

Rt Hon Carwyn Jones AM
First Minister of Wales

24 October 2018

Dear Carwyn,

Renting Homes (Fees etc.) (Wales) Bill

The Constitutional and Legislative Affairs Committee has today laid before the National Assembly its **Stage 1 Report on the Renting Homes (Fees etc.) (Wales) Bill**.

The Report has been sent to the Minister for Housing and Regeneration, as member in charge of the Bill.

The Committee agreed that I should also write to you and highlight a number of issues which should be drawn to the attention of all Welsh Ministers. The relevant conclusions and recommendations can be found in the annexe to this letter.

I would like to draw particular attention to the use of the word "appropriate" in the context of establishing a commitment to consult. The Committee has a longstanding concern about the excessive use of the phrase "appropriate" in Bills, which we regard as poor legislative drafting. We are equally concerned that its use in Explanatory Memorandums and Statements of Policy Intent reduces clarity and transparency.

This letter is copied to Jeremy Miles AM, Counsel General for Wales, and Rebecca Evans AM, Minister for Housing and Regeneration.



Yours sincerely,

A handwritten signature in black ink that reads "Mick Antoniw". The signature is written in a cursive style with a horizontal line underneath the name.

Mick Antoniw

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



Annexe – Constitutional and Legislative Affairs Committee, Report on the Renting Homes (Fees etc.) (Wales) Bill: conclusions and recommendations for the attention of the Welsh Ministers

Issues relating to legislative competence and Crown consent

Paragraph 32 - It is our opinion that the one sentence explanation within the Explanatory Memorandum of how the National Assembly has the legislative competence to make the provisions in the Bill lacks sufficient detail. In expressing this view, we draw attention to our comments in our report on the Childcare Funding (Wales) Bill. In that Report, we highlighted that the Welsh Government's assessment of how the National Assembly has the legislative competence to proceed with the Childcare Funding (Wales) Bill spans 11 paragraphs in the Explanatory Memorandum, something which we suggested may relate to the complexity of the reserved powers model of competence introduced by the Wales Act 2017. While we do not suggest that a "one size fits all" approach should be adopted in this regard, the stark difference between the approaches taken with these two Bills merits explanation.

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.

Paragraph 33 - We note that the Bill would bind the Crown and may affect the personal interests of the Her Majesty the Queen and the Duke of Cornwall and, as such, the consent of the Crown is required before the Bill may be passed by the National Assembly. We further note that the Minister has not yet sought consent because she is awaiting the fullness of the Bill following the amending stages.

Paragraph 34 - While we consider there are merits to this approach, we also believe that there may be advantages to earlier engagement with the Crown on consent matters as a way of mitigating the risks of a delay to the passing of a Bill towards the end of its passage through the National Assembly. Earlier engagement may be by way of advanced notice to the Crown of the expected date of when consent will be sought, or a request for a provisional decision on consent pending any changes that may be made to the Bill during the amending stages. These comments are based on the assumptions that first, these actions do not already take place and secondly, that this approach is acceptable to both the Welsh Government and the Crown. If the former assumption has been made in error



and a form of early engagement does occur, we believe this fact should be drawn to the attention of the National Assembly.

Issues relating to impact assessments

Paragraph 61 - We have significant concerns with both the content of, the approach to, and the accessibility of the impact assessments accompanying the Bill.

Paragraph 62 - We are disappointed with the Minister's statement that her and her team had made an assumption that Assembly Members and other interested parties would be familiar with where to find the impact assessment gateway. As the Committee responsible for scrutinising all Bills laid before the Assembly, we are not aware of this gateway. We are now aware that, in contrast to what was implied during the scrutiny session, this Bill appears to be one of the first Welsh Government Bills to be accompanied by impact assessments which has used this 'gateway' approach. For that reason, we do not believe it reasonable to assume or suggest that relevant parties would have been familiar with its existence.

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.

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).

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.

