

External Affairs & Additional Legislation Committee: Consultation on the Great Repeal Bill and its implications for Wales: Response from the Wales & Europe Working Party of Cytûn (Churches Together in Wales)

Cytûn (Churches Together in Wales) brings together the main Christian denominations of Wales, and a number of other Christian organisations, to work together on matters of common concern. The 16 member churches have around 168,000 adult members in every community across Wales, and regular contact with many more adults, children and young people. A full list of member churches and organisations can be found at:

<http://www.cytun.cymru/us.html>

The Wales & Europe Working Party was founded in the aftermath of the June 2016 referendum to enable the churches to work together in responding to the result and the many changes it is bringing about in the life of the nation. All member churches of Cytûn are involved in the Working Party. Resources published by the Working Party can be found at:

www.cytun.cymru/waleseurope

This response was approved by a meeting of the Working Party on 5th May 2017, and may be published in full.

We would welcome the opportunity to be involved further in the work of the Committee. Any queries should be directed to the Secretary of the Working Party, Revd Gethin Rhys, National Assembly Policy Officer for Cytûn, at gethin@cytun.cymru.

We are grateful for the opportunity to respond to this consultation. Our comments on each of the questions are printed in red below.

1. The Great Repeal Bill and the broader legislative approach to Brexit

1.1 What is your view on the UK Government's approach to legislating for Brexit and the implications this might have for Wales, devolution and the balance of power between the Assembly and Welsh Ministers?

1. We support the principle of incorporating EU law into domestic law so that current rights and responsibilities are altered only after the UK has left the EU, and with full scrutiny by the relevant legislature.
2. Difficulties arise, however, because (a) current devolution legislation assumes membership of the EU; and (b) EU legislation assumes compliance by the member state and does not make provision for sub-state legislatures. There is therefore an inevitable danger of inadvertent (or deliberate) rebalancing of the devolution settlements during this process. Because of the unified England & Wales legal jurisdiction, this is a particular problem with regard to Wales. The Cytûn Wales & Europe Working Party has been consistent in its view that the process of departure from the EU should not, in and of itself, lead to alterations in the devolution boundary, as the 2011 Welsh referendum result should be respected in the same way as the 2016 EU referendum result.
3. Chapter 4 of the Great Repeal Bill White Paper begins to set out the idea that “the UK single market” will need to be regulated after Brexit in the same way as the EU single market is at present. This novel concept is then used to suggest that the framework regulations currently made by the EU will in future be made through UK legislation (para 4.4), with implementation within that framework being devolved with regard to

devolved subject matters. It adds that initially the UK framework will be very similar to the EU framework, with discussion on changes following Brexit. This is contrary to the idea put forward in the Welsh Government/Plaid Cymru White Paper [Securing Wales' Future](#) (pp 27-28) that the frameworks be agreed between all the UK governments. It is our view that the UK Government's proposal would require primary UK legislation with Welsh Assembly consent in those policy areas that the Wales Act 2017 does not reserve to Westminster. The UK Government White Paper adds (para 4.5) *"This will be an opportunity to determine the level best placed to take decisions on these issues, ensuring power sits closer to the people of the UK than ever before. It is the expectation of the Government that the outcome of this process will be a significant increase in the decision making power of each devolved administration."* It appears to us that this elision of "decision-making power" (administrative competence) and legislative competence – two different concepts – may lead to a divorce between legislative and administrative devolution, a problem which has dogged the Welsh settlement since 2007 and had been partially addressed by the Wales Act 2017. The re-opening of this gap will be confusing for citizens wishing to know which elected representatives are responsible for which matters. At a time of lessening trust in governance arrangements, a situation where one needs to speak to your MP about legislative changes (e.g. with regard to agriculture) but to your AM about administration of that legislation is surely undesirable.

Furthermore, the suggestion that detailed conversations between the UK and devolved governments will begin only AFTER Brexit is unacceptable. We believe that the closest possible co-operation is required between the Governments and legislatures of the UK throughout this process.

4. We welcome the statement in the White Paper that the Equality Act 2010 – based on EU law – will remain in force (para 2.17 Example 1) and that the UK "has no plans to withdraw" from the European Convention on Human Rights. These are both in line with what this Working Party and individual member churches of Cytûn have asked for. However, we are very concerned that the UK Government does not intend to incorporate the EU Charter of Fundamental Rights into UK law, arguing that all the rights in it are either contained in other legislation or treaties which will be preserved in UK law, or are irrelevant because they relate to specific EU institutions (paras 2.23-2.25). We note, for example, the concerns expressed in [the BMJ](#) on 2 May 2017 that the Charter's "right to health" and associated case law will therefore be lost. We would urge the Assembly to ask the UK Government to reconsider its position on this. If it does not do so, we would suggest that the Assembly consider ways in which the Charter and its rights could be retained in Welsh law - perhaps analogously to the way the UN Convention on the Rights of the Child has been used in the [Rights of Children and Young Persons \(Wales\) Measure 2011](#)).

2. The granting of delegated powers

[Paragraph 4.6](#) of the White Paper states that:

"Legislation that is within the competence of the devolved legislatures or ministers giving effect to EU law will also need to be amended as we leave the EU. We therefore propose that the Bill also gives the devolved ministers a power to amend devolved legislation to correct law that will no longer operate appropriately, in line with the power we propose should be held by UK ministers."

The power to grant delegated powers to UK Ministers rests with Parliament. In areas of devolved competence, the Assembly holds the power to grant delegated powers to Welsh Ministers, though Parliament can also grant these powers to Welsh Ministers.

2.1 How can the drafting of the Great Repeal Bill ensure that the Assembly has sufficient oversight over powers delegated to Welsh Ministers?

We are very concerned that any delegated powers should be subject to sufficient oversight by the relevant legislature. Given that the Assembly has the power to delegate powers to Welsh Ministers, it would seem best for the Great Repeal Bill to confirm (for the avoidance of doubt) that the Assembly has legislative competence in devolved areas, and leave the Assembly to delegate powers to Welsh Ministers as it sees fit.

This approach would, however, require extensive involvement of the National Assembly and the Welsh Government in the drafting of the Great Repeal Bill, in order that there should be no undue delay in making necessary amendments to devolved legislation.

3. Scrutiny and control of delegated powers

The White Paper sets out a range of constraints that are to be placed on the delegated powers provided to UK Ministers and, by extension, Welsh Ministers. These include limiting the powers so that they are not available to Government for making policy changes and time-limiting the powers ([see paragraphs 3.16 to 3.25](#)).

3.1 Are the constraints proposed in the White Paper sufficient?

We support the proposed constraints. We believe that the Great Repeal Bill should not limit the powers of the Assembly to add additional constraints, procedures or oversight arrangements in the case of powers delegated to Welsh Ministers.

The White Paper recognises that Parliament will need to be satisfied that the procedures in the Bill for making and approving secondary legislation are appropriate.

3.2 Should the Assembly be free to determine the procedures for making and approving secondary legislation where powers are delegated to Welsh Ministers?

Yes.

3.3 If so, how can this be reflected in the drafting of the Great Repeal Bill?

Given that the procedures of the Assembly are not reserved under the Wales Act 2017, we do not see any need for the Great Repeal Bill to make specific provision of this kind.

3.4 If the Assembly is free to determine the procedures for making and approving secondary legislation where powers are delegated to Welsh Ministers what procedures should it consider?

Given the exceptional volume of such legislation which will be required, we would recommend that extensive use be made of Assembly Committees rather than plenary sessions for considering such secondary legislation.

We imagine that many of the legislative steps required will be repetitive, in that the same wording and certainly the same principles will be raised on numerous occasions. We would encourage the Assembly to consider ways of establishing precedents so that identical discussions need not be repeated ad nauseam, leaving time for new principles and questions to be considered as they arise.

We would also encourage the three devolved legislatures to learn from one another, and adopt one another's wordings and techniques where appropriate to avoid 're-inventing wheels'.

The House of Lords Constitution Committee has suggested that Parliament could establish a sifting mechanism within Parliament that considers whether a particular piece of delegated legislation contains policy decisions that should trigger an enhanced form of parliamentary scrutiny ([see Chapter 3](#)).

3.4 Should the Assembly consider a similar sifting mechanism for considering delegated legislation brought forward under the Great Repeal Bill?

Yes.

3.5 How could such a system work in practice?

The House of Lords Constitution Committee has acknowledged that this process will be challenging in a Parliament of 650 elected and over 800 non-elected members. We recognise that this process will be exceptionally challenging in an Assembly of 60 members. We would make the following suggestions to seek to ease the difficulties:

- The closest possible liaison between Westminster and Assembly 'sifting' mechanisms, especially where carried out by Parliamentary/Assembly committees. There could be considerable advantage in having observers from the Assembly at Westminster and vice versa so that, where (virtually) identical matters arise they need not be considered twice.
- Given the relative size of Wales, the good relations between the Assembly and the wider policy community, and the relatively defined fields of legislative competence that would be covered, there might be virtue in inviting (non-voting) expert panellists to sit with 'sifting' committees, according to the subjects under consideration. They would operate as expert witnesses, but during consideration of the secondary legislation itself (rather than during separate hearings). If such an idea is adopted, it would be very important that such panellists declare any relevant interests.

3.6 Would provision for this, if any, should be made under the Great Repeal Bill?

We believe that this should be a matter for the Assembly.

The House of Lords Constitution Committee has suggested that Ministers should provide specific information in Explanatory Memoranda accompanying statutory instruments to aid the scrutiny process ([see Chapter 3](#)).

3.7 What information should Welsh Ministers be required to include in explanatory memoranda accompanying statutory instruments brought forward under the Great Repeal Bill to demonstrate that the legislation meets any constraints on powers?

We believe that the House of Lords Constitution Committee proposals provide an excellent starting point. We would encourage the External Affairs and Additional Legislation Committee to begin considering specific guidance for Welsh Ministers immediately.

3.8 Should the Assembly set these requirements in its own Standing Orders?

As this is an unprecedented and unique set of circumstances, we do not believe that detailed provision should be included in the Assembly's Standing Orders, as these particular SOs would be used only in the current Assembly. Instead, we suggest that a permissive Standing Order should allow as much flexibility as possible to the Assembly and its committees, so that as the process proceeds there may be a learning from experience and the process may be refined and improved.

3.9 If it should, how could/should this be reflected in the drafting of the Great Repeal Bill?

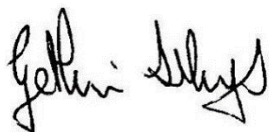
We believe that the Standing Orders of the Assembly are a non-reserved matter under the Wales Act 2017 and this does not therefore need to be included on the face of the Great Repeal Bill.

4. Engaging with stakeholders

4.1 How can the Assembly ensure that the Welsh people, stakeholders and organisations have sufficient opportunity to contribute to the legislative processes established by the Great Repeal Bill?

- See the suggestion made under 3.5 above.
- More generally, we believe that the processes should be as transparent and open as possible. We commend the work of Assembly Committees in seeking and gathering evidence so far, and would encourage them to continue with such work throughout the process initiated by the Great Repeal Bill. This could cover both devolved and reserved matters of particular relevance to Wales, the evidence gathered regarding the latter being shared with Westminster committees.

5th May 2017.



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Swydddog Polisi / Policy Officer

on behalf of the Cytûn Wales & Europe Working Party

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