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*Alun Cairns*

## EUROPEAN UNION (WITHDRAWAL) BILL

Ahead of Commons Report stage for the European Union (Withdrawal) Bill today and tomorrow, I am writing to provide you with an update on amendments made to the Bill at Committee and to highlight amendments that the Government has tabled for Report stage consideration.

You will be aware of our continuing commitment to improve clause 11 of the Bill; whilst it has not been possible to bring forward an amendment at Commons Report, we have reaffirmed our commitment to amend this provision in the House of Lords and discussions continue between the UK Government and the devolved administrations to enable us to do so.

### Committee stage amendments

As I noted in my letter of 10 December, amendments at Committee stage modified the scrutiny procedures for SIs made using powers in the Bill. The first of these amendments concerned the explanatory memoranda produced to accompany regulations made using powers under the Bill. It places requirements on UK Government Ministers to include information in those memoranda.

The second amendment modified Schedule 7 to require Ministers of the Crown to lay Statutory Instruments (which they are proposing to make under the negative procedure using the three principal powers in the Bill) before the Commons for consideration by a committee. You will also wish to note that the Government has tabled consequential amendments relating to these matters ahead of Report stage of the Bill.

These amendments do not place requirements on the Welsh Ministers and do not apply to the Assembly. Nonetheless I have asked my officials to discuss these provisions with yours to ascertain the Welsh Government's and the Assembly Commission's views on these and I understand that these conversations are

progressing well. I am interested in your views on whether these provisions should apply to Assembly scrutiny of Welsh Ministers' use of powers in the Bill. I attach a detailed list of questions that we have asked the Welsh Government at Annex A and would also welcome any views you may have.

### **Clause 10 amendments**

We have listened to the arguments put forward by the Welsh Government and the Scottish Government on the powers in Clause 10 and have brought forward two amendments for Report stage.

The first amendment would change the requirement for the devolved administrations to seek the consent of the UK Government in exercising the deficiencies power to a consult requirement. This is in line with the amendment published by the Welsh and Scottish Governments. The second Government amendment would provide that, where a framework is not required in a given area, the devolved administrations should be able to use the powers in the Bill to correct deficiencies in direct retained EU law in that area.

We recognise the importance of working with the devolved administrations to ensure the Bill works for all parts of the UK and these amendments demonstrate our willingness to make improvements to it. We are also continuing discussions with the devolved administrations on how we can best manage the task of preparing the statute book for exit day. My colleagues and I continue to be grateful for the constructive engagement of the Welsh Government on these issues.

### **Clause 7 amendments**

We have tabled amendments to Clause 7 to make absolutely clear the scope of the power in this clause given speculation on the ways it could be used. These amendments ensure the correcting power can still make all the changes required to deliver a functioning statute book.

We have tabled amendments which restrict the scope of the power to correct deficiencies in retained EU law by making the list of deficiencies in clause 7(2) exhaustive rather than illustrative. This means that the correcting power can be used only if deficiencies arise in the circumstances listed.

To ensure the scope of the power matches the range of deficiencies identified there are two further amendments:

- Firstly, a 'sweeper' provision to enable deficiencies similar to those listed to be treated in the same way as those listed.. For example, where 'Member States' public authorities' are referred to the 'sweeper' provision will mean that EEA-EFTA public authorities could also be included.
- Secondly, providing a power for UK Ministers to add to the deficiencies list through an SI requiring the approval of both Houses of Parliament.

These amendments do not place requirements on Welsh Ministers. However, they will apply to corrections made by Welsh Ministers using the powers conferred by Clause 10 and Schedule 2. I have asked my officials to discuss these provisions with yours.

This list of deficiencies applies across the UK. The UK Government believes it is important that there is consistency between jurisdictions in the UK, so any additional types of deficiencies would also apply to devolved ministers' powers. We would expect to consult with colleagues in the devolved administrations where we identify additional deficiencies before adding new types of deficiency as this would affect devolved ministers' powers.

The UK Government would consider closely any suggestions for additional categories of deficiencies from the devolved administrations. We would expect to accept any proposals the devolved administrations make to ensure devolved ministers are able to make the appropriate changes to prepare their laws for exit day.

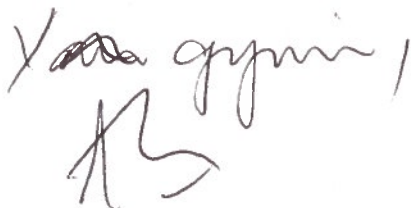
### **Rights of challenge based on the general principles of EU law**

Throughout Committee Stage we listened carefully to the views of MPs across the House, including those who called for greater legal certainty as we leave the EU.

Therefore, we have brought forward amendments to clarify the position regarding rights of challenge under the general principles of EU law. These amendments will, in some cases, allow a legal challenge to be brought for up to three months after exit day on the basis of incompatibility with the general principles of EU law.

Any challenge must relate to a cause of action that occurred before exit day and may be made against either administrative action or domestic legislation other than Acts of Parliament. The effect of this amendment will allow courts, tribunals and other public authorities to disapply or quash the offending enactment or conduct.

I am writing in similar terms to the Presiding Officer and I am copying this letter to the Chair of the Assembly's External Affairs and Additional Legislation Committee, the Chair of the Assembly's Constitutional and Legislative Affairs Committee and to the Chair of the Welsh Affairs Committee in Parliament.



**Rt Hon Alun Cairns MP**  
Secretary of State for Wales  
Ysgrifennydd Gwladol Cymru

## Annex A

The amendments described in the attached letter do not, largely, have any effects on the devolved administrations. If the devolved administrations would like similar provisions to be made for them in the Bill, this would be possible and the UK Government would expect to make these changes at committee stage in the House of Lords. We would therefore need your decisions in principle by Second Reading in the House of Lords to allow time to work up mutually acceptable drafting.

We expect the Bill to enter the House of Lords this week and Lords Second Reading is scheduled for 30 and 31 January, with committee stage likely to commence in mid-late February. This annex therefore sets out a list of questions that we believe need to be answered quickly in order to proceed with any amendments to bring the devolved administrations and devolved legislatures within the scope of the provisions. Officials in DExEU will be happy to further discuss any of these with your officials if that would be helpful to your decision making process.

### *Explanatory Material*

- Would you like devolved authorities to be statutorily bound to produce explanatory material alongside SIs made under the relevant powers in schedule 2 of the Bill?

*If so:*

- Should this explanatory material relate to the changes being made by the SI?
- Should this explanatory material relate to the relevant equalities duties?
- Should this requirement only apply to SIs made under the powers in Schedule 2 parallel to those in clauses 7(1), 8 and 9?

### *Sifting*

- Would you like devolved authorities to be required to submit negative SIs for a committee of the relevant legislature to consider the appropriateness of the negative procedure?

*If so:*

- Should this only apply to the SIs made under the powers in schedule 2 parallel to those in clauses 7(1), 8 and 9?
- Should the other provisions of relating to a sifting committee (e.g. timing, non-binding, remedies) parallel those applying in the UK House of Commons?

### *Joint procedure*

- Currently the sifting procedure and the requirement to produce explanatory material do not apply to SIs made via the joint procedure - do you have any views on this approach?

## Other outstanding technical matters

### *The “made affirmative” procedure*

In the Bill as introduced we included a “made affirmative procedure” which could be used by UK ministers in certain urgent cases where there was not sufficient time to go through the normal draft affirmative procedure before the instrument needed to be in force (see paragraphs 4 and 13 of Schedule 7 to the Bill). This procedure would involve making an instrument which will cease to have effect one month after the instrument is made unless the instrument is debated and approved within one month of being made.

As this was an unusual legislative procedure we did not apply it to the powers conferred on any of the devolved administrations on introduction, but instead sought views from each administration on whether they thought the procedure would be useful and appropriate in the context of their legislature.

- Would you like the “made affirmative” procedure to be available for powers exercised by Scottish Ministers?

### *Defined terms and the Interpretation and Legislative Reform (Scotland) Act 2010:*

In the Bill as introduced the only amendments we made to the defined terms in the Interpretation and Legislative Reform (Scotland) Act 2010 were to preserve the defined terms from the European Communities Act. However in the Interpretation Act 1978 we introduced several new defined terms related to withdrawal that the UK Government thought would be useful in relation to its future legislation - these include the following new terms added by para 11(e) of Schedule 8 of the EU (Withdrawal Bill):

- “retained EU law”
- “retained direct EU legislation”
- “retained EU obligation”
- “exit day”.

The Interpretation Act was also amended to alter the definition of “enactment” so that going forward its meaning would include retained direct EU legislation.

We did not include these in ILRA on introduction as we thought it was a matter for the Scottish Government as to whether these new definitions should be included and we wrote to offer to include any of these new definitions in ILRA if you thought it would be suitable to include them

- Would you like any of these new defined terms (or the new meaning of “enactment”) to be included in the amendments to ILRA?
- Are there any other issues relating to EU-exit and interpretation legislation that you think it would be useful to address in the European Union (Withdrawal) Bill?