

CLAC consultation on the Wales Bill 2016-17: Draft response from Cytûn

Introduction

1. Cytûn represents the main Christian denominations of Wales and a range of other Christian organisations. A full list of members can be found at: <http://www.cytun.org.uk/us.html>. The member denominations have about 172,000 active adult members, as well as contact with many children, young people and other adults in every community across Wales.
2. Some of our member churches have a long history of campaigning for and supporting devolution in Wales; others maintain a neutral stance on the principles involved, but all are committed to positive engagement with the National Assembly and the Welsh Government.

Draft Wales Bill 2015

3. Cytûn and many of its member churches endorsed the two reports of the Silk Commission in 2012 and 2014. There was widespread support amongst our members for the principles of legislative devolution outlined in para 3.3.3 of the second report¹. We would draw particular attention to the principles of clarity, coherence and stability. These principles have received endorsement from both UK and Welsh Governments.
4. Cytûn produced on behalf of its members a response to the 2015 draft Wales Bill endorsing CLAC's recommendation that the Bill be paused for further reconsideration, and that any future Bill should be a consolidated bilingual piece of legislation. In addition to the reasons adduced by CLAC for such a pause, and the failure of the draft Bill to show the desired clarity, coherence and stability, we expressed the view that the decisions regarding the UK's membership of the European Union and on reform of the Human Rights Act 1998 should precede passage of a Wales Bill, as otherwise a supposedly lasting settlement would inevitably require further amendment in short order.

Continuing concerns regarding the Wales Bill 2016-17

5. Cytûn has been involved in CLAC's discussions on the current draft Bill, and has also corresponded with the Wales Office regarding the Justice in Wales Working Group and its terms of reference. This correspondence has been published on the CLAC Loomio website.
6. While welcoming the improvements made since the 2015 draft Bill, and welcoming the devolution of electoral and internal arrangements for the Assembly, some taxes and some further responsibilities regarding energy and transport, we remain concerned at a number of features of the Bill. Most of these have also been raised by other respondents, so we only summarise them here:
 - 6.1 The number and variety of individual reservations in Schedule 1 Part 2 of the Bill appears to us to limit the Assembly's "legislative space", as defined by Prof. Thomas Watkin. We would draw CLAC's attention to the examples offered by the Assembly Research Service in its helpful publication [*The Wales Bill – reserved matters and their effect on the Assembly's legislative competence*](#). We are especially concerned at the reservations which seem to us to restrict the Assembly's ability to legislate in the areas which were referred to in the ballot paper of the 2011 referendum. We have included a list of these reservations at para 7 below. We are also concerned that the Explanatory Memorandum to the Bill does not provide a rationale for specific reservations.

¹<http://webarchive.nationalarchives.gov.uk/20140605075122/http://commissionondevolutioninwales.independent.gov.uk/files/2014/03/Empowerment-Responsibility-Legislative-Powers-to-strengthen-Wales.pdf>

- 6.2 We remain concerned that although legislative powers are presented in the Bill as a “reserved powers” model – everything is devolved unless reserved – the devolution of Minister of the Crown functions to Welsh Ministers continues on a “conferred powers” model, and much of the Bill is involved in listing such powers to be devolved, and in permitting further such piecemeal devolution by Orders in Council. This remains different from the Scottish and Northern Irish patterns of devolution, where administrative and legislative devolution is much closer aligned, on a reserved powers basis. We would strongly urge that in the interests of clarity for the people of Wales, a similar model of alignment be adopted for Wales.
- 6.3 Similarly, the list of “Wales public bodies” in Schedule 4 means that responsibility for public bodies is also determined on a conferred powers model, rather than the Bill containing a list of reserved public bodies, with all others devolved. Section 21 of that Schedule removes the obligation on Ministers of the Crown to consult with Welsh Ministers regarding cross-border bodies. This reduces the Welsh Ministers’ leeway with regard to these bodies, and in terms of clarity and consistency, the same considerations apply here as in para 6.2.
- 6.4 This admixture of models may well lead to unexpected consequences. For example, consider the new employment contract for junior doctors in England. The new contract has been introduced using the powers of a Minister of the Crown which relate to England only as the corresponding powers have been devolved to Welsh Ministers. However, were the UK Parliament to legislate to impose the contract, they could do so for Wales also – and the Assembly would be unable to reverse this as employment matters are reserved by Reservation H1 and the regulation of medical professionals by Reservation G1 (c).
- 6.5 Christian churches have played a particular role in the maintenance of the Welsh language as a living language used in everyday life. We are especially concerned, therefore, at the specific limitations in the Bill on legislation with regard to the Welsh language in non-devolved areas. Schedule 1 para 200 appears to devolve all matters relating to the Welsh language and public bodies, until it is read alongside Schedule 2 clause 11(1)(b) which specifies that the Assembly may not alter any responsibility of a Minister of the Crown regarding the Welsh language without their permission.
- 6.5.1 When this is read together with Schedule 4 (see our para 6.3) this results in a considerable diminution in the Assembly’s ability to legislate with regard to use of the Welsh language by reserved public bodies, and the ability of Welsh Ministers to participate in decisions regarding the language relating to cross-border public bodies.
- 6.5.2 To add further complexity, this Bill would not be retrospective, so these reserved bodies would retain their current obligations under Welsh Language Schemes and Language Standards made under existing legislation – but these could no longer be altered legislatively, thus leading to three parallel systems of statutory regulation relating to the Welsh language and public bodies.
- 6.6 We regret that very little is done in Part 2 Schedule 1 (the list of reservations) to clarify the many areas which are currently partly devolved. For example, education is mainly devolved, but teachers’ pay and conditions are reserved. Similarly, some planning functions are devolved, but others – such as the Community Infrastructure Levy – are reserved. There are dozens of similar examples where the National Assembly and Welsh

Government are limited by reservations in their freedom to develop new devolved policies and solutions.

- 6.7 We welcome the establishment of the Justice in Wales Working Party (see our para 4) regarding the operation of the single England and Wales legal jurisdiction, but we are concerned that it may not report prior to passage of the Bill. We have also contributed to and welcomed the Law Commission's report on [The Form and Accessibility of the Law Applicable in Wales](#), and share the concerns expressed therein regarding the ability of the ordinary citizen or even the seasoned lawyer to determine exactly which laws apply in Wales. We very much regret that no attempt has been made to incorporate any of the recommendations of this report into this Bill.
- 6.8 We are concerned that the Silk Commission principle of collaboration between the UK and Welsh Governments is not reflected in this Bill. The Justice in Wales Working Party is a step in the right direction, as is the recent revival of British-Irish Council meetings. However, we would wish to see the recommendations of Chapter 5 of the 2014 Silk Commission report² being implemented. If our analysis that the settlement envisaged in the 2016-17 Bill is very complex then such arrangements will be essential to the smooth governance of the people of Wales.
- 6.9 It is our view that, taken together, these aspects of the Bill would mean that the devolution settlement would be made far more complex than is currently the case, and would make it far more difficult for civil society to know to which level of government it needs to turn to promote a particular policy or seek a particular administrative action.

Reserved matters

7. As noted in para 5.1 above, it is our view that a number of the specific reservations in Part 2 of Schedule 1 of the Bill restrict the Assembly's legislative competence in areas which were subject to the 2011 referendum decision of the Welsh people. We believe that there should be clear justification for reserving areas which a well-informed voter in the 2011 referendum would have believed to be devolved following that referendum, and that is not provided by the current Explanatory Memorandum. We would draw particular attention to the following – referencing the sections of Schedule 1 and noting in parentheses the devolved area concerned, as listed at: <https://www.gov.uk/guidance/devolution-settlement-wales>
- 7.1 C12 Industrial development (economic development)
C14 Export assistance (economic development)
C16 Pubs code (economic development)
C17 Sunday trading (economic development)
D Energy (economic development). We are particularly concerned at reservations D3 coal (except land restoration) and D6 energy conservation, both areas of current and historic importance to Wales.
E Transport (highways and transport). We understand the need for reservations 102, 103, 107, 111, 112, 113, 114, 117, 118, 119, 124 and 125 where consistency is required across the UK, but the remainder appear to us to be appropriate for devolution. Reservation 115 Severn Bridge is an especially sensitive matter in Wales. Exception E(2)(a), restricting the Assembly's ability to subsidise goods services on the railways, is a mystery to us (transport, environment).
G1 (c) – Regulation of health professions (health)

² See note 1 above

H1 Employment and industrial relations, in so far as this area relates to economic development and to devolved public services.

H2 Industrial training boards (economic development, education)

H3 Job search and support (economic development)

J1-J5 Health and medicines (health) – while accepting that there might be need for some narrowly defined reservations to preserve consistency across the UK in some matters

K5 Sports grounds (sport and recreation)

L12 176, 177 Child arrangements, adoption; care, supervision or protection of children (social welfare)

M3 Agricultural charges and debentures (agriculture)

M4 184 (c) Planning with regard to railways (highways and transport)

M4 185 Community infrastructure levy (economic development, highways and transport, local government)

M4 186 Compulsory purchase – should be devolved at least in so far as it relates to devolved functions

M4 187 Building regulations (housing, economic development). We are especially concerned at the breadth of reservation 187 (c) “services, fittings or equipment provided in or in connection with buildings”

N4 191 – We would suggest the omission of “bank holidays” from this list (culture, tourism)

N8 The Children’s Commissioner (social welfare)

N9 School teachers’ pay and conditions (education)

7.2 We believe that if these reservations were removed, the Bill would be simplified and something approaching the status quo in devolution of legislative powers to Wales would be maintained and a greater degree of clarity and consistency would be introduced to that part of the devolution arrangements. If these reservations remain, it would limit the Assembly’s legislative competence to an extent which we believe to be incompatible with a fair assessment of the result of the 2011 referendum.

7.3 We are not in this response making proposals regarding a deliberate expansion of devolved legislative competence into entirely new areas, although some of our members would support such an expansion of devolution.

What should happen now?

8. The members of Cytûn are not unanimous in their view of how to suggest that the Committee should proceed. Some of our members believe that it would be better if the National Assembly were to refuse legislative consent for all or part of this Bill, continue to work within existing legislation and await a consolidated Bill at a future date. They believe this due to:

8.1 the deficiencies and ambiguities in the Bill as outlined above and the consequent complicating of public understanding of devolved government;

8.2 the potential for narrowing the Assembly’s legislative competence and the powers of Welsh Ministers with regard to some public bodies;

8.3 the ability of a future Bill to take proper account of departure from the European Union.

9. Others of our members favour making as many improvements as might be possible to the current Bill as it proceeds through Parliament, but that it should then become law. They believe this due to:
- 9.1 The gains in competence referred to in para 5 above.
- 9.2 The unlikelihood of securing Parliamentary time for a further Wales Bill in the foreseeable future.
- 9.3 Because by enacting a “reserved powers” model of devolution prior to the UK’s departure from the European Union, repatriated powers in non-reserved areas would be automatically devolved to the National Assembly upon Brexit, unless Westminster legislated otherwise. If we remained with the current conferred powers model, all repatriated powers would come to Westminster, and further legislation would be required to devolve them to the National Assembly, which would cause delay in achieving clarity post-Brexit, and risk complicating the devolution settlement in areas such as agriculture, the environment and economic development, where competence is currently shared between the National Assembly, Westminster and the European Union.
10. We wish the Committee well with its consideration of this matter, and are happy to provide further information should the Committee so desire.

This response may be published in full.

Parch./Revd Gethin Rhys
Swyddog Polisi'r Cynulliad Cenedlaethol / National Assembly Policy Officer
Cytun - Eglwysi Ynghyd yng Nghymru/Churches Together in Wales

Tel: [REDACTED]

 ***Hapus i gyfathrebu yn Gymraeg ac yn Saesneg. Happy to communicate in Welsh and English***

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