



Ein cyf/Our ref: LF/FM/0399/12

David Melding AM  
Chair  
Committee for the Scrutiny of the First Minister  
National Assembly for Wales  
Cardiff

17<sup>th</sup> January 2013

Dear David

**Committee meeting on 14 November 2012  
The Welsh Government's Legislative Programme**

*Planning, coordination and timetabling of legislation*

When I announced the five-year programme in July 2011, I indicated that there was room within it for further legislation. Members of the Committee will be aware from my statement at the end of the last session that a further four Bills have been added to the programme, which included two to be introduced during this session. Similarly, as policy proposals have developed we have reconsidered the need or the proposed timing of the legislation and subsequently removed two Bills from the legislative programme.

As I indicated in my evidence to the Committee, we are also mindful of proposals brought forward from Assembly Members.

Flexibility is essential to ensure the scope of those Bills that have already been announced can expand, or contract, according to the outcomes of consultations and taking into account stakeholder engagement on detailed policy.

Flexibility within the legislative programme, and flexibility in drafting, is achieved through careful management of resources and timetabling.

The capacity and capability of the civil service to deliver all of the Government's priorities, including legislation, is a matter for the Permanent Secretary. But he shares with me a commitment to ensure the civil service in Wales has the skills and capabilities to deliver primary legislation for Wales.

I am keen to ensure officials are appropriately trained and supported in order to deliver legislation within our new primary law making powers. A new development and training programme has been put in place for staff, and roll out of this has begun.

There will no doubt be challenges for the civil service to deliver the legislative programme, but I am confident these will be met and there will be well developed, well drafted legislation, which meets the policy intentions.

### *Consultation and engagement*

In my evidence to the Committee I set out that it is individual Ministers who determine the consultation approach for the legislative proposals. Cabinet has an interest in such matters, and will also consider this.

The decision as to which type of consultation is appropriate has to be undertaken on a case-by-case basis. In some cases, Bills will need to be the subject of more than one formal consultation – we have seen this, for example, with the Human Transplantation (Wales) Bill.

Generally, Green Papers are used early in the policy development stage. White Papers are appropriate if it is already agreed that legislation is the appropriate vehicle to deliver a policy intention; such consultations are likely to seek views on the nature of the legislation and the best way for the legislation to give effect to the policy aim.

Consultations on draft Bills are not possible in every case, and it is recognised that they are not always the best way of gaining the views of stakeholders. However, they do have a role, and in particular this is where the policy development process is well advanced and the consultation relates to matters of fine detail. Consultations on draft Bills are also very useful in allowing stakeholders to see how the legislation is expected to work in practice.

Following a consultation exercise relating to legislation, I expect Ministers to publish a consultation summary report. As the Committee has suggested, I have asked that consideration be given to setting out in future reports any difference between the views of individuals and organisations in Wales and opinions from outside Wales (where possible).

I am keen to ensure that there is consultation and engagement with our stakeholders in the development of the Regulatory Impact Assessments (RIAs) that are prepared for Government Bills. For the RIA process to be meaningful, careful evidence gathering and assessments needs to take place; there needs to be good engagement and a shared understanding between Government and stakeholders as the basis of decision making and financial planning.

There will be occasions when there are different views between Government and stakeholders on the projected costings, but there has to be a realistic acknowledgement and acceptance of the projections and modelling used to develop such costings.

### *Discussions with the UK Government*

The Welsh Government is committed to working within the framework provided by the Devolution Guidance Notes, and in this context DGN9 in particular. The guiding principle in DGN9 is that early engagement and effective communication between the UK Government and the Welsh Government is crucial in ensuring that the Welsh devolution settlement works well.

There will however be occasions when there are differences of opinion between the two Governments on matters of competence, but in practice these tend to be resolved through discussion and good engagement.

I have already made clear that in my view a conferred powers model of devolution is not sustainable. In Wales, as in Scotland and in Northern Ireland, we should have a reserved powers model.

With a reserved powers model the assumption would be that all Ministerial functions outside the reserved powers are devolved, bringing greater clarity to the devolution settlement in Wales. While there may still be some exceptions to the general rule, overall the Assembly's legislative competence would be aligned with the executive powers of the Welsh Ministers. This would make it much easier for the people of Wales to hold both the Assembly and the Welsh Government to account.

*Review and consolidation of Welsh law*

The Counsel General is currently considering the approach to consolidation and simplification of Welsh legislation, and he has already made statements to the Assembly setting out the Welsh Government's support to improving access to legislation.

Work is ongoing in this area, and I would expect the Counsel General to make further statements in the coming months. I also anticipate providing an update on this in my annual legislative statement.

*Post-legislative issues and implementation*

Careful consideration, on a case-by-case basis, will need to be given to the scrutiny of Bills and accompanying subordinate legislation at the same time.

During Stage 1 the Committees will consider whether a Bill contains a reasonable balance between the powers on the face of the Bill and the powers conferred on Welsh Ministers to make subordinate legislation. Their consideration is whether or not the powers should be given to the Welsh Ministers, not necessarily how the powers will be used.

Publishing the draft regulations alongside the Bill during Stage 1 consideration for the benefit of Committee members, will mean that those regulations are also available to stakeholders. If the Bill is amended at Stage 2 or Stage 3 in such a way as to affect the powers to make subordinate legislation, the draft regulations will need to be amended. I would be concerned about creating expectations amongst stakeholders as to a course of action, which may then change in light of the consideration of the Bill. I would also be concerned that stakeholders would focus on the detail of the subordinate legislation, when the Committee may be seeking their views as to the detail of the Bill itself.

In considering whether regulations would be available at the time of the Bill's scrutiny by Committees, the resource implications for preparing those draft regulations at the same time as supporting the preparation and scrutiny of the Bill will be a relevant factor.

I am however mindful of the position of the Committee, and the importance of effective scrutiny of legislative proposals. Where a Government Bill contains powers for the Welsh Ministers, and it is not appropriate or possible for the draft regulations to be available during the scrutiny process, I expect Ministerial colleagues to set out to the Committee the policy intentions for those regulations.

I will write under separate cover regarding the other matters of your letter of 3 December 2012.

Yours sincerely

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

**CARWYN JONES**