

Mark Drakeford AM/AC
Cabinet Secretary for Finance



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref

Rt Hon David Lidington CBE MP

24 April 2018

Dear David

European Union (Withdrawal) Bill: amendments and Intergovernmental Agreement

Further to the intensive trilateral discussions which have taken place between our two Governments and the Scottish Government, I am writing to tell you that the Welsh Government, on basis of the intergovernmental agreement, will support an LCM linked to the EU (Withdrawal) Bill. Although the position we have currently developed does not meet the whole of our aims I recognise that the trilateral discussion process represents very significant progress from where we started.

As you know, our position is that the best way forward within the framework of EU legislation is for the Governments of the UK to work together to create common approaches where we agree they are needed. We welcome the fact that this work is underway although I would have preferred such arrangements to have been developed without the need for legislative constraints, with respective Governments trusting each other's undertakings not to legislate in areas where we agree UK wide frameworks are needed until they have been agreed.

Nevertheless I recognise that the UK Government's latest amendments to Clause 11, together with the commitments and assurances set out in the Inter-Governmental Agreement, represent a significant step forward and a recognition that the default position is that responsibility for policy in areas devolved to Wales should continue to lie with the National Assembly.

Instead of the blanket restriction on the devolved legislatures amending retained EU law, with the possibility of specific areas being 'released' into devolved competence, the amendments recognise that only certain elements of EU law, specifically related to areas where it is agreed frameworks are needed, should be subject to a new, temporary, constraint. This is clearly much more compatible with the 'reserved powers' model of devolution.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Gohebiaeth.Mark.Drakeford@llyw.cymru
Correspondence.Mark.Drakeford@gov.wales

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.

The Agreement also effectively means that secondary regulation-making powers which will not normally be used to put in place these new temporary restrictions on competence without the consent of the National Assembly for Wales. You have agreed not normally to put such regulations to Parliament for approval unless the devolved legislatures and administrations have given their consent. Moreover, in the event of a legislature withholding consent, Parliament will be asked, on the basis of even-handed information, to decide if the regulations should be made. We accept that, within our current constitutional system, this responsibility rests with Parliament, though as you know, we have put forward constructive proposals as to how inter-governmental working could be fundamentally reformed to minimise the risk of deadlock between the Governments. We look forward to the UK Government engaging more substantially with these ideas.


The Agreement also contains explicit assurance of a 'level playing field' in terms of legislation, in that you have undertaken not to bring forward new legislation relating to England in areas where our legislative competence is constrained. In addition your previous assurances that the constraints envisaged would be temporary are now reflected in the proposed amendments. Finally, the Agreement removes any doubt that primary legislation brought forward to put in place new UK-wide frameworks – for example, on agricultural support - could be construed as being outside the Sewel convention.

More generally, I believe the collaborative process of working set out in the Agreement will form the basis of a more equitable approach to inter-governmental working than has been the case with the JMC to date and will strengthen inter-governmental relations. In this context, we must all step up engagement on the development of frameworks and the broader work of the JMC (EN). Alongside our support for an LCM on the basis of the amendments laid in Westminster, the Welsh Government is committed to continued dialogue to explore refinements to the inter-governmental agreement on which we have all been working.

In summary, the Agreement and the new UK Government amendments to the EU (Withdrawal) Bill represent a substantive change in approach that balances our concerns on the risks to our devolution settlement and your position to seek certainty in law as we leave the European Union. On the basis of this Agreement, the Welsh Government intends to recommend to the National Assembly for Wales that it gives legislative consent to the EU (Withdrawal) Bill, we will also take steps to repeal our Law Derived from the European Union (Wales) Bill, and the Attorney General will withdraw his reference of the Bill to the Supreme Court.

I am copying this letter to the Minister for Negotiations on Scotland's Place in Europe, the Secretary of State for Exiting the European Union and the First Minister of Wales.

Yours sincerely

A handwritten signature in black ink that reads "Mark Drakeford". The signature is written in a cursive, slightly slanted style.

Mark Drakeford AM/AC
Cabinet Secretary for Finance