

Jane Hutt AS/MS
Y Gweinidog Cyfiawnder Cymdeithasol
Minister for Social Justice



Llywodraeth Cymru
Welsh Government

Huw Irranca-Davies MS
Chair, Legislation, Justice and Constitution Committee
SeneddHealth@senedd.wales

14 February 2022

Dear Huw

Legislative Consent Memorandum on the Nationality and Borders Bill (“the Bill”)

I am grateful to you and your fellow members of the Legislation, Justice and Constitution Committee for taking the time to consider the Legislative Consent Memorandum (LCM) laid on the Nationality and Borders Bill (“the Bill”).

I was pleased to see members agreed with the position I set out in the LCM; that the consent of the Senedd is required for the clauses highlighted.

Your report includes one recommendation, and you have sought a response ahead of the debate tomorrow. My response to your questions are as follows:

Provide an update on her discussions with the UK Government as to whether the provisions of the Bill fall within the legislative competence of the Senedd

We repeatedly raised concerns with the UK Government about the impact of this Bill on Wales and sought details of the clauses relating to age assessment from May onwards, without success. The UK Government has provided no satisfactory assurances and no amendments have been tabled to address the concerns which we have raised.

Most recently, correspondence received from Home Office officials on 8 February conveyed the UK Government position remained unchanged. That is, that all the Bill’s clauses were within reserved competence and no Legislative Consent Memorandum is required for the clauses related to age assessment.

I have written to UK Government Ministers on three occasions to express my concerns about the Bill. As early as 26 July 2021, soon after the Bill was introduced, I wrote to the Home Secretary to explain our position regarding age assessments:

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
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CF99 1SN

Gohebiaeth.Jane.Hutt@llyw.cymru
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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

“Your letter states that ‘almost all of [the Bill’s] provisions deal with matters that are reserved to the UK Parliament’ and, consequently, there is no intention to seek Legislative Consent Motions. However, the placeholder clause relating to unaccompanied children (clause 58) is, as yet, undefined and I seek further information from you about the drafting, purpose and effect of this clause. Welsh local authorities have duties under the Social Services and Well-being (Wales) Act 2014 which may require them to undertake age assessments to ensure appropriate support is being put in place, irrespective of any Home Office-arranged age assessment which may have already taken place. We have our own ‘Unaccompanied Asylum Seeking Children: Age Assessment Toolkit’ which explicitly states that age assessment is not a scientific process. Radiological methods have been thoroughly and repeatedly discredited over many years. It appears likely that the current proposals could lead to one Government department considering an asylum seeker to be an adult, whereas a Welsh local authority considers that person to be a child. Should this happen, there would be significant safeguarding concerns for that child if they are placed in a House of Multiple Occupation, hotels, or in detention with adult asylum seekers.”

My letter to the Home Secretary of 9 December 2021 was a joint letter with Shona Robison MSP, Cabinet Secretary for Social Justice, Housing and Local Government, Scottish Government. A reply was received from the Minister for Safe and Legal Migration, Kevin Foster, MP on 18 January 2022.

In the reply from Minister Foster, he noted the Welsh Government had tabled a legislative consent memorandum before the Senedd in respect of age assessment provisions but restated clearly their position was the legislative consent of the devolved legislatures was not required. The Minister stated that his officials would write to the Welsh Government with further detail however the letter has not been received.

Explain whether, as part of her discussions, she has sought amendments to the Bill relevant to paragraphs 19 and 20 above

The Home Office did not engage with our concerns regarding age assessment due to their stance of this being a reserved matter. As a result, no opportunity was available to us to pursue amendments. After the LCM was laid, Minister Foster stated his officials would be in touch to discuss further but to date, no letter has been received. We will write again to the Home Office following the debate to advise them of the outcome.

Indicate whether she will be engaging the dispute resolution procedures in line with the final package of reforms announced following the recently published Review of Intergovernmental Relations

The Welsh Government, along with the UK Government, the Scottish Government, and the Northern Ireland Executive, have agreed to use the package of reforms which has emerged from the joint Review as the basis for the conduct of intergovernmental relations. We will now begin to implement this new approach, including through the new disputes mechanism as necessary and appropriate.

The proposed mechanism around dispute avoidance and resolution outlines each government’s right to refer and escalate a dispute, and requires independent chairing and independent secretariat arrangements. It includes a presumption of independent input, through either advice or mediation, and increased transparency to aid legislatures’ scrutiny and stakeholder engagement.

The Welsh Ministers will give further thought to managing this through the new IGR machinery.

I am copying this letter to Russell George MS, Chair of the Health and Social Care Committee, and Jayne Bryant MS, Chair of the Children, Young People and Education Committee.

I hope my reply is helpful.

Yours sincerely,

A handwritten signature in black ink that reads "Jane Hutt". The signature is written in a cursive style with a horizontal line above the first few letters.

Jane Hutt AS/MS

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