

**Mick Antoniw, AM,
Chair,
Constitutional and Legislative Affairs Committee,
National Assembly for Wales.**

21 May 2018

Dear Mick Antoniw,

**SCRUTINY OF REGULATIONS MADE UNDER THE EUROPEAN UNION
(WITHDRAWAL) BILL – OPERATIONAL MATTERS**

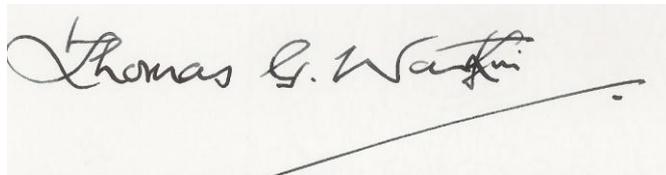
Thank you very much for your letter of 17 May inviting me to contribute to your consideration of the operational matters that relate to the scrutiny of regulations to be made under the provisions of the EU (Withdrawal) Bill, with particular reference to the amendments made by the House of Lords during the latest stages of the bill's passage.

As always, I shall be happy to contribute as best I can. On this occasion, there is however a difficulty in that I am committed to attending and contributing to some events over the next few weeks which will make it difficult for me to reply properly much before the middle of the week commencing 4 June. I realise that this is less than a week before your meeting with the Leader of the House, Julie James AM, and that ideally you would wish an earlier response. Nevertheless, I shall try to respond fully by that time if that is acceptable to you.

In case it may be of use in the meantime, there are some concerns with the proposals contained in the amendments which I think need to be addressed. I must emphasize that I have not as yet had the opportunity to study the Lords' amendments thoroughly and that what follows in the attached Appendix are first thoughts based on what I have managed to read thus far, and what I have heard and read discussed in the media. With that *caveat*, I hope the points raised will be of some use until I am able to submit a more reasoned reply.

With my thanks and best wishes,

Yours sincerely,

A handwritten signature in black ink on a light-colored background. The signature reads "Thomas G. Watkin" in a cursive script. A long, thin horizontal line is drawn below the signature, extending from the left side of the signature towards the right.

Thomas Glyn Watkin

APPENDIX

1. I remain concerned that, in redistributing functions currently exercised by EU institutions, regulations made by Ministers of the Crown may allocate functions, relating to matters which are devolved, to public authorities which are not devolved Welsh authorities. If that is done, will the allocation remain valid when the five-year sunset period comes to an end? If it does, the Assembly will not be able to modify or remove such functions without Minister of the Crown consent, i.e., competence will in truth be lost. The same problem would arise if the allocation was to a UK government department, or if the function was made jointly exercisable by the Welsh Ministers and the Secretary of State.
2. When the sunset period has ended, will the Secretary of State's intervention powers remain in place regarding any changes which the Assembly is able to make within its competence to amend what the UK government has done by regulations in the meantime?
3. Is the Welsh Government putting in place mechanisms at Westminster to oppose the making of regulations to which the Assembly has not consented? Do they intend to mobilise a coalition of opposition parties to defeat such moves in the Commons given the UK Labour leader's comments on a continuing 'power grab'?
4. Where does the convention that the Lords do not frustrate the will of the democratically elected chamber rest where the Commons is overturning the will of a democratically elected devolved legislature on an issue which is devolved? There appears to be uncharted constitutional territory here. The matter would become particularly important if a UK general election returned a majority government before the two-year sunset period for making regulations had expired, thus making it unlikely that intervention in the Commons could succeed..
5. Is there a danger that the mechanism introduced to allow UK Ministers to ask Parliament to override the Assembly's wishes regarding legislative consent in this instance may form a precedent for how the Sewel Convention may be operated in the future? In other words, is the proposed procedure a Trojan horse? The answer to point 4 above becomes even more significant in that event.
6. Is, or should there be, a difference as a matter of convention between the consequences in Parliament or the Lords of the Assembly's not agreeing to consent and refusing consent?
7. Under the principles operating behind the 'English Votes for English Laws' procedures, should there be a similar procedure to allow Welsh MPs a distinct role in votes on regulations affecting laws which do not relate otherwise than in relation to Wales?

Thomas G. Watkin
21 May 2018