

To: Welsh Peers

20 October 2016

Dear Colleague

Wales Bill 2016 – proposed amendments

Following the second reading debate on the Wales Bill in the House of Lords last week, I wish to draw your attention to my recommendations for amendments that I have published today. I hope you may consider tabling these in Committee stage over the coming weeks.

As I outlined in my letter of 5 October, whilst I welcome the progress that has been made on the Bill to date, some outstanding issues remain. The amendments I have published today are focused on ensuring the legislative competence of the Assembly is clear, workable and does not roll back on the current settlement.

Specifically, the amendments address the statutory expression of the convention requiring Assembly consent; reinstate the Assembly's ability to remove or modify a function of a UK Minister, where to do so is incidental or consequential (in line with the Supreme Court's decision on the Local Government Byelaws (Wales) Act 2012); remove the new consent requirements imposed by the Bill where the Assembly wishes to affect the functions of non-devolved public bodies; and allow the Assembly to add to the list of 'relevant persons' who receive funding directly from the Welsh Consolidated Fund.

I am pleased to see that the Assembly's Constitutional and Legislative Affairs Committee's excellent report, published on 6 October also expresses the view that these issues must be addressed and amongst its significant recommendations, endorses specific amendments I have published previously.

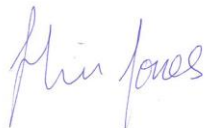
The attached documents contain briefing and explanatory notes on the changes I am suggesting, alongside the draft amendments themselves.

Croesewir gohebiaeth yn Gymraeg neu Saesneg / We welcome correspondence in Welsh or English



I hope that these suggestions will contribute to the important debate on the future of Wales' constitutional settlement. If you would like to discuss or receive any more details please contact my office.

Yours sincerely

A handwritten signature in blue ink that reads "Elin Jones". The signature is written in a cursive style.

Elin Jones AM
Llywydd



Outstanding Issues

Assembly Consent: Convention on Parliament legislating on devolved matters – clause 2

This is an important constitutional principle: the Assembly should consent to any change in its powers.

Clause 2 as written will not achieve a robust statutory basis for the legislative consent convention. Clause 2 contains a provision that Parliament will not “normally” legislate with regard to devolved matters without the consent of the Assembly. The use of the word “normally” is unsatisfactory as it is potentially open to a broad interpretation. Parliament should only legislate on the Assembly’s behalf without its consent in exceptional circumstances and it would be preferable for those circumstances to be specifically defined.

The scope of the statutory legislative consent arrangements between the Assembly and Parliament should be no narrower than the scope of the inter-governmental convention currently in place.

Likewise, the Assembly should give its consent before the power to vary the income tax rate is devolved.

Consent should be required when matters:

- (a) are within the legislative competence of the Assembly,
- (b) modify the legislative competence of the Assembly,
- (c) modify functions of the Assembly, and
- (d) modify functions of members of the Welsh Government (mainly the Welsh Ministers) where such functions are within devolved areas.

I would therefore like to see greater assurance as to when Assembly consent is required, including a commitment that the UK Government will continue to comply with the current non-statutory requirements for consent as set out in the UK Government devolution guidance notes.



Minister of Crown Consents – Schedule 2 paragraphs 8 -11

Schedule 2 of the Wales Bill proposes a new Schedule 7B to the Government of Wales Act which sets out general restrictions on the Assembly's legislative competence. Included within this are areas for which UK Government – or Minister of the Crown - consent is required before the Assembly can affect the functions of “reserved authorities”, i.e. UK Ministers, UK government departments and other public authorities (other than Wales Public Authorities).

There has been considerable improvement since the draft Bill was published last year and many of the requirements for consent under the current settlement have been removed. However there are some areas where the changes proposed under the Bill roll back on the Assembly's current competence and I believe these should be further considered.

The Bill would withdraw the Assembly's ability to remove or modify functions of a UK Minister, where to do so is incidental or consequential. I am particularly concerned that the effect of this would be a roll-back of the Assembly's current competence. Moreover, it would, effectively, reverse the Supreme Court's decision, in the case concerning the Local Government Byelaws (Wales) Act 2012 that Secretary of State consent was not needed, because removal UK Ministerial powers was merely a consequence of the main purpose of the Bill.

The Bill would also take away the Assembly's ability to remove or modify specified functions of a UK Minister in devolved areas exercisable after May 2011 – notably the Welsh Language functions of UK Ministers. One example of the effect of this roll-back is that, under this Bill many aspects of the Welsh Language (Wales) Measure 2011 would require UK Government consent before it could be passed by the Assembly.

In addition, the Bill will introduce a new restriction, preventing the Assembly from affecting the functions of other reserved authorities (other than Wales Public Authorities), e.g. the DVLA, Crown Prosecution Service, the BBC, police in any way. Currently, no such restriction applies and, as drafted, I am concerned that the Bill could prevent the Assembly from requiring reserved authorities to comply with the general law applicable in Wales. For example the Assembly could currently impose a duty that all workplaces in Wales should display “no e-cigarette” signs and a reserved authority such as the DVLA which is based in Swansea would have to comply with that duty, but under the proposed new settlement it would, arguably, not have to do so unless the UK Government consented.



Financial Provisions – To amend Schedule 2 in relation to Clause 13

Schedule 7B paragraph 7 sets out the sections of the Government of Wales Act 2006 which the Assembly will have competence to modify. Paragraph 7(2)(d) specifically refers to those sections of Part 5 of the 2006 Act which are amendable without restriction.

As it stands this does not include sections 120(1) or 124(3) of the 2006 Act, which provide for ‘relevant persons’ – otherwise known as ‘direct funded bodies’ such as the Wales Audit Office and Public Services Ombudsman for Wales – which receive funding directly from the Welsh Consolidated Fund.

The ability to modify the list of direct funded bodies would allow the Assembly to enable a body, which is independent of Welsh Government, to also be financially independent, where this is deemed appropriate. Any use of such competence to amend these GOWA 2006 clauses to add to the ‘relevant persons’ would require an Act of the Assembly, and therefore would not be a decision taken lightly. It would be subject to consultation and rigorous scrutiny.

