

Huw Irranca-Davies AM
Chair- Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
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21 September 2016

Dear Huw,

Scrutiny of the UK Government's Wales Bill

Thank you for your letter, dated 18 July 2016 inviting the Equality, Local Government and Communities Committee's views on the Wales Bill. The Committee considered the Bill, in particular the impact of the reservations on its remit, at our meeting on 15 September 2016, and agreed that I should write to you to report back its views.

General

Like our predecessor committee (the Fourth Assembly's Communities, Equality and Local Government Committee), we support the principle of a move to a reserved powers model. However, we are concerned that the approach taken by the UK Government, both in respect of the tests on competence, including the introduction of new tests, and the number and extent of reservations, does little to address the complexities associated with the current model or to improve Wales' overall settlement.

This will be the fourth time that Parliament has legislated for significant changes in Wales' devolution settlement in less than 20 years. We had expected that the constitutional changes provided for in the Bill would deliver a durable and lasting settlement for Wales. However, if the Bill is passed in its current form, we are concerned that such a settlement will not be realised and that further legislation on this matter will be necessary before long.

Reservations

We recognise that, one of the biggest criticisms of the draft Wales Bill was the number of reservations and the lack of a clear rationale for the inclusion of those reservations. As such, we are disappointed that the reservations set out in the Bill with particular relevance to the Committee's remit remain largely unchanged following the scrutiny of the draft Bill. Like our predecessor, we are concerned that, in some cases, these reservations may reduce the Assembly's competence and prevent the Assembly from legislating freely in areas that it can already legislate in. It is wholly unacceptable that the Assembly could find itself in the position, under the new settlement, where it is unable to pass an Act that could have been passed under the conferred powers model, or to amend such an Act.



Turning to the specific reservations, we have serious concerns about the impact of reservation 37 (*The prevention, detection and investigation of crime*) on the Assembly's future ability to legislate in key policy areas, such as the prevention of violence against women, domestic abuse and sexual violence. When the Gender Based Violence, Domestic Abuse and Sexual Violence Bill (subsequently enacted and renamed the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 (the Act)) was introduced to the Assembly, it was widely reported that Wales was leading the way in the UK in this area. It is therefore entirely regrettable that, under the new settlement, such legislation will likely be outside competence. You may be aware that the Committee is currently undertaking post-legislative scrutiny work on the Act. Should the Committee wish to recommend legislative changes to the Welsh Government, these would have to take account of any changes made to the Assembly's legislative competence by the Wales Bill.

Further to the above, we are concerned about the impact of reservation 37 on local government functions, and note that this may affect the ability of the Assembly to confer new duties and powers of investigation of regulatory offences on local authorities. In similar terms, we are concerned that reservation 41 (*anti-social behaviour*) could prevent the Assembly from empowering authorities to tackle anti-social behaviour, for example in the housing context.

The majority of the Committee believe that the Bill should provide for the devolution of policing to the Assembly, which would bring Wales in line with other devolved administrations who have had powers over policing for some time. We note the recent decision by the UK Government to merge the role of the Police and Crime Commissioner for Greater Manchester with the newly elected mayor for the region. In effect, this will provide the Mayor with powers beyond that of Wales in this area of policy. It is therefore all the more surprising that the UK Government feels the need to retain powers over policing in Wales.

The previous draft Bill contained what was then reservation 171 (fire safety), which included an exception for "provision of automatic fire suppression systems in newly constructed and newly converted residential premises". This reservation and exception has been removed in the Wales Bill. Although this would appear to be a positive step, it is unclear whether domestic fire sprinklers would fall within reservation 186 (building regulations). You will be aware that the Assembly has already passed legislation in this area (Domestic Fire Safety (Wales) Measure 2011). This is another example of a potential roll back, which we would oppose.

We are concerned that, reservation 206 (*equal opportunities, including the subject-matter of the Equality Act 2006 and the Equality Act 2010*), as drafted, would be a reduction in the Assembly's competence, which we are disappointed with. We consider that this reservation could impinge on the Assembly's ability to legislate in this area in future in any meaningful way.

We welcome the increase in the Assembly's competence in relation to local government elections under the proposed new settlement (and note that this increase was also provided for in the draft Bill). This would enable the Assembly to legislate for almost all aspects of local government elections, including who is able to vote. It also erases any doubt about the Assembly's ability to legislate for the voting system, should it wish, which again, is to be welcomed.



Tests on competence

We acknowledge that some concessions have been made in relation to the restrictions on modifying private law, criminal law, and on modifying functions of reserved authorities and Minister of the Crown functions. While this is a step in the right direction, it does not detract from the key issue that the imposition of these, and other tests on competence, will do little to improve clarity or to address the complexity of existing arrangements.

I hope that you find the above useful in informing your report.

Kind regards

A handwritten signature in black ink that reads "John". The letters are cursive and fluid, with a long horizontal stroke for the 'J' and a similar one for the 'n'.

John Griffiths AC / AM
Cadeirydd / Chair

