



Rt Hon Alun Cairns MP
Secretary of State for Wales
Wales Office
Gwydyr House
London
SW1A 2NP

9th June 2016

Dear Alun

Wales Bill

I am writing further to your publication of the Wales Bill on 7 June. These are my immediate reactions to the Bill, but there must of course be opportunities for me and my officials to raise further points as matters go forward, not least because the Bill has been changing right up to the point of introduction.

General

When we spoke on Monday, I indicated that I would give the Bill a cautious welcome, and my statement to the Assembly on Wednesday reflected that. I do acknowledge that, compared to what was published last October, there has been some progress in making the Bill fit for purpose. But there is still a considerable way to go: I am concerned, given the level of complexity, uncertainty and apparent lack of coherence in certain parts of the Bill that it will not deliver the clearer, simpler, more certain and long-lasting settlement based on principle that is needed for Wales. It is very unfortunate that the Bill's introduction has had to be brought forward in an untimely way, and this must not be allowed to curtail the ongoing discussions between us and between our officials with a view to addressing satisfactorily the many outstanding issues.

I understand that Second Reading will be taking place next week. The subsequent timetabling of the Bill particularly concerns me. Our officials need to have time to work together to see how far they can reach agreement on ironing out the details, particularly on the restrictions and reservations in the Bill relating to the Assembly's legislative competence. That will require a lot of work over the summer, so it is essential not to get to Committee Stage on those aspects of the Bill until that work has been done, and to provide an adequate amount of time for detailed scrutiny and amendment at Committee Stage.

I hope we can reach agreement on many issues, but there will inevitably be some (eg devolution of policing) where the Welsh Government's views will continue to differ from those of the UK Government. I will continue to press those matters, and to encourage Parliamentary debate on them as appropriate.

I must also repeat what I said on Monday about the failure of the Bill to provide for a distinct legal jurisdiction for Wales. I am clear that, however welcome other aspects of the Bill may be, this omission means that it will not be able to provide the sustainable long-term devolution settlement that Wales needs; the existing single jurisdiction will increasingly become a fiction and a source of friction as the substantive civil and criminal law in Wales and England diverge. The Bill strengthens rather than weakens the case to address the jurisdiction issue, and Parliament will need at some future time to return to this issue. In the meantime, I cannot see how the new provision in the Bill recognising the existence of a body of Welsh law takes us forward. I will review the Terms of Reference for the Officials Working Group which your officials have provided to mine.

Specific Issues

The Devolution Model: I understand that there have been several discussions at official level about the Assembly's powers to modify the criminal law following the demise of the 'necessity' test, that the Bill provisions have been subject to frequent revision, and that the version in the Bill print was only very recently settled upon by UK Government officials. My officials will be giving careful consideration to this latest version. Officials will also have to discuss the possible need to enable the Assembly to make changes in consequential or incidental ways in some of the areas of law and justice that are reserved or restricted, in order to make Assembly legislation fully effective. These are technical issues, but it is crucial that we get them right in order to secure a sustainable settlement.

Reservations: Some of these have been removed and others redefined, but there are still too many (for example, on Community Infrastructure Levy, Teachers Pay and Conditions), and others are still expressed far too broadly (for example, those in relation to Compulsory Purchase, and Buildings). You need to press Whitehall Departments to focus on the issues that really do need to be dealt with on an England-and-Wales or UK level; this requires a laser-like focus rather than a blunderbuss. And I continue to be very concerned about the reservations around Alcohol licensing and Sale and supply of alcohol; these are major Public Health issues for us, and the Assembly ought to be able to deal with them.

Ministerial Consents: I accept that some progress has been made on the issue of when UK Ministers' consent is required in respect of specific provisions in Assembly Bills. The general bar on the Assembly modifying pre-commencement Minister of the Crown powers, even if these were within legislative competence, is removed, but I have concerns about the UK Government's plans to devolve those powers (and possibly modify them) by Transfer of Functions order. Our officials will need to discuss these matters further. There remains a bar on the Assembly without consent seeking to modify functions of Ministers of the Crown, UK government departments and other public authorities, but I accept that the effect of this will be substantially mitigated by dis-applying the consent requirement for legislation modifying the functions of "Wales public authorities", and so the Assembly will be able to make new provision for those. Nevertheless, there is still technical detail to be worked through, and there is still no 'consequential or incidental' exception when the consent restriction bites; this for example still means that the Byelaws Bill could not have been passed without Secretary of State consent, which is not an acceptable outcome.

Income Tax Devolution: With the removal of the referendum provisions, the Bill leaves it open to the Treasury to devolve income tax responsibilities by order, and without any requirements either for consultation with the Welsh Ministers or any form of Assembly procedure. I have made it clear that we will not accept these responsibilities without fair funding; the order-making powers should not be exercisable unless there is in place a fiscal framework (covering a fair block grant offset, a long term resolution of the issue of fair funding, and an increase in our capital borrowing limit to reflect the increase in independent revenues from devolved taxes, among other matters) agreed between the two governments and endorsed by the Assembly and Parliament.

Water: You are well aware how sensitive an issue this can be and I do emphasise the importance I attach to it. It is very frustrating that, more than a year after your predecessor's St David's Day White Paper, so little progress has been made. While we obviously must wait for the conclusions of the inter-governmental group reviewing the issues, I am at a loss to understand why it is thought that there will be insufficient time for the Wales Bill to include the necessary primary legislative provision giving effect to those conclusions. I would welcome an explanation of that. The issues are reasonably small in number: aligning the two governments' responsibilities to the political boundary; the Secretary of State intervention powers in respect of Water and the (very unwelcome) proposal expanding them to cover Sewerage, rather than letting these be managed by appropriate inter-governmental arrangements; the position in respect of OFWAT; and the retention of licensing as a reserved matter. There needs to be substantial movement by the UK Government in respect of all of these matters.

Justice Impact Test: The Assembly already has a Standing Order covering this subject, and the provision in the Bill does not seem to serve any useful purpose. The question is anyway not one appropriate for legislation, the underlying issue needs to be addressed on an inter-governmental basis as part of a wider discussion about Justice issues in Wales. I am open to such a discussion.

Teachers' Pay and Conditions: We did not discuss this on Monday, but I am keen to move forward quickly in this area so that we can ensure the successful and speedy transfer of this power, which will enable us to have a pay system that supports and complements the new education system in Wales. But we have not been able to reach agreement with DfE on the terms of a transfer: a more realistic offer is needed for the Welsh Government to assume the responsibility for teachers' pay and conditions. The current offer does not reflect the Machinery of Government principle that *'the resources to be transferred should be sufficient to support the functions being transferred.'*

Transitional Provisions: Our officials have been discussing these, on the assumption that the new settlement will come into force during the lifetime of the current Assembly rather than at the beginning of the next. That has not hitherto been the Welsh Government's formal position, but I accept that if we can arrive at a mutually satisfactory outcome in respect of the Bill provisions as a whole, they can properly be brought into force within a reasonable period of time following Royal Assent to the Bill; as our officials have discussed, for the bulk of them, that will be at the beginning of the following financial year. The transitional provisions need to be developed accordingly.

I look forward to further discussion with you on these and other aspects of the Bill and I will be writing further in due course about several other difficult issues which it raises.

I am copying this letter to Nia Griffith MP, Shadow Secretary of State; Hywel Williams MP; and Mark Williams MP, at Westminster; and to the Presiding Officer, and Leanne Wood AM, Andrew RT Davies AM, Neil Hamilton AM and Kirsty Williams AM in Cardiff.

Yours sincerely

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

CARWYN JONES