

Agenda – Culture, Welsh Language and Communications Committee

Meeting Venue:	For further information contact:
Committee Room 2 – Senedd	Steve George
Meeting date: Wednesday, 14 September 2016	Committee Clerk
Meeting time: 09.15	0300 200 6565
	SeneddCWLC@assembly.wales

Informal pre-meeting

(09:00 – 09:15)

- 1 Introductions, apologies, substitutions and declarations of interest
- 2 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for items 3 and 8

3 Wales Bill: Legal briefing

(09.15–09.45)

(Pages 1 – 24)

Katie Wyatt, Legal Adviser

4 Scrutiny of the Cabinet Secretary of Economy & Infrastructure

(09.45–10.30)

(Pages 25 – 45)

Ken Skates AM, Cabinet Secretary for Economy & Infrastructure

Manon Antoniazzi, Director – Culture, Sport & Tourism

Peter Owen, Head of Arts Branch



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- 4.1 Scrutiny of the Cabinet Secretary of Economy & Infrastructure: Priorities for the Fifth Assembly**
- 4.2 Scrutiny of the Cabinet Secretary of Economy & Infrastructure: Scrutiny of the Arts**
- 4.3 Scrutiny of the Cabinet Secretary of Economy & Infrastructure: Scrutiny of Historic Environment**

Break

(10.30–10.45)

5 Wales Bill: Evidence from the Office of the Welsh Language Commissioner

(10.45–11.30)

Dyfan Sion, Director of Policy and Research

Huw Gapper, Senior Officer Policy and Research

6 Scrutiny of the Minister for Lifelong Learning and Welsh Language

(11.30–12.15)

(Pages 46 – 50)

Alun Davies AM, Minister for Lifelong Learning and Welsh Language

Bethan Webb, Deputy Director, Welsh Language

Paul Kindred, Senior Policy Analyst

6.1 Scrutiny of the Minister for Lifelong Learning and Welsh Language: Priorities for the Fifth Assembly

6.2 Scrutiny of the Minister for Lifelong Learning and Welsh Language: Scrutiny of Broadcasting and Media

6.3 Scrutiny of the Minister for Lifelong Learning and Welsh Language: Scrutiny of Welsh Language

7 Paper(s) to note

7.1 Letter from the Llywydd regarding Committee Statements in Plenary
(Pages 51 – 52)

7.2 Letter from the Chair of the Constitutional and Legislative Affairs Committee regarding the Wales Bill
(Pages 53 – 74)

7.3 Letter from the Chair of the Finance Committee regarding the approach to scrutiny of the Welsh Government draft budget 2017–18
(Pages 75 – 77)

7.4 Letter from the Welsh Language Commissioner to the Secretary of State for Wales regarding the Wales Bill
(Pages 78 – 80)

7.5 Letter from the Chair of the Public Accounts Committee regarding the BBC's annual report and accounts
(Page 81)

7.6 Letter from the Chair of the External Affairs and Additional Legislation Committee regarding the Committee's remit
(Pages 82 – 86)

8 Private debrief
(12:15 – 12:30)

Paratowyd y ddogfen hon gan gyfreithwyr Cynulliad Cenedlaethol Cymru a'u gwybodaeth a chynghor i Aelodau'r Cynulliad a'u cynorthwywyr ynghylch materion dan ystyriaeth gan y Cynulliad a'i bwyllgorau ac nid at unrhyw ddiben arall. Gwnaed pob ymdrech i sicrhau bod y wybodaeth a'r cynghor a gynhwysir ynddi yn gywir, ond ni dderbynnir cyfrifoldeb am unrhyw ddibyniaeth a roddir arnynt gan drydydd partïon.

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Culture, Welsh Language and Communications Committee

Briefing on the implications of the Wales Bill for the work of the Committee

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PART 1

INTRODUCTION

1. The Wales Bill proposes a number of significant and complex changes to the constitutional law of Wales. It provides for the recognition of an Assembly for Wales and a Welsh Government as permanent parts of the United Kingdom's constitutional arrangements; gives statutory recognition to the existing convention that the United Kingdom Parliament will not "normally" legislate with regard to devolved matters without the consent of the Assembly.

2. The Wales Bill also gives the Assembly legislative competence to change important matters such as its name, the number of Assembly Members, the manner in which Assembly Members are elected, including the franchise and the electoral system, disqualification of Assembly Members, and the length of Assembly terms (though some of these changes would require the agreement of two-thirds of all Assembly Members).

3. The Wales Bill proposes to transform the Assembly's existing legislative competence from a conferred powers model to a reserved powers model. While the current conferred powers model sets out what the Assembly can do, the proposed reserved powers model sets out what the Assembly cannot do.

4. The proposed reserved powers model sets out what the Assembly cannot do by reference to ten tests (see Part 2). The cumulative effect of these tests is very significant, raising concerns that the Assembly's competence is being rolled back in significant areas. Examples are given in each Part below.

5. Also, the Wales Bill confers new executive functions on the Welsh Ministers.

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PART 2

THE WALES BILL COMPETENCE TESTS

1. The Wales Bill proposes 10 tests of competence (as opposed to 9 currently). The tests are set out below. Some of them are the same as current tests (e.g. compatibility with the European Convention on Human Rights and EU law). Some are new, but flow inevitably from the change to a reserved powers model.

2. The 10 proposed tests for competence are summarised in the table below. The most significant tests are then considered further in Parts 3 to 8.

3. A provision of an Act of the Assembly will be **outside competence** if:

Test 1	It extends beyond the England and Wales jurisdiction .
Test 2	It applies otherwise than in relation to Wales , unless— <ul style="list-style-type: none"> - the provision is ancillary to another provision of an Act of the Assembly or a devolved provision in a UK Act of Parliament, and - it has no greater effect beyond Wales than is necessary to give effect to the purpose of that other provision.
Test 3	It relates to reserved matters listed in Schedule 7A.
Test 4	It modifies the law on reserved matters , unless— <ul style="list-style-type: none"> - the modification is ancillary to a provision which does not relate to a reserved matter, and - has no greater effect on reserved matters than is necessary to give effect to the purpose of that provision.

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Test 5	<p>It modifies the private law, unless the modification has a purpose which does not relate to a reserved matter.</p> <p>“The private law” is defined broadly as meaning the law of: contract; agency (acting on someone else’s behalf); bailment (a form of temporary transfer of property); tort (civil wrongdoing, such as medical negligence); unjust enrichment and restitution (the return of property to its owner); property; trusts; succession (i.e. inheritance).</p>
Test 6	<p>It modifies or creates a criminal offence in a “listed category”.</p> <p>The listed categories are—</p> <ul style="list-style-type: none"> - treason and related offences, - homicide offences (including offences relating to suicide) and other offences against the person (including offences involving violence or threats of violence) that are triable only on indictment (i.e. the most serious offences against the person), - sexual offences (including offences relating to indecent or pornographic images), - perjury offences. <p>Also, a provision of an Act of the Assembly cannot modify the law about—</p> <ul style="list-style-type: none"> - criminal responsibility and capacity (e.g. mental capacity to commit a crime, or the age at which a child can be prosecuted for an action), - the meaning of intention, recklessness, dishonesty and other mental elements of offences, - inchoate and secondary criminal liability (this covers matters such as what constitutes an attempt, or a conspiracy, to commit an offence), - sentences and other orders in respect of criminal conduct, and their effect and operation.

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	And modifying the law relating to defences to an offence counts as a modification of the offence.
Test 7	It modifies a protected enactment (listed in Schedule 7B, including some provisions of the Government of Wales Act 2006 and some other legislation, such as the Human Rights Act 1998).
Test 8 (Part 1)	<p>It confers or imposes functions on a reserved authority without UK Government consent.</p> <p>It modifies the constitution of a reserved authority without UK Government consent.</p> <p>It confers, imposes, modifies or removes functions specifically exercisable in relation to a reserved authority without UK Government consent.</p> <p>“Reserved authority” means a Minister of the Crown or UK government department and any other public authority other than a Wales public authority (WPA). A WPA, generally speaking, is a public authority whose functions apply only within Wales and only to non-reserved matters. But bodies with wider functions can be defined as WPAs by listing them in the new Schedule 9A to the Government of Wales Act 2006.</p> <p>This test does not apply in relation to a few specified bodies that may otherwise be reserved authorities, such as the Electoral Commission, the Food Standards Agency and the Water Services Regulation Authority.</p>
Test 8 (Part 2)	<p>It removes or modifies any function of a public authority without UK Government consent.</p> <p>But this test does not apply to—</p>

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	<ul style="list-style-type: none"> - a Wales public authority, - a Minister of the Crown, - a few specified bodies such as the Electoral Commission, the Food Standards Agency and the Water Services Regulation Authority.
Test 8 (Part 3)	<p>It removes or modifies certain specified functions of a Minister of the Crown without UK Government consent.</p> <p>The specified functions are—</p> <ul style="list-style-type: none"> - Minister of Crown functions that are exercised concurrently or jointly with the Welsh Ministers, - any Welsh language functions of a Minister of the Crown, - some specific water, sewerage, marine and railway functions of a Minister of the Crown.
Test 8 Part 4)	It removes or modifies any other Minister of the Crown function (i.e. a function not covered by Part 3 of Test 8) without the Welsh Ministers having first consulted UK Government.
Test 9	It is incompatible with the European Convention Human Rights (as incorporated into UK law by the Human Rights Act 1998)
Test 10	It is incompatible with EU law .

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PART 3

THE “RELATES TO” TEST

Current settlement

1. The current settlement is based on the conferred powers model. This means that Assembly legislation must **relate to a devolved subject** listed in Schedule 7 to the Government of Wales Act 2006. For example, the following devolved subjects are listed in Schedule 7 under the heading ‘Culture’:

- Arts and Crafts
- Museums and galleries
- Libraries
- Archives and historical records
- Cultural activities and projects

2. And the following devolved subjects are listed in Schedule 7 under the heading ‘Ancient monuments and historic buildings’:

- Archaeological remains
- Ancient monuments
- Buildings and places of historical or architectural interest
- Historic wrecks

3. “Welsh language” is also listed in Schedule 7 under a heading of the same name.

4. The words “relates to” have a specific meaning in the Government of Wales Act. Whether or not an Assembly Act “relates to” a devolved subject depends primarily on the **purpose** of that Act. However, the **effect** of the Act, and other factors, can also be taken into account. So “relates to”, in our settlement, does not simply equate to “deals with”, or “touches on”.

5. Assembly Acts such as the Historic Environment (Wales) Act 2016, the Renting Homes (Wales) Act 2016, the Human Transplantation (Wales) Act 2013, the National

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Health Service Finance (Wales) Act 2014 and the Social Services and Well-being (Wales) Act 2014 all relate to one or more devolved subjects listed in Schedule 7.

6. Schedule 7 also lists **exceptions**, and Assembly legislation **must not relate to an exception** (even if it also relates to a devolved subject). For example, the following exceptions are listed in Schedule 7:

- Public lending right
- Broadcasting
- Classification of films, and video recordings
- Government indemnities for objects on loan
- Use of Welsh Language in courts
- Intellectual property
- Sunday trading
- Use of the Welsh language in courts

7. No Assembly Acts relate to an exception.

8. Then there are subjects that are not listed in Schedule 7, neither as devolved subjects nor exceptions. For example, 'defence of the realm', 'immigration' and 'employment' are not listed in Schedule 7. Schedule 7 is silent on these subjects, and they have come to be known as **silent subjects**.

9. There used to be a question as to whether the Assembly could pass legislation that related to both a devolved subject **and** a silent subject. In 2014, the Supreme Court clarified that the Assembly can pass legislation that relates to both a devolved subject **and** a silent subject. The classic example is the Agriculture Sector (Wales) Act 2014 which relates to both agriculture (a devolved subject) and employment (a silent subject).

10. Therefore, **provided Assembly legislation fairly and realistically relates to a devolved subject** it does not matter that it also relates to a silent subject. But it will matter if it relates to an exception, because Assembly legislation must not relate to an exception.

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The Wales Bill

11. The Wales Bill turns the current settlement into a reserved powers model. This means that Assembly legislation must **not relate to a reserved matter** (i.e. a matter which is reserved to the UK Parliament). Therefore, the list of reserved matters is important – the longer the list of reservations, the fewer things the Assembly will be able to do. Schedule 1 to the Wales Bill contains a list of reservations running to 200 paragraphs, many of which contain more than one reservation, and spreading across 35 pages.

12. The meaning of “relates to” in the Wales Bill is the same as in the current settlement: it depends on the **purpose** of the Assembly Act, but the **effect** of the Bill, and other factors, can also be taken into account in deciding whether an Assembly Act provision “relates to” a reserved matter or not.

13. If Assembly legislation relates to a reservation then it will be outside competence, **even if it also relates to a devolved subject** such as ancient monuments.

14. All of the exceptions listed above have been turned into reservations. So they are outside the Assembly's reach currently and they will remain outside the Assembly's reach under the Wales Bill.

15. However, there are areas where there is reduction in the Assembly's legislative competence. Here are two examples of a reduction in the Assembly's competence and the complexity of navigating a way around all the reservations.

Example 1: employment as a reservation

The Wales Bill turns employment from a silent subject into a reservation. So, matters like employee rights and the minimum wage are reserved under the Wales Bill. Therefore, under the Wales Bill the Assembly would not be able to pass legislation which relates to employee rights and the minimum wage even if it also relates to, say, social welfare.

To give a hypothetical example: the Assembly wishes to legislate on wages and working times in the social care sector. Under the current settlement, this would be within competence if it fairly and realistically related to social

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welfare (i.e. if the purpose and effect of the legislation was to improve the care of vulnerable persons and older persons by, for example, ensuring that care-workers were not incentivised to cut care visits short by the way in which their wages or working hours were calculated). It would not matter if the legislation also related to employment.

However, under the Wales Bill, if the legislation had more than a **loose or consequential** connection with employment, then it would relate to a reserved matter and would be **outside competence**. Further, it would not matter if the legislation also related to a non-reserved area such as social welfare; provided it related to a reserved matter then it would be outside competence. In the example above, it is likely that the Assembly legislation would fail the “relates to” test because it relates to the reservation of employment. In other words, the new settlement would produce a **reduction in competence**.

That conclusion is supported by the inclusion of “the subject-matter of the Agricultural Sector (Wales) Act 2014” as an **exception** to the employment reservation. This suggests that while wages etc are within competence in the context of agriculture, they would be reserved in other sectors.

Example 2: police powers under the Mental Health Act 1983

The Policing and Crime Bill amends the powers of the police under the Mental Health Act 1983. The police already have powers under the 1983 Act to enter premises in order to remove people who suffer from a mental disorder and to take them to a place of safety. The Policing and Crime Bill extends those powers in several ways; it also provides certain safeguards as a check on those extended powers, including greater controls over what kind of place can be used as a ‘place of safety’.

For example, the Policing and Crime Bill allows the police to enter a wider range of premises to remove people suffering from mental disorder, but at the same time it requires the police to consult a health professional before removing a person (if such consultation is practicable). Further, a police

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station could never be a place of safety for a child under the Policing and Crime Bill.

These provisions are currently within the legislative competence of the Assembly because they fairly and realistically relate to the following Schedule 7 subjects:

- the prevention, treatment and alleviation of mental disorder
- the care of vulnerable persons

There are no relevant exceptions (for example, policing is not an exception). Therefore, these parts of the Policing and Crime Bill are clearly within the legislative competence of the Assembly and the Assembly's consent is needed before the UK Parliament can legislate in this area.

Under the Wales Bill, policing is a reservation. Therefore, if these parts of the Policing and Crime Bill relate to (i.e. have more than a loose or consequential connection with) policing, then they would be outside the Assembly's competence (even if they also relate to prevention of mental disorders or care of vulnerable persons). While the main purpose of these parts of the Bill seems to be to protect people suffering from mental disorders, the police element is significant. Also, the long title to the Policing and Crime Bill says, in respect of the mental health parts, that it is "a Bill...to amend the powers of the police under the Mental Health Act 1983".

Given the purpose and effect of these parts of the Policing and Crime Bill, there is likely to be more than a loose or consequential connection with policing, therefore these parts of the Bill are likely to relate to policing and to be outside competence under the Wales Bill.

If these parts of the Policing and Crime Bill were judged to be outside Assembly competence under the Wales Bill, no legislative consent motion would be needed.

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PART 4

MODIFYING THE LAW ON RESERVED MATTERS

1. Not only must Assembly legislation not relate to a reserved matter, it also must not modify the law on reserved matters. There is a very fine distinction between the two tests.

2. For example, Assembly legislation could pass the “relates to test” because the purpose and effect of the Assembly legislation means it’s not really about a reserved matter. But the Assembly legislation could still be modifying the law on reserved matters.

3. This can be demonstrated by looking again at the example of the Policing and Crime Bill which amends the powers of the police under the Mental Health Act 1983. If Assembly legislation sought to amend the powers of the police under the Mental Health Act 1983 and a court said that, given that the dominant purpose of the Assembly legislation is to address mental health concerns, the Assembly legislation is not really about policing, then it would pass the “relates to” test.

4. However, the Assembly legislation will still be modifying the law on reserved matters because it is **modifying the law on policing** (i.e. that part of the law on policing that is in the Mental Health Act 1983). And in order to pass the test on modifying the law on reserved matters, the Assembly would have to show that its legislation modified the law on policing only in an **ancillary**¹ way and that its legislation **had no greater effect on policing than was necessary** to give effect to the purpose of addressing mental health concerns.

¹ It will be ancillary if: (a) it provides for enforcement of Assembly legislation or is otherwise appropriate for making Assembly legislation effective, or (b) it modifies the law on reserved matters in an incidental or consequential way.

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5. The “law on reserved matters” encompasses **all** the law on reserved matters.

Given the great number of reservations, this test captures a huge amount of law, and Assembly legislation will only be able to modify that huge amount of law if it is doing so in an ancillary way and there is no greater effect than necessary to give effect to the purpose of the Assembly legislation.

6. Note that even if tests 3 and 4 are satisfied in the above police example, the police will very likely be a “reserved authority” and therefore UK Government consent will be needed before the Assembly can impose functions on the police or modify the functions of the police (see Part 8 for further details on UK Government consent). This is a good example of how the cumulative effect of the Wales Bill tests can amount to a significant restraint on the Assembly’s ability to legislate.

7. For a different example of how Assembly legislation could pass the “relates to” test but fail the “modifies the law on reserved matters” test, see paragraph 414 of the Explanatory Notes to the Wales Bill.

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PART 5

THE WELSH LANGUAGE

1. Although the Wales Bill includes a list of reserved matters upon which the Assembly cannot legislate, if the Wales Bill becomes law the creation, removal or change of the Welsh language functions of a person other than a court (see paragraphs 2 and 3 below) will not be reserved. However, other provisions in the Bill require the UK Government's consent if the Assembly wishes to legislate to remove or modify a UK Ministerial function in relation to the Welsh Language (see paragraph 4 below).

2. Schedule 1 of the Wales Bill proposes to insert a new Schedule 7A into the Government of Wales Act 2006. Schedule 7A contains the list of reserved matters; i.e. the list of topics on which the Assembly will not be able to legislate. However, paragraph 200 of proposed Schedule 7A makes specific provision for Welsh language functions. This states that Schedule 7A does **not** reserve:

- (a) conferring or imposing (or giving power to confer, impose) a Welsh language function on a person other than a court;
- (b) modifying or removing (or giving power to modify or remove) any Welsh language function of a person other than a court.

3. A Welsh language function is defined as a function in relation to the Welsh language.

4. Schedule 2 of the Wales Bill inserts a new Schedule 7B into the Government of Wales Act 2006. Schedule 7B contains additional restrictions on the Assembly's legislative competence, on top of the reservations in Schedule 7A. Paragraph 11(1)(b) of Schedule 7B relates to the Welsh Language. This states that a provision of an Assembly Act cannot remove or modify (or confer power by subordinate legislation to remove or modify) any function of a Minister of the Crown exercisable in relation to the Welsh language unless the UK Government consents to the

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provision. This represents a **reduction** in the Assembly's competence, as, currently, the Assembly is able to make legislation modifying or removing any function of a Minister of the Crown which came into force on or after 5 May 2011. It is also currently able to remove or modify older functions of a Minister of the Crown where the removal or modification is merely consequential or incidental. In other cases, the UK Government's consent is needed.

5. The Wales Bill will not affect existing Assembly legislation on the Welsh language, notably the Welsh Language (Wales) Measure 2011 and the Official Languages (Wales) Act 2012. Specifically, the Welsh Language Commissioner's powers in the Measure to impose standards will remain in force. (See Schedule 6, paragraphs 1 and 5 of the Wales Bill).

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PART 6

PRIVATE LAW

1. This test is set out in the Table above (Test 5).
2. Using the private law is a very important way to make legislation effective; private law can be used to enforce obligations and secure rights.
3. The Assembly has used the private law in many pieces of legislation. For example, the Renting Homes (Wales) Act 2016 used contract law to reform the legal basis for renting a home. The Mobile Homes (Wales) Act 2013 used contract law to modernise the relationship between mobile home owners and site operators.
4. The Human Transplantation (Wales) Act 2013 used the law of agency to deal with issue of consent. For example, a person with parental responsibility for a child could, in certain circumstances, provide express consent for transplantation activities on behalf of the child.
5. The Wales Bill does not define the meaning of “agency”, but on the basis that it means acting on someone else’s behalf then the Human Transplantation (Wales) Act 2013 modified the law of agency. Under the current settlement, there was no need to consider the law of agency because: (a) the legislation related to a devolved subject, and (b) there is no “private law” exception.
6. However, under the Wales Bill, the Assembly would have to consider whether its legislation modified the private law; in particular, the Assembly would not be able to modify the private law if the purpose of the legislation related to a reserved matter. Again, this re-enforces the point that the list of reservations is important.
7. While the Human Transplantation (Wales) Act 2013 would not relate to a reserved matter and would pass the private law test, other tests under the Wales Bill are relevant. In particular, because the Human Transplantation (Wales) Act 2013 confers functions on the Human Tissue Authority (which would be a reserved authority

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under the Wales Bill) then UK Government consent would be needed (see Part 7 for more on UK Government consent).

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PART 7

CRIMINAL LAW

1. This test is set out in the Table above (Test 6). The example below demonstrates how the proposed new settlement would reduce the Assembly's competence in relation to the criminal law.

Example: sexual exploitation of children

In the context of sexual exploitation of a child, the definition of “sexual exploitation” in the Sexual Offences Act 2003 includes “recording” indecent images of a child. The Policing and Crime Bill amends that definition to clarify that “streaming” and “transmitting” indecent images of a child are included in the definition.

This is within the legislative competence of the Assembly because it relates to the following Schedule 7 subject:

- the protection and well-being of children.

There are no relevant exceptions (for example, sexual offences is not an exception). Therefore, this part of the Policing and Crime Bill is currently within the legislative competence of the Assembly and the Assembly's consent is needed before the UK Parliament can legislate in this area.

Under the Wales Bill, Assembly legislation will not be able to modify or create a sexual offence. The Policing and Crime Bill's amendment to the definition is modifying (or possibly creating) a sexual offence, therefore under the Wales Bill it would be outside the Assembly's competence and no LCM would be needed.

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PART 8

MINISTER OF THE CROWN (UK GOVERNMENT) CONSENT

1. This is a long and complicated series of tests, which are summarised in the Table above, as Test 8, parts 1 to 4. The example below illustrates just one way in which the new settlement would reduce the Assembly's ability to legislate without UK Government consent.

Example: UK Government (UKG) consent needed to impose e-cigarette duties on reserved authorities with workplaces in Wales

The Public Health (Wales) Bill was originally intended to prohibit the use of e-cigarettes generally across workplaces in Wales. As part of that prohibition, it imposed certain duties on managers of workplaces, for example, it required managers to take steps to stop persons using e-cigarettes and required them to put up signs in the workplace. Currently this is within competence because it relates to health and there are no relevant exceptions. Also, no UKG consent is currently needed to impose such duties on workplace managers generally across Wales.

But under the Wales Bill, UKG consent would be needed to impose such duties on reserved authorities with workplaces in Wales (such as the DVLA, Crown Prosecution Service, Land Registry). This is because those duties would amount to imposing functions on reserved authorities, and paragraph 8 of new Schedule 7B makes it very clear that UKG consent is needed before the Assembly can impose functions on reserved authorities.

If UKG consent was not given, the duty to take steps to stop persons using e-cigarettes and the duty to put up signs would not apply to reserved authorities. This would result in an inconsistent application of those duties across Wales.

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2. The example in paragraph 6 of Part 4 provides another example where, under the Wales Bill, UKG consent would be needed to modify the mental health functions of the police. No such consent would be needed under the current settlement.

3. The example in paragraph 7 of Part 6 provides another example where, under the Wales Bill, UKG consent would be needed to impose functions on the Human Tissue Authority. No such consent was needed under the current settlement.

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ANNEX - TABLE OF RESERVATIONS WHICH ARE OF MOST RELEVANCE TO THE COMMITTEE

Reservation – Section and number	Description	Impact of the reservation on the Assembly's legislative competence
B16, 54 and 55	54 Classification of films and video recordings (including video games) 55 Licensing of– the provision of entertainment, and late night refreshment.	Wording slightly different from current exception; slight reduction in competence. “Video games” is not currently included as an exception.
B17, 56	The sale and supply of alcohol	Wording slightly wider than current exception but effect likely to be equivalent.
B18, 57	Betting, gaming and lotteries	Unchanged.
B22, 61–62	Charities and fund–raising	Not currently an exception from competence so appears to produce a reduction in competence.

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J6, 153–155	Reservations concerning Health and safety – including fire safety (save for the promotion of fire safety otherwise than by prohibition or regulation).	Wording wider than current exception; effect in practice unclear , especially when combined with another restriction on competence.
K1, 156 and 157	Broadcasting and other media; the BBC.	Wording wider than current exception; effect in practice unclear .
K2, 158	Public lending right	Unchanged.
K3, 159	Government indemnity scheme for objects on loan	Unchanged.
K4, 160	Property accepted in satisfaction of tax and the disposal of such property	Wording wider than current exception – reduction in competence.
K5, 161	Safety of sports grounds	Not currently an exception from competence – reduction in competence.

Agenda Item 4

Document is Restricted

CULTURE, WELSH LANGUAGE AND COMMUNICATIONS COMMITTEE WRITTEN EVIDENCE – PORTFOLIO PRIORITIES

1. The purpose of this paper is to provide written evidence to the Culture, Welsh Language and Communications Committee on priorities within the Economy and Infrastructure portfolio that relates to the Committee's remit, including culture, creativity and the arts, marketing and promotion and the historic environment.

Historic Environment

2. Our national historic assets represent a precious and unique heritage, but also have substantial economic potential. The sector supports nearly 40,000 jobs, generates £749 million in GVA and is vital to tourism.
3. Historic buildings and monuments give communities their character and deserve our appreciation and protection. The condition of our designated historic assets is an indicator of our cultural well-being, and historic buildings that are well-used and cared for contribute to the health of our communities. Conversely, buildings that are at risk through neglect or decay are wasted assets that degrade the quality of their environment, and can damage social and economic vibrancy.
4. The Historic Environment (Wales) Act 2016, which received Royal Assent on 21 March 2016, gives Wales progressive new legislation for the historic environment. The Act will support the sustainable management and conservation of listed buildings and to take appropriate action when a building falls into disrepair through neglect. As part of a suite of guidance documents that are being prepared to support the Act, the Welsh Government through Cadw will be issuing specific guidance on managing historic buildings at risk. Consultation on a draft of this guidance is planned for later this year

Museums, Archives and Libraries

5. The Museums, Archives and Libraries team is responsible for the development and implementation of museum, archive and library policy for both national and local institutions, which protect and make accessible the culture and heritage of Wales. They contribute to the delivery of a range of Welsh Government initiatives including tackling social exclusion through the Fusion programme, supporting formal and informal learning for all ages, improving literacy and engagement through initiatives including *'Every Child a Library Member'* and *Taking over Museums Day*, supporting volunteering and apprenticeships, and providing access to information via our network of public libraries.
6. Over the next five years, the priority is to pursue a transformational agenda to ensure sustainability of high quality services against a continuing difficult financial background and to support the development of new approaches, particularly in the area of digital services, to meet the growing expectations of users for online access and service delivery. We will build on the success of the People's Collection Wales digital heritage programme, particularly in the area of community engagement, and expect the sector, both national and local, to play its part in the Year of Legends in 2017 and future campaigns.
7. A series of expert reviews has provided a strong foundation on which to develop these transformational agendas. A number of the recommendations have been delivered or are in progress.

CULTURE, WELSH LANGUAGE AND COMMUNICATIONS COMMITTEE

WRITTEN EVIDENCE – PORTFOLIO PRIORITIES

8. The Fusion programme will continue to be a priority, building on the success of the pilot projects, to ensure that disadvantaged groups from all parts of Wales develop new skills and confidence through engagement with culture and heritage.
9. Our national institutions will continue to receive Welsh Government grant-in-aid to protect our culture and deliver services across the nation. In 2018, the work to redevelop St Fagans will come to fruition, helped by a £7 million investment from the Welsh Government. The National Library will continue to lead on digital delivery of services and will begin implementation of a new 3 year strategy by April 2017, delivering innovative and inclusive services.
10. Collaboration with a wide range of other organisations and sectors is key to improving the sustainability of service delivery in a challenging economic climate. We will challenge national institutions, including the National Museum and National Library, to proactively work together to explore ways of increasing external investment in cultural heritage activities and in providing leadership to the wider sector.
11. To maximise the potential of the sector we are also evaluating options for the creation of 'Historic Wales', exploiting synergies between our national historic environment organisations and drawing upon the findings of the recent review undertaken by Baroness Randerson.

The Arts

12. Our programme for government will include a number of commitments focused on the arts, and others where the arts will have a part to play. In addition to the priorities set out in my annual Remit letter, the Arts Council of Wales (ACW) and the arts sector will have a key role in helping to implement the following initiatives:
 - *The Challenge Fund for Sports and Arts*: this will be targeted at increasing investment and participation. The Fund will help organisations, particularly those working at a community and grass-roots level, to match fund their projects and to fuse creativity and digital exploitation. It will augment, not replace, existing Arts Council (and Sport Wales) budgets.
 - *National Endowment for Music*: in partnership with the Education Minister, and ACW, we are looking to establish a permanent endowment fund for music. The aim is to build-up a fund of £20 million or more. In time, it could yield up to a £1 million per year to support young people to develop their skills and talents in music. Achieving this target is possible, albeit it will be very challenging, so the fund will need to attract funds from various public and private sector sources. We are consulting a range of potential partners and beneficiaries, to ensure we have an effective plan for creating and sustaining this new body.
 - *The Wellbeing Bond / Social Prescriptions*: these public health initiatives will invest in groups and activities - including arts and cultural organisations - that help to reduce sedentary lifestyles, poor nutrition and excessive consumption of alcohol, and support the treatment of depression and mental illness. There is growing evidence that in many cases, arts therapies and cultural

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participation can be an effective and affordable way of increasing patients' confidence and self-worth, and of reducing symptoms such as anxiety and depression.

13. There will continue to be a focus on increasing participation. In particular, the arts have a key role in promoting more opportunities for young people and for people from disadvantaged backgrounds. This will help us to make further progress with the ambition for Wales to become the most creatively active nation in Europe. Together with the Arts Council, we will also be encouraging the sector to play an active part in our city region initiatives, given its proven record in contributing to place-based regeneration schemes. Another priority will be to encourage local authorities to do everything they can to continue supporting arts venues, projects and services, given their importance to the wellbeing of communities.

Publishing and Literature

14. An independent review of literature and publishing is currently underway and is considering the Welsh Government's current cultural, social and economic aims in supporting the publishing and literature industry in Wales and whether the current provision is fit for purpose for the 21st Century. The Panel is due to report in October.

Welsh Books Council

15. The Welsh Government supports the publishing industry in Wales through the Welsh Books Council (WBC). Over 70% of the Welsh Government's grant to the WBC is channelled through the publishers in order to support and develop a thriving and viable publishing industry. The WBC supports the publishing industry by offering paid-for specialist services to the publishers in the fields of editing, design, sales and marketing and by grant-aiding around 300 titles annually (200 in Welsh and 100 in English) with about 100 of these books for children.
16. The publishing industry in Wales is very aware that books need to be accessible to all readers, whatever their background, which includes more than just the cover price. The WBC has made a concerted effort over the last few years, and this will continue, to extend the range of more commercial titles with a greater emphasis on popular fiction, biographies and sport in order to reach a greater number of readers. The presence of books from Wales in e-book formats has again opened the market to new opportunities.
17. The WBC makes a contribution to the Welsh Government's strategic agenda in a number of areas including Welsh Language, Economic Development and Sustainability, Literacy and Reading, Tackling poverty and working in deprived areas.

Literature Wales

18. Literature Wales, funded by the Welsh Government through the Arts Council of Wales, is the national organisation responsible for developing and promoting literature. It represents the interests of Welsh writers both inside Wales and internationally and encourages people to enjoy others' writing and to write themselves, through a programme of workshops, courses, festivals and

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competitions. Literature Wales' main projects include the Wales Book of the Year, the National Poet and the event funding scheme, Writers' on Tour. Services offered by Literature Wales include mentoring, writers' bursaries, information and advice, and independent manuscript assessment.

Media Forum

19. The Welsh Government's Media Forum will consider a number of issues including the challenges facing the media industry in Wales. This forum is very timely considering the significant challenges facing the media in Wales

Marketing and Communications

20. The Wales brand strategy has been updated and a strong and coherent new approach to promoting Wales is now in place. The new brand approach centres on promoting Wales in an integrated way, and is highly contemporary but also distinctive and uniquely Welsh. Our focus over the next few years will be to drive this approach across all aspects of Wales marketing to make as much impact as possible with individual campaigns and activities.

Tourism Marketing

21. In 2016 a new, thematic approach to promoting Wales – based on Wales's key competitive strengths – launched with the Year of Adventure. This will be followed by a Year of Legends in 2017 and a Year of the Sea in 2018. The aim of the approach is to focus efforts to promote Wales in the UK and internationally, with a view to influencing over £300 million a year in additional spend in the Welsh economy.
22. Visit Wales marketing is multi-channel and multi-market. The key focus is on the domestic market and key English regions, where activity includes television, print, out-of-home, experiential, digital and social media marketing, as well as PR. This approach drove over 4 million visitors to visitwales.com in 2015/16, and resulted in record campaign response levels for Wales in the same period.
23. Internationally the focus is on the Republic of Ireland, Germany and the USA – and we have seen a significant increase in web-traffic to the German site in particular since we launched a coordinated marketing programme in this market in 2013 including cinema and television marketing.
24. The Visit Wales travel trade programme draws in an additional £4.5 million a year to the economy and is growing year-on-year as interest in Wales from a target list of top operators grows. This work again focuses on Wales's primary markets internationally but also extends to other markets and territories too – including emerging markets such as Japan and China.
25. Visit Wales marketing also responds to major events and market opportunities as they arise and recently deployed a £500,000 campaign to maximise on Wales's success at the Euro 2016 Finals. This included television advertising in Germany as well as print and digital advertising in France and here in the UK.

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26. A Memorandum of Understanding has recently been agreed with VisitBritain. Visit Wales marketing recently undertook a promotional roadshow, visiting four key European cities, in partnership with the GREAT Campaign.

Business Marketing

27. For the past five years, Business Marketing has worked in partnership with the priority sector teams, the Trade and Invest team and the Enterprise and Business Information team to drive awareness and interest of Wales as a business destination for businesses to start; grow or locate in Wales.

28. In addition, Business Marketing has promoted the Business Wales service to drive awareness and take-up of the services and support available from Welsh Government and its partners. Key markets have been Wales and the UK, with activity in other overseas markets linked to trade missions and events.

29. For 2016, we are engaging with the Regional Entrepreneurship Acceleration Panel on how elevate Wales' status as a destination to start a business and promote a culture of entrepreneurialism in Wales. Enterprise Zones have been a significant focus of activity.

30. Through the Just Ask Wales campaign, launched in 2014, we have targeted foreign direct investment based in London and South East England, with the aim of building a pipeline of interest that can be cultivated over time into projects. In the first year of operation, there was 10 per cent uplift in new enquiries from new investors. For 2016, we are working to introduce the Business pillar of the Wales brand, bringing consistency alongside activities in the tourism sector.

31. For overseas markets, a high level investment campaign has been launched to promote Wales' status as a business destination.

Agenda Item 6

WRITTEN EVIDENCE PAPER TO THE CULTURE, WELSH LANGUAGE & COMMUNICATIONS COMMITTEE

Minister for Lifelong Learning & Welsh Language: September 2016

Introduction

1. The purpose of this paper is to set out my priorities for the Lifelong Learning & Welsh Language portfolio. The portfolio is wide ranging. However, with respect to the elements of it which are of interest to the Committee, my priorities as set out in the Labour Party manifesto include:
 - Setting an ambitious target of one million Welsh speakers by 2050 with key milestones for the decades leading to this.
 - Continuing to support the planned expansion of Welsh medium education in our schools.
 - Recognising the importance of the media and will press for fair funding of both Welsh and English language broadcasting in Wales.
 - Extending the availability of free online education resources so that more Welsh learners can access Massive Open Online Courses.
2. These priorities have clear synergies, and will be taken forward in line with my wider portfolio activities (which includes Establishing a Ministerial Taskforce for the Valleys) and with the work undertaken by colleagues across Government. I look forward to proactively engaging with the Committee in delivering on these priorities.

The Welsh Language

Consultation on draft Welsh language strategy – a million Welsh speakers by 2050

3. At this year's National Eisteddfod in Abergavenny, the First Minister and I set out a new ambition to reach a million Welsh speakers by 2050. We are currently consulting on what needs to happen so we can meet this ambition. The content of the final strategy will set our direction of travel from April 2017.
4. We have proposed six development areas – each containing specific goals and actions – as a basis for deliberate action over the long term to realise the ambition of a million speakers:
 - Planning and Language Policy
 - Normalisation
 - Education
 - People
 - Support
 - Rights

5. Over the course of this Assembly term, we will develop detailed policies to drive the strategy, targeting specific areas highlighted as priorities during the consultation.

Reviewing Welsh Language Legislation

6. In his statement at the beginning of this Assembly, the First Minister said that the Welsh Government will seek to amend the Welsh Language (Wales) Measure 2011. At present, it is too early to set out the details. I am keen to ensure that the legislative basis for the Welsh language is appropriate, up to date and makes the process for imposing standards less bureaucratic.

Welsh Language Standards

7. I am committed to making further Standards regulations for other sectors which come under the Welsh Language Measure. I issued a written statement on 12 July providing an update in this respect.

Education Planning

8. If we are to increase the number of Welsh speakers, the education system has a crucial part to play. I want local authorities to plan for growth in Welsh-medium education. My officials have already been in discussions with local authorities to refine the guidance on preparing Welsh in Education Strategic Plans for the next three years, with the aim of ensuring timely action that leads to that growth.
9. Work has already begun on designing a new curriculum for Wales, which will include one continuation of learning for the Welsh language.

Cymraeg i Blant (Cymraeg for Kids)

10. We launched Cymraeg i Blant in April this year to encourage and support parents and prospective parents to use the Welsh language with their children. As well as practical support locally, we will make sure that parents receive information about the benefits of Welsh-medium education at key points throughout the journey of bringing up their child.

Young People

11. We will continue to develop the “Welsh Language Charter” across Wales, with the aim of supporting and encouraging informal use of Welsh amongst children and young people. We will also work with young people and business to emphasise the importance of Welsh as a skill for the workplace.
12. We want Welsh to be relevant to the younger generation. We can raise the profile of Welsh and engender a sense of pride in the language by

making sure that young people's passions such as music, technology and sport are central in our promotion work.

Welsh for Adults

13. We are starting a new period in the planning and delivery of Welsh language learning opportunities for adults. New structures are in place that will lead to innovative opportunities for learners to gain confidence to use it in the workplace, socially, and in a family setting. We established the National Centre for Learning Welsh in 2015 and the Centre published its strategy for the period 2016-2020 at the National Eisteddfod. It is clear that there is a commitment from the sector to move forward, and contribute to the overall aim of creating many fluent and confident Welsh speakers.

Promoting Use of the Language

14. It is essential that we support people across the country who speak Welsh every day. We want to make it relevant to everyone, whether they speak Welsh, English or any other language; to make sure that future generations can speak Welsh and use it; and ensure that more places exist where it is completely obvious that Welsh is the natural language.

Businesses

15. We will work with our partners to help the private sector incorporate more bilingualism in services. The excitement surrounding the national football team has given us a new opportunity to prove the value of the Welsh language in marketing, and this represents a golden opportunity upon which to capitalise.

Broadcasting

BBC Charter Review

16. Through our Memorandum of Understanding with the UK Government and the BBC, the Welsh Government will continue to be fully involved in the BBC Charter Review process. The renewal of the BBC Charter has potential implications for BBC Cymru Wales, S4C and the independent production companies across Wales. We have been very clear that the BBC should invest additional funding into the services it provides for Wales and to ensure programming that truly reflects the lives of people in Wales.

S4C

17. It is also vital that S4C has sufficient funding, as well as having editorial and managerial independence. We welcome the UK Government's intention to carry out a comprehensive review of S4C, which we have continually pushed for and was originally promised in 2010. However, this should take place in parallel with the BBC Charter Review rather than after

it. It should also be part of a broader, more fundamental review of the Public Service Broadcasting needs of Wales. We expect to be fully involved in the review of S4C, including the development of the terms of reference.

ITV Cymru Wales

18. Ensuring plurality of English language television in Wales is vital, in news and also general programming aimed at Welsh viewers. ITV Cymru Wales therefore continues to have a vital role to play as an alternative to the BBC for news and non-news programming. We do not view the existing level of provision on the Channel 3 licence as appropriate, or even adequate. Work will be undertaken to address this.

A Vibrant Sector

19. A vibrant broadcasting sector is an essential component of a modern democratic society. As a nation with its own language, culture and political institutions, a strong media is essential to provide a comprehensive service that informs, educates and inspires the people of Wales. The Welsh Government will continue therefore to stand up for maintaining full services in the Welsh and English languages at a national and local level.
20. This Committee, as well as the Welsh Government's new Independent Media Forum, will be an important platform to discuss the urgent issues relating to broadcasting and the media in Wales

Digital Strategy for Education

21. The Welsh Government's *Digital First* strategy sets out a framework approach for digital transformation across the Welsh Public Sector. In response to *Digital First*, my officials are developing a *Digital Strategy for Education* which will specifically focus on helping transform the education sector in Wales by modernising and improving the way it operates. As a "digital transformation" strategy it will outline the principles and actions the education sector in Wales can pursue to make better use of technology to modernise and save money.
22. I envisage the strategy improving the way the sector operates by digitally transforming the sector through new ways of working and thinking using digital, social, mobile and emerging technologies. It will explore improving leadership, encouraging innovation and considering different thinking and new business models. It will also propose a specific focus on incorporating digitisation of assets and increasing the use of technology to improve the experience of the education sector – from learners and practitioners, back office administration activities to front line teaching.

Alun Davies AM
Minister for Lifelong Learning & Welsh Language
September 2016

Committee Chairs
National Assembly for Wales
Cardiff Bay
CF99 1NA

21 July 2016

Dear Chair

Committee Statements in Plenary

Over recent weeks, the Business Committee has started considering how greater variety could be introduced to Assembly time in Plenary. Part of the impetus for doing so came from the Legacy Report of the Business Committee of the Fourth Assembly which included the following recommendation:

“The new Business Committee should look at scheduling a greater variety of business during non-government time, including more committee business to increase the integration between Plenary and committees. Types of business could, for example, include statements at the beginning of committee inquiries, annual reports from committees, debate topics chosen by young people and other stakeholders, and series of debates on a particular theme.”

The view that Plenary time is not always used as effectively as it could be is one I share, and during the autumn term I will be bringing forward proposals for change for Business Managers to consider, with a view to expanding Members’ opportunities to scrutinise the government and represent their constituents.

The Committee has however taken an early decision that it would like to see greater integration between Plenary and committee work, and that one way of doing that would be to have committee Chairs make statements in Plenary from time to time regarding their committee’s work and priorities. Whilst it is up to Chairs, in consultation with their committees, to decide when they would wish to make a statement, examples we would like to encourage in the first instance include the beginning of inquiries, possibly to help scope out the committee’s



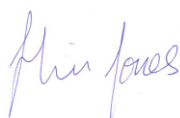
work, and follow-up work on the committee's recommendations, or when a committee was considering its work programme.

We consider that such statements would be a useful tool in increasing the profile of committees' work both among other Members and with the public more generally, and allow greater engagement with, and understanding of, committee inquiries by those who aren't directly involved with them. If properly used, we are confident that such statements and the response to them, could be a valuable tool in informing a committee's thinking and priorities. They would therefore serve a different purpose to the debates on committee reports which are a long-established feature of Assembly business, and which we would want to see continue.

The Business Committee meets weekly to agree the organisation of Assembly business, and while statements can be taken without notice with my permission, we would usually expect any request for time to be received at least a week before the statement is to be made, so that it can appear on the Business Statement and Announcement.

I'd be grateful if you would consider how you and your committee could make use of plenary statements, and I would encourage you to bring some forward in the near future. I am aware that many committees will be launching new inquiries and deciding on priorities during the autumn term, and so the coming period provides a perfect opportunity to trial the use of committee statements. I hope you can play your part in making it a success.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Elin Jones'.

Elin Jones AM, Presiding Officer
Chair, Business Committee



Bethan Jenkins AM
Chair, Culture, Welsh Language and Communications
Committee

18 July 2016

Dear Bethan

Wales Bill

We are currently scrutinising the Wales Bill as it goes through the UK Parliament. Its Committee stage was completed on 11 July in the House of Commons, and we envisage Report Stage and Third Reading will be in September, before the Bill progresses to the House of Lords.

We have already taken evidence from a range of academics and legal experts, as well as the First Minister and y Llywydd. We have invited the Secretary of State for Wales to give evidence but he has, so far, declined the invitation.

We held an excellent stakeholder event to discuss the Bill in Siambr Hywel earlier this month, which brought together stakeholders from the legal profession, academia and devolved policy areas. Building on this event, we have launched an online engagement forum to continue the discussion with stakeholders as the Bill progresses.

Our predecessor Committee was able to draw on the excellent work undertaken by your predecessor Committee when considering the draft Bill. The work of the Committees was incredibly helpful, especially in considering the policy impact of the specific reservations within their remits and the ability to make coherent, joined-up laws. I enclose a copy of the correspondence for your reference.

We would therefore welcome any views you have on the Wales Bill, particularly in respect of the impact of the reservations on your remits and whether the pre-



legislative scrutiny has changed the position outlined in your predecessor Committee's letters.

Our Committee is hoping to influence the House of Lords' scrutiny of the Bill, as well as informing the Assembly's debate when the Legislative Consent Motion is tabled. While we do not have a set timeframe for our deliberations, if you do wish to respond, it would be helpful to us, if we had this information in the first few weeks of the autumn term.

Yours sincerely

A handwritten signature in dark ink, reading "Huw Irranca-Davies", with a horizontal line underneath.

Huw Irranca-Davies

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



David Melding AM
Chair, Constitutional and Legislative Affairs
Committee

18 November 2015

Dear David

Draft Wales Bill: implications of the proposed reserved powers model on the Assembly's legislative competence

At its meetings on 4 and 12 November, the Communities, Equality and Local Government Committee ('the Committee') met to consider the draft Wales Bill ('the draft Bill'), in particular the implications of the draft Bill for the Assembly's legislative competence in areas relevant to our remit. The Committee agreed that I should write to you to outline our views on these issues.

While the current 'conferred powers' model has enabled the Assembly to pass laws in a range of key policy areas, this process has not been without its difficulties. The lack of clarity and the complexity inherent within the conferred powers model has been demonstrated most notably by the referral of three Assembly Acts to the Supreme Court in as many years.

To this end, the Committee supports a move to a reserved powers model that delivers a more coherent and workable devolution settlement. However, we had expected such a model to be a development of the current settlement; one which, at the very least, reflects the will of the Welsh electorate in the 2011 referendum to enable the Assembly to legislate on all matters in the 20 subject areas it has powers for, without needing the UK Parliament's agreement. We are deeply disappointed that the proposed model fails to meet these expectations. Indeed, it



appears that the draft Bill does little more than apply the conferred powers approach to a reserved powers model.

In addition, while we understand the rationale for the continuation of certain reservations, such as the constitution of the United Kingdom, foreign affairs and defence, it is not clear to most of the Committee why other matters, in particular policing, should not be within the Assembly's competence as recommended by the Silk Commission. It is even more surprising that matters of general social policy such as entertainment and late night refreshment, the sale and supply of alcohol, and knives are to be reserved.

Related to the above, we believe it is difficult to ignore the question of legal jurisdiction. The historical context of the "England and Wales" jurisdiction is not, in and of itself, a sufficient justification for the continuation of a single jurisdiction. We are concerned that, without a distinct legal jurisdiction for Wales, a reserved powers model would be extremely difficult to operate in practice.

We note the Secretary of State for Wales's intention for the draft Bill to give effect to the St David's Day commitments "to create a stronger, clearer and fairer devolution settlement that will stand the test of time". While the draft Bill provides an opportunity for the UK Government to deliver on these commitments, we believe that, as currently drafted, it fails to do this.

In reporting on Assembly Bills within our remit, we have referred to the need for legislation passed by this place to be both clear and accessible. These criteria should apply to all legislation, regardless of its origin. This is particularly relevant in the case of the draft Bill, which seeks to address difficulties resulting from the conferred powers model and to make lasting changes to Wales' devolution settlement. We believe that the draft Bill fails to meet these basic criteria, and that the proposed model, as currently drafted, would be more complex than existing arrangements, thus leaving the Assembly more vulnerable to challenge when exercising its new powers.

There is clearly a divergence of opinion between the UK and Welsh Governments about the draft Bill's proposals and how the new settlement would be interpreted, and we are aware of the on-going exchanges between the Secretary of State for Wales, the First Minister and the Presiding Officer on these matters.



In the context of the above, there is increasing uncertainty about what the eventual devolution settlement will look like. We are particularly concerned about the potential impact on the ability of political parties in Wales to develop manifestos ahead of the 2016 Assembly election. It may be difficult for the parties to commit to policies that require legislation to be delivered, because of a potential reduction in the Assembly's competence.

Legislative competence and the new competence tests

We note that the draft Bill proposes a number of tests of competence to be applied to Assembly Bills. Whilst some of these are the same as current tests (for example, compatibility with the European Convention on Human Rights and with EU law), others are new and do not appear to flow inevitably from a reserved powers model. These include four new “necessity” tests which would seem to constrain the Assembly more than at present; something that concerns us greatly.

Looking back at the legislation within the Committee's remit that has been passed by, or is currently proceeding through, the Assembly¹, if we were to apply the competence tests in the draft Wales Bill to these pieces of legislation, there appear to be a number of examples where there would either have been doubts about the competence of the Assembly to legislate, or where it would have been clear that the Assembly was not able to legislate. These points are expanded in the narrative below and in Annexe A.

Reservations

We have conducted an analysis of the reservations set out in the draft Bill with particular relevance to the areas in our remit. Our detailed findings are included in Annexe A, including a brief assessment of whether competence in these areas is likely to be reduced, increased, or left unchanged.

¹ During the fourth Assembly, the Committee has considered and reported on 9 Bills: National Assembly for Wales (Official Languages) Act 2012; Local Government Byelaws (Wales) Act 2012; Local Government Democracy (Wales) Act 2013; Mobile Homes (Wales) Act 2013; Housing (Wales) Act 2014; Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015; Local Government (Wales) Bill; Renting Homes (Wales) Bill; Historic Environment (Wales) Bill.



Our analysis has shown that, in certain areas, the Assembly's competence is likely to be extended, for example in relation to specific aspects of local government elections in Wales. Overall, however, in the areas within the Committee's portfolio, the effect of the proposed reservations will mean a likely reduction in the Assembly's competence; something that we oppose strongly. There are also a number of areas where the effect of the reservation on competence would be unclear. We do not consider this to be a satisfactory position.

Restrictions on modifying private law

In addition to examining the reservations proposed in the Bill, we have also considered some of the other competence tests, specifically the restriction on modifying the private law (Test 5, Annexe B).

We understand that this proposed restriction would mean a significant reduction in the Assembly's competence, as the test does not exist under the current settlement and would lead to problems in terms of clarity and workability of the settlement. The wording of the restriction is such that there is likely to be uncertainty about the breadth of the Assembly's competence, which we believe could increase the likelihood of referral of Bills to the Supreme Court. As an example, the Mobile Homes (Wales) Act 2013 implies new terms into mobile home agreements. This requires a modification of the law of contract. Whether or not this would be within competence under the new settlement is unclear and would depend on the application of the necessity tests. A similar point could be made in the case of virtually the whole of the Renting Homes (Wales) Bill.

Restriction on modifying criminal law and civil penalties

We also considered the competence test relating to modifying criminal law and civil penalties (Test 6, Annexe B). Under the current conferred powers model, subject to certain conditions, the Assembly can create criminal offences and change the defences available or penalties applicable. Our analysis of the proposed restriction on modifying criminal law and civil penalties is that it would only permit the Assembly to make the minimum possible changes in these areas to effect its legislative intention and that the courts would be able to review the Assembly's choice in this regard.

We note that a significant number of Bills that we have considered during the course of this Assembly have relied upon the creation of criminal offences and



introduced penalties as a means of ensuring compliance with duties imposed, or prohibitions introduced. For example, the Housing (Wales) Act 2014 contains a series of enforcement provisions, including an offence of appointing an unlicensed agent and the use of fixed penalty notices.

In addition, there are provisions within the Historic Environment (Wales) Bill that seek to limit the current ‘defence of ignorance’ for charges of damage to historic monuments.

Given the wording of the proposed reservation, it is reasonable to suggest that there would have been scope for some of the above changes to criminal law and civil penalties to be subject to challenge. While this, in itself is undesirable, of greater concern to us is that the proposed restriction could potentially lead to the passing of ‘toothless’ and largely ineffectual laws in Wales.

Reserved authorities and Minister of the Crown functions

Having considered the proposed competence test relating to reserved authorities and Minister of the Crown functions, we are concerned that it is significantly wider than the current test, and that the likely effect of this will be to greatly increase the number of instances in which the Assembly needs the consent of the UK Government to legislate.

By way of illustration, the Welsh Language (Wales) Measure 2011 enables the Welsh Ministers to prescribe standards that certain public bodies must meet in relation to Welsh language provision. However, if the proposed settlement came into force, the Assembly would not be able to amend the Measure so as to affect reserved authorities in new ways not already contained within the scope of the current Measure, unless Minister of the Crown consent was given. Nor would the Assembly be able to pass a new Act imposing new Welsh-language duties on reserved authorities without that consent.

There are several other examples of legislation within the Committee’s remit where consent would have been needed if the proposed test were to be applied:

- The Housing (Wales) Act 2014, which requires the co-operation between local authorities (and other bodies) in England and Wales in respect of homelessness;



- The Mobile Homes (Wales) Act 2013, which creates various rights of appeal to a tribunal;
- The Renting Homes (Wales) Bill, which creates numerous rights to refer matters to the county court, the high court or the Residential Property Tribunal;
- The Historic Environment (Wales) Bill, which creates a right of appeal against an enforcement notice to a magistrates' court.

It is fair to say that the legislative competence order ('LCO') process in place prior to the move to Part 4 of the Government of Wales Act 2006 was particularly onerous and meant delays in the introduction of legislative proposals that were supported in principle by all political parties in Wales. While we do not wish to comment on the principle of consent, we consider the proposed competence test relating to reserved authorities and Minister of the Crown functions would be a retrograde step. We have some concerns about the possible lack of efficiency of the consent process, particularly given our experience of LCOs. The need for increased intergovernmental communications in negotiating consents is likely to lead to greater delays being built into the process. This is particularly pertinent given the potential increase in the number of Bills requiring consent as a result of the proposed changes to the competence test. There is, of course, no guarantee that consent will be given in all cases.

To help inform our consideration of the draft Bill, we wrote to the Welsh Language Commissioner and Public Service Ombudsman for Wales ('PSOW') seeking their views on the impact of the Bill on the areas in which they have statutory responsibilities. In the PSOW's response, he refers to "ambiguity" and "uncertainty" about whether the Office and functions of the PSOW will remain within the Assembly's competence under the new settlement. The concerns expressed by the PSOW further illustrate that the proposed model fails to provide sufficient clarity, even on matters such as these, which should be straightforward. A copy of the PSOW's letter is attached at Annexe C.

The Committee welcomes this opportunity to contribute to your work and trust that you will find our views useful. We look forward to the publication of your report.



I am copying this letter to the First Minister, the Presiding Officer and the Secretary of State for Wales.

Yours sincerely,

Chris Chapman

Christine Chapman AC / AM

Cadeirydd / Chair



Annexe A: Reservations related to the Communities, Equality and Local Government Committee's remit

Local Government elections in Wales

(Section B1, reservations 20 – 26)

1. The current settlement confers competence on the Assembly as regards 'electoral arrangements' for local government. This wording has not been tested in the courts, but it has been taken to encompass the voting system (e.g. first past the post, single transferable vote, etc) as well as the conduct of elections, matters such as boundaries and the number of councillors elected for each ward (this list is not exhaustive). There is a specific exception excluding competence for the 'franchise' – i.e. who is allowed to vote.
2. Under the draft Bill, almost all aspects of local government elections would be within the Assembly's competence. Most notably, the franchise for local elections would clearly come within the Assembly's competence, as it is not reserved. This would represent an **increase** in the Assembly's competence.
3. There are reservations from this increased competence, however. The Assembly would not have competence to do the following:
 - Change the position concerning the combination of devolved and non-devolved elections, including the proposed new powers of the Welsh Ministers in this regard (reservations 20 and 21); ("devolved elections" here means Assembly and Welsh local government elections, while "non-devolved" elections means UK Parliamentary and European elections, elections of Police and Crime Commissioners and any other elections or referendums that would be outside the Assembly's competence such as, obviously, Scottish Parliamentary elections);
 - Change the limits on election campaign expenditure for non-devolved elections (reservation 25);
 - Change the limits on election campaign expenditure where local elections are combined with non-devolved elections (reservation 24);
 - Change the registration and financial rules that apply to political parties (reservation 26).



4. As well as the increase in the Assembly's competence, the Welsh Ministers would have some **increased executive powers** in relation to local government elections in Wales. They would be able to provide for the combination of certain Assembly and local government elections in Wales, though the rules on combining Assembly **ordinary** general elections and local government **ordinary** elections would not be within that power. Similarly, the Assembly would not have competence to change the timing of ordinary local government elections if they were due to coincide with an Assembly general election.

5. The Welsh Ministers would also have the power to make regulations to allow for digital registration of voters in local elections.

Immigration

Section B2, reservation 28: Immigration, including asylum and the status and capacity of persons in the United Kingdom who are not British citizens

6. The homelessness duties imposed on local authorities under **Chapter 2 of Part 2 of the Housing (Wales) Act 2014** ('the 2014 Act') make special provision for those who are subject to immigration control.

7. It is **unclear** whether the proposed reservation 28 means that provisions like this, making specific provision for asylum-seekers and others subject to immigration control, could be made under the proposed new settlement. If not, the implications are uncertain. It could mean that a future Assembly Act on housing or homelessness would have to treat those individuals in the same way as British citizens. Alternatively, it could mean that an Assembly Act would simply not be law in so far as those persons were concerned – although this appears an extreme interpretation.

Crime, public order and policing

Section B5 reservation 38: Prevention, detection and investigation of crime

8. Local authorities are responsible for the investigation of regulatory offences (crimes) in many areas, such as non-payment of council tax and environmental matters. This reservation might **reduce** the Assembly's competence to give local authorities new duties or powers of investigation.



9. This reservation would have had significant implications for the **Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015**. Most of the 26 sections of that Act are, in one way or another, aimed at reducing crime. The specific reservation of ‘prevention...of crime’ means it is likely that the whole Act **would have been outside competence** if introduced under the proposed new settlement.

Anti-social behaviour

Section B6, reservation 42: The subject matter of the Anti-social Behaviour, Crime and Policing Act 2014

10. Currently, an exception in the Government of Wales Act 2006 (‘GOWA’) prevents the Assembly from legislating about ‘*orders to protect people from behaviour that causes or is likely to cause harassment, alarm or distress.*’

11. Reservation 42 in the draft Bill would link the subject of anti-social behaviour to a definition set out in the Anti-social Behaviour, Crime and Policing Act 2014. It would prevent the Assembly passing an Act that related to (i.e. had more than a loose or tenuous connection with):

*‘(a) conduct that has caused, or is likely to cause, harassment, alarm or distress to any person,
(b) conduct capable of causing nuisance or annoyance to a person in relation to that person’s occupation or residential premises, or
(c) conduct capable of causing housing-related nuisance or annoyance to any person.’*

12. This is considerably wider than the current exception, which only prevents the Assembly legislating on existing ‘orders’.

13. The proposed new settlement would mean that the Assembly could not legislate in respect of anti-social behaviour in a housing context. As such, **section 55 of the Renting Homes (Wales) Bill** (which imposes obligations on contract-holders not to engage in this behaviour) would have been **outside** competence.

14. It is also likely that **section 145 of that Bill** (which permits supported housing providers to exclude occupants from their homes for up to 48 hours in cases of anti-social behaviour) would have been **outside** competence.



15. Tackling anti-social behaviour is closely linked to preventing crime. The **Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015** might, therefore, have fallen **outside** competence on the basis of this reservation, as well as on the basis of the reservation relating to the prevention of crime, if the proposed new settlement had been in force.

Dangerous items

(Section B11, reservations 48–50: The subject matter of the Firearms Act 1968 to 1997; the subject-matter of the Poisons Act 1972; knives)

16. These reservations include knives, blades, axes, swords, poisons and firearms. There is no current exception in GOWA for the matters covered by the proposed reservations. These matters may seem remote from the Assembly's competence but the Assembly could in fact currently legislate in relation to these dangerous items, provided that the purpose of the Assembly Act related to one of the conferred subjects in GOWA, such as prevention of injury, protection of children and young adults, or education.² For instance, the Assembly could in principle legislate on dangerous items for the purpose of protecting children and young people on the streets of Welsh communities, or in schools and colleges. As a result of the Supreme Court judgment in the *Agricultural Sector (Wales) Bill* case, the Assembly could therefore legislate on those matters provided that the purpose of the legislation was genuinely directed at one of the subjects of competence.

17. The proposed reservations would, therefore, represent a **reduction** in competence.

Misuse or dealing in drugs and psychoactive substances

(Section B12, reservation 51)

18. This reservation appears to be wider than the current exception in GOWA, which is only for "Misuse of and dealing in drugs". However, we consider that

² This was established by the Supreme Court judgment in the case of the *Agricultural Sector (Wales) Bill*. Like employment, which was an issue in that case, dangerous items such as knives are "silent subjects" – topics which are neither subjects nor exceptions in Schedule 7 to GOWA.



these substances would, in practice, be held to fall within the existing exception. Moreover, Assembly competence to legislate about them would currently be blocked by the existence of a UK Ministerial function which, under the current settlement, could not be removed or modified without UK Government consent. Therefore, this reservation produces no real change to competence.

Entertainment and late night refreshment, including classification of films and video recordings (including video games), and the sale and supply of alcohol
(Section B14, reservations 53 and 54 and Section B15, reservation 55)

19. An exception in GOWA currently prevents the Assembly from legislating about ‘*licensing of sale and supply of alcohol, provision of entertainment and late night refreshment*’.

20. The proposed reservation would apply only to ‘late night’ entertainment. It would appear that the Assembly would be able to legislate about entertainment at other times of the day and therefore this would be a slight **increase** in the Assembly’s legislative competence.

21. On the other hand, GOWA currently prevents the Assembly from legislating in respect of classification of films and video recordings, but not video games. The Assembly’s competence would be slightly **reduced** by the draft Bill, as video games would be reserved.

Charities and fund-raising

Section B21, reservation 61: Charities

22. Many registered social landlords are charities. Currently, the Assembly may impose duties on them under the heading ‘housing’. As an example, **section 95 of the Housing (Wales) Act 2014** requires registered social landlords to co-operate with local authorities in housing homeless people. It is **unclear** whether this provision would be outside competence, in so far as it affected charities, under the proposed new settlement.

Health and safety

Section J6, reservation 171: Fire safety



23. Currently, the Assembly has the competence in relation to the following subjects:

- Fire and rescue services;
- Provision of automatic fire suppression systems in newly constructed or newly converted residential premises;
- Promotion of fire safety otherwise than by prohibition or regulation.

24. Reservation 171 is simply “Fire safety”. There are specific exceptions for provision of automatic fire suppression systems in newly constructed or newly converted residential premises and for promotion of fire safety otherwise than by prohibition or regulation. However, there is no exception for “fire and rescue services”.

25. The reservation, on its own, probably does not reduce competence; that it is sufficient that “fire and rescue services” are not reserved. However, the draft Bill contains a restriction on the Assembly legislating in relation to public authorities whose functions are not wholly or mainly within competence. Given that the function of “fire safety” would be reserved, the combined effect of the reservation and the restriction **causes some uncertainty** about the Assembly’s power to legislate on the constitution, functions etc. of fire and rescue authorities.

Media culture and sport

Reservations under Head K

26. Competence in this area is largely **unchanged**, but there are some noteworthy points. In the current settlement, ‘Broadcasting’ is an exception. The proposed new settlement refers to ‘Broadcasting **and other media**’ (reservation 173) and ‘**The British Broadcasting Corporation**’ (reservation 174). The reservation of the BBC is likely to be for clarity only; under the current settlement, the BBC was always regarded as non-devolved. So, the only change which may be of significance is ‘other media’. It is unclear what this means, although it appears likely to encompass social media. Consequently, it is **unclear** whether this represents a reduction in the Assembly’s competence.

27. There is a further reservation (177) relating to payments made to HMRC in respect of property accepted instead of tax. This is wider than the current exception from competence: at present, the Assembly may legislate for payments



in lieu of tax in the form of property of ‘*Welsh national interest*’. Therefore, this would represent a **reduction** in competence.

Local land charges

(Section M2, reservation 198: Local land charges)

28. Under the current settlement, local land charges are within competence, except for fees. The proposed new settlement would **reduce** the Assembly’s competence by taking away its power to legislate on local land charges **in any way**.

Equal opportunities

(Section N1, reservation 206: Equal opportunities, including the subject-matter of the Equality Act 2006 and the Equality Act 2010)

29. The current settlement permits the Assembly to legislate on equal opportunities in relation, broadly, to public bodies in Wales which would be regarded as “devolved”.

30. This would no longer be possible under the proposed new settlement. Equal opportunities, including the subject-matter of the Equality Act 2006 and the Equality Act 2010, are reserved in the draft Bill. This would be a **reduction** in the Assembly’s competence.

31. However, the following would be within competence, by virtue of exceptions from the reservations:

(i) Encouragement of equal opportunities;

(ii) Imposing duties on “Welsh public authorities” and “specified public authorities” (both these terms are defined in the Bill) to make arrangements to ensure that their functions are carried out with due regard for their legal obligations as to equal opportunity;

(iii) The subject-matter of Part 1 of the Equality Act 2010 (which requires public bodies to have regard to the desirability of reducing socio-economic



inequalities in exercising their functions). Otherwise, affecting the Equality Act would be outside competence.

32. This competence is limited in scope. The competence to “encourage” (point (i)) falls short of a power to impose duties. Indeed “encouragement” in itself is something that does not require legislative action and therefore legislative competence is somewhat theoretical. The competence in point (ii) is merely to impose duties on public bodies as to how they carry out an existing legal duty. Point (iii) is however of more significance.

33. The definition of ‘equal opportunities’ does not include language. So, the Assembly’s competence to legislate in order to promote the Welsh language **appears to be unaffected**. However, restrictions on the Assembly’s competence may in fact reduce competence in this area, as already outlined in our letter.



Annexe B: Proposed competence tests in the draft Wales Bill

Test 1	Must not extend beyond the England and Wales jurisdiction.
Test 2	Must not apply otherwise than in relation to Wales or confer, impose, modify or remove functions exercisable otherwise than in relation to Wales (or give the power to do so), unless the modification is ancillary to a core competence provision AND has no greater effect beyond Wales than is necessary to give effect to the purpose of the core competence provision.
Test 3	Must not “relate to” reserved matters listed in draft Schedule 7A, which will be inserted into GOWA, replacing the present Schedule 7 (Schedule 7A can be found in Schedule 1 to the Bill).
Test 4	Must not modify the law on reserved matters (or give the power to do so), unless the modification is ancillary to a core competence provision AND has no greater effect on reserved matters than is necessary to give effect to the purpose of the core competence provision.
Test 5	<p>Must not modify private law (or give the power to do so) unless the modification is necessary for a devolved purpose, or is ancillary to a core competence provision AND has no greater effect on the general application of the private law than is necessary to give effect to that devolved purpose.</p> <p>“The private law” is defined as meaning contract law, agency law, the law of bailment, tort law, the law of unjust enrichment and restitution, property law, trusts law and succession law). This is extremely wide.</p>
Test 6	Must not modify the criminal law (or civil penalties), or give the power to do so, unless the modification is ancillary to a core competence provision AND has no greater effect on the general application of the criminal law/civil penalties than is necessary to give effect to that devolved purpose, AND is not a road traffic offence.



Test 7	Must not modify a protected enactment (listed in draft Schedule 7B, including some provisions of GOWA and some other legislation).
Test 8	<p>Must not affect Minister of the Crown functions, or those of government departments or other “reserved authorities” in a range of ways without the consent of ‘the appropriate Minister’.</p> <p>This test is similar to an existing one but has been significantly widened, i.e. has been made more restrictive of competence, in six ways:</p> <p>(i) the Assembly will not be able to remove or modify any UK Ministerial functions, current or future, unless the UK Government consents; whereas at present the prohibition only applies to functions created before 5 May 2011;</p> <p>(ii) the Assembly will not be able to remove or modify such functions where to do so would be merely incidental or consequential, unless the UK Government consents; this is a new prohibition and reverses the effect of the Supreme Court judgment in the <i>Local Government Byelaws (Wales) Bill</i> case;</p> <p>(iii) the same prohibitions apply to affecting the functions of “reserved authorities” (public authorities whose functions relate wholly or mainly to reserved matters, and public authorities which have any functions beyond Wales, even if their functions relate wholly or mainly to devolved matters) – this is a new prohibition;</p> <p>(iv) the Assembly will not be able to confer or impose any function on a reserved authority without UK Government consent (currently, this prohibition applies only to giving UK Ministers new functions);</p> <p>(v) the Assembly will not be able to confer, impose, modify or remove functions specifically exercisable in relation to a reserved authority, without UK Government consent; this is a new prohibition;</p> <p>(vi) the Assembly will not be able to modify the constitution of a reserved authority without UK Government consent; this is a new prohibition.</p>
Test 9	Must not be incompatible with the Convention rights.



Test 10	Must not be incompatible with EU law.
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Our ref: NB/SMH

Ask for: Nick Bennett

Your ref:



01656 641150

Date: 6 November 2015



Mrs Christine Chapman
Chair of the Communities, Equality
and Local Government Committee
National Assembly for Wales
Cardiff Bay
CARDIFF
CF99 1NA

Dear Mrs Chapman

Draft Wales Bill: Request for information

Thank you for your letter dated 23 October 2015 seeking my views on the draft Wales Bill published a fortnight ago. It would not be appropriate for me as Ombudsman to comment on the impact of the Bill in relation to bodies within my jurisdiction; however, I do welcome the opportunity to comment on its possible impact in relation to the office of the Public Services Ombudsman for Wales (PSOW).

First and foremost, there is ambiguity as to whether under the 'reserved model' arrangements set out in the draft Wales Bill, the office of PSOW and the functions of the office of the PSOW remains within the legislative competence of the National Assembly for Wales. Clearly this is a matter of concern and, of course, a live issue with the Assembly currently considering introducing a new PSOW Act.

As members of the Communities, Equality and Local Government Committee will be aware, currently, the Assembly has the competence to legislate for a new Public Services Ombudsman (Wales) Act, pursuant to Part 4 of the Government of Wales Act 2006 ('GOWA 2006'). The relevant provisions of GOWA 2006 are set out in section 108 and Schedule 7. Paragraph 14 of Part 1 of Schedule 7 sets out the subjects on which the Assembly may legislate under the heading of 'Public administration' and this includes 'Public Services Ombudsman for Wales'.



As members of the Committee will also be aware it is intended that Schedule 7 of the GOWA 2006 be repealed. Although there is no direct reference to the PSOW within the draft Wales Bill (apart from Schedule 7B, paragraph 7(7)(b)), it is possible that the PSOW remains within the Assembly's competence through the provision at Schedule 7A, paragraph 2(1)(b), whereby the "functions exercisable by any person acting on behalf of the Crown" is not reserved. It may be that it is this that is applicable given that the PSOW is a Crown appointment.

With the above uncertainties, however, I sincerely hope that the new draft Wales Bill will not delay or affect the Assembly's ability to introduce a new PSOW Act, should this remain its wish.

With regard to the additional areas being proposed for devolution contained in the draft Wales Bill, the key consideration from the PSOW's perspective is the potential increase in complaints to the office as a consequence. It is my view that the devolved areas being proposed (that is, elements of energy and transport, and Assembly and local government elections in Wales) will not generate a significant increase in complaints. Had the area of welfare, for example, been included in the draft Wales Bill, then that would have been a different matter. However, as things stand, I cannot see that there will be a major impact on the Ombudsman's office. I have previously given the Assembly the undertaking that, in seeking financial resources for the running of my office, I would not seek more than 0.03% of the Welsh Block. On the basis of the provisions within the draft Wales Bill, I believe that I would still be able to honour that undertaking.

I hope that this response is of at least some assistance to the Committee's considerations.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Nick Bennett', with a stylized flourish at the end.

Nick Bennett
Ombudsman

Chair, Children, Young People and Education Committee
Chair, Climate Change, Environment and Rural Affairs Committee
Chair, Culture, Welsh Language and Communications Committee
Chair, Economy, Infrastructure and Skills Committee
Chair, Equality, Local Government and Communities Committee
Chair, Health, Social Care and Sport Committee

18 July 2016

Dear Committee Chairs

Welsh Government Draft Budget 2017–18

At our meeting on the 14 July, the Finance Committee agreed the approach to the budget scrutiny. I am writing to all the Chairs of subject committees to share our thinking, and to encourage your committees to consider how they can contribute to deliver the most coherent and effective scrutiny of the Government's spending plans.

Budget focus

In the fourth Assembly all Committees agreed to adopt a co-ordinated approach to budget scrutiny, based on the performance and outcomes to be achieved with the resources available, and priorities identified by the wider public (based on feedback from engagement).

This approach centred on the four principles of financial scrutiny: affordability, prioritisation, value for money and process. These principles were used as the basis for all Committee briefings, evidence sessions and reports. The principles are:

- **Affordability** – to look at the big picture of total revenue and expenditure, and whether these are appropriately balanced;
- **Prioritisation** – whether the division of allocations between different sectors/programmes is justifiable and coherent;



- **Value for money** – Essentially, are public bodies spending their allocations well – economy, efficiency and effectiveness (i.e.) outcomes; and
- **Budget processes** – are they effective and accessible and whether there is integration between corporate and service planning and performance and financial management.

We have identified a number of areas which we would like to see the focus of the scrutiny, these are:

- *Approach to preventative spending and how is this represented in resource allocation (Preventative spending = spending which focuses on preventing problems and eases future demand on services by intervening early)*
- *Welsh Government policies to reduce poverty, mitigate welfare reform and prepare for an aging population*
- *Sustainability of public services, innovation and service transformation*
- *Local health board financial arrangements*
- *Preparation for the UK to leave the EU*
- *Low carbon budgeting and preparing for the Future Generations Act*
- *Preparation for the impact of further devolution included with the Wales Bill*
- *Impact of the Welsh Government's legislative programme and whether its implementation is sufficiently resourced*
- *Scrutiny of Welsh language, equalities and sustainability*

We would encourage you to use some of these areas as the focus for your budget scrutiny.

Draft budget consultation

As has been the previous practice are consulting over the summer recess. Additionally, we intend to have a form of 'social media conversation' when the draft budget has been published, which will enable stakeholders to feed in additional views on the actual figures published within the draft budget. We invite you to direct your stakeholders to our consultation.



Timetable

As you will be aware by now the dates for the draft budget have been agreed and are:

- Draft Budget Laid – 18 October
- Deadline for Finance Committee to Report – 29 November (5 sitting weeks/6 weeks in total)
- *Debate on the Draft Budget – 6 December*
- Annual Budget Motion tabled – 20 December

We would request that in accordance with Standing order 20.10, should your Committee report on the budget, it would be helpful to have your response by Friday 18 November.

Finally, if you have any questions about any aspect of the draft budget process, please feel free to contact me or the Clerk to the Finance Committee, Bethan Davies, 0300 200 6372, Bethan.Davies@assembly.Wales

Yours sincerely



Simon Thomas

Chair





Comisiynydd y
Gymraeg
Welsh Language
Commissioner

The Right. Hon. Alun Cairns MP
Secretary of State for Wales
Wales Office
1 Caspian Point
Caspian Way
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CF10 4DQ

14/07/2016

Dear Alun

The Proposed Wales Bill

I write to express some concerns regarding the possible effects of the proposed Wales Bill on the Welsh language, in the hope that you can alleviate those concerns by addressing the points raised below. My concerns relate to the Bill's potential to hinder the full implementation of the Welsh Language (Wales) Measure 2011 and to limit the current powers of the National Assembly for Wales to legislate for the Welsh language.

The Welsh Language Measure (Wales) 2011 empowers Welsh Ministers to introduce through regulations statutory duties relating to the Welsh language i.e. Welsh Language Standards, and to make those duties specifically applicable to a wide range of persons. Exercising that power enables me to notify relevant persons that they must comply with the duties introduced, to set timetables for compliance and to enforce compliance where necessary. The Measure allows for making duties specifically applicable to Ministers of the Crown only with the consent of the Secretary of State.

Schedule 1 of the proposed Bill lists reserved matters. Paragraph 200 of that schedule specifies that conferring, imposing, modifying or removing Welsh language functions of a person is not a reserved matter, except in relation to courts.

Schedule 2, paragraph 8 of the proposed Bill ('General Restrictions') states that an Act of the Assembly cannot include provision to confer, impose, modify or remove a function of a Minister of the Crown without the consent of the appropriate Minister. This reflects the provisions of the Welsh Language (Wales) Measure 2011. However the proposed Bill also requires the consent of the appropriate Minister in order for an Act of the Assembly to make provision for conferring or imposing functions on government departments and reserved authorities, or for modifying or removing the functions of such persons. It appears

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Correspondence welcomed in Welsh and English

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Comisiynydd y
Gymraeg
Welsh Language
Commissioner

therefore that should the National Assembly decide in future to legislate for the Welsh language, following the passing of the proposed Wales Bill, it would not be able to include a provision in an Act to confer or impose Welsh language functions on government departments and reserved authorities, or modify or remove the Welsh language functions of such persons. If that is an accurate interpretation of the proposed Bill, then the National Assembly for Wales would not be able to legislate for the Welsh language in future without doing so in a context where its powers are significantly reduced in so far as government departments and reserved authorities are concerned. I would be grateful if you would confirm that this is an accurate interpretation of the potential effects on the Welsh language of paragraph 8, Schedule 2 of the proposed Bill. If so, I would appreciate an explanation of the reasons for limiting the Assembly's current powers to legislate for the Welsh language in this way.

If my interpretation is accurate then it would be a matter of grave concern as government departments and reserved authorities provide a very wide range of services to the people of Wales, services that many people are obliged to use and many of which have been available in Welsh for quite some time.

I fear that paragraph 8, Schedule 2 of the proposed Bill, should the Bill become law, would lead some government departments and reserved authorities to question the Assembly's powers to make Welsh language duties specifically applicable to them in accordance with the Welsh Language (Wales) Measure 2011, without the consent of the appropriate UK Minister. I would appreciate an undertaking from you that passing the proposed Bill would not effect implementation of the Welsh Language (Wales) Measure 2011 in this or in any other way.

Paragraph 11(1)(b), Schedule 2 of the proposed Wales Bill specifies that an Act of the Assembly cannot modify or remove a Welsh language function of a Minister of the Crown without the consent of the appropriate UK Minister. I would appreciate an explanation of the reasons for referring specifically to Welsh language functions within this paragraph. I would also like to know the reasons why this paragraph requires the Assembly to seek the consent of the appropriate Minister in order to modify or remove a Welsh language function of a Minister of the Crown, rather than require the Assembly to consult with the appropriate Minister, as is required in order to modify or remove other certain types of functions of a Minister of the Crown.

On another matter, I would appreciate an update on progress in implementing the following recommendation made by the Silk Commission in relation to the Welsh language:

'We believe that all the areas mentioned by the Commissioner should be reviewed by the UK and Welsh Governments with a view to amending the law to give equal status to the Welsh language. More generally, we believe that the UK Government and Welsh Government should systematically assess and then keep under review the way in which the Welsh language is used across government.'



Comisiynydd y
Gymraeg
Welsh Language
Commissioner

I wrote to your predecessor on this matter and received a reply in December which noted the following:

'The Government will continue to seek opportunities to revise laws which do not provide equal status for the Welsh language. This includes legislation on registration where the General Registry Office, part of HM Passport Service, is working with the Wales Office and Welsh Government to seek appropriate legislative opportunities to introduce amendments' (my translation of a letter received in Welsh only).

I would appreciate an update on progress since December in implementing this recommendation, as well as a response to the questions raised above in relation to the proposed Wales Bill. As the proposed Bill is swiftly making its way through Parliament, I would greatly appreciate a prompt response to this letter.

Yours sincerely

Meri Huws

Welsh Language Commissioner

Bethan Jenkins AM
Chair, Culture, Welsh Language and Communications
Committee
National Assembly for Wales

14 July 2016

BBC Annual Report and Accounts

Dear Bethan,

At the Public Accounts Committee meeting on 11 July, the Committee discussed the possibility of undertaking scrutiny work of the BBC's audited accounts as part of its annual scrutiny of accounts. This follows the agreement of a revised Memorandum of Understanding arising from the BBC Charter review/Welsh Government and a recommendation by the previous Public Accounts Committee that this should be an area of work for its successor Committee in the 5th Assembly.

The Auditor General for Wales advised the Committee that as he has no powers to review the BBC's accounts nor its activities in Wales, there are limits to the support that he could provide to any Committee scrutiny in this area. However, whilst this would not prevent the Public Accounts Committee from considering the accounts I wanted to write to you as Chair of the Culture, Welsh Language and Communications Committee to ask whether you intend to consider the BBC's annual report, and if so whether you would be willing to consider the accounts as part of this scrutiny

Yours sincerely,



Nick Ramsay AM
Chair



Agenda Item 7.6

Chair, Children, Young People and Education Committee
Chair, Climate Change, Environment and Rural Affairs Committee
Chair, Constitutional and Legislative Affairs Committee
Chair, Culture, Welsh Language and Communications Committee
Chair, Economy, Infrastructure and Skills Committee
Chair, Equality, Local Government and Communities Committee
Chair, Finance Committee
Chair, Health, Social Care and Sport Committee
Chair, Petitions Committee
Chair, Public Accounts Committee

25 August 2016

Dear Committee Chairs,

Implications for Wales of the UK's withdrawal from the European Union

You will be aware that an additional policy and legislation committee was established to relieve pressure on other committees and to scrutinise other matters of public importance.

Business Managers re-considered the remit in light of the EU Referendum result and agreed that the Committee should prioritise its work around the effect that leaving the European Union will have on Wales.

Consequently, its name was changed to the External Affairs and Additional Legislation Committee ('the External Affairs Committee').

I would like to draw your attention to the interim remit for the External Affairs Committee proposed by the Business Committee:

1. To examine the implications for Wales of the United Kingdom's withdrawal from the European Union and to ensure Welsh interests are safeguarded during the withdrawal process, in any new relationship with the European Union and in



the intra-UK post-withdrawal arrangements for relevant policy, finance and legislation.

2. To coordinate activity across Assembly committees in relation to point 1 above.
3. To carry out the functions of the responsible committee under Standing Orders 21.8 to 21.11.
4. To consider any other matter, including legislation, referred to it by the Business Committee.

Further information can be found in the report by the Business Committee on revising the remit of the Committee, which is enclosed with this letter.

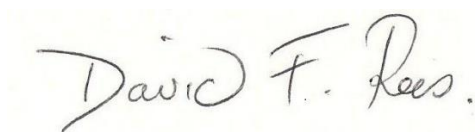
A motion to formally amend the remit of the External Affairs Committee will be tabled by the Business Committee for agreement by the Assembly on Wednesday 14 September 2016.

We will need to have a co-ordinated approach to the scrutiny of these matters across Assembly committees.

I would be grateful if you could indicate whether your committee is planning any work that relates to the United Kingdom's exit from the European Union, or any other aspect of our remit. I would also like to offer you an open invitation to attend any meeting of the External Affairs Committee that relates to matters within your committee's remit.

I look forward to building a constructive working relationship with you as this important work progresses.

Yours sincerely,



David Rees AM
Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.



Business Committee report on revising the remit of the External Affairs and Additional Legislation Committee

Purpose of the Committee

The Committee will need to ensure that Welsh interests are safeguarded in negotiations and eventual decisions on:

- the UK's withdrawal from the European Union;
- the UK's future relationship with the European Union; and
- intra-UK post-withdrawal arrangements for policies, finance and legislation that stem from the European Union.

This work could be summarised as having three interdependent loci: Cardiff, London and Brussels.

Approach

The approach could be phased accordingly:

Understanding the implications – A comprehensive assessment of the policy, financial, legislative and constitutional implications for Wales. Draw on Commission, Government, academic and third sector expertise to deliver this. It could convene an expert panel to assist with this aspect of its work.

Understanding the practical steps – Once the magnitude and detail of the implications are understood, the Committee could look at what needs to be done to ensure that Welsh interests are adequately represented and acted upon during the exit negotiations. In doing so, it would scrutinise the Welsh Government's strategy for managing this process and, if necessary, recommend alternative approaches.

Understanding the Welsh interest – the Committee could play a positive role in terms of providing a platform for dialogue between stakeholders and the exit negotiations – ensuring stakeholder views are heard and inform scrutiny of those involved in the negotiations. Additionally, feeding-back progress as negotiations progress can assist in ensuring stakeholders remain engaged

and that the Assembly stays ahead of the game in terms of representing the people of Wales.

Holding the Welsh Government to account – the Committee could use the knowledge it has developed in these first phases of its work to scrutinise the Welsh Government's actions and influence on the exit process.

The focus throughout would be on ensuring the best possible outcome for the people of Wales.

Where a committee is able to support the Welsh Government, this cross-party endorsement could strengthen the Welsh position. If a committee makes constructive criticism, this too can strengthen the prospect of positive outcomes for Wales if acted upon by the Welsh Government.

The work to understand the implications and engage stakeholders could start immediately. It provides an opportunity to position the Assembly as the forum for debate about the Wales-specific issues surrounding the UK's exit from the EU.

Other committees will wish to examine the implications for domestic policy of the negotiations. This Committee could co-ordinate that work and draw on this to augment its own work (rather than duplicating). The Business Committee notes that the Chairs' Forum is due to discuss this in the Autumn.

In order to obtain the information and intelligence needed for this work, the Committee (and Chair in particular) will need to ensure that it is embedded in inter parliamentary networks such as the EC-UK forum, that they have a thorough understanding of the field of play in Brussels and London and to be in a position to respond with agility and pace to emerging developments.

The Business Committee could consider whether this Committee should be required to report on progress to the Assembly on a rolling basis.

Additional Legislation

This Committee can also undertake the scrutiny of legislation, in any subject area referred to it by the Business Committee, where capacity does not enable it to be scrutinised within the existing Committee structure.

It would also be logical to reallocate the responsibilities for draft European Union legislation, which currently lie with the Constitutional and Legislative Affairs (CLA) Committee, to this Committee.

There is nothing to prevent the Business Committee reviewing these arrangements in the future.

Revised remit proposed by Business Committee to the Assembly

Business Committee proposes the following remit:

1. To examine the implications for Wales of the United Kingdom's withdrawal from the European Union and to ensure Welsh interests are safeguarded during the withdrawal process, in any new relationship with the European Union and in the intra-UK post-withdrawal arrangements for relevant policy, finance and legislation.
2. To coordinate activity across Assembly committees in relation to point 1 above.
3. To carry out the functions of the responsible committee under Standing Orders 21.8 to 21.11.
4. To consider any other matter, including legislation, referred to it by the Business Committee.

A corresponding change will also be needed to the remit of the Constitutional and Legislative Affairs Committee.