

EMERGENCY BILL STATEMENT BY THE WELSH GOVERNMENT

TITLE Statement in support of treating the Law Derived from the European Union (Wales) Bill as an Emergency Bill

DATE 27 February 2018

BY Cabinet Secretary for Finance

This statement is made alongside tabling a motion to propose that the Law Derived from the European Union (Wales) Bill be treated as an Emergency Bill, in accordance with Standing Order 26.95A.

The UK, Scottish and Welsh Governments are agreed that legislation is required to provide certainty and a smooth transition for citizens and businesses following the UK's withdrawal from the European Union. There is collective recognition of the need to ensure that, as far as possible, the same laws and rules will apply immediately after exit, with necessary modifications, that applied immediately before exit.

The Welsh and Scottish Governments have said that the best solution for dealing with the legislative consequences of the UK's withdrawal from the EU would be a Bill enacted by the UK Parliament, for the UK as a whole, which respected the devolution settlement. However, when the UK Government introduced, in July 2017, its European Union (Withdrawal) Bill ("the EU Withdrawal Bill") as the legislative vehicle to deliver this objective, it was clear that this was not its approach.

The Welsh Government set out, in the Written Statement issued on the day of introduction of the EU Withdrawal Bill and in the Legislative Consent Memorandum laid before the Assembly in September, our view, that the Bill as introduced did not properly respect the devolution settlement and that we were consequently unable to recommend to the Assembly that it give consent to the Bill as drafted.

We subsequently produced, jointly with the Scottish Government, a set of proposed amendments that would provide the changes to the EU Withdrawal Bill that would enable the Welsh Government and Scottish Government to consider recommending that consent be given. Those amendments were tabled for debate by the House of Commons at Committee stage but were not agreed.

We have since made sustained and constructive efforts over a number of months to persuade the UK Government to bring forward agreed amendments to the EU Withdrawal Bill to enable the Welsh Government to recommend to the Assembly that it gives consent to the Bill. Although discussions continue, to date, our efforts have been unsuccessful. The UK Government promised amendments at House of Commons Report stage but nothing was tabled. In these circumstances, we have had no option

but to prepare responsibly for the possibility of consent to the EU Withdrawal Bill being withheld by the Assembly and to seek an alternative means of securing legal certainty for people and businesses in Wales in respect of the continued application of EU law.

We have therefore developed legislation that will provide Wales with continuity of EU law in devolved areas – the Law Derived from the European Union (Wales) Bill (“the LDEU Bill”). This LDEU Bill is intended to preserve EU law, with necessary modifications, covering subjects devolved to Wales following the withdrawal of the UK from the EU.

We have delayed introduction of the LDEU Bill to provide the best possible chance of reaching agreement on an amended UK Bill. Following JMC(EN) on 22 February, where there was no agreement on the EU Withdrawal Bill, we have reached a point where it is no longer possible to delay further as we continue to be in a position where we cannot reasonably recommend to the Assembly that it give its consent to the EU Withdrawal Bill.

This process has had a consequential effect on the timing of the LDEU Bill and the limited time now available means that the Bill must be treated as an Emergency Bill. The implementation of the Bill will require considerable legislative action on the part of the Welsh Ministers and National Assembly before exit day (the day on which the UK officially leaves the European Union). Moreover, the number of modifications to make laws function properly post-exit that will need to be made by the Welsh Ministers in regulations will increase should the LDEU Bill become law, since the Bill provides for the Welsh Ministers to make such modifications to all legislation within devolved competence, rather than for only UK Government Ministers to be given extensive powers to make these modifications in devolved areas (as would be the case under the EU Withdrawal Bill). The limited time left between now and exit day means that the application of the normal Bill procedures would leave too little time to implement the Bill properly were it to be enacted. The Bill must be subject to an expedited legislative process in the Assembly to allow it to receive Royal Assent by the end of April to ensure that as much time as possible is given to undertake this considerable task and in order to achieve continuity in the rules and laws that apply in devolved areas in Wales ahead of exit day.

The proposed timetable for the LDEU Bill has also been informed by the progress of the EU Withdrawal Bill through Parliament and the need to ensure the LDEU Bill receives Royal Assent before the EU Withdrawal Bill. We recognise that this is not ideal and would much prefer all legislation to be subject to the robust scrutiny procedures that normally apply but the exceptional circumstances mean that this is not possible in this case.

As stated above, the Bill's principal objective is to ensure, as a general rule, that there is continuity in that the rules and laws that apply in devolved areas immediately prior to exit and those applying immediately after exit, thereby providing certainty for citizens, businesses and other organisations. This can only be done if the Bill is treated as an Emergency Bill. Not doing so would lead to a great deal of legal uncertainty and a lack of continuity for stakeholders (including businesses, public and voluntary sector organisations) as well as the people of Wales. The costs of legal uncertainty and a lack of continuity would likely be considerable. However, the cost estimates are not known at

this time because much depends on the final form of the EU Withdrawal Bill itself and the terms which the UK negotiates for leaving the EU.

It remains the Welsh Government's view that the best approach to this issue remains an amended EU Withdrawal Bill which can be given legislative consent by the National Assembly. We will continue to work to achieve this, including our engagement with members of the House of Lords, many of whom are supportive of devolution and who may be able to make amendments to the Bill themselves. However, we must have a viable alternative approach in the event that the EU Withdrawal Bill is not amended and, in our view, this is the last moment available for bringing forward the LDEU Bill.