



Rt Hon Alun Cairns MP
Secretary of State for Wales
Wales Office
Gwydyr House
Whitehall
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24th November 2016

Dear Alun

Wales Bill: Justice in Wales Commission

During our earlier discussion I reaffirmed the importance I attach to establishing a statutory commission on justice in Wales, as underlined in my letter to you of 20 October.

Since you published your draft Wales Bill in October last year, it has been clear that the interaction of a legislative Assembly with a joint England and Wales jurisdiction will continue to be the source of fundamental instability in our devolution settlement. This must be addressed if the proposals in the Wales Bill are to stand a chance of working effectively in even the short to medium term.

In my supplementary evidence to the pre-legislative scrutiny of the draft Bill I proposed a distinct Welsh jurisdiction, supported by a joint courts service, as a pragmatic solution that would recognise the distinct and diverging law in England and in Wales, while maintaining existing administrative arrangements. The Government and Laws in Wales Bill provided for a longer term solution, deferred for ten years.

We have put forward the Commission proposal in a spirit of compromise, to enable serious and sustained consideration of the implications of this for the future of the joint jurisdiction issue. You will have seen the Lord Chief Justice's reported comment this week that this is a matter which must remain under active review.

In the long term there is no question that the issue of the joint jurisdiction must be addressed. It is simply not credible for the UK Government to argue that the joint jurisdiction has served Wales well, when legislative devolution has changed the context fundamentally. There will be increasing divergence of the law applicable in each of Wales and England.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

I regard this as an unresolved issue that is critical to the viability of the Wales Bill. I am disappointed that Lord Bourne's letter to Peers dated 11 November made only a passing reference to the Commission which suggested no real understanding of its purpose and instead chose to concentrate on the UK Government's officials working group on administrative arrangements for Justice in Wales. I remain of the view that the group is intended to be an internal UK Government (and not an inter-governmental) Working Group, with Terms of Reference intended to reflect UK Government perceptions of the priorities. It cannot therefore be contended that the Welsh Government should necessarily be engaged with the Group's work (and of course the Welsh Government cannot be bound by any recommendations that the Group choose to make).

I believe the Commission that is needed, will be a fundamentally different exercise. It will be made up of senior individuals, with the independence and legal expertise required to carry weight with both governments. It will be a standing commission, enabled to take a long term view and engage widely with stakeholders. It will be transparent and report to both Governments.

We intend to table our amendment again at Report Stage in the Lords, and would urge you to give it further consideration; if you have a non-statutory alternative to offer, it must be one capable of addressing the serious questions likely to arise over the next few years, and in which the UK Government is willing to play an active part.

I am copying this letter to the Presiding Officer; to Leanne Wood AM, Andrew RT Davies AM, Kirsty Williams AM and Neil Hamilton AM; and to Huw Irranca Davies AM (Chair, Constitutional and Legislative Affairs Committee) and Eluned Morgan AM. Also to Lord Bourne and the Peers who spoke on this matter during the first day of the Lords consideration in Committee on 31 October.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Carwyn Jones', written in a cursive style.

CARWYN JONES