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Rt Hon Carwyn Jones AM
First Minister of Wales
Welsh Government
Cardiff Bay
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Ref: 38SOS 13

12 March 2013

Dear Carwyn

Thank you for your letter of 1 March relating to the recommendations of the Assembly's Constitutional and Legislative Affairs Committee's report on powers granted to Welsh Ministers in UK laws.

You wrote specifically about recommendation 5 - which recommends amending the Assembly's Standing Orders so that the consent of the Assembly would be required where a UK Parliamentary Bill legislates to modify the legislative competence of the Assembly or the executive competence of Welsh Ministers.

The practical effect of implementing this recommendation would be to extend the use of Legislative Consent Motions (LCMs) to include modifications to Welsh Ministers' functions which fall outside the legislative competence of the Assembly. I note that the Welsh Government has accepted recommendation 5, and wishes to amend DGN9 to take forward the recommendation.

Having considered the issue very carefully, I cannot agree the recommendation. In deciding against taking it forward I believe that, above all, it would be wrong in principle for Parliament to seek the approval of the Assembly to legislate in an area which is non-devolved.

I note that the position in regard to Scotland and Northern Ireland is different. The Scottish Parliament approves provisions in UK Parliamentary Bills which confer functions on Scottish Ministers, or modify their existing functions, in non-devolved areas. This reflects the position set out in the Scotland Act 1998 where Orders in Council transferring functions to the



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Scottish Ministers must be approved by each House of the UK Parliament and by the Scottish Parliament.

In contrast, the Government of Wales Act 2006 requires the approval of both Houses of Parliament and the Welsh Ministers to an equivalent Order conferring functions on Welsh Ministers. It would be inconsistent to require Assembly approval for provisions in UK Parliamentary Bills which confer functions on Welsh Ministers, but not for equivalent provisions in Orders in Council.

As we both appreciate, each devolution settlement is different and tailored to particular circumstances. The different approaches set out in the 1998 and 2006 Acts reflect the fact that Scottish Ministers exercise functions almost exclusively in areas where the Scottish Parliament exercises legislative competence. In Wales, devolved and non-devolved functions are far more intertwined; Welsh Ministers exercise far more functions in non-devolved areas and some executive functions in devolved areas are exercised by the Secretary of State.

Given that I am not persuaded by the case for a change to DGN9, I would ask you to resist any amendment to the Assembly's Standing Orders to implement recommendation 5.

Rt. Hon. / Y Gwir Anrh. David Jones MP / AS
Secretary of State for Wales
Ysgrifennydd Gwladol Cymru