



Ein cyf/Our ref: LF/FM/5152/11

David Melding AM
Chair
Constitutional & Legislation Affairs Committee
National Assembly for Wales
Cardiff Bay
Cardiff

15th November 2011

Dear David

I am writing further to my letter of 2nd November accepting your invitation to give oral evidence to the Committee.

Your Committee's inquiry raises a specific issue, that of the delegation of powers, in connection with the pursuit by Welsh Ministers of our policy objectives through appropriate provision in Westminster legislation. In general, the Welsh Government follows the principle that primary legislation in devolved areas should be enacted by the National Assembly. However, it is necessarily the case that there are, and will continue to be, circumstances in which it is sensible and advantageous if provision which otherwise would be within the Assembly's competence is sought for Wales in Parliamentary Bills, with the consent of course of the National Assembly (signified by approval of a Legislative Consent Motion). Such provision will not infrequently include conferring new delegated powers on the Welsh Ministers.

Taking provision in a UK Bill can enable pragmatic solutions to be reached in a timely fashion, while simultaneously respecting the competence of the Assembly through the LCM process. It can be a matter of practical good government for such provisions to be included in a UK Bill. Examples of situations where such an approach would be appropriate could include:

- when the UK Government's legislative proposal would also be appropriate for Welsh circumstances but there is no time available for similar provisions to be brought forward in the Assembly;
- where the inter-connected nature of the relevant Welsh and English administrative systems mean that it is most effective and appropriate for provision for both to be taken forward at the same time in the same legislative instrument;
- where the devolved provisions in question are minor or technical and non-contentious;
- where the UK Bill covers both devolved and non devolved matters and the Westminster route must be taken in order to achieve the policy objective;
- where the competence of the Assembly and/or the powers of the Welsh Ministers would be extended in a way that could not be achieved through an Assembly Act, given the limits on the Assembly's legislative competence.

In my Government's view, it would be most unwise if we were to adopt a self-denying ordinance in respect of Westminster Bills in such circumstances.

Turning to the points specifically raised in your call for evidence:

The extent of the current National Assembly scrutiny of delegated powers given to Welsh Ministers through provisions in UK Acts and through other statutory mechanisms

This is of course primarily a matter for the Assembly itself. The Government must work within the devolution settlement as contained in the Government of Wales Act 2006 (GOWA 2006) and, in our dealings with the UK Government, in accordance with the principle of confidentiality enshrined in the Memorandum of Understanding.

A number of arrangements are already in place to enable Assembly scrutiny of provisions in Parliamentary Bills. Section 33 of GOWA 2006 requires the Secretary of State for Wales to consult the Assembly about the UK Government's legislative programme, which is followed by a debate in plenary. Assembly Committees have the discretion to consider Welsh provisions in Parliamentary Bills and the revised Standing Orders have put in place new arrangements for Legislative Consent Motions and the laying of written statements in relation to certain types of Bill provision.

The extent to which the National Assembly is able to exercise robust scrutiny of such processes through its Standing Orders

The content of Standing Orders is a matter for Business Committee.

The relevance of the UK Government's Devolution Guidance Notes in the light of recent Welsh constitutional developments

The existing Devolution Guidance Notes are currently being revised to take account of the new constitutional arrangements in Wales. Your Committee will of course bear in mind that these Notes are not the responsibility of the Welsh Government, although our officials engage in dialogue with Wales Office officials on the drafting. The Notes are aimed primarily for the guidance of civil servants working in Whitehall departments, who may on occasion have only a limited knowledge and understanding of devolution.

The procedures for Legislative Consent Motions compared to the position in the other devolved legislatures.

So far as I am aware, the procedures followed here are similar to those used in the other devolved legislatures, but your Committee will no doubt draw attention to any distinctive features of our arrangements which merit reconsideration.

I look forward to attending the Committee next week to discuss these matters further.

Yours sincerely



CARWYN JONES