

Y Gymdeithas Feddygol Brydeinig

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MAKING LAWS IN THE FOURTH ASSEMBLY

Inquiry by the National Assembly for Wales' Constitutional and Legislative Affairs Committee

Response from BMA Cymru Wales

National Office
Swyddfa Genedlaethol

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INTRODUCTION

BMA Cymru Wales is pleased to provide a response to the Constitutional and Legislative Affairs Committee's inquiry entitled 'Making Laws in the Fourth Assembly'.

The British Medical Association represents doctors from all branches of medicine all over the UK; and has a total membership of over 150,000 including more than 3,000 members overseas and over 19,000 medical student members.

The BMA is the largest voluntary professional association of doctors in the UK, which speaks for doctors at home and abroad. It is also an independent trade union.

BMA Cymru Wales represents some 7,000 members in Wales from every branch of the medical profession.

RESPONSE

BMA Cymru Wales does not offer a response to every question put forward in the Committee's consultation letter, but does put forward responses to the following specific questions:

Question 2. What impact has the Assembly's conferred powers model of legislative competence had on the drafting of Bills? What would be different if the Assembly had a reserved powers model?

BMA Cymru Wales considers there is constant risk of legal challenge and referral to the Supreme Court directly arising from the current conferred powers model. We believe that this constant risk of legal challenge is extremely unhelpful in determining policy and advising Assembly Members.

Meanwhile, we note that Scotland and Northern Ireland have the ability to legislate freely without the constraints of the conferred powers model – and more importantly, without the risk of their legislation being regularly subject to constitutional challenge.

It is our view that the National Assembly's powers to legislate would be more clearly defined under a reserved powers model. There would then no longer be a need to preface advice with a constitutional law lecture regarding what can or cannot be done. In short, we consider that uncertainty would be removed for those uninitiated in the constitutional technicalities of the Welsh devolution settlement.

Question 3. What is your view of the content of the Explanatory Memoranda which accompany Bills and how useful are they in explaining the purposes of Bills?

We believe that these explanatory memoranda do serve to make the understanding of proposed legislation more accessible to stakeholder organisations. This may make it easier for such organisations, which may lack

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legal expertise, to engage with the democratic process and law-making. We therefore consider them to be helpful.

Question 4. In a single chamber legislative system, what value to you place on the use of:

a) draft Bills for consideration before a Bill is formally introduced;

A draft bill offers a clearer indication as to the Welsh Government's legislative intent – any such clarity is always to be welcomed. It can also offer greater opportunity for stakeholders and other interested parties to shape new legislation, something which may be of benefit in particular circumstances depending on the substance of what is being considered.

b) more time for Stage 1 scrutiny;

On some occasions the timeframe for responding to a Stage 1 consultation has proved challenging for a membership-based organisation such as ourselves. As such, it has sometimes been difficult for us to adequately consult with our members within the time available regarding points that they may wish to see included as well as to then seek endorsement of a draft response by the wider membership ahead of its submission.

There have also been occasions – e.g. during the Stage 1 scrutiny of the Human Transplantation (Wales) Bill – when we would have welcomed the opportunity to follow up our written evidence with the chance to present oral evidence to the committee considering the legislation. This was not, however, possible due to time constraints within the timetable the committee had adopted.

It also has to be remembered that, in addition to responding to consultations on proposed Bills, organisations such as BMA Cymru Wales may well be wishing to respond to numerous Welsh Government consultations and inquiries by National Assembly committees (and other organisations) that are not related to proposed legislation. This can provide a very challenging workload, particularly in an area like health. When balancing so many different consultations, it is therefore helpful if each is given an adequate timeframe within which organisations can respond. As a minimum, we would suggest that each consultation should be of at least two months' duration, and longer than that where possible. We note that this is not always the case.

Question 5. What is your view of the need for, and impact of, curtailed scrutiny of Bills?

We would suggest that this should be a more exceptional course of action than may have been the case up till now. Curtailed scrutiny creates a greater risk of poor legislation being enacted and reduces the opportunity for those legislating to consult with those who might have an interest in a new law being passed, including those who might be directly affected by it.

Whilst we note that both the Control of Horses (Wales) Bill and the National Health Services Budgets (Wales) Bill bypassed Stage 1 committee scrutiny, we are unconvinced that either of these Bills could be regarded of being of sufficient urgency for this to have been warranted. We would therefore suggest that clearer criteria should be adopted that would permit such curtailed scrutiny only when it is specifically justified by needs of urgency.

Question 7. What is your view of the Welsh Government's and the National Assembly's capacity to legislate?

The National Assembly's capability to legislate has improved greatly since the implementation of Part IV of the Government of Wales Act 2006, but Wales is still in an inferior position in comparison with the legislative competence which currently applies in both Scotland and Northern Ireland.

In relation to capacity, we are concerned that there does not always appear to have been time for committees to have undertaken sufficient scrutiny of certain Bills. We have observed on a couple of occasions, for instance, that a substantial number of amendments being considered by committees at Stage

2 of the legislative process have been disposed of within a single committee meeting. One example was the Health and Social Care Committee's consideration of 42 amendments to the Human Transplantation (Wales) Bill on 22 May 2013. This was dealt with in a single meeting lasting just over three hours. A second example was the Enterprise and Business Committee's consideration of the Active Travel (Wales) Bill on 4 July 2013 which disposed of 57 amendments in less than two and a half hours. This would suggest that many of these amendments were not considered in any great depth.

There is also perhaps a capacity issue as a result of the fact that the National Assembly's subject committees double-up as legislative scrutiny committees. This may mean that, at times, they have difficulty finding sufficient time to perform both roles as effectively as they would like. For instance we note that in July 2013, in order to accommodate more time to scrutinise the Social Services and Wellbeing (Wales) Bill, a planned oral evidence session on the 2013 measles outbreak in which we were scheduled to participate had to be cancelled by the Health and Social Care Committee late in the day. We are also aware that an inquiry by the Children and Young People Committee into childhood obesity had to be put on hold last year as it was determined that more committee time was required for scrutiny of the Further and Higher Education (Governance and Information) (Wales) Bill.

Taken together, these two examples might suggest that the current committee arrangements in the National Assembly do not provide sufficient capacity for them to undertake both roles. There is a danger that if National Assembly committees have too great a remit, then the work they undertake may be rushed or lacking in depth. This, in turn, can mean that there is inadequate time available for effective scrutiny of Bills under consideration.

Question 8. What is your view of the Welsh Government's management of the legislative programme?

Our observed impression is one of muddle. For instance, we have observed a lack of clarity concerning the interrelationship (or otherwise) between the proposed Future Generations (Wales) Bill and the proposed Public Health (Wales) Bill.

We further note that no explanation has been provided regarding the rationale for the dropping of a proposal for Health Impact Assessments between the publication of the Public Health (Wales) Green Paper and the more recent Public Health (Wales) White Paper. Nor has it been made clear why the proposed approach of the intended Bill appears to have been significantly narrowed in scope.

These examples imply a lack of a clear direction in the Welsh Government's legislative approach.

Question 10. What other comments would you like to make about the making of laws?

There can be no justification in our view for the current constitutional confusion that is caused to the medical profession (and wider civil society) by Wales having an inferior model of devolution compared to that which pertains in Scotland and Northern Ireland.

The sooner that Wales achieves a reserved powers model of devolution the better for all who have to both operate and work or engage within this system.

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