

Constitutional and Legislative Affairs Committee

Meeting Venue:
Committee Room 2 – Senedd

Meeting date:
7 October 2013

Meeting time:
14:30

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



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Agenda

1 Introduction, apologies, substitutions and declarations of interest

2 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3 (Pages 1 - 2)

3

CLA(4)-23-13(p1) – Background information on Statutory Instruments with Clear Reports

Negative Resolution Instruments

CLA311 – The Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) (Amendment) Regulations 2013

Negative procedure; Date made: 21 September 2013; Date laid: 26 September 2013; Coming into Force Date: 22 October 2013

CLA313 – The Contaminants in Food (Wales) Regulations 2013

Negative procedure; Date Made: 27 September 2013; Date Laid: 1 October 2013; Coming into force Date: 31 October 2013

CLA314 – The Motor Vehicles (Off Road Events) (Amendment) (Wales)

Regulations 2013

Negative procedure; Date Made: 30 September 2013; Date Laid: 1 October 2013; Coming into Force Date: 25 October 2013

CLA315 – The Motor Vehicles (Competitions and Trials) (Amendment) (Wales) Regulations 2013

Negative procedure; Date Laid: 30 September 2013; Date Made: 1 October 2013; Coming into Force Date: 25 October 2013

Affirmative Resolution Instruments

CLA312 – The Domestic Fire Safety (Definition of Residence) (Wales) Order 2013

Affirmative Procedure; Coming into Force Date: 30 April 2014

3 Consideration of the Draft Deregulation Bill (UK draft Bill) (Pages 3 - 13)

CLA(4)–23–13 (p2) – Legal Briefing

CLA(4)–23–13 (p3) – Research Briefing

<http://www.parliament.uk/business/committees/committees-a-z/joint-select/draft-deregulation-bill/>

4 Papers to note (Pages 14 - 20)

CLA(4)–23–13(p4) – Letter from the Chair to Mr Maroš Šefčovič, Vice-President of the European Commission in relation to Proposal for a Regulation of the European Parliament and of the Council on measures to reduce the cost of deploying high-speed electronic communications networks (COM(2013)147

CLA(4)–23–13(p5) – Reply from Neelie Kroes, Vice-President of the European Commission

CLA(4)23–13(p6) – Letter from Gwenda Thomas AM, Deputy Minister for Social Services in relation to the Social Services and Well-being (Wales) Bill

5 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:

(vi) the committee is deliberating on the content, conclusions or recommendations of a report it proposes to publish; or is preparing to itself to take evidence from any person.

Consideration of Correspondence from First Minister in relation to the Committee Report on Powers Granted to Welsh Ministers in UK Laws (Pages 21 - 26)
CLA(4)-23-13(p7) - Letter from First Minister

Consideration of the Draft Report on the Review of Inquiry into powers granted to Welsh Ministers in UK Laws October 2013 (Pages 27 - 54)
CLA(4)-23-13 (p8) - Consideration of the Draft Report on the Review of Inquiry into powers granted to Welsh Ministers in UK Laws October 2013

Transcript

View the [meeting transcript](#).

Agenda Item 2

Constitutional and Legislative Affairs Committee

CLA(4)-23-13 - Paper 1

BACKGROUND INFORMATION ON STATUTORY INSTRUMENTS WITH CLEAR REPORTS

CLA311 - The Local Authorities (Executive Arrangements) (Functions and Responsibilities)(Wales) Regulations 2013

Procedure: Negative

These Regulations amend the *Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) Regulations 2007* by adding functions in respect of the approval or determination of school organisation proposals under sections 51 or 53 of the *School Standards and Organisation (Wales) Act 2013*. The effect of this amendment is that a local authority has discretion as to whether the functions in question are the responsibility of the executive.

CLA312 - The Domestic Fire Safety (Definition of Residence) (Wales) Order 2013

Procedure: Affirmative

This Order amends the description of classes of residential premises contained in the definition of “residence” in section 6(1) of the *Domestic Fire Safety (Wales) Measure 2011* by adding children’s homes as a class of residential premises.

CLA313 - The Contaminants in Food (Wales) Regulations 2013

Procedure: Negative

These Regulations revoke and re-enact with changes the corresponding 2010 Regulations. They continue to implement EU requirements relating to the maximum levels of erucic acid and certain contaminants in foodstuffs, as well as the administration and enforcement of those requirements.

CLA 314 – The Motor Vehicles (Off Road Events) (Amendment) (Wales) Regulations 2013

Procedure: Negative

These Regulations amend the list of bodies appointed to authorise off-road events in Wales. They also make provision in relation to the setting of application fees by authorising bodies, so that fees levels are published and do not exceed a reasonable amount.

CLA315 – The Motor Vehicles (Competitions and Trials) (Amendment) Regulations 2013

Procedure: Negative

These Regulations appoint the *Royal Automobile Club Motor Sports Association Limited* (in place of the Royal Automobile Club) as the authorising body for certain events (other than a race or trial of speed) involving the use of motor vehicles on a public highway.

The Regulations also provide that the Royal Automobile Club Motor Sports Association Limited can determine its own application fees, provided the fee levels are published and are reasonable.

Agenda Item 3

PWYSIG: Mae'n bosibl bod y ddogfen hon ac unrhyw beth sydd wedi'i amgáu gyda hi yn cynnwys cyngor cyfreithiol sydd wedi'i roi yn gyfrinachol i Gomisiwn Cynulliad Cenedlaethol Cymru neu unrhyw sefydliad arall sy'n rhan o Gynulliad Cenedlaethol Cymru. Os felly, mae'r cyngor yn destun braint broffesiynol gyfreithiol. Peidiwch ag anfon y ddogfen hon (neu unrhyw atodiad iddi) at unrhyw berson y tu allan i Gomisiwn Cynulliad Cenedlaethol Cymru heb ganiatâd ysgrifenedig gan aelod o Adran Gwasanaethau Cyfreithiol y Comisiwn. Os ydych wedi cael y ddogfen hon drwy gamgymeriad, rhowch wybod i'r awdur ar unwaith drwy ei ffonio.

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Constitutional and Legislative Affairs Committee

The draft DEREGULATION BILL

Legal Advice Note

Introduction

1. In July 2013, the UK Government published a draft Deregulation Bill. A Joint Committee of both Houses of Parliament was appointed to conduct pre-legislative scrutiny into the draft Bill and the policies underpinning it. That Committee published a call for evidence with a closing date of the 16th September, and is due to report by the 16th December. One of the questions raised by the Committee was "What are the consequences of the draft Bill for the devolved administrations?" The Committee has therefore sought the views of the devolved legislatures, and has agreed to accept evidence from the National Assembly by the 11th October.

Background

2. The foreword to the draft Bill describes it as "the latest step in the Government's ongoing drive to remove unnecessary bureaucracy that costs British businesses millions, slows down public services like schools and hospitals, and hinders millions of individuals in their daily lives." It describes the contents of Bill as reducing unnecessary burdens on three main groups:

- "Freeing business from red tape;
- "Making life easier for individuals and civil society; and
- "Reducing bureaucratic requirements on public bodies."

3. The draft Bill consists of 65 clauses and 16 Schedules. Most deal with the removal of requirements that relate to specific subjects, which relate to varying degrees to the different parts of the United Kingdom. As far as Wales is concerned,

many relate to non-devolved subjects such as company law, insolvency and international shipping. Others affect legislation that applies only to England. More significant are those that affect the law of England and Wales on subjects such as housing and local government. However, a preliminary examination of those detailed provisions suggests that care has been taken to limit the effect of those changes to England; see for example clauses 20 and 21 that relate to housing.

4. This paper therefore concentrates therefore on provisions that would be of general, rather than specific, application. These are:

- “Legislation no longer of practical use (clauses 50-57);
- “Exercise of regulatory functions (clauses 58-61) ; and
- “General” provisions (clauses 62-65).

“Legislation no longer of practical use”

5. The concept of “legislation no longer of practical use” first appears in clause 50, which introduces Schedule 16. This, in turn, repeals or revokes specific legislation, and is explained fully in the Explanatory Notes. These give an indication of the sort of circumstances in which legislation might be considered to be of no practical effect. An example is the repeal of the Statutory Water Companies Act 1991 - following water privatisation and re-organisation, there are no longer any companies that would come within the provisions of the Act. Similarly the Agricultural Produce (Grading and Marking) Act 1928 and the Agricultural Produce (Grading and Marking) Amendment Act 1931 are to be repealed because they have been overtaken by European legislation.

6. The crucial provision of the Bill is clause 51. This would permit a Minister of the Crown to provide for legislation to cease to apply if the Minister considers that that legislation is no longer of practical value. The Minister would be able to do this simply by making an order. The legislation could be repealed or revoked generally or in relation to a specific part of the UK. The Bill contains examples of Westminster legislation that would cease to apply to England, but would continue to apply to Wales. “Minister of the Crown” is defined in the Ministers of the Crown Act 1975 as “the holder of an office in Her Majesty's Government in the United Kingdom, and includes the Treasury, the Board of Trade and the Defence Council.” Legislation for these purposes means an Act (of Parliament) or subordinate legislation, but not an Act or Measure of the National Assembly.

7. However, by virtue of clause 57(2), this Ministerial power to repeal legislation would also be exercisable in relation to any provision made by, or under, an Act of the Scottish Parliament or the National Assembly, or a Measure of the National Assembly or by Northern Ireland legislation, - but only to the extent that the repeal was an incidental, supplementary, consequential, transitional, transitory or saving provision.

8. If a proposed order contained provision which would be within the legislative competence of the National Assembly if it were contained in an Act of the Assembly, the UK Minister would have to obtain the consent of the Welsh Ministers, but not the National Assembly. Subsequent clauses specify a super-affirmative procedure at Westminster.

9. Currently, the non-statutory Legislative Consent Motion procedure would apply to a UK Ministerial orders making provision within the legislative competence of the Assembly. However, it might be argued by the UK Government that a statutory requirement to obtain the consent of the Welsh Ministers would override such a non-statutory procedure.

The Committee is therefore invited to consider:

(a) whether it is content with the provisions as drafted;

and if not,

(b) whether UK Ministers should be able to disapply provisions which would be within the legislative competence of the National Assembly at all;

(c) whether they should be able to do so only with the consent of the National Assembly rather than the Welsh Ministers; or

(d) whether the Bill should instead provide for such orders to be made by the Welsh Ministers in relation to any provisions which would be within the legislative competence of the National Assembly; and in that case, what Assembly procedure should apply to such Welsh Minister orders (bearing in mind that a super-affirmative procedure is being applied at Westminster).

Exercise of regulatory functions

10. Clause 58(1) provides that “A person exercising a regulatory function to which this section applies must, in the exercise of the function, have regard to the desirability of promoting economic growth.”

11. A Minister of the Crown would be able, by order, to specify the regulatory functions to which clause 58 would apply. Such an order could not specify a “regulatory function so far as exercisable in Wales, if or to the extent that the function relates to matters which are devolved Welsh matters.” A devolved Welsh matter means a matter within the legislative competence of the National Assembly. Thus it would not apply, for example, to regulation by the Welsh Language Commissioner in relation to the Welsh language, but would apply to the regulation of broadcasting in Wales by Ofcom.

Is the Committee content?

General provisions

12. Clause 62(1) would empower a Secretary of State by order to make such provision as he or she considers appropriate in consequence of the Act. That may include transitional, transitory or saving provision and amend, repeal, revoke or otherwise modify legislative provisions, including those made by the National Assembly. For example, if an Act of the Assembly referred to legislation to be repealed by the Bill, that reference could be deleted. In the usual way, amendments to primary legislation would be subject to the affirmative procedure at Westminster; changes to subordinate legislation would be subject to the negative procedure.

Is the Committee content, or should a consent requirement be inserted in relation to legislation within the competence of the National Assembly?

Legal Services

National Assembly for Wales

October 2013

Constitutional and Legislative Affairs Committee

The UK Draft Deregulation Bill

Briefing

Date of paper:

7 October 2013

This briefing has been produced by the Research Service for use by the Constitutional and Legislative Affairs Committee.

**For further information, contact Alys Thomas in the Research Service
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**Research
Service**

This briefing provides background information to accompany the note provided by Legal Services.



1. Introduction

The **Draft Deregulation Bill** (“the Draft Bill”) was published by the Cabinet Office on **1 July 2013**. The Draft Bill **amends or repeals 182 different pieces of legislation**, removing, what the UK Government terms, “unnecessary burdens” on three key groups: businesses, individuals and civil society and public bodies. The Rt. Hon. Ken Clarke QC MP stated:

I am as strongly in favour of sensible regulation as the next man, but only where it is necessary to prevent wrongdoing and protect the public. In recent years a mountain of unnecessary legislation has been piled onto the statute book, usually introduced with the most worthy motives. This regulatory burden wastes time and money for hard-working people and ties honest businesses and public bodies in bureaucratic knots.¹

The **Joint Committee on the draft Deregulation Bill**, chaired by Lord Rooker, was appointed by both Houses of Parliament on 17 July 2013 to conduct pre-legislative scrutiny into the draft Deregulation Bill and the policies underpinning it. The Joint Committee comprises six MPs and six Peers (none of whom are Welsh MPs or peers connected to Wales). It will take written and oral evidence and make recommendations in a report to both Houses. The Joint Committee is required to make its report by **16 December 2013**. The Joint Committee has invited interested organisations and individuals to submit written evidence as part of the inquiry. Consultation questions can be seen in **Annex 1** and include the question **What are the consequences of the draft Bill for the devolved administrations?**²

This briefing provides background information to accompany the **note provided by Legal Services** on the Draft Bill.

2. The Draft Bill

The **Coalition Programme for Government** agreed between the Conservatives and Liberal Democrats in May 2010 stated “We will cut red tape by introducing a ‘one-in, one-out’ rule whereby no new regulation is brought in without other regulation being cut by a greater amount.”³

The UK Government has already introduced deregulatory measures which did not include legislation:

- major simplification of the registration and payment system for company charges;
- binding new rules to exempt hundreds of thousands of low risk businesses from health & safety inspections;
- the introduction of a portable Criminal Records check, which employers can view instantly online, saving the need for a new check in the majority of cases;

¹ [Cabinet Office, *Government unveils Deregulation Bill*, Press Release, 1 July 2013 \[accessed 2 October 2013\]](#)

² [UK Parliament, *Joint Committee on the Draft Regulation Bill, Have your say on the Draft Deregulation Bill*, Press Release, 31 July 2013 \[accessed 2 October 2013\]](#)

³ [UK Government, *Coalition Programme for Government*, May 2010 \[accessed 3 October 2013\]](#)

Committee Reference: CLA(4)-x-13

- overhauling no-win, no-fee legal claims;
- increasing the qualifying period for unfair dismissal to two years;
- introducing new incentives so that roadworks on the busiest roads are done during quieter times.

In the 2013 Queen's Speech the UK Government announced that "a Bill will be introduced to reduce the burden of excessive regulation on businesses." It stated:

The Deregulation Bill would be part of the Government's agenda to reduce the burden of excessive or unnecessary regulation where primary legislation is required. The Bill will be published in draft for pre-legislative scrutiny. Many other regulations are being scrapped and reformed either administratively or via secondary legislation.⁴

The UK Government argued that the main benefits of the Draft Bill would be to reduce or remove burdens on businesses and civil society and facilitate growth; reduce or remove burdens on public bodies, the taxpayer or individuals and to tidy up the statute book by repealing legislation that is no longer of any practical use.

The Draft Bill sets out a range of measures aimed at the three groups:

Provisions affecting **business** include:

- scrapping health and safety rules for self-employed workers in low risk occupations;
- putting a deregulatory 'growth duty' on non-economic regulators;
- making the system of apprenticeships more flexible and responsive to the needs of employers and the economy. The Bill will remove a lot of prescriptive detail in the current legislation and clarify the employment status of apprentices;
- removing employment tribunal judges' power to issue wide recommendations to businesses brought before them.⁵

Provisions relating to **individuals and civil society**, include:

- reducing the period for which someone has to live in their social housing to qualify for Right to Buy from five to three years.
- scrapping fines for people who make mistakes putting out their bins.
- deregulating the showing of 'not-for-profit' film in village halls and community centres, making it easier for small charities and community groups to hold film nights
- devolving decisions on public rights of way to a local level.⁶

Provisions affecting **public bodies** include:

⁴ [GOV.UK, *The Queen's Speech 2013: background briefing notes*, 8 May 2013, page 19 \[accessed 2 October 2013\]](#)

⁵ [Cabinet Office, *Government unveils Deregulation Bill*, Press Release, 1 July 2013 \[accessed 2 October 2013\]](#)

⁶ [Cabinet Office, *Government unveils Deregulation Bill*, Press Release, 1 July 2013 \[accessed 2 October 2013\]](#)

Committee Reference: CLA(4)-x-13

- removing prescriptive requirements on local authorities to consult and produce various strategies, giving them more freedom from central control
- freeing schools from pointless paperwork and prescriptive central government requirements.⁷

The Draft Bill also brings forward a new mechanism which would allow Parliament to identify and remove uncontroversial legislation more speedily.

Please refer to the Legal Services note as to how these provisions affect Wales.

Explanatory Notes to the Draft Bill state:

Some provisions in the Bill deal with matters which have been devolved. It is therefore envisaged that some legislative consent motions may be needed at the appropriate time. Discussions with the devolved administrations about provisions in the Bill which relate to devolved matters are ongoing. The purpose of these discussions is to determine whether the governments in Wales, Scotland and Northern Ireland wish these provisions to be included in the Bill on introduction to Parliament.⁸

The **Law Society for Scotland** has published its response to the consultation on the Draft Bill. In regard to provisions about legislation no longer of practical use (Clauses 51 – 57) it states:

Clause 51 allows a Minister of the Crown to make an order for legislation to cease to apply if the Minister considers it is of no practical use. The Order can repeal or revoke the legislation or amend it.

In terms of Clause 52, before making an Order under Section 51 which contains provisions which would be within the legislative competence of the Scottish Parliament, if it were contained in an Act of that Parliament, the Minister must obtain the consent of the Scottish Ministers. Clauses 52(2) and (3) apply a similar provision to Wales and Northern Ireland.

The Society questions whether it is appropriate for a Minister acting under Section 5, where the Order would contain a provision which would be within the legislative competence of the Scottish Parliament, that the Minister should only require the consent of Scottish Ministers and not the Scottish Parliament. The lack of Parliamentary engagement in connection with such Orders which affects Scottish legislation or indeed Welsh or Northern Irish devolved legislation lacks proper democratic engagement. These concerns also extend to Clause 57.⁹

⁷ [Cabinet Office, *Government unveils Deregulation Bill*, Press Release, 1 July 2013 \[accessed 2 October 2013\]](#)

⁸ [Draft Deregulation Bill, Explanatory Notes, 1 July 2013 \[accessed 3 October 2013\]](#)

⁹ [Law Society of Scotland, *The Draft Deregulation Bill: Response*, September 2013 \[accessed 3 October 2013\]](#)

Committee Reference: CLA(4)-x-13

Annex: Consultation Questions

General

1. The draft Bill covers a broad range of specific activities and a large amount of legislative provision is amended by it. Could the same result have been achieved using existing secondary legislative procedures?
2. What are the advantages and disadvantages of including specific deregulatory provisions amending existing legislation and providing additional or amended order making powers within primary legislation rather than considering them through existing deregulatory mechanisms?
3. Are the changes proposed in the draft Bill evidence-based and have any risks associated with the changes been taken adequately into account?
4. Does the draft Bill achieve its purpose of reducing the regulatory burden on business, organisations and individuals effectively and fairly?
5. Will the draft Bill generally benefit businesses by offsetting other regulatory burdens? Are there indirect impacts on other businesses from reducing regulation in specific sectors?
6. To what extent does the draft Bill benefit consumers as well as businesses?
7. How does the provision in the draft Bill affect:
 - i. protections afforded to individuals under human rights and equalities legislation?
 - ii. employment law, skills and the labour market?
 - iii. the environment, particularly in the management of waste?
 - iv. the provision of education?
 - v. the effective administration of justice?
 - vi. social, wellbeing or health inequalities?
8. Have the measures set out in the draft Bill been subject to adequate cost-benefit analysis on the basis of consultation with those affected?
9. Will any or all of the proposals have any significant economic or financial impact? Do you have any evidence of the impact that will aid the Committee in their scrutiny?

Power to disapply legislation no longer of practical use

10. Is a new “power to disapply legislation no longer of practical use” necessary or are there existing procedures which could be used to achieve the same effect?” (Clause 51)?
11. Is the meaning of the phrase “no longer of practical use” clear? In this context, what is meant by “practical”? Should it be defined and, if so, how? Will removing any of the provision proposed in Schedule 16 of the draft Bill have implications for any other areas of regulation?

Committee Reference: CLA(4)-x-13

12. Are the safeguards regarding the use of the “no longer of practical use” power (set out in Clauses 54 to 56) adequate and appropriate?
13. Other deregulatory mechanisms such as Legislative Reform Orders or Public Bodies Orders have specific tests set out in the parent Act - should there be similar tests set out in the draft Bill? What should they be?
14. Are the mechanisms set out for parliamentary oversight (Clauses 55 and 56) of deregulation orders adequate and appropriate?
15. Are there other changes to deregulatory powers, procedures and parliamentary oversight which you think should have been included in the Bill and, if so, why?
16. What are the risks associated with the proposed new power to disapply legislation that is “no longer of practical use”?

A duty to have regard to the desirability of promoting economic growth

17. To what extent do the Government’s existing powers of direction over regulators already provide the ability to guide regulators towards the importance of promoting economic growth? Is this legislation necessary?
18. Will the introduction of a duty to have regard to “promoting economic growth” compromise the independence of regulators? What additional safeguards are required to ensure that the introduction of such a duty will not compromise the independence of a regulator?
19. How is a duty to have regard to the desirability of economic growth likely to affect those regulators to which it is applied?
20. Where is the introduction of such a duty likely to have beneficial effect? Where might there be adverse consequences?
21. How might the extent to which a regulator has fulfilled, or breached, the duty be ascertained?
22. How can the likely financial and economic impact of the proposed duty be assessed?

Devolution

23. What are the consequences of the draft Bill for the devolved administrations?

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol Constitutional and Legislative Affairs Committee

Cynulliad
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Cymru
National
Assembly for
Wales



Mr Maroš Šefčovič
Vice-President of the European Commission responsible for
Inter-Institutional Relations and Administration
Rue de la Loi 200
1049 Brussels
Belgium
SW1A 0PW

15 May 2013

Dear Vice President Šefčovič

Proposal for a Regulation of the European Parliament and of the Council on measures to reduce the cost of deploying high-speed electronic communications networks (COM(2013)147)

I wanted to draw to your attention recent correspondence on subsidiarity concerns raised by the National Assembly for Wales' Constitutional and Legislative Affairs Committee (which I Chair) at its meeting last week.

I have written to William Cash MP and to Baroness O'Cathain, the Chairs respectively of the House of Commons' European Scrutiny Committee and the House of Lords' EU Sub-Committee B, about the above proposal. I attach a copy of my letters and the associated report from my Committee.

As you will be aware, the Treaty of Lisbon introduced an 'early warning mechanism' on subsidiarity (set out in Protocol No.2 to the treaty) which gives national parliaments (in consultation with their regional parliaments where appropriate) the opportunity to submit 'Reasoned Opinions' to the European Commission on any subsidiarity aspects of draft legislative proposals published by the EU Institutions.

You will see from the correspondence that the Constitutional and Legislative Affairs Committee shares the concerns raised by both the UK Government and the House of Commons European Scrutiny Committee. In particular, the Committee believes that the proposed Regulation's aim would be best achieved by action at Member State level, and that the measures supported by the proposed Regulation – such as infrastructure sharing, information

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provision, street works coordination and in-built broadband equipment in buildings – would all be best implemented at a local level.

I would be grateful if you could take the Committee's representations into account, on behalf of the National Assembly for Wales. As a sub-state legislature we aim to engage positively with EU matters, particularly in relation to our consideration of issues relating to subsidiarity. We very much look forward therefore to hearing your thoughts on how our concerns could be effectively addressed.

Yours sincerely

A handwritten signature in black ink that reads "David Melding". The signature is written in a cursive style with a long, sweeping tail that extends to the right.

David Melding AM
Chair

NEELIE KROES

VICE-PRESIDENT OF THE EUROPEAN COMMISSION

Brussels, 30 SEP. 2013

Dear Mr Melding,

I would like to thank the National Assembly for Wales for its letter concerning the Proposal for a Regulation of the European Parliament and of the Council on measures to reduce the cost of deploying high-speed electronic communications networks {COM(2013) 147 final}. Your letter has been transferred to me by Vice-President Šefčovič.

The development of the digital economy is a key driver for creating growth and jobs in Europe and has therefore a major role to play in Europe's economic recovery. Hence the ambitious broadband targets set out in the Digital Agenda for Europe to be reached by 2020. Moreover, ubiquitous high-speed networks are a prerequisite for bridging the digital divide and ensuring regional cohesion. Investments in Europe are lagging behind the rest of the world, so if we are to unlock the potential of the digital economy and strengthen Europe's competitiveness, our efforts will have to be stepped up significantly. The measure which the Commission proposed in March has the potential to reduce costs of EU-wide deployment by up to 30% (or 60 billion euros), notably by allowing the use of existing passive infrastructure under certain conditions and by cutting red tape.

The proposed Regulation is one of the 12 key actions identified in the Communication 'Single Market Act II: Together for Growth'¹ which will boost growth, employment and confidence in the Single Market and generate real effects on the ground.

I took good note of the concerns expressed by the Assembly and would like to react, at this stage, as follows:

Mr. David Melding AM
Chair of the National Assembly for Wales
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¹ Communication from the Commission to the European Parliament, the Council, the Economic and social Committee and the Committee of the Regions, COM(2012)573 of 3.10.2012, http://ec.europa.eu/internal_market/smact/docs/single-market-act2_en.pdf.

The proposed Regulation aims at removing barriers to the functioning of the Single Market, which are caused by the existence of a patchwork of rules at national and sub-national levels. Such patchwork causes delays in network deployment, and affects the costs. In our view, addressing such fragmentation can best be achieved at EU level. Action at Union level is also better suited to ensure equal treatment and non-discrimination of undertakings and investors throughout the EU. In particular, it is an obstacle to the completion of the digital single market that utilities may offer their physical infrastructure in one Member State and not in another. Another obstacle results from the patchwork of rules, applicable in the different Member States which causes delays in network deployment, and affects the costs. While the deployment of networks is effectively locally implemented, it is decided, financed and designed at national and supra-national level. Leaving aside international connectivity, which has a cross-border character per se, when electronic communications providers are deploying high-speed broadband, they do it on an efficient scale, which has effect at EU level.

The proposal follows from a request from the Heads of State and Government meeting at the European Council in March 2012 to prepare measures to reduce the costs of roll-out of broadband in the EU². Last December, the European Council endorsed a legally binding instrument at EU level as part of the so-called Single Market Act II³. The type of legal instrument, a Regulation, was carefully chosen by the Commission in view of its efficiency and effectiveness: by focussing on a limited number of directly applicable rights and obligations, it aims at removing identified obstacles and barriers to the development of the digital single market, without harmonising and interfering with organisational issues, which are left to the discretion of Member States.

Furthermore, in view of the current level of underinvestment, important steps need to be taken rather urgently. Hence the choice of a Regulation, which can deliver results quickly, rather than a Directive, which would need a significant amount of time for transposition and could not achieve the same level of harmonisation in the context of a fragmented single market.

The Regulation builds on national best practice and aims at scaling them up at EU level. National best practice is not affected by the proposal. In accordance with the principle of subsidiarity however, Member States may adopt more detailed rules or provisions complementing the rights and obligations specified in the proposed legal instrument, for example to establish data bases of existing physical infrastructure at the level of detail they believe best. With regard to procedural issues, the proposal respects the constitutional distribution of powers of Member States, especially those with decentralised exercise of power, such as the UK, by allowing Member States to allocate the powers provided by this Regulation to the authority and at the level of aggregation which is best suited to exercise it.

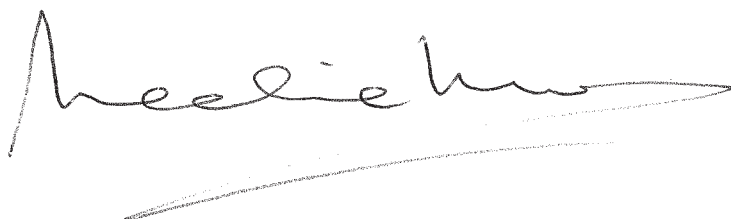
² Conclusions of the European Council of 1/2 March 2012, EUCO 4/2/2012, available at <http://register.consilium.europa.eu/pdf/en/12/st00/st000004-re02.en12.pdf>, page 5.

³ Conclusions of the European Council of 13/14 December 2012, EUCO 205/12, <http://register.consilium.europa.eu/pdf/en/12/st00/st00205.en12.pdf>, item 17.

Lastly, the possibility of Member States to exempt, for proportionality reasons, from the application of this Regulation categories of infrastructure or buildings further guarantees in our view that the Commission has taken due consideration of the principle of subsidiarity.

I hope that these clarifications address the concerns raised by the National Assembly for Wales and look forward to continuing our political dialogue in the future.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Medina', with a long horizontal flourish extending to the right.

Gwenda Thomas AC / AM
Y Dirprwy Weinidog Gwasanaethau Cymdeithasol
Deputy Minister for Social Services



Llywodraeth Cymru
Welsh Government

Ein cyfl/Our LF/GT/0954/13

David Melding AM
Chair
Constitutional and Legislative Affairs
Committee

2 October 2013

Dear David,

Thank you for meeting with me on 30 September to discuss your Committee's report of its Stage 1 scrutiny of the Social Services and Well-being (Wales) Bill. We talked about Recommendations 8 and 13 where I sought your clarification for the rationale for them. I wanted to write setting out my views on these Recommendations.

Recommendation 8 - *We recommend that the Deputy Minister should table an amendment to the Bill to apply the Affirmative procedure in the first instance to the making of Regulations under Sections 92 and 93, followed thereafter by the Negative procedure.*

I recall our discussion about this during my evidence session with you. However, the discussion was mostly about whether the detail of the Regulations under these sections should be placed on the face of the Bill and less about the procedure for these Regulations. These powers are simply a restatement of those within the Children Act 1989 and are currently subject to the Negative procedure without issue. At our meeting you noted your Committee's preference for the Affirmative procedure to be used more widely but in this regard, I see no reason to depart from the arrangements already in place and which function well.

Recommendation 13 - *We recommend that the Deputy Minister should table an amendment to apply the Affirmative procedure to Section 144 of the Bill.*

It appears that this recommendation arises from a misunderstanding of the procedures for the powers under sections 143 and 144 which itself may have been based on a typographical error in the Explanatory Memorandum which stated that these powers were subject to the Affirmative procedure. This error will of course be corrected following Stage 2 proceedings.

Section 143 is in fact subject to the Negative procedure, whereas due to the nature of section 144, in that it inserts a Regulation making power into section 25 of the Children Act 2004, there is currently no procedure applied to that power.

Further, during my evidence session with you, I think that Suzy Davies AM misunderstood my intentions in relation to section 144. I do not think the Affirmative procedure should apply in this

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regard. I attempted to clarify this point at Committee however, this has not been reflected in your report nor in your recommendations.

On the point of section 147, the Health and Social Care Committee made recommendations in relation to the strengthening of partnership arrangements and I am minded to bring forward amendments to this effect.

In closing I would like to add that I am grateful for your view expressed in the meeting, that I have gone a long way to meeting your Committee's recommendations, I look forward to debating these matters further on 8 October.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Gwenda', written in a cursive style.

Gwenda Thomas AC / AM
Y Dirprwy Weinidog Gwasanaethau Cymdeithasol
Deputy Minister for Social Services

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