

David Melding AM
Chair of Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
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16 November 2015

Dear David

Draft Wales Bill

At our meeting on 4 November, we considered the draft Wales Bill. We considered:

- whether it met the Secretary of State’s aim of providing a clear and lasting devolution settlement; and
- the effect that this draft Bill would have on the policy areas we are responsible for scrutinising.

Our consideration to date has been limited due to the time we have available to consider the draft Bill, but we felt it important to input into your work within the timescale requested.

Our initial response is that the draft Bill does not provide a clear or lasting devolution settlement.

We are developing our position on these points, but currently believe that there are several examples of where the draft Bill will add complexity; create uncertainty; and reduce the Assembly’s legislative competence.

Whilst we broadly welcome the increases to legislative and executive competence, we have concerns about the basis on which some of these are being proposed and the limited opportunity they provide for truly devolved decision making. We have concerns that there are also some areas where the legislative competence of the



Assembly appears to be reduced and we will be giving further consideration to these.

I hope to provide you with further detail on these points in the coming weeks.

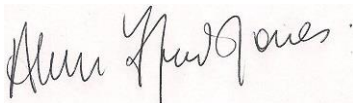
Attached to this letter is a table that sets out our analysis of the draft Bill's proposed reservations within the policy areas covered by the Environment and Sustainability Committee's remit.

You will see from this table that there remain unanswered questions about the rationale behind some of the changes to competence and what the implications of these changes might be.

We will be giving further consideration to the draft Bill and intend to write to the Secretary of State and the Welsh Affairs Committee before the Christmas recess. We will copy this correspondence to you; though note that it falls outside the time you have allocated for considering the draft Bill.

Should you require any further information I would be happy to meet with you to discuss this matter further.

Yours sincerely



Alun Ffred Jones AM

Chair of the Environment and Sustainability Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



Environment and Sustainability Committee

Initial view on the reservations proposed by the draft Wales Bill that are relevant to the work of the Environment and Sustainability Committee

Reservation	Change to Assembly's legislative competence	Comments
B6 Anti-social behaviour		
42 – Anti-social behaviour	Yes	The current exception in the 2006 Act prevents the Assembly from legislating about ' <i>orders to protect people from behaviour that causes or is likely to cause harassment, alarm or distress</i> '. The draft Bill links the reservation to the subject-matter of Parts 1-6 of the Anti-social Behaviour, Crime and Policing Act 2014, which includes for example injunctions, community protection notices and public space protection orders. The definition of anti-social behaviour in section 2 of the 2014 Act is also wider than the current exception. Currently the Assembly has competence in relation to environmental nuisance. The restriction could reduce the Assembly's competence to legislate in areas such as dog fouling, noise nuisance, control of Japanese knotweed etc.
43 -Dangerous dogs and dogs out of control	Yes	At the end of 2012 the Welsh Government began its' consultation on the draft Control of Dogs (Wales) Bill which included provisions for both dangerous dogs and dogs out of control. The Bill was placed on hold because of similar provision which was to be made by the Anti-Social Behaviour Crime and Policing Act 2014. Whilst there was disagreement during the passage of that Act between the respective governments about whether the Assembly had competence to legislate in respect of dangerous dogs, no arguments were raised in respect of the control of dogs generally.



		The reservation is wider than the suggested reservation for 'dangerous dogs' in <i>powers for a purpose</i> . If the draft Bill became law it would mean that the Assembly would be unable to move forward with the Bill if it wished to do so.
B17 – Hunting		
57 - Hunting with dogs	No	
B18 – Scientific and educational procedures on live animals		
58-Procedures on live animals for scientific or educational purposes	Yes	The current exception is for ' <i>regulation of scientific or other experimental procedures on animals</i> '. The proposed reservation is wider and is not just confined to just the regulation of such procedures. This is unlikely to have much practical effect because of EU Law and existing Minister of the Crown functions. The Welsh Ministers do not currently exercise any executive functions under the Animals (Scientific Procedures) Act 1986
B21 – Charities and fund-raising		
61-Charities 62-Raising funds for charitable, benevolent or philanthropic purposes	Yes	Section 57 of the Environment (Wales) Bill provides that " <i>Carrier bag regulations must require the net proceeds of the charge to be applied to charitable purposes</i> ". It is not clear whether under the proposed settlement such a provision would be outside the Assembly's competence. Whilst the purpose of the provision is not to benefit charities, its effect is certainly that of raising funds for a charitable purpose. How will it affect devolved bodies which have charitable status?
C4 Intellectual property		
68-Intellectual property <i>Exception</i> Plant varieties and seeds	Yes	The previous carve-out from the ' <i>intellectual property</i> ' exception was only in respect of plant varieties. The proposal widens the carve-out so that the Assembly would have competence to legislate in respect of intellectual property for seeds as well as plant varieties.



C5 Imports, exports and movement of plants etc.		
<p>69-Prohibition and regulation of – (a) imports and exports, and (b) the movement of food, plants, animals and other things within the United Kingdom. <i>Exceptions</i> Prohibition and regulation which relates to food, plants, animals and related things, and which is for the purposes of – (a) protecting human, animal or plant health, animal welfare or the environment, or (b) observing or implementing obligations under the Common Agricultural Policy.</p> <p>Prohibition and regulation which relates to animal feeding stuffs, fertilisers or pesticides (or things treated by virtue of an enactment as pesticides), and which is for the purposes of protecting human, animal or plant health or the environment.</p> <p>But prohibition and regulation for the purposes of protecting endangered species of plants and animals is not excepted.</p>	<p>No – exception is however worded differently but see comments</p>	<p>The proposed carve out from the exception makes it clear that prohibition and regulation of the movement of plants, animals etc. for the purposes of protecting endangered species of animals and plants is reserved to the UK Government. Whilst the carve out to the existing exception under heading 1 in Schedule 7(Agriculture, forestry, animals, plants and rural development) does not specifically state this, it is likely to be because protection of endangered species is not itself a subject in Schedule 7 . The prohibition and regulation of the import and export of endangered species is also reserved in Scotland. The change is unlikely to have much practical effect as the basis for current law at a UK and EC level is the Convention on International Trade in Endangered Species (CITES).</p>
C6 Consumer Protection		
<p>70 -Regulation of – (a) the sale and supply of goods and services to consumers, (b) guarantees in relation to such goods and services, (c) hire purchase, including the subject-matter of Part 3 of the Hire-Purchase Act 1964, (d) trade descriptions, (e) misleading and comparative advertising, except regulation specifically in relation to tobacco and tobacco products,</p>	<p>Yes</p>	<p>The carve out to the reservation appears to have been narrowed.</p> <p>Under the current settlement, agricultural and horticultural products, animals and animal products, seeds, fertilisers and pesticides (and things treated by virtue of an enactment as pesticides) are excluded from the general exception to ‘<i>consumer protection including the sale and supply of goods to consumers, consumer guarantees, hire purchase, trade descriptions, advertising and price indications</i>’ meaning</p>



<p>(f) price indications (g) auctions and mock auctions of goods and services, and (h) hallmarking and gun barrel proofing. 71-Safety of, and liability for, services supplied to consumers. 72-The regulation of – (a) estate agents, (b) timeshares, and (c) package travel and package holidays. 73-The regulation of – (a) unsolicited goods and services, and (b) trading schemes. 74-The subject-matter of Part 8 of the Enterprise Act 2002.</p> <p><i>Exception</i> Food, food products and food contact materials</p>		<p>that the Assembly could subject to passing all the other tests, legislate in respect of e.g. consumer protection for those subjects. Under the proposed settlement only legislation which concerns “<i>food, food products and food contact material</i>” has been specifically excepted from the consumer protection reservations.</p>
<p>C7 Product standards, safety and liability</p>		
<p>75-Technical standards and requirements in relation to products in pursuance of an obligation under EU law. 76-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 77-Product safety and liability 78-Product labelling</p> <p><i>Exceptions</i></p> <p>Food, food products and food contact materials. Agricultural and horticultural produce, fish and fish products, seeds, animal feeding stuffs,</p>	<p>Yes</p>	<p>The wording of the proposed carve out to the reservation differs from the carve out to the existing exception in Schedule 7 and has potentially been narrowed.</p> <p>It appears as though the Assembly would be able to legislate in respect of product standards, safety and liability for fish and fish products, but the change from “<i>animals and animal products</i>” to “<i>animal feeding stuffs</i>” is narrower. The wording replicates the wording in the Scotland Act.</p>



fertilisers and pesticides (including anything treated as if it were a pesticide by virtue of an enactment).		
C16 Water		
<p>93- Appointment and regulation of a water undertaker whose area is not wholly or mainly in Wales</p> <p>94-Licensing and regulation of a licensed water supplier</p> <p>95- Appointment and regulation of a sewerage undertaker whose area is not wholly or mainly in Wales</p> <p>96-Licensing and regulation of a licensed sewerage licensee</p> <p>97 - The Water Services Regulation Authority</p> <p><i>Exceptions</i></p> <p>Regulation of a licensed water supplier in relation to licensed activities that use the supply system of a water undertaker whose area is wholly or mainly in Wales.</p> <p>Regulation of a sewerage licensee in relation to licensed activities that use the sewerage system of a sewerage undertaker whose area is wholly or mainly in Wales.</p>	Yes	<p>The Assembly has gained legislative competence for sewerage as set out in <i>Powers for a purpose</i>.</p> <p>The restrictions for sewerage undertakers mirror those for water undertakers.</p> <p>There is now a specific reservation in respect of the Water Services Regulation Authority (currently OFWAT). Ofwat is the economic regulator for water services and is responsible for setting price limits, encouraging competition etc. The Assembly could not make provision in respect of any of its economic activities as this is likely to fall foul of one of the other exceptions in Schedule 7 e.g. <i>regulation of anti-competitive practices</i> 'price indications' etc. The Welsh Government argue in their submission to the Wales Office dated 7th September 2015, that it is possible that Assembly legislation could establish a separate water regulator for the purposes of water supply and resource management etc. As a result of appearing as a reservation, Ofwat will also be a named body placing additional restrictions on the Assembly's competence. The Assembly will be unable to confer, modify or remove Ofwat's functions, legislate about its constitution or confer, modify or remove functions specifically exercisable in relation to it.</p>
C17 Non-energy minerals		
98 - The exploration for and exploitation of minerals which are not capable of producing energy	Yes	This would cover minerals such as sand, clay, chalk, gravel etc. At present ' <i>mineral workings</i> ' is a subject over which the Assembly has competence. The Assembly also presently has competence over subjects such as ' <i>coast and marine environment (including seabed)</i> , and ' <i>environmental protection</i> ' which could



		provide competence for e.g. legislation which banned a type of mineral working because it had harmful effects on the environment.
D1 Electricity		
102-Generation, transmission, distribution and supply of electricity	No	
D2 Oil and Gas		
103-Oil and gas, including – (a) the ownership of, exploration for and exploitation of deposits of oil and natural gas, (b) offshore installations and pipelines, (c) the subject-matter of the Pipelines Act 1962 (including section 5(deemed planning permission)) so far as relating to pipelines within the meaning of section 65 of that Act, (d) pollution relating to oil and gas exploration and exploitation, but only so far as the exploration or exploitation is seaward of relevant territorial waters, (e) licensing of marine activities so far as relating to oil and gas exploration and exploitation, but only in relation to activities carried out seaward of relevant territorial waters, (f) restrictions on navigation, fishing and other activities to ensure safe operation of offshore activities, (g) liquefaction and regasification of natural gas, and (h) the conveyance, shipping and supply of gas.	Yes	<p>The reservation is much more detailed than the current exception in Schedule 7 to the 2006 Act which refers to “<i>Oil and gas.....</i>”</p> <p>The reservation is similar to that found in the Scotland Act 1998.</p> <p>The Welsh Government in their submission to the Wales Office (deposited in the library) have raised a number of queries as to what some of the reservations may mean.</p> <p>In particular it is unclear what “offshore” means in the context of some of the reservations and also why in relation to reservations 103(d) and (e) "relevant territorial waters" are defined as 3 nautical miles from the baseline rather than 12 nautical miles.</p> <p>The Assembly have however gained competence in respect of the granting and regulation of petroleum licences (save for the consideration payable) and access to land for the purpose of searching for or getting petroleum under such licences.</p>
D3 Coal		
104-Coal, including (a) the ownership and exploitation of coal, (b) deep and opencast coal mining (c) subsidence relating to coal mining, and (d) water discharge from coal mines <i>Exception</i> Land Restoration	Yes	<p>The current exception in Schedule 7 to the 2006 Act is for ‘<i>Coal, including mining and subsidence, apart from land restoration and other environmental matters</i>’.</p> <p>The proposed reservation seems to widen the current exception by including ‘<i>water discharge from mines</i>’ which arguably <i>relates</i> to environmental protection. It also</p>



		narrows the previous carve out from the exception from ' <i>land restoration and other environmental matters</i> ' to simply ' <i>land restoration</i> ' so it would appear that under the proposed settlement the Assembly would now be unable to make environmental provision which mitigated the effects of mining.
D4 Nuclear energy		
105-Nuclear energy and nuclear installations, including – (a) nuclear safety, security and safeguards, and (b) liability for nuclear occurrences 106-The Office for Nuclear Regulation <i>Exception</i> Disposal of very low level radioactive waste moved from a site requiring a nuclear site licence.	No – there are minor changes to the wording of the existing exception but these do not make any material change.	
D5 Energy conservation		
107-Energy conservation <i>Exception</i> The encouragement of energy efficiency otherwise than by prohibition or regulation	No	
E3 Marine and waterway transport		
126-132	No	No change in relation to matters within the Committee's remit, e.g. carriage of animals on vessels.
G4 Veterinary Surgeons		
151-Regulation of the profession of veterinary surgeon	Yes	Under the current settlement the Assembly could legislate to make provision for veterinary surgeons in Wales so long as such legislation passed the other tests and the provision <i>related</i> to another Schedule 7 subject, for example ' <i>Animal health and welfare</i> '. How much practical affect this reservation will have is not clear. Welsh Ministers do not currently exercise any functions under the Veterinary Surgeons Act 1966.
H1 Employment and industrial relations		
154- Employment rights and duties	Yes	Whilst the subject matter of the



<p>and industrial relations, including the subject-matter of-..... (l) the Gangmasters (Licensing) Act 2004</p> <p><i>Exception</i></p> <p>The subject-matter of the Agricultural Sector (Wales) Act 2014</p>		<p>Agricultural Sector (Wales) Bill is excepted from reservation 154- Employment and Industrial relations, thus retaining the status quo, it is unclear what the phrase “<i>the subject matter</i>” means. Is the Assembly able to legislate for all employment matters that relate to Agricultural Workers or are they confined to only the issues dealt with by the Act such as pay, holiday etc.? The general reservation would now mean that the Assembly is unlikely to be able to legislate in a similar manner for other groups of workers and indeed teachers’ pay and conditions is now a specific reservation.</p> <p>The Welsh Government have also raised a concern in their submission to the Wales Office dated 7th September 2015, that the exception relating to the Gangmasters (Licensing) Act 2004 could potentially reduce their competence in relation to shellfisheries.</p>
<p>J4 Medicines, medical supplies, biological substances etc.</p>		
<p>163 Veterinary medicinal products, including manufacture, authorisations for use and regulation of prices. 164 Specified feed additives. 165 Animal feeding stuffs, in relation to – (a) the incorporation in them of veterinary medicinal products or specified additives; (b) matters arising in consequence of such incorporation</p>	<p>Yes but see comments</p>	<p>The current exception in Schedule 7 is for “<i>authorisations of veterinary medicines and medicinal products</i>”. The proposed reservations would appear to be wider as they include the manufacture of products, the incorporation of them into food stuffs etc. It is uncertain whether this would have much practical effect as veterinary products, medicated animal feed etc. is regulated on an EU basis.</p>
<p>M3 Registration of agricultural charges and debentures</p>		
<p>199- The subject-matter of sections 9 and 14 of, and the Schedule to, the Agricultural Credits Act 1928</p>	<p>Yes but see comments</p>	<p>Whilst this is not a current exception to the Assembly’s legislative competence, it is tied into the reservation of land charges more generally which is not currently a subject in Schedule 7.</p>



M4 Development		
200-The regulation of – (a) the design and construction of buildings, (b) the demolition of buildings, and (c) services, fittings and equipment provided in or in connection with buildings.	Yes	<p>Welsh Ministers currently have executive competence to make Building Regulations save for energy infrastructure. Clause 28 of the draft Bill devolves executive functions to the Welsh Ministers in respect of such infrastructure.</p> <p>Whilst Building regulation is not a specific subject within Schedule 7 at present, neither is it an exception. The Assembly may therefore presently pass laws about building regulation which relate to subject areas within Schedule 7 such as '<i>listed buildings</i>' or '<i>protection of the environment</i>', provided none of the exceptions and exemptions from legislative competence apply. In particular, the National Assembly does not have legislative competence to pass laws in relation to "Energy conservation, apart from the encouragement of energy efficiency otherwise than by prohibition or regulation. The new proposal would therefore appear to narrow the Assembly's existing competence.</p>
201- National policy statements under the Planning Act 2008.	No	
202- The subject matter of Parts 3 to 8 of the Planning Act 2008, so far as relating to- (a) development of a kind for which development consent would have been required under that Act on the commencement date if the development were to be carried out to any extent in Wales, and (b) development which would have been associated development under section 155 of that Act in relation to that kind of development on that	Yes	<p>Clauses 17 and 18 of the draft Bill amend the Planning Act 2008 and Electricity Act 1989 so that the Welsh Ministers are now the decision maker for all onshore wind powered generating stations in Wales and for other electricity generating stations in Wales and in Welsh territorial waters up to 350MW. Projects over 350MW (excluding wind) will continue to be dealt with by the Secretary of State through the NSIP process. Additionally the Bill provides that in respect of projects over 350MW (excluding wind) the Secretary of State will be able to make a decision on any</p>



<p>date; And for this purpose “the commencement date” is the date on which section 3 (1) of the Wales Act 2016 came into force.</p>		<p>associated development connected with the infrastructure. Currently local authorities in Wales make such decisions.</p> <p>This reservation makes it clear that such development or associated development which would have required consent from the Secretary of State on the commencement date of the new competence provisions (i.e. those projects (not including wind) over 350MW) will continue to be matters over which the Assembly has no competence.</p> <p>Clauses 17 and 18 come into force automatically 2 months after commencement. Therefore, so long as section 3 (1) is brought into force after 2 months from commencement the Assembly will have competence over all onshore wind and other electricity generating projects up to 350MW both in Wales and in Welsh territorial waters.</p>
<p>203-Community Infrastructure Levy</p>	<p>No</p>	
<p>204-Compulsory purchase of land</p>	<p>Yes</p>	<p>Compulsory purchase is not currently excepted from the legislative competence of the Assembly and whilst it is unlikely that an Assembly Act could make wholesale change to the compulsory purchase system, there would appear to be no reason why Assembly legislation could not for example make changes to local authority compulsory purchase powers where this related to another subject in Schedule 7 e.g. town and country planning.</p>
<p>N7 Deep sea bed mining operations</p>		
<p>213- Activities for the purposes of deep sea bed mining operations</p>	<p>No</p>	

