

Jane Hutt AC / AM
Y Gweinidog Cyllid a Busnes y Llywodraeth
Minister for Finance and Government Business



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: LF-JH-0382-15

David Melding AM
Chair, Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
Cardiff CF99 1NA

16 April 2015

Dear David,

Following my attendance at the Constitutional and Legislative Affairs Committee to give evidence on Making Laws in the Fourth Assembly, I am pleased to respond to your request for supplementary information.

Firstly, I mentioned the protocol for the Welsh Government's consultations on White Papers and draft Bills (paragraphs 18 and 39 of the draft transcript). I attach a copy of the protocol and the First Minister's letter to the Presiding Officer on this subject from 17 October 2011.


Secondly, you asked for information on changes to the Human Transplantation (Wales) Bill between the draft Bill consultation and the Bill's Introduction. I include this information in an annex to this letter.

You also raised a number of questions regarding Members' Bills in your letter. The point at which the Welsh Government engages with a Member in Charge of a Member's Bill will be different depending on the circumstances of the individual Bill. One factor is the extent to which the Member in Charge of the Bill wishes to engage with the Government.

Other factors include whether the Welsh Government is supportive of the Member's Bill in the context of our legislative commitments with the need to prioritise delivery of our own legislative programme.

The Welsh Government can liaise with the UK Government and can also make approaches on behalf of the Member in Charge. However, its ability to do this will depend on the amount of information it has regarding the Bill before it is introduced. In some cases the Welsh Government may not be aware of the detailed content of the Bill before it is introduced.

Consequently, there is no general rule for our stage-by-stage approach to Members' Bills. In all cases, however, the Government will present its view on the proposed Bill and seek to ensure it can implement any legislation brought forward if it should progress.

Yours sincerely,


Jane Hutt AC / AM
Y Gweinidog Cyllid a Busnes y Llywodraeth
Minister for Finance and Government Business

Annex: Changes to the Human Transplantation (Wales) Bill before Introduction

A small number of changes were made to the Human Transplantation (Wales) Bill as a direct result of consultation on a draft Bill. Other changes were made because there was sufficient scope within the timetable to pause and reflect on various points of drafting. The following table shows the changes made to the Human Transplantation (Wales) Bill (as introduced). We have indicated below which changes were made as a direct consequence of comments received during the consultation and which were a result of further consideration given to the drafting of the Bill during that period (the section numbers below refer to the sections in the Bill at introduction).

Changes made	Reason
Some revisions to the terminology in a number of sections to better reflect, and sit alongside, the Human Tissue Act 2004	Identified by drafter*
Inclusion of “for a significant period before dying” in section 5 on excepted adults in relation to an adult who lacked capacity to understand the notion of deemed consent	Raised during consultation
Technical changes to provide clarity in the wording of various sections, in particular sections 3 relating to transplantation activities and sections 4 and 5 relating to consent from adults	Identified by drafter*
Minor adjustment to the wording relating to a qualifying relation being able to show that the deceased “would not have consented” rather than proving they would have “objected”	Raised during consultation
Various meanings moved from the main sections to an interpretation section	Identified by drafter*
Recognition in section 7 that an appointment made under the Human Tissue Act 2004 would be recognised in Wales	Identified by drafter*
Some further clarification made to section 8 in relation to (living) adults who lack capacity to consent	Raised during consultation
The removal of a section (former section 10) in relation to restriction of activities in relation to donated material, since this was considered unnecessary as it did not relate to consent	Identified by drafter*
Creation of a separate section 14 on the Codes of Practice setting out the amendments to be made to the Human Tissue Act 2004, together with some further clarification on the approval of the Codes	Identified by drafter*
Inclusion, at section 17, of a definition of qualifying relationships for the purposes of the Act	Identified by drafter*
Clarification of the commencement provisions in section 19 to take account of the need to undertake a two-year communication campaign before the main provisions of the legislation come into effect	Identified by drafter*

*Some changes were made in discussion with Parliamentary Counsel and/or take account of points raised by the UK Government.

Y Gwir Anrh/Rt Hon Carwyn Jones AC/AM
Prif Weinidog Cymru/First Minister of Wales



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: LF/FM/5121/11

Rosemary Butler AM
Presiding Officer
Chair, Business Committee
National Assembly for Wales
Cardiff Bay
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17 October 2011

Dear Rosemary

I am writing to you to clarify the Welsh Government's position in relation to the handling of its White Paper and Draft Bill consultations.

The Welsh Government has made a commitment to consulting prior to introducing legislation, whether it be at policy stage, White Paper stage, or by way of a Draft Bill. We have already published a White Paper relation to the School Standards and Organisation Bill, and will shortly be publishing a White Paper on Organ Donation. Later this year we will also publish a number of Draft Bills for consultation.

While I consider both White Papers and Draft Bills to be primarily Government consultations, I have asked Ministers to ensure that Assembly Members are informed prior to publication by way of a Written Ministerial Statement. These consultations are however an exercise in listening to and engaging with stakeholders and the wider public.

We would of course welcome the views the Assembly may have in relation to the proposals outlined in these consultations, whether they come from individual Assembly Members or an Assembly Committee.

However, the appropriate time for the Assembly to properly scrutinise Ministers on Welsh Government legislative proposals is during the formal scrutiny stages once the Bill is formally introduced. We would not wish to undermine the Assembly's scrutiny of Government legislation by circumventing these proceedings.

As such, we would not expect Ministers to be called to appear before Committees during these consultations to discuss a White Paper or Draft Bill. We would however be happy to arrange for officials to provide technical briefings to Committees on individual White Papers or Draft Bills.

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It is of course for Committees to decide how best to consider these consultations, if they wish to do so, and they may wish to invite evidence from key stakeholders. The Government's position will be clearly set out in each White Paper or Draft Bill, on which we are seeking the views of stakeholders.

I hope that this letter clarifies the Government's position on this matter

Yours sincerely

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a smaller 'J' and a short horizontal stroke.

CARWYN JONES

Protocol for Welsh Government White Papers and Draft Bills

To ensure consistency, when publishing White Papers or Draft Bills for consultation Welsh Ministers are asked to follow the below protocol:

Launch

1. White Papers and Draft Bills are primarily Welsh Government consultations; however it is recognised that as both relate to future Government legislation it is appropriate that Assembly Members be notified first.
2. When sent to Assembly Members, the White Paper or Draft Bill will be accompanied by a Written Statement. Welsh Ministers have the discretion to provide an Oral Statement in Plenary; however Ministers will bear in mind the need to provide an advance copy of the consultation documents to Members in advance of an oral statement.
3. Welsh Ministers may launch the White Paper or Draft Bill consultation outside of the Assembly, however in order to do so, a Written Statement and consultation document will be provided to Assembly Members shortly before the launch.

Committee Consideration

4. It is of course for the Assembly to decide whether to consider a White Paper or Draft Bill consultation, however the Welsh Government will welcome the Assembly's consideration of the proposals.
5. In addition to Assembly Members being provided with a copy of the documentation, a courtesy copy will be provided to the Clerk of the responsible Assembly Committee.
6. If invited to appear before an Assembly Committee to discuss the White Paper or Draft Bill, it is not expected that Welsh Ministers will attend. The Government position would have been set out in the consultation document, and the purpose is to seek the views of stakeholders. Welsh Ministers will of course appear before Committee during their scrutiny of the Bill once it is formally introduced.
7. If the Committee desired it, Government officials will be made available to provide a technical briefing on the content of the White Paper or Draft Bill.
8. If the Assembly Committee chooses not to participate in a White Paper or Draft Bill consultation, this does not prevent individual Assembly Members from providing comments directly to the Welsh Government.

Further Advice

9. The Legislative Programme Team can provide further advice on this protocol and any associated issues.