

The Rt Hon. Steve Barclay MP
Secretary of State for Exiting the European Union
Department for Exiting the European Union
9 Downing Street
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8 January 2020

Dear Secretary of State,

EU (Withdrawal Agreement) Bill: Revision of EU law during the implementation period

The External Affairs and Additional Legislation Committee is currently considering the European Union (Withdrawal Agreement) Bill ('the Bill') and associated issues of legislative consent.

I will write to you next week with our final report on the Bill, which we intend to publish ahead of the Assembly's debate on a legislative consent motion relating to the Bill.

In the meantime, I am writing to make the case for two amendments to clause 29 of the Bill to ensure a role for the Assembly is preserved in the review of EU law during transition.

Currently, the Assembly has a role in considering the compliance of draft EU law with the principle of subsidiarity.

This stems from the following provision in Protocol No.2 to the Treaty on the Functioning of the European Union:

It will be for each national Parliament or each chamber of a national Parliament to consult, where appropriate, regional parliaments with legislative powers.



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Of course, this provision will no longer apply once the UK leaves the EU.

Clause 29 of the Bill provides for a Parliamentary mechanism for reviewing EU legislation during the implementation period. We note that this does not operate on the question of compliance with the principle of subsidiarity. Instead, it is based on the question of whether a piece of EU legislation “raises a matter of vital national interest to the United Kingdom”.

The Assembly’s experience of reviewing draft EU law in the past has shown that, on occasion, there have been specific issues of interest to Wales that have arisen that were not identified at a UK level. For example, the possible impact on the Welsh fisheries industry of a ban on driftnet fishing and changes to organic regulations for Welsh agriculture.

These issues, by extension, can be considered issues of UK national interest. We contended that the Assembly, in conducting a review of EU legislation with a focus on the areas of policy devolved to it, would add value to the overall UK-wide scrutiny process.

Therefore, to ensure that the Assembly’s role in reviewing EU law during transition is not diminished, we wish to see an analogous (albeit discretionary) role for the Assembly to be acknowledged in UK law – just as such a role is currently acknowledged in the legal text of the Treaties.

Simple amendments to the Bill could secure this. For example:

Clause 29, page 33, line 39, after “Commons” insert –

“,and any committee of the devolved legislatures,”

Clause 29, page 34, line 10, after “legislation” insert –

“and has consulted any committee of the devolved legislatures that the EUC considers also has an interest in the EU legislation”

These amendments would, as is the case currently, leave any consultation with the devolved legislatures to the discretion of UK parliamentary committees.

As deadlines for tabling amendments to the Bill in the Commons has passed, we would be grateful if you would consider the possibility of arranging for amendments to be tabled in the House of Lords to give effect to our proposal.



I have copied this letter to the Minister of State in your Department, Lord Callanan. I have also copied this letter to the Counsel General and Brexit Minister, the Secretary of State for Wales, Earl of Kinnoull (as Chair of the European Union Committee in the last Parliament), and the Convener of the Scottish Parliament's Culture, Tourism, European and External Affairs Committee.

Yours sincerely,

David Rees AM



Chair of the External Affairs and Additional Legislation Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

