



Rt Hon Alun Cairns MP
Secretary of State for Wales
Gwydyr House
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22nd December 2016

Dear Alun

Wales Bill: Clause 60 Consequential Provision

I am replying to your letter of 13 December. We discussed the issues when we met on 15 December, and I have also now had the opportunity to read the Debate in the House of Lords on 14 December on clause 60 of the Bill.

It seems to me that there are four possible situations that might arise where Ministers of one government have powers to amend primary legislation made by, or of particular interest to, the “other” legislature.

First, UK Ministers may have taken powers in a Parliamentary Bill to make amendments by order to other enactments, which may include amending Assembly Acts or Acts of Parliament that fall within the legislative competence of the National Assembly. In those circumstances (and whether or not provision for affirmative order procedure has been made in the Bill), the Assembly’s consent will be required, as is made clear in paragraph 53 of Devolution Guidance Note 9. The Assembly’s Standing Order 30A sets out the procedural requirements for securing that consent; clearly, the early consultation you suggest before such orders are made will assist in that process. Given that it will not be only the Secretary of State for Wales who may secure such powers, it will be important that all Secretaries of State are aware of the requirement for Assembly consent in these circumstances.

Secondly, Devolution Guidance Note 17 (in conjunction with the Sewel convention) requires consent in circumstances where amendments are proposed to be made to the legislative competence of the National Assembly. So in the case of the Wales Bill the power could be used to amend the legislation (the 2006 and 2014 Acts) which establish the foundations of Welsh devolution. If such an amendment were sought to be achieved by a Parliamentary Bill, that Bill would require the Assembly’s consent under the second limb of the Sewel Convention; it therefore must follow that Assembly consent should be required for the same

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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.

amendment being secured by Ministerial order. Again your suggestion for early consultation would be appropriate in this context.

Thirdly, an Assembly Act (which of course will have to be within legislative competence if this situation is to arise) may give Welsh Ministers powers to make amendments to other legislation, including primary legislation. Any such Act can be expected to require compliance with an affirmative order procedure in the Assembly if amendment to primary legislation is envisaged.

Finally, the content of an Assembly Act may be such as to require amendment of earlier legislation, but the amendments required may be beyond the Assembly's competence. In that situation, the Secretary of State can make the necessary amendments by way of an order under section 150 of the 2006 Act, which requires affirmative order procedure if the order modifies earlier primary legislation.

I am copying this letter to the Presiding Officer, and you should feel free to share it as necessary with peers contributing to debates on the Wales Bill.

Yours sincerely

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

CARWYN JONES