Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
Constitutional and Legislative Affairs Committee

Cynulliad Cenedlaethol Cymru
National Assembly for Wales

Lord Rooker
Chair
Joint Committee on the Draft
Deregulation Bill
House of Lords
London
SW1A 0PW

10 October 2013

Dear

Draft Deregulation Bill

1. I refer to the draft Deregulation Bill, published by the UK Government on 16 July, which is being scrutinised by your Committee.

2. I am very grateful to you for agreeing to accept evidence from the National Assembly after your original deadline of 16 September 2013.

3. We considered the Bill at our meeting on 7 October.

4. We note that many provisions of the Bill, as far as Wales is concerned, relate to non-devolved subjects such as company law, insolvency and international shipping. Other provisions affect legislation that applies only to England.

5. More significant are those that affect the law of England and Wales on subjects such as housing and local government. However, a preliminary examination of those detailed provisions suggests that care has been taken to limit the effect of those changes to England, for example, clauses 20 and 21 that relate to housing.

6. We have therefore concentrated our consideration on provisions that would be of general, rather than specific, application. In the context of these provisions, we have serious concerns about the nature of the powers being given to UK Ministers in relation to Wales as currently provided for in this Bill.

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Clauses 51 and 57

7. From our perspective, the crucial provision of the Bill is clause 51. This would permit a Minister of the Crown to provide for legislation to cease to apply if the Minister considers that that legislation is no longer of practical value. The Minister would be able to do this simply by making an order. The legislation could be repealed or revoked generally or in relation to a specific part of the UK. The Bill contains examples of Westminster legislation that would cease to apply to England, but would continue to apply to Wales. "Minister of the Crown" is defined in the Ministers of the Crown Act 1975 as "the holder of an office in Her Majesty's Government in the United Kingdom, and includes the Treasury, the Board of Trade and the Defence Council." Legislation for these purposes means an Act (of Parliament) or subordinate legislation, but *not* an Act or Measure of the National Assembly.

8. However, by virtue of clause 57(2), this Ministerial power to repeal legislation *would* also be exercisable in relation to any provision made by, or under, an Act of the National Assembly or a Measure of the National Assembly to the extent that the repeal was an "incidental, supplementary, consequential, transitional, transitory or saving" provision.

9. As the Bill is currently drafted, if a proposed order contained provision which would be within the legislative competence of the National Assembly were it contained in an Act of the Assembly, the UK Minister would have to obtain the consent of the Welsh Ministers, not the National Assembly. This is inconsistent with subsequent clauses which specify a super-affirmative procedure at Westminster for scrutiny of the order.

10. We strongly believe that there would be much greater democratic legitimacy if the UK Government were required to obtain the consent of the National Assembly, rather than the Welsh Ministers, before it repealed legislation made by, or within the competence of, the National Assembly.

11. Placing a specific statutory requirement to this effect in the Bill would reinforce the principle contained in Devolution Guidance Note 9, which states that:

> "The UK Government would not normally bring forward or support proposals to legislate in relation to Wales on subjects in which the Assembly has legislative competence without the Assembly's consent."

Not making such a change to the Bill could undermine this principle.

12. The significance of such repeals should not be underestimated and they must be subject to thorough scrutiny in the National Assembly. As such, a proposal to repeal legislation of a nature described in paragraph 9 above should be laid before the National Assembly at the earliest opportunity to enable timely scrutiny by all relevant committees. We believe this to be a principle of such importance that a statutory duty to consult the National

Assembly (as well as to obtain its consent at a later stage in the process) should appear on the face of the Bill.

Clause 62

13. Clause 62(1) has a similar effect to clause 51. It would empower a Secretary of State by order to make such provision as he or she considers appropriate in consequence of the Act. That may include transitional, transitory or saving provision and amend, repeal, revoke or otherwise modify legislative provisions, *including* those made by the National Assembly. (For example, if an Act of the Assembly referred to legislation to be repealed by the Bill, that reference could be deleted.) Orders amending primary legislation would be subject to the affirmative procedure at Westminster; changes to subordinate legislation would be subject to the negative procedure.

14. In our view, orders made under clause 62(1) that amend, repeal, revoke or otherwise modify legislative provisions either made by the National Assembly or within its legislative competence must be subject to the National Assembly's consent.

15. Clauses 51, 57 and 62, and those related to them, are therefore of considerable concern to us and we believe should be changed or amended as we describe above to ensure that legislative scrutiny in the National Assembly is consistent with the process for legislative scrutiny at Westminster. We firmly believe that, if the Bill remains as currently drafted, it has the potential to undermine the existing devolution settlement in Wales.

Yours sincerely

David Melding AM
Chair