

Dawn Bowden AS/MS
Dirprwy Weinidog y Celfyddydau a Chwaraeon, a'r Prif Chwip
Deputy Minister for Arts and Sport, and Chief Whip



Llywodraeth Cymru
Welsh Government

Huw Irranca-Davies MS
Chair
Legislation, Justice and Constitution Committee
Senedd Cymru
Cardiff Bay
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CF99 1SN

seneddjlc@senedd.wales

25 April 2022

Dear Huw,

Thank you for your letter of 25 March 2022 regarding the Cultural Objects (Protection from Seizure) Bill. I am happy to give the Legislation, Justice and Constitution Committee more information regarding the Bill and the eventual removal of the application of the provisions for Wales.

This Private Members' Bill by Mel Stride MP, and sponsored by the Department for Digital, Culture, Media and Sport (DCMS), contains provisions which amend an existing Act (the Tribunals, Courts and Enforcement Act 2007), and as introduced, contained provisions falling within the devolved competence of the Senedd and included a concurrent power. As a Private Members' Bill, the Parliamentary timetable for the Bill was less structured and it progressed at pace.

The concurrent power would have affected the Senedd's powers to make legislation in this area in the future, due to the fact that Minister of the Crown consent would be required to remove the concurrent function. The power can be considered to be practically necessary to ensure an object on loan from abroad is protected from seizure in specific circumstances, and that the authority best placed to exercise the power can do so. However as you know, the Welsh Government's position, as set out in the *Guidance on principles on concurrent powers in UK Bills*, emphasises a presumption against making new concurrent powers in devolved areas. Therefore, in line with the Welsh Government's policy approach, my officials asked the UK Government officials for an amendment to the Bill, so that it included a provision which would provide a carve out from the application of paragraph 11(1)(a) of Schedule 7B to the Government of Wales Act 2006.

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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.

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I have provided a full, detailed outline of the timeline of discussions between myself, my officials and our counterparts in UK Government and DCMS (see appendix A). This timeline demonstrates our significant efforts to ensure an outcome where Wales was included in the Bill, and the devolution settlement protected. The discussions held between officials were not minuted, but I have attached the formal correspondence between myself and Mel Stride MP (appendix B and C).

You mentioned, the new intergovernmental machinery. Welsh Ministers will give further thought to managing the escalation of disagreements as disputes through the new intergovernmental relations machinery. There are no current plans to escalate any disagreement as a dispute. Of course, this would be a big step to take and should only be taken as a last resort, when all attempts to avoid this action have been exhausted.

I am copying this letter to Elin Jones MS, Y Llywydd, Delyth Jewell MS, Chair of the Culture, Communications, Welsh Language, Sport and International Relations Committee and Mick Antoniw MS, Counsel General and Minister for the Constitution.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Dawn Bowden'.

Dawn Bowden AS/MS

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Deputy Minister for Arts and Sport, and Chief Whip

Appendix A - Timeline of key communication regarding Cultural Property (Protection from Seizure) Bill

Date	Activity Description
10 August 2021	Letter received from UK Government Minister of State for Digital and Culture. Provides an introduction to the Bill and a draft copy of proposed legislation.
17 August 2021	Officials from Welsh Government Culture Division meet with DCMS. Receive high level explanation of Bill's content and how its provisions are proposed to work in practice.
19 October 2021 & 1 November 2021	Officials from Welsh Government Culture Division correspond with DCMS to explore the concurrent power specifically.
17 November 2021	Bill passed Commons Committee Stage with no amendments.
2 December 2021	Officials from Welsh Government Culture Division correspond with DCMS to request a carve out is inserted into the Bill.
3 December 2021	DCMS respond requesting an explanation of why Welsh Government believe there are strong reasons for a carve out being necessary, and how the existing policy would suffer without it.
8 December 2021	Welsh Government officials respond to DCMS, confirming rationale for requesting the carve out: to ensure that the Bill works in the way intended and ensuring the protection of cultural objects, while ensuring the devolved competence of the Senedd is not limited.
10 December 2021	Legislative Consent Memorandum (LCM) laid in relation to the provisions of the Bill which fall within the legislative competence of the Senedd, but Deputy Minister reserves the decision on recommending consent to the concurrent power provision following the outcome of discussions with UK Government. https://senedd.wales/media/lmokqhx3/lcm-ld14761-e.pdf https://senedd.cymru/media/io1juqod/lcm-ld14761-w.pdf
22 December 2021	DCMS respond to Welsh Government officials reply of 8 December. This response, agreed by DCMS, the Wales Office and the Cabinet Office, sets out that UK Government consider a carve out unnecessary and why UK Government did not believe the proposals would limit the competence of the Senedd. The reasons cited however, focussed around the practicalities of ensuring any object is protected throughout the UK and that the purpose of giving each national authority the power to grant UK-wide protection is one of convenience, so that each national authority does not need to exercise the power separately, and to ensure that there are no gaps in protection if the object is travelling through the UK. The response does not address the issue of Senedd competence.

10 January 2022	<p>Welsh Government officials meet with DCMS to reiterate that the purpose of the carve out would be to maintain the status quo in relation to the Welsh devolution settlement. Welsh Government officials emphasise that the carve out would not remove the concurrent power or prevent the powers in the Bill being used to protect an object in the way intended. Instead, a carve out would ensure that legislative competence is protected as has occurred with other carve-outs (for example the Environment Act 2021).</p> <p>DCMS officials inform Welsh Government officials that the UK Government Minister of Arts had decided <u>either</u> Welsh Government agrees to the Bill proceeding as it is currently drafted, <u>or</u> the Bill will be amended to remove Wales from the Bill. DCMS asked for clarification of Welsh Government's stance by 17 January so it had time to redraft the Bill to remove Wales, in preparation for the Bill's Report stage in the House of Commons on 28 January.</p>
11 January 2022	<p>Deputy Minister attends four nations Culture Ministers' meeting. Lord Parkinson raised the Private Members' Bill on cultural objects. Deputy Minister reiterates Welsh Government stance that it supports the general policy of the Bill but that an appropriate carve outs are required to protected legislative competence, again citing recent examples.</p>
17 January 2022	<p>Deputy Minister for Arts and Sport and Chief Whip briefs First Minister.</p>
17 January 2022	<p>Deputy Minister Deputy Minister for Arts and Sport and Chief Whip Letter to Mel Stride MP (see appendix B), copied to Lord Parkinson of Whitley Bay, Parliamentary Under Secretary of State (Minister for Arts), the Rt Hon Simon Hart MP, Secretary of State for Wales and the Rt Hon Steve Barclay MP, Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office, to reiterate the Deputy Minister's request that an amendment is made to the Bill to include a carve out from the application of paragraph 11(1)(a) of Schedule 7B to the Government of Wales Act 2006.</p>
19 January 2022	<p>Reply received from Mel Stride MP (see appendix C) to the Deputy Minister for Arts and Sport and Chief Whip. Informs that the application of the Bill to Wales will be removed if the Welsh Government does not recommend the Senedd agrees to the Bill as drafted.</p>
20 January 2022	<p>Officials update to First Minister.</p>
24 January 2022	<p>Welsh Government Deputy Director Culture corresponds with DCMS Deputy Director Museums and Cultural Property, requesting, that the</p>

	Bill is not amended before its third reading in the Commons. This would ensure that all possible solutions are explored and the resulting Ministers' decisions could then be incorporated in a final amendment when the Bill is in the House of Lords.
24 January 2022	DCMS Deputy Director responds with the belief that it would not be possible to do as suggested, as the timescales in the Bill's progression through the parliamentary process would not enable any amendments made in the Lords to go back to the Commons prior to the end of the current Parliamentary session.
24 January 2022	DCMS Director for Arts, Heritage and Tourism corresponds with Welsh Government Director, Culture, Sport and Tourism. Reiterates that the choice remains either to remain with the current drafting or be removed.
25 January 2022	Welsh Government Director, Culture, Sport and Tourism responds to DCMS Director for Arts, Heritage and Tourism, emphasising that the Bill as drafted contravenes Welsh Government's principles on concurrent powers and is why a carve out was necessary as with similar recent Bills. He argues that this more broadly highlights the need for devolved governments to be included in the drafting stages of any UK-wide Bill to advise and tease out such issues sooner, which would have been especially helpful in regard to this Bill, given its tight timescales to take through the Parliamentary process.
25 January 2022	Deputy Minister for Arts and Sport and Chief Whip letter to Mel Stride MP (see appendix D), copied to Lord Parkinson of Whitley Bay, Parliamentary Under Secretary of State (Minister for Arts), the Rt Hon Simon Hart MP, Secretary of State for Wales and the Rt Hon Steve Barclay MP, Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office. Deputy Minister reiterates need for a carve out and expresses her disappointment that an amendment would be tabled to remove Wales from the Bill, but not to insert a carve out.
28 January 2022	Third Reading and Report Stage in the House of Commons. Wales and Northern Ireland removed from the Bill's provisions.
28 January 2022	Letter from Mel Stride MP to Deputy Minister for Arts and Sport and Chief Whip (see appendix E) confirming an amendment had been tabled to remove Wales from the Bill.

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Deputy Minister for Arts and Sport, and Chief Whip



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA-DB-0266-22

Mel Stride MP
House of Commons
London
SW1A 0AA

mel.stride.mp@parliament.uk

25 January 2022

Dear Mel Stride,

Thank you for your email, received 19 January, confirming your stance regarding the Cultural Objects (Protection from Seizure) Bill.

I would be willing to meet with you and the Parliamentary Under Secretary of State (Minister for Arts) to discuss this matter urgently.

I am naturally disappointed by the refusal to include such an amendment, and am surprised that there is a willingness to amend the Bill to remove Wales, but not to amend the Bill to add the carve out. This is especially surprising as several recent Bills have included this carve out. I also note your concern of the risk to the timely progression of the Bill. I would argue that amending the Bill to remove Wales would pose a greater risk to its substance and progression, as it would in all likelihood lead to an amendment being tabled by MPs or Members of the House of Lords to ensure Wales is included in the territorial extent of the Bill.

I reiterate the Welsh Government's stance. If the Bill does include a concurrent function we wish Wales to be included in an amended Cultural Objects (Protection from Seizure) Bill that includes the required carve out from the application of paragraph 11(1)(a) of Schedule 7B to the Government of Wales Act 2006.

That said and given that we appear to have reached an impasse so far on this matter [REDACTED] [REDACTED] have revisited the proposed amendments to consider further whether there is any alternative solution. In light of this I am aware that there have been further discussions over the last few days between my officials and DCMS officials [REDACTED]

[REDACTED] questioning whether the proposed amendments as currently drafted do in fact create a concurrent function. It is t [REDACTED] r

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██████████ arguable that the proposed amendments have not created a concurrent function of the nature that you describe but instead creates a number of complementary geographically based functions vested in Ministers of the 4 governments within the UK. This is a complex area. If ██████████ correct this might offer a solution in that a technical amendment to proposed subsection (4C) to remove the reference to concurrence and to make it clear that subsection (4C) only has effect to make it clear that the respective relevant authorities' functions can be exercised simultaneously in respect of the same object at the same time might allow us to break this impasse.

Whilst I understand the desire is not to table amendments to the Bill in the Lords my principal focus is to ensure that the Bill properly reflects and respects the devolution settlement.

I am copying this letter to Lord Parkinson of Whitley Bay, Parliamentary Under Secretary of State (Minister for Arts), the Rt Hon Simon Hart MP, Secretary of State for Wales and the Rt Hon Steve Barclay MP, Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office.

Yours sincerely,

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

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Welsh Government

Ein cyf/Our ref MA-DB-0087-22

Mel Stride MP
House of Commons
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mel.stride.mp@parliament.uk

17 January 2022

Dear Mel Stride,

I write regarding the Cultural Objects (Protection from Seizure) Bill. My officials have been in contact with those in DCMS regarding our request for an amendment to the Bill. I am copying Lord Parkinson of Whitley Bay, Parliamentary Under Secretary of State (Minister for Arts) who is aware of the following points as they were raised at a meeting of the four nations' culture ministers on 11 January.

The Bill contains a concurrent power at the proposed new subsection (4C)(b).

I acknowledge that overall the Bill's provisions are sensible, important and address recognised weaknesses in the current scheme. Ensuring that the provisions in the Bill apply to Wales will safeguard parity of cultural access to international loans for the public across all four nations of the UK. It is not our intention to depart from the arrangements proposed.

As currently drafted, the concurrent power affects the Senedd's powers to make legislation in this devolved area in the future.

Our position on concurrent powers is that there is a presumption against making new concurrent powers in devolved areas. If concurrent powers are created, then a carve out should apply so that no consent would be required to remove them.

I request that an amendment is made to the Bill, so that it includes a provision which would provide a carve out from the application of paragraph 11(1)(a) of Schedule 7B to the Government of Wales Act 2006.

A carve out would be created by including a provision in the Bill which amends paragraph 11(6) of Schedule 7B of the Government of Wales Act 2006. Numerous Acts of Parliament include carve outs and an example can be found in section 141(3) of the Environment Act 2021. A carve out would ensure Wales and Scotland are treated with parity in relation to the Bill.

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I recognise that in the scenarios covered by the Cultural Objects (Protection from Seizure) Bill, the concurrency would ensure the protection of objects while in the UK; however, the carve out would allow this while ensuring the devolved competence of the Senedd is not limited.

I strongly advise, in order for the Senedd to consider agreeing its consent to provision falling within its legislative competence being included in the Bill, a carve out is necessary.

I am copying this letter to Lord Parkinson of Whitley Bay, Parliamentary Under Secretary of State (Minister for Arts), the Rt Hon Simon Hart MP, Secretary of State for Wales and the Rt Hon Steve Barclay MP, Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office.

Yours sincerely,

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