

The Right Hon Stephen Crabb MP
Secretary of State for Wales

19 November 2015

Dear Secretary of State for Wales

Draft Wales Bill

The Children, Young People and Education Committee considered the draft Wales Bill in its meeting on 12 November. In doing so, we sought to answer three questions in the context of the Committee's remit and work:

- Is the draft Bill clear and are there ways it could be made clearer?
- Does the draft Bill affect the Assembly's current competence in relation to children, young people and education?
- What does the draft Bill mean for the Assembly's ability to legislate effectively in future?

We hope that our answers to these questions will assist you in taking forward the draft Bill and you will be able to reassure us that you are addressing our concerns.

Is the draft Bill clear and are there ways it could be made clearer?

The draft Bill contains over 200 specific reservations, wide-ranging general reservations, new "necessity" tests and broadened requirements for consents. The combination of these tests and reservations make it difficult for us to assess with confidence the impact of the draft Bill on those areas that fall within the Committee's remit. The extent of the specific reservations should be explained in the explanatory notes accompanying the draft Bill.

Further, it is unclear why certain policy areas have been reserved as no rationale has been provided. You have described *how* the reservations in the Bill were developed. However, the reservations should be underpinned by principles, which can be explained clearly and



simply. It is incumbent on the UK Government to explain *why* reservations have been included in the draft Bill.

It would be helpful to receive clarification as to why certain Silk recommendations have not been given effect in the draft Bill. In particular, the Committee notes that the Secretary of State gave a commitment in his letter of 3 September to the First Minister to give further consideration to the devolution of teachers' pay and conditions. The Committee would be grateful for an update on progress.

Does the draft Bill affect the Assembly's current competence in relation to children, young people and education?

During our discussions, we identified specific reservations which appear to reduce the Assembly's competence in relation to children, young people and education and the matters that affect them. We were not able to identify or consider the potential impact of all of the reservations given the time available.

Reservation 38 – The prevention, detection and investigation of crime

This reservation is potentially very wide and reduces the legislative competence of the Assembly. It could have significant implications if the Assembly wished to legislate in areas concerning child protection, for example. The Committee cannot support this proposal.

Reservation 61 – Charities

It is not clear whether this reservation applies to charity law or the regulation of charities. The Committee notes that the Wales Office's analysis of Acts passed in the 4th Assembly states that this reservation is intended to apply to charity law. However, that is not clear in the Bill. This reservation could be interpreted in such a way as to impinge on the Assembly's ability to legislate in relation to private schools with charitable status as well as institutions in the Higher and Further Education sectors.

Reservation 193 – Family Law

The current Government of Wales Act devolved the following elements of family law –

- (a) Welfare advice to Courts, representation and provision of information, advice and other support to children ordinarily resident in Wales and their families, and
- (b) Welsh family proceedings officers.



These elements are not listed as exceptions in the draft Bill. This would clearly constitute a reduction in the competence of the Assembly and the Committee cannot support this.

The Assembly's current competence as set out in Schedule 7 of GOWA includes "adoption and fostering". In the draft Bill, the family law reservation includes an exception relating to "adoption agencies and their functions". It appears that the current competence would be reduced by the draft Wales Bill. The Committee cannot support this.

Reservation 206 – Equal Opportunities

Under the current settlement the Assembly can amend equality legislation insofar as its legislation relates to Equal Opportunity public authorities. This reservation appears to remove that competence and the Committee cannot support this.

General restriction as to the criminal law.

Schedule 7B of the draft Bill provides for various general restrictions on the legislative competence of the Assembly, including restrictions related to the Criminal law. The potential effect is wide and could have a considerable impact on matters that relate to the remit of this Committee, for example, if the Assembly wished to legislate in relation to child protection.

In conclusion, we are concerned that the Assembly's competence in relation to matters affecting children, young people and education will be reduced as a result of the draft Bill. This could be addressed by ensuring that reservations and exceptions in the draft Bill accurately and fully reflect the Assembly's current competence.

How will the draft Bill affect the Assembly's ability to legislate effectively in future?

We are concerned that the reservations, necessity tests and other restrictions in the draft Bill will unnecessarily constrain the Assembly's ability to legislate effectively in areas where it already has powers or functions. Such is the extent of the reservations that there will be unintended consequences which may restrict the Assembly further than was originally intended or envisaged.

We would like to draw your attention to two examples related to the remit of the Children, Young People and Education Committee –

Under the new model, Section 134 of the Social Services and Well-being (Wales) Act 2014, which designates the Chief Officer of police as a partner on safeguarding boards, would



require Secretary of State consent, as police forces are reserved authorities. It is clear that the Act relates to a devolved purpose – social welfare, and the creation of safeguarding boards and specifying the partners thereof would be within competence. However, the consequence of this reservation means that the Assembly could not designate a Chief Officer of a Welsh police force as a partner on a safeguarding board located in Wales without the consent of the Secretary of State. The rationale for this constraint is unclear. It may be an unintended result of the designation of police forces as reserved authorities.

The second example of an area affected by the wide-ranging reservations could be the Children's Commissioner for Wales. Under the current settlement it would be possible to extend the powers that the Commissioner has in relation to matters which relate to or affect children in Wales including "silent" subjects. However, taking into account some of the specific reservations and the general restrictions in Schedule 7B, the draft Bill limits the potential for the Assembly to do this.

In conclusion, the Committee is concerned about the lack of clarity in the draft Bill. Further, the Committee has grave concerns about the proposed reduction in the Assembly's competence in areas that fall within the Committee's remit. The Committee welcomes your undertaking that there will be further discussion on the content of the draft Bill and looks forward to seeing the issues outlined in this letter addressed.

Yours Sincerely



Ann Jones AC / AM
Cadeirydd / Chair

cc Constitutional and Legislative Affairs Committee

