

Alun Cairns
Secretary of State for Wales

27 January 2017

Dear Alun

Wales Bill: Clause 69 – Consequential provision

Thank you for copying to me your letters of 13 December 2016 to the Presiding Officer and the First Minister.

One of the roles I am keen for this Committee to promote is an understanding of the Welsh constitution arising as consequence of the various UK Acts of Parliament relating to Welsh devolution.

On this basis, there is one point raised in your letter that we would like to clarify.

Clause 69 of the Wales Bill (formerly clause 53 and then clause 60) permits the UK Ministers to amend legislation made by the National Assembly, albeit in certain circumstances, without the National Assembly's consent. In chapter 11 of our report on the Bill, we expressed concern at this provision.

Your letters to the Presiding Officer and the First Minister state that:

“The power to amend Assembly legislation is mirrored by similar powers in a number of Acts of the Assembly that enable Welsh Ministers to modify parliamentary legislation in consequence of Assembly Act provisions without recourse to Parliament.”

But comparing the powers of the Welsh Ministers to modify UK Parliament legislation with the powers of UK Ministers to modify Assembly legislation is unhelpful. The contexts of the two powers are very different.



The Welsh Ministers can only amend UK Parliament legislation because both the National Assembly and the UK Parliament has specifically given consent; the National Assembly having given consent in the relevant enabling Assembly Act and the UK Parliament having given consent by passing the *Government of Wales Act 2006* (and subsequent devolution acts) in the first place.

In contrast, UK Ministers are being given power to modify Assembly legislation without the National Assembly being given the opportunity of specifically consenting to that power. While the National Assembly agreed to the Wales Bill Legislative Consent Memorandum, this is a general consent to the Wales Bill as a whole. Legislatures usually get a chance to agree to legislation section by section, but that opportunity was not available to the National Assembly with regard to clause 69 of the Wales Bill.

The changes that can be made under clause 69 may be considered insignificant by some, but they must have a legal purpose and will change the law. We remain of the view that the approach adopted in clause 69 is constitutionally unsound and is against the principle set out in clause 2.

Related to clause 2 and the above issues, we believe there is scope for the updated Devolution Guidance Note 9 to provide clarification, in particular around any consent procedure that is expected to apply when UK Ministers are proposing to modify Assembly legislation, whether it is via the clause 69 power or otherwise. We would be grateful if we could be kept informed of progress on updating Devolution Guidance Note 9.

I am copying this letter to the Llywydd and the First Minister.

Yours sincerely

Huw Irranca-Davies

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Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

