

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
Constitutional and Legislative Affairs Committee

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



March 2014

Dear

Draft Wales Bill

I refer to the draft Wales Bill, which was published by the UK Government on 18 December 2013.

We have been taking a close interest in this Bill given its constitutional significance.

In particular, we have seen your exchange of correspondence with the Presiding Officer on the draft Bill. We would like to place on record our endorsement of the points she has raised.

There are some additional points we would like to make based on our consideration of the draft Bill and the work of our committee over the last few years.

Budgetary procedures

We fully support the Silk Commission's recommendation to give the Assembly control over its budgetary procedures (recommendation 32 of *Empowerment and Responsibility: Financial Powers to Strengthen Wales*), in

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Croesewir gohebiaeth yn y Gymraeg a'r Saesneg/We welcome correspondence in both English and Welsh

line with position in Scotland. In our view, this would be a pragmatic and sensible approach, allowing the Assembly to take advantage of the new financial powers being provided through the draft Bill in a co-ordinated and efficient way.

Clause 21: The work of the Law Commission so far as relating to Wales

In 2012, we conducted an inquiry into a separate Welsh jurisdiction. Most witnesses were supportive of having a body to review Welsh law and that its membership should be flexible and draw on expertise in the law schools and the profession. We recommended that:

a body should be entrusted with reviewing and assisting with the consolidation of Welsh law. Such a body could form part of the existing Law Commission for England and Wales or be a newly established body.

We note that clause 21 of the draft Bill inserts new provisions into the *Law Commissions Act 1965* in order to impose a new duty on the Law Commission to provide advice and information to the Welsh Ministers directly. This makes it clear that the Welsh Ministers will be able to refer law reform matters to the Law Commission themselves. However, the draft Bill does not place Welsh Ministers on the same footing as UK Government Ministers or Scottish Ministers, with regard to the Law Commission or the Scottish Law Commission, respectively. For instance, the Law Commission will not be under a duty to provide the Welsh Ministers with a comprehensive programme of consolidation and revision of statute law in devolved areas.

We believe that placing a duty on the Law Commission would ensure that the Welsh legal constitution develops in a clear, coherent and logical way. Such a duty would send a clear message about the importance of law reform in Wales and will ensure that this work can be planned and undertaken in a timely way, and in line with the developing body of Welsh law.

In our view the required change could be achieved by amending section 6 of the 1965 Act to extend the definition of 'the Minister' to include Welsh Ministers in relation to the Law Commission. This would reflect the way that the Scottish Ministers are included in relation to the Scottish Law Commission. This permits Scottish Ministers to request comprehensive programmes of consolidation and statute law revision and to approve recommendations made by the Scottish Law Commission.

In light of our comments, we strongly support therefore recommendations 32 and 33 of the Silk Commission's most recent report *Empowerment and Responsibility: Legislative Powers to Strengthen Wales*.

Clause 24: Power to make supplementary, consequential, etc provision

Clause 24 is of particular concern to us. As currently drafted, it permits HM Treasury to make consequential amendments that result from Part 2 of the

draft Bill, which could amend a Measure or Act of the Assembly. It would seem to us appropriate that any changes by the UK Parliament to an Act or Measure passed by the Assembly, *of whatever nature*, should be endorsed by the Assembly. This is a significant constitutional principle.

In our view, not requiring the consent of the Assembly has the potential to undermine the devolution settlement; it would be wholly inappropriate for a law made by the Assembly to be amended by the Treasury with the consent of the UK Parliament, potentially following discussions between the UK and Welsh Governments. Not involving the legislature that made the original law would be constitutionally incredible.

Electoral arrangements

The draft Wales Bill makes several proposals with regard to electoral arrangements. We strongly believe that it is entirely legitimate for the Assembly to have legislative competence over its own electoral arrangements. We consider therefore that the National Assembly and the Welsh Government should at least have the same powers as those granted to the Scottish Parliament and Scottish Government through the *Scotland Act 2012*.