



# The EU Withdrawal Bill – A Legal Perspective

## The constitutional implications for Wales



Plaid | Party of  
Cymru | Wales

Published by Plaid Cymru on 9<sup>th</sup> October 2017

Contact: [post@plaid.cymru](mailto:post@plaid.cymru)

Commissioned by the Plaid Cymru Westminster Group

Authored by Awen Fflur Jones

Promoted by Plaid Cymru at Ty Gwynfor, Marine Chambers, Anson Court, Atlantic Wharf,  
Cardiff Bay, Wales CF10 4AL

Printed by Colourstat at 68 Rochester Row, Westminster, London, England SW1P 1JU

Images used under the Creative Commons license

Credits: Wojtek Gurak/Jan Kench/Rajan Manickavasagam/Flickr

## The European Union (Withdrawal) Bill and its legal and constitutional implications for Wales

The UK government published The European Union (Withdrawal) Bill (the Bill) on 13 July 2017. After months of speculation regarding what provisions the Bill would include, the Bill, since publication is proving to be extremely controversial.

In this paper, I focus on the Bill's legal and constitutional implications for Wales. I argue how and why the Bill is entirely unacceptable to the people of Wales in its current form.

Ned Thomas, in his article "*Brexit: A Moment of Existential Danger*" in Planet, traced back the origins of the various EU initiatives in favour of minority languages and smaller cultures, and explained how those initiatives had done much to protect the Welsh language and culture. In his view, Brexit itself posed a "*moment of existential danger*" to Wales and the Welsh language and culture. Whilst it must be acknowledged that the people of Wales voted to leave the European Union in the Brexit referendum, having considered in detail the provisions of the Bill as drafted, it is my view that it poses, in its current form an existential threat to the current devolution settlement in Wales.

In this paper I argue that:

1. The devolution settlements within the UK have fundamentally changed the UK's territorial constitution, albeit in an evolving and piecemeal manner. Now is the time to commit that evolved territorial constitution into a written UK constitution, bringing together all those changes.
2. The Bill as drafted adopts a binary approach to the devolution settlement, which does not reflect the 'glue' that has been EU law on that settlement, nor the shared competences that exist between the UK Government and the National Assembly for Wales (NAW).
3. The Bill requires significant amendment to ensure it does not erode the current devolution settlement in Wales, which is reflective of the wishes of the people of Wales as expressed in two referendums on devolution
4. Negotiations regarding Brexit and the Bill should proceed in a manner which is reflective of the devolution settlement, with the NAW / WG given a seat at the negotiating table in discussions between the UK Government and with the EU.

## 1. The principles of the UK's territorial constitution, as evolved since devolution, and why Wales' devolution settlement is under threat

The mandate of the NAW includes two referendums, in which the people of Wales voted for devolution in the original referendum of 1997, and then subsequently in 2011 on the move to the present system of legislating. When much of the Brexit debate is being couched as 'taking back control', and acting in accordance with the 'will of the people', we should remember these two referendums' outcomes – which signalled loud and clear that the will of the majority of Welsh people, on both occasions, was that the NAW should both exist, and have powers vested within it which it could use to legislate in a manner which represented the best interests of the peoples of Wales. The fact that Wales has voted for Brexit, or that Brexit is happening does not affect the results of those two devolution referendums. However, the Bill as drafted undermines the principles of the current devolution settlement, creating unacceptable constitutional instability between the UK Parliament and Wales.

Since devolution first took shape in Wales, Scotland and Northern Ireland, the territorial constitution of the UK has been constantly evolving. Whilst the Westminster Parliament remains sovereign under the current constitution, certain powers are now legitimately exercised by the devolved administrations and their respective legislatures.

These devolved powers have evolved over time. Following the Silk Commission's second report in 2014, implemented by means of the Wales Act 2017, Wales has finally followed Scotland to a 'reserved powers' model, which means that the NAW may legislate on matters that are not expressly reserved to the UK government. The Wales Act 2017 is set to come into force in April 2018. Agriculture, the Environment, Fisheries, Education, Health and

Regional Policy are all devolved areas to the custody of the NAW, and that institution may currently legislate upon them within the confines of EU law.

As the House of Lords European Union Committee: *Brexit: Devolution* report stated, the devolution settlement seems therefore on a superficial level to imply a binary relationship between Wales (and the other devolved countries) and the Westminster Parliament<sup>1</sup> - as if the devolved legislatures are free to do anything they want, as long as it is not expressly forbidden by the UK Parliament<sup>2</sup>. This is not in fact the case however, due to two important factors.

The first factor is that the three devolution settlements are framed in the context of the UK's pre-existing EU membership, and reflect the supremacy of EU law: they reflect not a one-to-one relationship between the UK and devolved institutions, but a three sided relationship, in which many key powers are exercised neither in Westminster or Cardiff, but in Brussels<sup>3</sup>.

Section 108 of the current Government of Wales 2006 Act expressly provides that the Welsh Assembly is prohibited by statute from legislating contrary to EU law. An Act of the Assembly "is not law" (s108 (2)) if, among other things, it is 'incompatible with...EU Law' (s108 (6) (c)). Once section 3 of the Wales Act 2017 enters into force, the numbering will change; the provision will be contained in s108A (1) (not law) and s108A (2) (e) (incompatible with EU law). It is section 3 of the Wales Act 2017 that is cited within the Bill.

---

<sup>1</sup> HoL EUC Brexit: Devolution, para 25

<sup>2</sup> Ibid.

<sup>3</sup> HoL EUC Brexit: Devolution, para 26

The House of Lords European Union Committee found that the European Union has been, in effect, part of the glue holding the UK together since 1997<sup>4</sup>. It went on to state:

*“The supremacy of EU law, and the interpretation of that law by the Court of Justice of the EU, have in many areas ensured consistency of legal and regulatory standards across the UK, including in devolved policy areas such as environment, agriculture and fisheries. In practice, the UK internal market has been upheld by the rules of the EU internal market”<sup>5</sup>.*

The second factor is the ‘shared competences’, which have evolved between the UK institutions over time. These are areas of policy where both the National Assembly for Wales and the Westminster Parliament can both legislate on different aspects. These shared competences are set out in minute detail in legislation enacted by the Westminster Parliament, and while powers may overlap in complex ways, there is a statutory basis for determining whether any particular exercise of devolved competences is lawful<sup>6</sup>.

Whilst the UK Parliament therefore retains power in each of the devolution statutes to legislate in relation to devolved matters, the Sewel convention requires that it should normally do so only with the consent of the relevant devolved legislature. The Sewel convention now has statutory expression in section 2 of the Scotland Act 2016 (which adds a new subsection 28(8) to the Scotland Act 1998, and in section 2 of the Wales Act 2017, (adding subsection 107(6) to the

Government of Wales Act 2006)<sup>7</sup>, which states as follows:

*Convention about Parliament legislating on devolved matters*

*In section 107 of the Government of Wales Act 2006 (Acts of the National Assembly for Wales), after subsection (5) insert—*

*“(6) But it is recognised that the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Assembly.*

Despite this statutory expression of the previous Sewel convention however, the Supreme Court in the *Miller*<sup>8</sup> case found that even in its statutory form, the Sewel convention was no more than a political convention, apparently without legal substance. However, it has been suggested by many legal and political commentators since the verdict that it would be ‘*political folly*<sup>9</sup>’, for the UK Government to press on with the Bill without the legislative consent of Wales, Scotland and Northern Ireland.

Despite the fact that these two factors are hugely influential, or indeed instrumental to the devolution settlement, the UK government, in its approach to the Bill has chosen to adopt a binary approach to the Wales / Westminster relationship.

Professor Roger Scully has argued that the apparent adherence in the UK to a highly prescriptive, binary model, was a reluctance in

---

<sup>7</sup> Henry VIII comes to Scotland, Wales and Northern Ireland, and other Devolution Questions in the EU (Withdrawal) Bill, Kenneth Campbell QC

<sup>8</sup>

<https://www.supremecourt.uk/cases/docs/uk-sc-2016-0196-judgment.pdf>

<sup>9</sup> The EU (Withdrawal) Bill: Initial Thoughts, Mark Elliott, Public Law for Everyone

---

<sup>4</sup> HoL EUC Brexit: Devolution, para 36

<sup>5</sup> Ibid

<sup>6</sup> HoL EUC Brexit: Devolution, para 29

central Government to contemplate the sharing of sovereignty:

*“There is substantial understanding in London of the dimension of devolution that scholars would generally term self rule... of the granting of powers to devolved Governments and Parliaments in Edinburgh, Cardiff, Northern Ireland and so on. There is very little understanding, let alone enthusiasm, for creating the dimension of what scholars call shared rule, where the individual constituent units would participate in their own right in the sharing of powers across the whole state<sup>10</sup>”.*

Alternatively the approach of the UK Government in this respect demonstrates a possible lack of understanding of what mechanisms such as the Sewel convention, since enshrined in Statute, and the other various provisions of the Acts generated to further and protect the devolved administrations, signified for the way in which the territorial constitution of the UK had evolved, and their subsequent effect on law making from a UK Parliament, and from the devolved administrations’ perspective. This is why it is now time for a written constitution which properly reflects the evolved devolution settlements, so that the UK Parliament can be in no doubt of the principles to which they should adhere when dealing with devolved matters in the context of Brexit.

As Jo Hunt, in her chapter ‘Devolution’ from *The UK after Brexit* warned;

*“As the UK begins the process of detaching itself from the European Union, the UK’s constitutional order is variously pitched somewhere on a continuum between a unitary state and a federation – where the powers held by the different levels of state are*

*constitutionally entrenched. The labels used to describe the UK state, including the status and the relations between its parts have included a union state, a state of unions, a quasi-federation, and a voluntary association of nations. These different perspectives on the place in the UK’s constitutional order held by the devolved nations have been able to co-exist in the constitution’s inchoate form, providing a pragmatic political fudge. No definitive fixing has been required, until now. The process of withdrawing from the EU places demands on the UK’s constitution which require a defining of elements otherwise indeterminate and evolving. Clashes over constitutional expectations are inevitable”<sup>11</sup>.*

To summarise therefore; the UK territorial constitution has evolved in a complex and piecemeal manner, with different powers granted to different devolved administrations in response to various Commissions and events, as opposed to being developed in any coherent or strategic manner.

The position now is that whilst Parliament’s sovereignty remains supreme (and the various Wales Acts recognises that they are capable of being repealed by Parliament), the Sewel Convention, since enshrined in statute, is a powerful political mechanism by which legislative consent should be sought by the UK Parliament before it legislates on matters devolved to the NAW.

To date, the overriding ‘glue’ of EU law has also meant that shared competences between the UK Parliament and the NAW, and those areas of power devolved to the NAW have all been able to develop in a manner which kept the UK’s domestic union intact, given the overriding nature of the European Union’s internal market rules.

---

<sup>10</sup> As quoted in HoL EUC Brexit: Devolution, para 31

---

<sup>11</sup> “Devolution”, Jo Hunt, *The UK after Brexit*, Michael Dougan (ed).

The situation between Wales and the UK Parliament is therefore far removed from a 'binary' relationship. All legislative changes that will affect the devolution settlement in Wales, or the introduction of any framework agreements to keep intact elements of the domestic union within the UK, for the purposes of trade etc. should therefore be introduced by way of consultation and agreement between the UK Parliament and the NAW / Welsh Government. If no agreement can be reached between these parties, then Wales should be able to veto any such proposed legislative changes and / or framework agreements.

Any other mode of imposition of changes upon Wales signals adherence to a binary arrangement by the UK Parliament, where it seems to consider it is right to impose upon Wales certain changes which will affect its devolution settlement. Such an approach would not at all be reflective of the changes made to the UK territorial constitution over the past twenty years, which in Wales's context are reflective of the will of the people of Wales as expressed in two referendums on devolution.

## 2. Rhetoric and Reality

If one considers the rhetoric adopted by the UK Government over recent months in its description of its intended interactions with the devolved administrations of Wales, Scotland and Northern Ireland, you could quite easily be forgiven for thinking that it intended to act in keeping with the principles of an evolved territorial constitution which reflects the devolution settlement.

In her Lancaster House speech on 17 January 2017 for example, Theresa May stated that she was determined from the start that *“the devolved administrations should be fully engaged in the [Brexit] process”*. Further, she said *“I look forward to working with the administrations in Scotland, Wales and Northern Ireland to deliver a Brexit that works for the whole of the United Kingdom”*<sup>12</sup>.

Her next sentence perhaps should have set off alarm bells with those concerned with the devolved administrations’ rights;

*“Part of that will mean working very carefully to ensure that – as powers are repatriated from Brussels back to Britain – the right powers are returned to Westminster, **and the right powers are passed** to the devolved administrations of Scotland, Wales and Northern Ireland.”*

Whilst expressing therefore a commitment to *‘working with the administrations in Wales’* etc., her next sentence belies the fact that Westminster saw the question of *‘what powers should be passed’* to the devolved administrations as a question for Westminster alone to decide.

Again in the UK Government’s White Paper, the commitment was given to *“work closely with the devolved administrations to deliver an approach that works for the whole and each part of the UK”*<sup>13</sup>.

The Bill, once published however reflected a very different reality.

Six days after the Prime Minister’s Lancaster House speech, the Welsh Government and Plaid Cymru published a joint White Paper entitled *“Securing Wales’ Future”*. It set out six key priorities<sup>14</sup>:

1. Continued participation in the Single Market to support businesses, and secure jobs and the future prosperity of Wales
2. A balanced approach to immigration linking migration to jobs and good properly-enforced employment protection
3. On finance and investment, UK Government assurances that Wales would not lose funding as a result of the UK leaving the EU
4. **A fundamentally different constitutional relationship between the devolved governments and the UK Government, based on mutual respect and consent.**
5. Maintenance of social and environmental protections and values, in particular workers’ rights
6. Consideration of transitional arrangements to avoid a ‘cliff edge’ in the UK’s economic and wider relationship with the EU.

<sup>12</sup>

<https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech>

<sup>13</sup> Legislating for the United Kingdom’s withdrawal from the European Union, Para 4.4

<sup>14</sup> As summarised in HoL EUC Brexit: Devolution, para 103

It appears however that number 4 above, which is of relevance to the contents of the Bill, has not been at all respected in the manner it has been drafted, and the provisions it includes for the devolved administrations.

Since the Brexit Referendum was held on 24 June 2016, the Joint Ministerial Committee (JMC), as established under the reissued memorandum of understanding between the UK and the devolved Governments in 2013, has only met twice – on 24 October 2016, and on 30 January 2017.

At the October meeting of the JMC, a Joint Ministerial Committee (EU Negotiations) (JMC –EN) was established, to be chaired by the Secretary of State for Exiting the EU, David Davis MP. The JMC-EN first met on 9 November 2016, then again on 7 December.

The JMC-EN's terms of reference are admirable ones<sup>15</sup>:

*“Through the JMC (EN) the governments will work collaboratively to:*

- *Discuss each government's requirements of the future relationship with the EU;*
- *Seek to agree a UK approach to, and objectives for, Article 50 negotiations, and*
- *Provide oversight of negotiations with the EU, to ensure, as far as possible, that outcomes agreed by all four governments are secured from these negotiations, and,*
- *Discuss issues stemming from the negotiation process which may impact upon or have consequences for the UK Government, the Scottish Government, the Welsh Government, or the Northern Ireland executive”.*

---

<sup>15</sup> As summaries in HoL EUC Brexit: Devolution, para 274

Since December, the JMC – EN has only met twice, most recently on 8 February 2017. The Government's White Paper on the Repeal Bill was published on 30 March 2017. Since then therefore, (and since negotiations between the UK Government and the European Commission commenced!) there have been no meetings of the JMC-EN, despite reassurances given by the Secretary of State for Scotland (David Mundell) at a JMC on 19 April 2017 that;

*“In our negotiation with the EU, we will be seeking the best deal for all parts of the UK. The Joint Ministerial Committee (EU Negotiations) was established to facilitate engagement between the UK Government and devolved Administrations, and has had regular substantive and constructive discussions”<sup>16</sup>.*

Contrast that sentence with Michael Russell, MSP's evidence to the House of Commons Exiting the European Union Committee on 8 February 2017, when asked how often it had met:

*Today's the fourth. It meets this afternoon, though I am afraid I could not tell you where, because such is the process of setting these meetings that I do not even know, at this moment, where that meeting is taking place. I think it is somewhere within the environs of this building, but we do not know”<sup>17</sup>.*

Jonathan Edwards, Plaid Cymru's MP for Carmarthen East and Dinefwr, also asked a written question regarding the JMC-EN on 12 July 2017:

*“To ask the Secretary of State for Exiting the European Union, when the Joint Ministerial*

---

<sup>16</sup>

<https://hansard.Parliament.uk/Commons/2017-04-19/debates/C1F898F9-7347-4285-A25D-641A1BA32CA8/JointMinisterialCommittee>

<sup>17</sup> As quoted in HoL EUC Brexit: Devolution, para 277

Committee (EU Negotiations) will next meet”<sup>18</sup>.

The answer he received was suitably bland and non-committal:

*“The Government has been clear from the start that the devolved administrations should be fully engaged in our preparations to leave the EU. The Secretary of State has had a number of bilateral discussions with the Scottish and Welsh Governments as we have moved into the negotiation phase and we are committed to positive and productive engagement going forward. In the absence of an Executive, we have also engaged at an official level with the Northern Ireland Civil Service.*

*Over the summer, we anticipate there will be regular and sustained bilateral discussions with officials from the devolved administrations, reporting back to Ministers at regular intervals to ensure sufficient progress is being made. There is also a place for multilateral meetings, and we will take that forward as and when it is appropriate”<sup>19</sup>.*

The UK Government also voted against putting the JMC-EN on a statutory footing for Brexit negotiations during the passage of the European Union (Notification of Withdrawal) Act 2017.

On 21 June 2017, in the opening paragraph of the Queen’s speech, the Government expressed its commitment, once again, to *“working with Parliament, the devolved administrations, business and others to build*

---

<sup>18</sup>

<http://www.Parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-07-12/4456>

<sup>19</sup> Ibid

*the widest possible consensus on the country’s future outside the European Union”<sup>20</sup>.*

David Davis MP also robustly defended the Government’s record, in his evidence to the House of Lords European Union Committee, telling them that *“We have bent over backwards...to pay attention to the interests of the people of Scotland, the people of Wales, and, of course, particularly the people of Northern Ireland”<sup>21</sup>.*

Given therefore the rhetoric used, and some of the statements made by the UK Government as cited above, as we journeyed towards the eventual publication of the Bill, one would have expected the Bill to adequately reflect the current devolution settlements, together with the nuances of an evolved UK territorial constitution. It is no wonder therefore that the contents of the Bill, once published have proven so controversial, and to be such a deep disappointment to the devolved administrations, leading to the First Minister of Scotland, Nicola Sturgeon and First Minister of Wales, Carwyn Jones, to condemn the Bill as a *“naked power-grab, an attack on the founding principles of devolution and could destabilise our economy”<sup>22</sup>*

As David Rees AM, Chair of the Assembly’s External Affairs Committee stated:

*“As we stated in our recent report, this Bill is being introduced following next to no consultation with the Welsh Government and no prior consultation with the Assembly. If this Bill does seek to constrain the Assembly’s powers, then it could be seen as undermining devolution and the democratic will of the Welsh people, as expressed in the 2011*

---

<sup>20</sup>

<https://www.gov.uk/government/speeches/queens-speech-2017>

<sup>21</sup> HoL EUC – Brexit: Devolution paragraph 288

<sup>22</sup> Joint Statement 13 July 2017.

*referendum on full law-making powers for Wales<sup>23</sup>*”.

The Bill has been published with scant regard for the principles of a changed UK territorial constitution as evolved since devolution originally took place. It would appear that the UK Government seems to struggle to comprehend those principles, let alone act in accordance with them. The warning given by the House of Lords European Union Committee that *“A successful settlement cannot be imposed by the UK Government; it must be developed in partnership with the devolved Governments”<sup>24</sup>* seems so far to have gone unheeded by the UK Government.

---

<sup>23</sup>

<https://assemblyinbrief.wordpress.com/2017/07/17/what-does-the-eu-withdrawal-bill-mean-for-wales-and-devolution/>

<sup>24</sup> HoL EUC Brexit: Devolution para 272.

### 3. The provisions of the EU (Withdrawal Bill) - shortcomings in the context of the devolution settlement for Wales

Much of the political and legal commentary about the Bill that has been written so far has focused on significant and concerning clauses other than the devolution clauses. Mark Elliott's damning summary of the Bill's impact was as follows:

*"In political terms, the Withdrawal Bill is being presented as the epitome of the taking back of control and the restoration of "sovereignty" that has been so fetishized by some. But it actually demonstrates something very different. It serves as a stark reminder of the way in which the banal rhetoric that has characterised — and that continues to characterise — much of the political debate in this area is now beginning to meet brutal legal and constitutional reality. Some will doubtless find clause 1 of the Bill, with its references to "exit day" and the repeal of the European Communities Act, intoxicating. They should make the most of it. Because the rest of the Bill palpably demonstrates that those drunk on the notion of taking back control need to face up to the fact that they — indeed, we — are in for one hell of a hangover"*<sup>25</sup>.

Mark Elliott further summarised the main provisions of the Bill thus:

*The Bill will do three key things. First, it will repeal the European Communities Act, which was passed in 1972 in order to enable the UK to join what is now the EU. (Clause 1 – to happen on 'exit day', whenever that will be) Second, it will turn nearly all existing EU law into UK law. Third, the Bill will give Government Ministers the powers to amend, get rid of, and replace "retained EU laws"*

25

<https://publiclawforeveryone.com/2017/07/14/the-eu-withdrawal-bill-initial-thoughts/>

*(that is EU laws that are converted into national laws by the Bill)*<sup>26</sup>.

The third point above has already been extensively written about, as these powers given to Government Ministers, in clause 7 and 9 of the Bill are the much talked about 'Henry VIII' powers. What that means is that those Ministers are granted extensive (and to a great extent unchecked and unscrutinised powers) to issue statutory instruments to deal with 'deficiencies' in the EU law that is to be 'retained' by the UK (creating a distinct body of 'retained EU Law') post exit day.

This main focus of this section of the paper is on the provisions of the clauses of the Bill directly affecting the devolution settlement in Wales, (i.e. clauses 10 and 11 of the Bill). At section 4 of the paper I have also included a focus on other parts of the Bill that should be challenged from Wales' perspective. The Explanatory Notes to the Bill note that Clause 1, 2, 3, 4, 8, 10, 11, 12, 16 and Schedule 1, 2, 3, 4, and 7 of the Bill require a Legislative Consent Motion to be granted by Wales, Scotland and Northern Ireland in accordance with the Sewel convention, and therefore the scope of each of these Clauses and Schedules on Wales should be considered carefully.

As mentioned above, the pertinent clauses of the Bill which deal with the devolved administrations are clauses 10 and 11. It is these clauses which belie the UK Government's blatant disregard for the changed UK territorial constitution as evolved since devolution began, and indeed demonstrate their determination to take a binary approach to Westminster's relationship

26

<https://publiclawforeveryone.com/2017/07/14/1000-words-the-eu-withdrawal-bill/>

with Wales and the other devolved administrations post Brexit.

Clause 10 states as follows;

*Schedule 2 (which confers powers to make regulations involving devolved authorities which correspond to the powers conferred by sections 7 to 9) has effect.*

This clause therefore simply gives effect to Schedule 2 of the Bill, and means, in general, that Ministers in the devolved administrations can make changes by Statutory Instruments too.

You may think, 'so far so good'. Clause 11 then concerns the legislative competence of the devolved legislatures (the NAW in Wales' context), whilst Schedule 2 and 3 concern executive competence (the power of Welsh Ministers to make statutory instruments / secondary legislation).

Clause 11 (2) cites section 108A of the Government of Wales Act 2006, which as mentioned above has yet to become law. It is anticipated to come into force in April 2018.

As noted above, at present, the competence of the Welsh Assembly is limited by the requirement to remain compatible with EU law. Sub-clause 11 (2) (a) of the Bill however amends S108A by changing the restriction from an Act (of the NAW) not being law if it is incompatible with EU law to an Act not being law if it is in breach of retained EU Law, with some exceptions.

Clause 11 (2) (b) (8) is also significant, as it states that an Act of NAW cannot modify, or confer power by subordinate legislation to modify, retained EU law, other than being able to modify subordinate legislation that was within the legislative competence of the NAW pre-exit day (subsection 11 (2) (b) (9)). This means that devolved institutions will still

be unable to act after exit in the same way as prior to exit in relation to what will become retained EU law. The UK Parliament however will gain power to modify all or any EU law as it sees fit after exit day.

This clause therefore is part of what the First Ministers of Wales and Scotland to refer to as 'a naked power grab'. The clause limits the Assembly to only be able to modify retained EU law within the legislative competence of the NAW pre-exit day, as per the provisions of subsection 11 (2) (b) (9).

Whilst these restrictions are simply a confirmation of the current requirement not to do anything incompatible with EU law (which is the current rule governing the NAW's power to legislate), the point is that of course the whole legal system within the UK will be different post Brexit. The Bill therefore must be amended to allow for the NAW to have powers to legislate on all matters that fall within devolved fields which previously they could not have done as they would have fallen foul of the EU law-related restriction on devolved competence. This can be the only acceptable principle to underpin the repatriation of EU laws to the devolved legislature of Wales.

Subsection 11 (2) (10) then provides;

*"Subsection (8) does not apply so far as Her Majesty may by Order in Council provide.*

This clause provides an alternative consent mechanism, for any lifting of the requirement by the NAW to abide by EU law or in future by retained EU law will arguably alter devolved competence, which if done by Statute would invoke the Sewel convention. As Orders in Council are not subject to the Sewel Convention, the UK Government have introduced it as an alternative consent mechanism to release, at moments of its choosing, areas of retained EU law to the

NAW, with a decree that it may then legislate upon that retained EU law area after all.

A clue to the UK Government's reasoning behind introducing this mechanism can be found in Theresa May's speech at the Conservative Party Conference, where she quoted:

*"Because we voted in the referendum as one United Kingdom, we will negotiate as one United Kingdom, and we will leave the European Union as one United Kingdom"*<sup>27</sup>.

In other words, the UK Government's priority is to keep the domestic UK union and market together in the absence of the EU law 'glue', and the only way it can conceive of doing so is to essentially retain powers to amend retained EU law in its entirety to itself in the first instance, before picking and choosing at it sees fit which areas of EU retained law it decides does not require a pan-UK approach, and which it can therefore afford to bestow to the NAW to legislate upon.

The NAW should be given the power to amend retained EU law, in the same manner as the UK Parliament can. To achieve this the NAW could in return negotiate with the UK Government to agree upon frameworks which could protect the interests of the UK 'union' where that might represent the best interests of all parts of the UK, (thus alleviating the UK Government's concern that the domestic 'union' of the UK must be protected), but whilst also dealing with problems posed by Brexit which are peculiar, or at least emphasised in Wales, as touched upon in the next section.

Given the comments above, it simply cannot be acceptable that the NAW can only legislate to change 'retained EU law' once an Order in

Council has been passed on a particular area to grant them the right to do so. Such Orders in Council would need to be approved by the NAW and both Houses of Parliament before they would become effective, an extremely prescriptive process, which belies the desire by the UK Parliament to hold tight power over the NAW, in contempt for its current devolution settlement.

Turning to Schedule 2. The Schedule sets out the powers of devolved ministers to correct deficiencies in domestic devolved legislation.

Section 1 of Schedule 2 provides the powers for the devolved Ministers (s 1 (1)), and the devolved ministers in conjunction with UK Ministers (s1 (2)) to make regulations which can prevent, remedy or mitigate any failures of retained EU law to operate effectively, or any other deficiency in retained EU law arising from the withdrawal of the UK from the EU.

There is no time limit on the Welsh ministers' corrective power in these Sections, unlike the two year time limit on UK ministers to do so as contained in Section 7 of the Bill.

Paragraph 2 (1) states as follows however:

*No regulations may be made under this Part by a devolved authority unless every provision of them is within the devolved competence of the devolved authority.*

This limits the powers to make regulations to 'prevent, remedy or mitigate failures of retained EU law' therefore to regulations of which ALL the provisions are (already) within the devolved competence of the Welsh Ministers. This means that Welsh Ministers can make regulations only on matters arising out of the current legislative competence of the Assembly, or provisions that modify subordinate legislation under the older Government of Wales Act 1998.

---

<sup>27</sup> T May, Britain after Brexit, a Vision of Global Britain, speech to Conservative Party Conference, Birmingham, 2 October 2016

Paragraph 3 however prevents the use of this corrective power by Welsh Ministers to modify retained direct EU law. In other words, the corrective power applies only to EU-derived domestic legislation. Again, this is a lesser power than given to UK Ministers, who may modify retained direct EU Law.

In addition, the devolved Minister may not make modifications which could be inconsistent with UK modifications of retained direct EU law. This means that if the UK government modified an EU Regulation, and the devolved Ministers are responsible for the enforcement legislation, it will have to be modified in a way that makes sense with the new modified UK regulation.

Directly applicable EU Law includes much of agriculture law, which is a devolved area. Under the current provisions of the Bill, the NAW for example could not introduce a new, bespoke system of payments for farmers in Wales that would be different from the existing EU system and also different from the way in which that system will be converted into UK law. By contrast, the UK Parliament could introduce an agriculture Bill that removed the requirements of any EU rules converted by the Bill<sup>28</sup>.

Section 5 of Schedule 2 also requires the consent from an UK minister for any corrective regulations coming into force before exit day (as yet not specified by the Bill), or which remove reciprocal arrangements between the UK and EU or its member states. Section 6 also provides for the requirement of consent from a UK minister if that would be needed for an Act of the Assembly covering the same subject matter.

Essentially therefore, whenever the Bill gives a power to devolved ministers, it gives the same power to UK Ministers. Arguably therefore, London could step in and make laws for Wales on devolved matters. The Bill also does not stipulate that this would be subject to the consent of the Welsh Government or the NAW. This should also be tackled forthwith by way of an amendment to the Bill.

Paragraph 10 of Schedule 2 provides the definition of what is within the devolved competence of the Assembly – i.e. in which devolved authorities will only be able to make corrections.

As summarised therefore by Mark Elliott: *“At the moment, devolved legislatures are forbidden from doing things that breach EU law, even if the thing they wish to do concerns a subject-matter that is devolved. When the UK leaves the EU, by default, that restriction will go – in effect causing powers to flow from Brussels to the devolved capitals. But the Bill erects a diversion, providing that repatriated powers, even when they relate to devolved subjects, will instead go to London. The UK Government will then decide which of them to hand to the devolved institutions, the implication being that some will not be handed over”*<sup>29</sup>.

In a nutshell, unless clauses 10 and 11, and Schedule 2, of the Bill are amended in a manner that reflects the current devolution settlement in Wales, and the manner in which the UK’s territorial constitution has evolved over the past two decades, the Bill should be rejected in its entirety. It goes against the democratically agreed devolution settlement of Wales in its current form.

---

<sup>28</sup> In Brief, NAW Research service blog, What does the EU (Withdrawal Bill) mean for Wales and devolution?

---

<sup>29</sup> <https://publiclawforeveryone.com/2017/07/14/1000-words-the-eu-withdrawal-bill/>

#### 4. Other parts of the Act which are concerning from Wales' perspective

As mentioned in section 3 above, clauses 10 and 11 of the Bill should not be the only focus of criticism from Wales' perspective. Below I have set out other matters that should receive due consideration, as summarised by Professor Mark Elliott, and Victor Anderson.

Clause 2 preserves 'EU-derived domestic legislations', such as secondary legislation enacted under section 2 (2) of the European Communities Act (ECA) for the purpose of implementing EU directives. (It is of course already domestic legislation, but clause 2 ensure is remains so despite repeal of ECA)<sup>30</sup>. Exceptions could be added to Clause 2 (2) for example – to exclude the Euratom Treaty (specified in Schedule 1 of the ECA) for example<sup>31</sup>.

Clause 3 converts 'direct EU legislation' into domestic law – so regulations and decision that have direct effect in the UK so long as it remains a member state. It will remain enforceable here post termination of member state status<sup>32</sup>. Clause 3, subsection 2(b) and (c) could be deleted, along with Schedule 8, Part 2, paragraphs 12-17, in order to keep the UK in the European Economic Area<sup>33</sup>.

Clause 4 deals with elements of EU law that have effect in the UK thanks to section 2(1) of the ECA but which are not covered by clause 3. These are rights under directly effective provisions of the EU treaties, - including the key provisions of the Treaty on the Functioning of the EU that provide for the

'four freedoms' of goods, capital, services, and labour. It is not clear how this will work however, as free movement of UK citizens will not really work once other EU states have no legal obligation to acknowledge, far less act upon, such rights<sup>34</sup>.

Clause 5: addresses the status of retained EU Law. The Courts will be able to dis-apply pre-exit Acts of Parliament if they conflict with retained EU law. But if there is a dispute about the supremacy of post-exit domestic legislation and retained EU law, the EU supremacy principle will be disregarded. This means that post exit, acts of Parliament will be capable of taking priority over retained EU law<sup>35</sup>.

Clause 5(4) provides that the EU Charter of Fundamental Rights is not part of domestic law after exit day. But clause 5(5) provides that fundamental rights or principles that form part of EU law independently of the Charter are unaffected by the non-incorporation in domestic law of the Charter itself and can therefore form part of domestic law. But this caveat is of limited utility, thanks to Schedule 1, para 3 – which provides that no right of action can arise in domestic law post-exit on the basis of a failure to comply with general principles of EU law, and that legislative and administrative action cannot be quashed post-exit on the grounds of incompatibility with EU general principles. Such general principles can, however, be drawn upon the domestic courts when determining post-exit questions about (for instance) the meaning of retained EU law<sup>36</sup>.

<sup>30</sup>

<https://publiclawforeveryone.com/2017/07/14/the-eu-withdrawal-bill-initial-thoughts/>

<sup>31</sup> Victor Anderson, "Thoughts on Amending the EU Repeal Bill".

<sup>32</sup>

<https://publiclawforeveryone.com/2017/07/14/the-eu-withdrawal-bill-initial-thoughts/>

<sup>33</sup> Victor Anderson: "Thoughts on Amending the EU Repeal Bill"

<sup>34</sup>

<https://publiclawforeveryone.com/2017/07/14/the-eu-withdrawal-bill-initial-thoughts/>

<sup>35</sup> Ibid

<sup>36</sup> Ibid

Clause 6: deals with the jurisprudence of the European Court of Justice: the basic principles here are that post exit, CJEU case law is not binding upon UK courts, though it can chose to consider it, but UK courts must decide relevant cases in accordance with pre exit CJEU jurisprudence. This is subject to certain exceptions<sup>37</sup>. From Wales' perspective, it may be sensible to call for some form of new arbitration system to determine constitutional matters which would previously have fallen to the ECJ to determine, given that laws passed by Parliament are incapable of being struck down by the Supreme Court, due to Parliament's sovereignty.

Clause 7 confers extraordinary powers on Ministers of the Crown to amend, repeal or replace retained EU law by making administrative regulations (the Henry VIII powers as discussed briefly above). A series of amendments could be made to subsection (4) so that a Minister shall not make such regulations as specified in clause 7 unless s/he first takes a number of steps (to be defined). The clause could also be amended to specify a procedure involving consultations and scrutiny, with the aim to stop the Government using Statutory Instruments without proper scrutiny. Schedule 7, Part 1 should also be amended to reflect this<sup>38</sup>. A new sub clause could also be added to subsection 5 (b) to specify the setting up of particular new public authorities, which would normally need to (unless they are purely advisory) be done each time through new primary legislation.<sup>39</sup> Subsection (6) could also be amended to add to the list of exceptions already contained here (to constrain when regulations can be used)<sup>40</sup>.

---

<sup>37</sup> Ibid

<sup>38</sup> Victor Anderson, "Thoughts on Amending the EU Repeal Bill"

<sup>39</sup> Ibid

<sup>40</sup> Ibid

Clause 9 deals with implementing the withdrawal agreement. This is an incredibly far reaching clause – enabling the government to implement the terms of the deal with the EU, where it needs to be implemented before exit, without coming back to Parliament for the authority to do so. An exception to sub – clause (4) could be added, but essentially it would be better if the whole clause should be deleted. Schedule 7, Part 2, Para 6 would then fall, but if clause 9 is not deleted, another approach would be to amend that paragraph<sup>41</sup>.

### **Wales' specific considerations which are not protected by the Bill in its current form**

In its paper "*Securing Wales' Future*", the Welsh Government, along with Plaid Cymru set out a number of important objectives that were vital to be achieved in order to protect the people of Wales' interests during the Brexit process. Those issues and objectives set out in that paper reflect why the current Bill has such serious short comings in its current form, as it does not respect the current devolution settlement and the manner in which the UK's territorial constitution has evolved in the last twenty years. Without the founding blocks of the Brexit process being set out in a manner which reflects and protects those two fundamental issues, then matters which are peculiar to Wales, or which carry more significance in Wales than in the rest of the UK will be incapable of being protected.

Whilst the UK as a whole is a net contributor to the EU, Wales is a net beneficiary. Further, due to the size of Wales, and because its situation does not give rise to difficult political and constitutional questions as arise in Scotland and Northern Ireland, together with the fact that the majority of Welsh voters voted to leave the European Union, our

---

<sup>41</sup> Ibid

bargaining position is not strong as a country. The current Bill reflects that weakness. This is frustrating position to be in especially given the fact that Wales was the only devolved country to vote to leave the EU, along with England.

Below are set out in brief some of those matters which are of significance, or which are peculiar to Wales, and which demonstrate why the binary approach taken by the UK government to the way the Bill has been drafted is unacceptable. The nuances of the Welsh economy, its languages and its cultures and the influence on all these factors by the EU over the last forty years are not currently protected by the Bill. These issues are also set out more fully in the Welsh Government / Plaid Cymru joint paper “Securing Wales’ Future” and the House of Lords European Union Committee Brexit: Devolution paper.

### **Manufacturing**

The EU Single Market is more important to Wales than the rest of the UK. The EU accounted for 67% of all Welsh exports and in 2016, Wales had a £2.25 billion trade surplus with EU countries and a £2.3 billion trade deficit with non-EU countries. A failure to reach a comprehensive free trade agreement with full participation in the Single Market, in particular for US companies cooperating out of Wales, would be disastrous for Welsh manufacturing, which is worth £9 billion to the Welsh economy. The alternative of trading under WTO terms would be equally disastrous for Welsh exports, as food exports would face a tariff of 15% on exports to the EU, while car manufacturers would face a tariff of 10%<sup>42</sup>.

Wales has a larger proportion of manufacturing in the Welsh economy than other parts of the UK, and those

---

<sup>42</sup> Lord Wigley, as quoted in HoL EUC Brexit: Devolution, paragraph 108

manufacturers’ goods pass across the border absolutely routinely<sup>43</sup>. Two engine plants in Wales exported between 80 and 85% of their product to the EU, and imported about 70% of parts or materials used in the construction of engines from the EU.<sup>44</sup> In light of these statistics therefore, it is of crucial importance that any alternative trade agreements reached by the UK (and the contents of the forthcoming Customs and Trade Bill) are reflective of these particular aspects of the Welsh economy.

### **Agriculture**

Whilst the farming industry is less significant in GDP terms, it carries great significance for its cultural importance, and importance as a bastion of the Welsh language and the potential impact on dependent and economically vulnerable communities<sup>45</sup>. 92% of agricultural exports go to the EU<sup>46</sup>. 80% of Wales was an EU-designated Less Favoured Area, so risks to Welsh farmers are correspondingly greater than for English farmers<sup>47</sup>.

The impact of future free-trade agreements on Wales, and the farming sector in particular are therefore a very real concern, and Wales should have a distinct interest in the Brexit Trade Bill (expected to be published this autumn) and any future free trade agreements with non-EU countries, as summarised by Mark Drakeford:

*“We would need a differentiated approach to it. We wince a little bit every time we hear a UK minister say in a throwaway remark how*

---

<sup>43</sup> Mark Drakeford as quoted in HoL EUC Brexit: Devolution, paragraph 113

<sup>44</sup> Gerald Holtham, as quoted in HoL EUC Brexit: Devolution, paragraph 117

<sup>45</sup> Ibid

<sup>46</sup> Sir Emyr Jones Parry, as quoted in HoL EUC Brexit: Devolution, paragraph 119

<sup>47</sup> Nicholas Fenwick, as quoted in HoL EUC Brexit: Devolution, paragraph 119

*great it would be to have a free trade deal with NZ. If we get the wrong free trade deal with NZ, it will be the end of Welsh hill farming and sheep farming*<sup>48</sup>.

Thus trade agreements with non-EU countries on agriculture, as well as automobile, aeronautics, and steel, should not be allowed to proceed, or should not proceed in Wales' context if the impact on the existing Welsh economy is disproportionate. In the context of agriculture not only is the introduction of added competition a worry, but the introduction of foods from countries that don't produce food to the same rigorous high standards as Welsh farms is also particular concern – including GM foods or foods high in growth hormones or preservatives.

Let us not forget in this context the contents of Liam Fox, Secretary of State for Trade's letter to cabinet ministers suggesting they deny devolved administrations the ability to veto trade deals with other jurisdictions, and that the devolved administrations should not sit on the new board of trade that the Prime Minister has decided to reform<sup>49</sup>. If the Bill makes it onto the Statute book in its current form, and if Liam Fox's view is reflected in his department's White Paper and Trade Bill, this type of behaviour will become the norm, not the exception, as the checks and balances that are necessary to protect the current devolution settlement are absent from its provisions.

## **Workforce**

EU labour is of significant importance to the Welsh economy. EU citizens make notable contributions to the agri-foods industry and

---

<sup>48</sup> Mark Drakeford, as quoted in HoL EUC Brexit: Devolution, paragraph 117

<sup>49</sup> The Times article, "Fox tries to bypass Scots and Welsh in bid for trade deals", The Times 19 August 2017

the healthcare sector in Wales<sup>50</sup>. Whilst there are only 79,000 EU nationals living in Wales, a relatively low figure, their contribution is concentrated in the NHS, agriculture, tourism and some manufacturing sectors<sup>51</sup>. The freedom of movement linked to work as a compromise could potentially be a very important and particular consideration for Wales.

## **Funding**

The UK government funds Wales on the basis of population, EU funding to Wales is on the basis of need<sup>52</sup>. The Barnett Formula is 'singularly inappropriate<sup>53</sup>' to support the specific needs of Wales post Brexit, because 'any formula that is not needs-geared is going to lead to a significant loss' for the country<sup>54</sup>. As 80% of Welsh farm income also comes from EU funds, the application of the Barnett Formula to farming subsidies would be extremely disadvantageous<sup>55</sup>. The loss of CAP subsidies, structural funds and other EU funding will have a significant impact on rural and valley communities. The Bill again needs to be amended to entitle NAW to amend retained direct EU law, so that the NAW for example could introduce a new, bespoke system of payments for farmers in Wales, post Brexit. Instead of erecting, as per Mark Elliott a '*diversion, where repatriated powers, even when they relate to devolved subjects, go instead to London*'.

---

<sup>50</sup> Dr Rachel Minto, HoL EUC Brexit: Devolution paragraph 122

<sup>51</sup> Leanne Wood, as quoted in HoL EUC Brexit: Devolution, para 122

<sup>52</sup> Leanne Wood, as quoted HoL EUC Brexit: Devolution paragraph 126

<sup>53</sup> Lord Wigley, as quoted in HoL EUC Brexit: Devolution paragraph 127

<sup>54</sup> Ibid

<sup>55</sup> Nicholas Fenwick, as quoted in HoL EUC Brexit: Devolution paragraph 129

In short, Agriculture, the Environment, Fisheries, Education, Health and Regional Policy are all devolved areas to the custody of the NAW, and that institution may currently legislate upon them within the confines of EU law. It is simply not acceptable for the UK government now therefore to restrict the NAW's ability to legislate in these areas only in keeping with retained EU law going forward, whilst for its own part it can change that retained EU law. The situation will cause a deep imbalance, and erodes the NAW's current powers. It is also unacceptable that the NAW will be given the power to change crumbs of retained EU law as thrown to it by the UK government off its table by way of Orders in Council. The short summary of particular Welsh issues contained above demonstrates why this is the case.

Further, there is a case that further competences should be devolved as a result of Brexit to the NAW. The specific labour market and demographic needs of Wales for example should possibly be accommodated by virtue of the devolution of some legislative powers on migration, though careful thought will need to be applied to this issue in order to ensure that a border with passport checks may be avoided. Employment and consumer law may also be areas upon which a degree of devolution may now be sensible.

Whilst the fundamentals of the repatriation of EU laws to the UK will be set out in the Bill, some of the issues identified above may also require addressing in the context of the other Brexit Bills soon to be published, which are as follows<sup>56</sup>:

- Customs Bill. This will enable the UK to run its own customs system, including setting and collecting customs duties.

- Trade Bill. This will enable the UK to negotiate and operate its own international trade policy. There is a key issue here about achieving Parliamentary control over trade agreements the Government wants to enter into.
- Immigration Bill. This will enable the UK to operate its own immigration system in relation to EU countries after it has left the EU.
- Fisheries Bill. This will enable the UK to run its own fisheries system.
- Agriculture Bill. This will establish a new system for payments to farmers and landowners after leaving the EU Common Agricultural Policy. This is potentially a way to incentivise stronger protection for the countryside.
- Nuclear Safeguards Bill. This ensures the UK continues to meet its international obligations for safe treatment of civil nuclear materials and for non-proliferation, after leaving the EU and Euratom.
- International Sanctions Bill. This will enable the UK to operate its own policy to impose or remove sanctions on other countries.

---

<sup>56</sup> As summarised by Victor Anderson's bullet points from his 'Briefing on Brexit in Parliament'

## Conclusion

All of the Bills cited above will require intense scrutiny to ensure harmony with an amended European Union (Withdrawal) Bill, and to ensure that the UK government does not ride rough shod over the current devolution settlement and the principles of the UK's evolved territorial constitution. Indeed, now is the time for that territorial constitution to be reflected in a written UK constitution so that there can be no doubt over the approach that should be adopted by the UK government to matters affecting Wales and the other devolved administrations.

The difference between the UK government's rhetoric and the reality of the proposed black letter law as contained in the Bill is testament to this need, as is Liam Fox's proposed approach to international trade negotiations. The people of Wales should be afforded their wishes as democratically expressed in two referendums on devolution by allowing their representatives a seat at the negotiating table in the departure talks with the EU, where those talks include focus on devolved matters.

Negotiation not dictation should also be the rule applied to the NAW – UK government

relationship, so that Wales' particular interests can be protected properly both in the context of the current devolution settlement and in any framework agreements that are necessary to protect the domestic union of the UK on certain matters, such as trade.

The significant amendments to the Bill identified above must also be accepted and should not be compromised at any cost.

Finally, in anticipation of the NAW obtaining the legislative powers it needs to protect Wales' interests, and in keeping with the current devolution settlement, more resources should be made available to that institution to afford it the ability to cope with the increased demands which will be made upon it. Otherwise the current existential threat to Wales' devolution settlement will almost certainly turn into a reality, and the mandate for the NAW as given by the people of Wales in two referendums shall be ignored.

Awen Fflur Jones

## Bibliography

1. Briefing on Brexit in Parliament – Victor Anderson
2. Briefing on the European (Withdrawal Bill) – Victor Anderson, 28.07.17
3. Thoughts on amending the EU Repeal Bill – Victor Anderson, 14.07.17
4. Devolution and the European Union (Withdrawal Bill) – Paul Bowers, Parliament and Constitution Centre, House of Commons Library, 25 July 2017
5. Brexit: Devolution – House of Lords European Union Committee 4<sup>th</sup> Report of Session 2017-2019, published 19 July 2017
6. Securing Wales’ Future – White Paper published jointly by the Welsh Government and Plaid Cymru
7. European Union (Withdrawal) Bill
8. European Union (Withdrawal) Bill Explanatory Notes
9. European Union (Withdrawal) Bill – Memorandum concerning the Delegated Powers in the Bill for the Delegated Powers and Regulatory Reform Committee
10. The Repeal Bill – Factsheets 1-10 - Department for Exiting the European Union
11. Impact Assessment: Summary: Intervention and Options
12. European Union (Withdrawal) Bill Department for Exiting the European Union RPC rating: fit for purpose – Regulatory Policy Committee
13. Joint statement by Carwyn Jones and Nicola Sturgeon in response to the introduction of the European Union (Withdrawal) Bill dated 13 July 2017
14. The ‘Great Repeal Bill’ and delegated powers: House of Lords Select Committee on the Constitution
15. The “Great Repeal Bill” and Delegated Powers – Professor Mark Elliott, Public Law for Everyone
16. Empty Threats: The Explanatory Notes to the European Union (Withdrawal) Bill, Paul Daly, 13 July 2017
17. The EU (Withdrawal) Bill; some initial thoughts, Julian Gregory, 13 July 2017
18. The EU (Withdrawal) Bill: Initial Thoughts, Professor Mark Elliott, Public Law for Everyone, 14 July 2017
19. EU (Withdrawal Bill: You say tomato, I say unprecedented Executive power, Angela Patrick
20. 1,000 words / The EU (Withdrawal) Bill, Professor Mark Elliott, Public Law for Everyone, 14 July 2017
21. Scared about your human rights after Brexit? You should be, Schona Jolly, The Guardian, 14 July 2017
22. Brexit Time – A Running Commentary – Uncategorised Don’t Shoot the Messenger; Brexittime, 15 July 2017
23. Where the Brexit battles over the repeal bill will be fought in Parliament, Steve Peers, 17 July 2017
24. European Union (Withdrawal) Bill: complexity without clarity? Daniel Greenberg, 17 July 2017
25. The European Union (Withdrawal) Bill: constitutional change and legal continuity, Jack Simson Caird, 18 July 2017
26. The European Union (Withdrawal) Bill – initial reflections on the Bill’s delegated powers and delegated legislation, 18 July 2017, Hansard Society

27. Henry V111 Comes to Scotland, Wales and Northern Ireland, and Other Devolution Questions in the EU (Withdrawal) bill, Kenneth Campbell QC, UK Constitutional Law Association,
28. A “blatant power grab”? The Scottish Government on the EU (Withdrawal) Bill, Professor Mark Elliott, Public Law for Everyone, 10 August 2017
29. The Devil in the Detail: Twenty Questions about the EU (Withdrawal) Bill, Professor Mark Elliott, Public Law for Everyone, 14 August 2017
30. “Fox tries to bypass Scots and Welsh in bid for trade deals”, article in the Times Saturday 19 August 2017
31. “Opportunity Costs”, Times leading article, Saturday 19 August 2017
32. “Devolution”, chapter by Jo Hunt
33. The Repeal Bill Legal and Practical Challenges of Implementing Brexit – Tobias Lock, Scottish Centre on European Relations
34. How Devolution has altered some fundamentals of the British Constitutions, Kenneth Cambell, QC, UK Constitutional Law Association
35. Brexit and devolution: laws and land grabs, Professor Jim Gallagher, 15 August 2017
36. Brexit: A moment of Existential Danger, Ned Thomas, Planet The Welsh Internationalist, No 227 Autumn
37. Legislating for Brexit: the Great Repeal Bill- Briefing Paper House of Commons Library, 23 February 2017
38. Legislating for the UK’s withdrawal from the European Union, Department for Exiting the European Union
39. First Ministers will work together to stop Repeal Bill ‘power grab’, Western Mail article, Wednesday August 2017