press UK Government to recognise that the Welsh Government absolutely must have a clear decision-making role in assessing which areas within Wales should become eligible for free port status.

Food and Farming

“We welcome the efforts to open new markets for the red meat sector, and recommended in our December 2018 report on the preparedness of the food and drinks sector in Wales that the Welsh Government’s new strategy for the food and drinks sector in Wales (expected in 2020) set out ‘clear and ambitious targets’ for increasing Wales’ access to new markets for the export of food and drink products”.

5. “We would welcome an update on the Welsh Government’s work in this area including the anticipated timescales for publication of the new food and drinks strategy”.

Response: Accept

Financial Implications: None from updating the Committee.

In July 2019, the Welsh Government published, in partnership with the Food and Drink Wales Industry Board, a consultation into proposals regarding the future direction and development of the food and drink industry in Wales. Our proposals were informed by extensive prior engagement with businesses and stakeholders. The proposals had the strategic aims to grow our businesses' scale, value, and productivity, to benefit our people and society, and to create and communicate a global reputation for Wales as a 'Food Nation'. The proposals were firmly rooted in Prosperity for All, the Well-Being of Future Generations Act (2015), and food being part of the foundational economy.

Responses were received from nearly 90 organisations and individuals, comprising a broad range of consultees with the majority from businesses and trade organisations. There was strong support for the proposals and the vision and mission we had proposed. The Welsh Government will be making a report summarising the responses received available on the Food and Drink Wales website shortly. We are now considering how to use this constructive feedback as we develop the strategic plan proposals further for publication in 2020.

"We note the significant concerns expressed to us by representatives of the farming industry particularly in relation to the impact of continued uncertainty; the lack of Wales-specific legislation; and more generally the development of future policy in this areas, after Brexit."

- 6. "We intend to draw these to the attention of the Climate Change, Environment and Rural Affairs Committee and hope that they will give them active consideration as part of their ongoing scrutiny of the Welsh Government and its policy work in this area"**

We welcome the Committee's ongoing interest in this area. A considerable amount of preparedness work relating to the farming industry has been undertaken by the Welsh Government. This has included working collaboratively with the industry, UK Government and other Devolved Administrations to assess the scale of the impact across all our agricultural sectors. The Welsh Government has also worked closely with Defra and Devolved Administrations to make the case for funding from HM Treasury to support the red meat sector in the event of a no deal exit. We have also worked closely with stakeholders in Wales to discuss the issues facing the red meat sector, share thinking and seek feedback on proposals.

In relation to Wales-specific legislation, we intend to bring forward a White Paper before the end of this Assembly term, setting out the context for the development of agriculture and forestry within Wales for the next 15 to 20 years. The White paper will lay the ground for the Agriculture (Wales) Bill which we intend to introduce as soon as practicable.

Regarding the development of future policy in this area, earlier this year, we published our consultation document, *Sustainable Farming and Our Land*, where we explained our proposals for a new sustainable land management scheme and sought views on how we intend to support farmers after the UK leaves the European Union. The main consultation closed on 30 October. We received over 500 substantive responses and 3000 campaign responses. We are currently considering all the responses received and will publish a summary of responses in due course.

Transition period and the risk of 'no deal'.

“We recognise the risks of ‘no deal’ at the end of the transition period as highlighted by stakeholders and continue to have deeply held concerns about such an outcome and its damaging implications for Wales”

- 7. “We recommend that the Welsh Government set out how it intends to ensure that the [agriculture] sector is sufficiently supported in the event of ‘no deal’ at the end of the transition period (i.e. ending the transition period without a free trade agreement in place) and to outline what lessons it has learned from preparations to the three previous Article 50 deadlines”.**

Response: Accept

Financial Implications: None from updating the Committee. There could be significant cost implications for supporting the agriculture sector in the event of leaving transition arrangements without a trade deal at the end of December 2020.

As referred to above and in your letter, the threat of leaving the transition arrangements without a trade deal at the end of December 2020 remains a real one, particularly given the UK Government’s unnecessary commitment not to seek an extension to the transition period that would allow for a future relationship that protects the interests of Wales and the UK as a whole. The Welsh Government will continue to prepare responsibly and appropriately for the future relationship with the EU.

In relation to the preparedness of the agriculture sector (referred to specifically in your letter), the Welsh Government will continue to engage closely with stakeholders to discuss the specific issues facing the industry, share our emerging thinking and seek feedback on proposals. In addition, the UK Agricultural Market Monitoring Group (UKAMMG) has been established under an arrangement between the UK Government and the other Devolved Administrations in order to coordinate analysis of market information from government, industry and other sources. The UKAMMG will monitor developments in the main agricultural industry and consider responses to adverse market developments and provide recommendations if any interventions are required. This will include assessing the impact of a “no trade deal” scenario at the end of the transition period, and the impact of WTO tariffs on the agricultural sectors.

In terms of lessons learned from preparations ahead of the three Article 50 deadlines, agriculture officials have worked hard to build relationships with Defra and other Devolved Administrations officials to strengthen communication and enable the collaborative working required to make a joint case for funding from HM Treasury to support the red meat sector in the event of exiting the transition period without a trade deal, with all the implications for tariff and non-tariff barriers that that would have.

More broadly, a key point we took from our experiences in preparing for the exit dates in the Spring and Autumn is the importance of the UK Government engaging meaningfully with us, which includes sharing information, and recognising the issues of critical importance to Wales.

The Welsh Government consistently said that a no deal Brexit would be a catastrophic outcome for Wales, and would have significant and far reaching implications. Exiting the transition period without a trade deal would have different, but nevertheless hugely damaging implications for Wales. Despite our clear opposition to such an outcome, the Welsh Government will continue to prepare for all possible future relationships with the EU. As recognised by the Auditor General for Wales in his September update to the Committee, our Brexit planning work constitutes “the most comprehensive example of cross-government working” the Wales Audit Office has seen the Welsh Government undertaken to date.

I hope the Committee finds this update on our preparedness work helpful, and I look forward to discussing these issues with you at a future meeting.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'J Miles', with a stylized flourish at the end.

Jeremy Miles AM

Y Cwnsler Cyffredinol a Gweinidog Brexit
Counsel General and Brexit Minister