

Rt Hon Stephen Crabb MP
Wales Office
Gwydr House
Whitehall
London
SW1A 2NP

16 November 2015

Dear Stephen,

Draft Wales Bill

The Enterprise and Business Committee took the opportunity to discuss the Draft Wales Bill at our meeting on 5 November 2015.

While we understand that this is a draft bill, and far from the finished product, nonetheless the Committee has grave concerns about the Bill as it is currently drafted. I understand that there will be further discussions between the Welsh Government and the Wales Office but we feel that in many areas there is a level of ambiguity in the drafting such that we are not able to comment on it without further clarification.

The Assembly's Constitution and Legislative Affairs Committee is leading in relation to the 'tests' that apply to the Assembly's legislative competence, so I have restricted the committee's initial comments to the reservations that relate to our remit.

In our committee discussion, a room full of experienced legislators struggled to understand what the bill does and what it is seeking to do. For those who are not used to reading and drafting laws, it is – in its present form – very difficult to understand. Clarity and workability are important principles when it comes to legislation, and I am sure that more can be done in this regard.



Within the Committee's remit there are a number of areas which are directly affected by the proposed Reservations listed in Schedule 7A of the draft Bill and grouped under three main 'Heads': Trade and Industry, Transport and Employment.

In Annex A I have set out a summary of the concerns the Committee has in those areas and specific questions. I am writing in the hope that your office will provide the Committee with a clear steer of the effect of the provisions on the existing competence of the National Assembly for Wales, and an explanation where the competence has been reduced.

These questions set out our initial concerns regarding the scope of the Bill. We anticipate having further discussions as a committee once greater detail emerges and I will write to you as the Bill progresses.

Kind regards,

A handwritten signature in black ink, reading "William Graham". The signature is fluid and cursive, with the first name "William" and the last name "Graham" clearly distinguishable.

William Graham

Chair, Enterprise and Business Committee

Cc. David Melding, Chair, Constitutional and Legislative Affairs Committee,
National Assembly for Wales

David Davies, Chair, Welsh Affairs Committee



The Draft Wales Bill – Enterprise and Business Committee

Annex A

The Enterprise and Business Committee of the National Assembly for Wales is seeking clarification on the following specific areas of the Draft Wales Bill:

Schedule 7A – Head C – Trade and Industry

1.0 Section C6 Consumer protection

- 1.1 The current exception in Schedule 7' GOWA prevents the Assembly from legislating about *'consumer protection, including the sale and supply of goods to consumers, consumer guarantees, hire purchase, trade descriptions, advertising and price indication.....'*
- 1.2 The new settlement includes a more detailed description of what the reservation 'consumer protection' includes. For example, in reservation 70 the additional words 'supply of services to consumers'
- 1.3 are included in the new settlement which do not appear in the current exception in relation to consumer protection Schedule 7, GOWA This wording of this reservation is therefore, narrower.

The Committee would like clarification of whether the supply of services to consumers applies only within the context of the Sale of Goods Act 1979 or is it intended to apply further across different types of services to consumers more generally, e.g. bus services etc.

- 1.4 Further, the new settlement includes the wording *'safety of, and liability for, services supplied to consumers'*. This wording is also not currently contained in Schedule 7, GOWA and is therefore, a **reduction** of the Assembly's competence.

The Committee wishes to understand why this competence is potentially reduced.

- 1.5 In relation to reservation 72 and reference to 'estate agents', as the Assembly is currently able to legislate on the 'promotion of business and competitiveness' and 'estate agents' are not specifically referred to in Schedule 7 this reservation therefore, **potentially reduces** the Assembly's competence in relation to 'estate agents'.



The Committee wishes to understand the intention of this potential reduction of competence.

2.0 Reservation C7 Product standards, safety and liability

2.1 The new settlement reservation refers to *‘technical standards and requirement in relation to products in pursuance of an obligation under EU law’*

2.2 It is not clear if this reservation has the effect of preventing the Assembly from making legislation which engages the Technical Standards Directive.

The committee would welcome further clarification on the scope of reservation 75.

2.3 The following wording is not clear – *‘the national accreditation body and the accreditation of bodies which certify or assess conformity to technical standards in relation to products or environmental management systems.’*

The committee would welcome further clarification on the meaning of reservation 76.

3.0 Section C12 Assisted areas and limits on financial assistance to industry

3.1 Reservation 89 limits the Assembly’s competence in relation to:

Section 1 and Section 8(5) (7) of the Industrial Development Act 1982 (‘the 1982’ Act)

3.2 Section 1 allows the Secretary of State by Order to specify any areas of Great Britain as a development area or intermediate area. Further, Section 8 allows the Welsh Ministers to provide financial assistance for industry.

3.3 While executive powers are retained for the Welsh Ministers under Section 8 of the 1982 Act, the inclusion of the subject matter of the 1982 Act potentially **narrows the Assembly’s ability to legislate under** the current wording of Schedule 7 of GOWA and general heading ‘economic regeneration and development’.

The Committee wishes to understand why the Assembly’s ability to legislate is being narrowed in relation to the Industrial Development Act 1982.



3.4 C15: Assistance in connection with export of goods and services etc

3.5 Reservation 92 relates to the subject matter of '*the Export and Investment Guarantees Act 1991*'. The Welsh Ministers have some powers under the 1991 Act that enable them to support exporters. Further, some of the provisions of the 1991 Act are within the Assembly's current competence under Economic development, specifically '*the promotion of business and competitiveness*'. This is therefore, a **reduction** in the Assembly's competence

The Committee wishes to understand why this competence is being reduced and clarity of the scope of this reservation is needed.

4.0 New powers in Transport

4.1 The Assembly would **gain competence to legislate** under the new settlement in relation to:

- Registration of local bus services, and the application and enforcement of traffic regulation conditions in relation to those services
- Speed limits – save for exemptions from speed limits i.e. speed limits for emergency services
- Taxi and private hire vehicle licensing
- Private hire vehicle operator licensing
- Harbours, but not safety standards in harbours

4.3 Under the draft Bill, further **executive powers to the Welsh Ministers** will be granted in relation to:

- speed limits
- Welsh harbours
- certain executive functions in relation to Taxis
- certain executive functions in relation to Traffic Commissioners

The committee welcomes these additional powers in areas for both the Assembly to legislate and the increase of executive powers to the Welsh Ministers in relation to these specific subjects



The following sets out the Committee's view concerning specific reservations under Head E– Transport of the draft Bill.

5.0 Section E1 Road transport

- 5.1 Reservation 111, concerns driver licensing and includes (training, testing and certification) whereas under Schedule 7, GOWA '06 it is only referred to as 'driver licensing'.
- 5.2 The wording therefore, is narrower under the new settlement and the inclusion of the word 'training' could impact on the Assembly's ability to legislate in relation to the promotion of road safety.
- 5.3 This is therefore, a **reduction in the Assembly's competence** and further clarity on the scope of this reservation is required.

The committee would welcome further clarification on the scope of this reservation. Also, clarification is sought that the Assembly will be able to continue to legislate in relation to the promotion of road safety.

- 5.4 Further, the Committee notes that traffic signs are a specific reservation, 117, which doesn't seem logical, given the new powers on speed limits generally.

The Committee would welcome additional clarification of what is intended.

6.0 Section E2 Rail transport

- 6.1 The current exception under Schedule 7 GOWA, refers to 'provision and regulation of railway services' whereas under the new settlement, reservation 123 only states '*railway services*'
- 6.2 This is therefore, a **potential reduction** in competence and further clarification is needed on the scope of this reservation.

The committee would welcome further clarification on the scope of this reservation and wishes to understand the intention of this potential reduction of competence.

7.0 E3 Marine and Waterway transport



- 7.1 The current exception under Schedule 7, refers to ‘shipping’ with two specific exceptions relating to financial assistance for shipping services to and from or within Wales and regulation of the use of vessels carrying animals. However, the new settlement the reservation refers to *‘shipping and other marine and waterway transport including the subject matter of.....)’* This is therefore, a **reduction** in the Assembly’s competence.

The Committee wishes to understand why this competence is being reduced.

- 7.2 The wording of reservation 128 in relation to Search and rescue and coastguard services is unclear.

The committee would welcome clarification that this phrase does not include the fire and rescue services.

8.0 E6: other matters

- 8.1 The current exception in Schedule 7 refers to ‘technical specification for fuel in use of internal combustion engines’ whereas the new settlement under reservation 137 refers to the same issue:

‘technical specifications for fuel or other energy sources or processes for use in road, rail, marine waterway or air transport’

- 8.2 The wording under the new settlement is more restrictive and encapsulates other wider forms of transport, and means of propulsion other than internal combustion engines, so is therefore, a **reduction** in competence.

The Committee wishes to understand why this competence is being reduced.

9.0 Bus Regulation

The potential for the regulation of buses in Wales is an area which the Committee has previously been interested in and the Welsh Government has said it requires further powers. An example was provided to the Committee illustrating how Bus Regulation might be viewed in the new settlement is provided below.



- 9.1 Example: *Under the new settlement, there is now scope for the Assembly to legislate concerning local bus registration. Aside from these, Department for Transport told the Committee in September 2015 that it believed that the Assembly / Welsh Ministers already had powers to regulate buses.*
- 9.2 *There are also currently limited executive powers for the Welsh Ministers / local authorities to co-ordinate bus operations under current legislation, these are set out in the Transport Act and Local Transport Act 2008, and include Voluntary and Statutory Partnerships and Statutory Quality Contracts.*
- 9.3 *Both the above-mentioned levers in theory should allow for the regulation of buses in Wales. However, there is a caveat to this. This because some of the associated benefits of regulation include the possibility of capping and regulating fares and integrated ticketing. It is not clear whether issues such as these would be caught by the following reservations:*

***C3: Competition: reservation 67** ‘Regulation of anti-competitive practices and agreements; abuse of dominant position; monopolies and mergers.*

***C6: Consumer protection: reservation 70** ‘Regulation of the sale and supply of..... services to consumers’*

The committee would welcome clarification that the draft Bill will allow for the regulation of buses in Wales – including issues such as fares and integrated ticketing not being caught by the above mentioned reservations should such an option be pursued in Wales.

10.0. Schedule 7A – Head H – Employment

10.1 Section H1 – Employment and industrial relations

- 10.2 Currently, the Assembly can legislate on ‘silent subjects’ i.e. (it is neither a devolved subject, nor an exception under Schedule 7) provided it is related to a ‘conferred subject’ under Schedule 7 of GOWA and the current settlement.



- 10.3 This was confirmed in the Supreme Court decision in light of the Agricultural Sector (Wales) Act 2014 where the Act was within competence despite it both relating to a devolved subject ‘agriculture’ and a silent subject ‘employment’
- 10.4 In the new settlement a silent subject ‘employment’ has become a specific reservation under Head H *‘Employment rights and duties and industrial relations including the subject of.....’* [and reference to a list of specific Employment legislation].
- 10.5 Further, a specific exception has been made to this Reservation which excludes *‘the subject-matter of the Agricultural Sector (Wales) Act 2014’* and protects the subject-matter of this Act.
- 10.6 Including ‘employment’ as a reservation in the current settlement in combination with the new legislative tests is a **significant reduction** in the Assembly’s competence in the context of employment.
- 10.7 There is also another Head under the new settlement – ‘the professions’ that includes not legislating on health professionals which seems a broader reservation than the current exception in Schedule 7, GOWA.
- 10.8 The Committee was provided with the following example of how might a proposed Bill in the new settlement be considered:
- *Proposed future Bill that is seeking to legislate on wages, conditions and training in social care sector – similar to Agricultural Sector (Wales) Act 2014.*
 - *Under present settlement in light of Supreme Court decision on 2014 Act – Bill concerning social care sector would be within competence.*
 - *Proposed reservation of ‘employment rights and duties and industrial relations’ under Head H, Section H1 of Schedule 7A – likely to take to same Bill **outside competence**.*
 - *The single exception for the subject matter of the 2014 Act makes this more likely – implying that whilst agricultural wages, holidays and training are within competence, these will be reserved in other sectors.*

The Committee wishes to understand why this competence is being reduced in relation to legislating on ‘silent subjects’ such as Employment provided they



‘relate to’ a ‘conferred subject’ under Schedule 7. This is of great concern to the Committee.

11.0 Section H3 – Job search and support

11.1 Reservation 156 ‘Arrangements for assisting persons to select, train for, obtain and retain employment and to obtain suitable employees’ potentially narrows the Assembly competence on economic development under Schedule 7 GOWA.

The Committee wishes to understand what this reservation is expected to capture.

12.0 Particular areas of uncertainty in relation to Executive powers

12.1 Devolution of the Wales and Borders Franchise and transfer of the executive functions of the Welsh Ministers is not dealt with in the draft Bill.

12.2 The St David’s Day announcement and paragraph 2.5.10 of Powers for a Purpose document stated:

12.3 *‘The UK Government is devolving executive franchising functions to the Welsh Government, to enable them to lead on the procurement and management of the next Wales and Borders franchise.’*

The Committee would welcome clarification on how the UK Government is proposing to devolve executive functions to the Welsh Ministers in respect of the Wales and Borders Franchise, given that this is not provided for within the draft Bill.

12.4 Further, the Welsh Government has previously requested that a change be made to the Railways Act 1993 that would allow public sector bodies to bid for franchise contracts. This would mirror the position for Scotland where provision is provided for in relation clause 49 of the Scotland Bill ‘Rail: franchising of passenger services’. Similarly, provision has not been made in the draft Bill.

12.5 In discussing the implications of the Smith Commission for Wales, the St David’s Day announcement said analysis of “relevant Smith recommendations in the Welsh context” would be undertaken “to enable



decisions to be taken early in the next Parliament on which might be implemented for Wales”.

- 12.6 Department for Transport officials told the Committee in September 2015 that the issue was being actively considered: *“the UK Government agreed to consider which non-fiscal parts of the Smith Commission agreement, including that commitment, might be implemented for Wales. That consideration is on-going, and further discussions with the Welsh Government will take place shortly in the context of preparing the Wales Bill”*.

The Committee would welcome clarification on what progress has been made in including this Smith Commission provision in the Wales Bill.

