



Mick Antoniw AM
Chair of Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

SeneddCLA@assembly.wales

14 November 2018

Dear Mick

I am writing in response to your letter of 24 October regarding the Constitutional and Legislative Affairs Committee's Stage 1 report on the Renting Homes (Fees etc.) (Wales) Bill ("the Fees Bill").

Your letter drew particular attention to recommendation 7 and the use of the word "appropriate" in the context of establishing a commitment to consult, but also highlighted a number of other conclusions and recommendations found in your report. I will respond to these in turn.

Legislative competence and Crown consent

Recommendation 2: *The Welsh Government should ensure information regarding legislative competence provided in its Explanatory Memorandums contains sufficient detail to ensure transparency and to enable effective scrutiny of Bills.*

In relation to the issue you raised about the legislative competence section of the Explanatory Memorandum, I can confirm that a more detailed position was set out in the Childcare Funding (Wales) Bill Explanatory Memorandum as it was the first Bill to be introduced under the new reserved powers settlement. Due to the change to reserved powers and there no longer being a need to refer to conferred subjects, the legislative competence section of Explanatory Memoranda in the future are more likely to accord with the statement in the Fees Bill Explanatory Memorandum.

Paragraphs 33 and 34 of the report also made reference to obtaining consent from Her Majesty or the Duke of Cornwall when any provision of a Bill requires it. I can confirm that we follow procedures agreed with the Queen's advisers. When I send a Bill to the Llywydd for her determination, my letter identifies where Queen's or Prince's consent may be required.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
YP.PrifWeinidog@llyw.cymru • ps.firstminister@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Impact assessments

Recommendation 3: *The Minister should use the Stage 1 debate as an opportunity to provide Assembly Members, and the wider audience, with more detail about the Welsh Government's impact assessment gateway and, in particular, its significance to the Bill.*

When developing the Fees Bill, an early version of the Welsh Government's new approach to integrating policy impact assessments was trialled. This is an approach developed in response to the Public Policy Institute for Wales report *Reducing complexity and adding value: A strategic approach to impact assessment in the Welsh Government*. Members may be aware of this work from the Welsh Government's response to the Finance Committee's Report on its *Inquiry into the financial estimates accompanying legislation* and the accompanying debate on 24 January this year.

The focus of the new approach is to bring together the various impact assessment duties using the framework of the Well-being of Future Generations (Wales) Act, with a view to simplifying and standardising the various assessment designs to create a more holistic and accessible approach to the assessment of impact.

We have continued to refine the approach taking into account early experience, at which point it was referred to as the impact assessment gateway. The approach has developed further since the Fees Bill was introduced, and has become known as an integrated impact assessment.

Also, shortly before the Fees Bill was introduced, Standing Orders were changed, as required by the Wales Act 2017, to require the Member in charge of a Bill to provide a justice impact assessment, i.e. a written statement on the potential impact of a Bill on the justice system in England and Wales. Standing Orders require the Member in charge to include this statement in the Explanatory Memorandum (EM) for each Bill. Since the new requirement came into force, different approaches have been trialled for including a justice impact assessment in a Bill, and for publishing supplementary information. While the justice impact assessment included in an EM satisfies the Standing Order requirement, any supplementary information stands in support of the assessment and alongside it.

The government will seek to ensure its EMs for future Bills are clear about how they are satisfying the Standing Order requirements, including for the justice impact assessment.

Recommendation 4: *The Welsh Government should ensure that its Explanatory Memorandums include direct links to all explanatory material available in regard to the relevant Bill, including the relevant impact assessment gateway document (if this approach to impact assessments is to continue).*

As part of the development of the new system of integrated impact assessment, the government has developed a summary impact assessment template. Summaries of the integrated impact assessment outcomes in relation to government Bills, produced using the template, will be publicly available on the Welsh Government website at the point a Bill is introduced. Although the committee will wish to note that not all forthcoming Bills will have integrated impact assessment summaries, as work on impact assessment for some was already well advanced when the new approach was rolled out.

I share the committee's view that there should be greater accessibility to both Welsh laws and accompanying explanatory material, including in relation to impact assessments. In the interests of accessibility and aiding scrutiny, the government will seek to ensure that where an integrated impact assessment summary is available for a Bill, a direct link to this is included in Explanatory Memorandums for Bills.

Other matters

Recommendation 7: *The Minister should revisit the approach to using the word “appropriate” when setting out a commitment to consult on the content of the subordinate legislation that will follow on from the Bill.*

Your letter drew my attention to the use of the word “appropriate” in EMs and Statements of Policy Intent in the context of establishing a commitment to consult.

You will have noted that the government adopts standard language in the introductory paragraphs of section 5 of an EM, “Power to make subordinate legislation”. Paragraph 5.2 states: *“The Welsh Government will consult on the content of the subordinate legislation where it is considered appropriate to do so. The precise nature of consultation will be decided when the proposals have been formalised.”*

The content of paragraph 5.2 is intended to be introductory, as the section itself summarises all the powers in the Bill, providing an explanation as to the appropriateness of it and a reason for the proposed procedure applicable to the use of each. The use of “appropriate” in the context of paragraph 5.2 is intended to set out the government’s general position in relation to consultation on subordinate legislation. In the majority of cases we would consult on the proposed policy intent or drafts of subordinate legislation, however, there may be circumstances when it would not be proportionate to undertake a formal consultation exercise or there are compelling reasons not to consult. For example, where the subordinate legislation increases a statutory fee by a predetermined formula or where subordinate legislation needs to be put in place urgently and the Welsh Ministers have the power to do so without being under a duty to consult.

I also note paragraph 66 of your committee report states *“from the outset, the Welsh Government needs to be clear on its plans for consultation”*. The Welsh Government has sought to provide as much information as is possible at the time a Bill is introduced or during its scrutiny, in section 5 of the EM; publishing a Statement of Policy Intent; or publishing draft regulations. However, it may not always be possible or practicable to set out our plans for consulting on subordinate legislation at the time of a Bill’s introduction.

I am copying this letter to the Counsel General, Leader of the House, Cabinet Secretary for Finance and the Minister for Housing and Regeneration.

Yours sincerely

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

CARWYN JONES