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Constitutional and Legislative Affairs Committee

Inquiry into the Granting of Powers to Welsh Ministers in UK Laws

Response from Farmers Union of Wales

NATIONAL ASSEMBLY FOR WALES' CONSTITUTIONAL AND LEGISLATIVE COMMITTEE'S INQUIRY INTO THE GRANTING OF POWERS TO WELSH MINISTERS IN UK LAWS

Response from the Farmers' Union of Wales

September 2011

NATIONAL ASSEMBLY FOR WALES' CONSTITUTIONAL AND LEGISLATIVE AFFAIRS COMMITTEE'S INQUIRY INTO THE GRANTING OF POWERS TO WELSH MINISTERS IN UK LAWS

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INTRODUCTION

1. The Farmers' Union of Wales welcomes this opportunity to contribute to the Constitutional and Legislative Affairs Committee's Inquiry into the Granting of Powers to Welsh Ministers in UK Laws, with particular reference to how this practice impacts on the scrutiny of legislation affecting rural Wales.
2. The Farmers' Union of Wales (FUW) supported Devolution and the establishment of a National Assembly for Wales believing that this would enable Wales to promote, develop and institute policies that were designed specifically to cater for the needs and aspirations of the people of Wales.
3. The Union firmly believes that the interests of farmers and the rural economy of Wales are best served by policies and legislation determined and fashioned, wherever possible, by the elected representatives of the National Assembly for Wales who would be more attuned to the particular concerns and needs of Wales' rural areas.
4. As a means of achieving this, the Union supported the strengthening of the powers and responsibilities afforded to the National Assembly for Wales, believing that legislative parity was needed between Wales and the other devolved nations.
5. The Union, therefore, welcomed the Referendum on Further Law Making Powers for Wales held earlier this year.

Questions

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.

6. The FUW believes that the National Assembly for Wales should have the opportunity to comment on all legislation pertaining to Wales, whether emanating from Westminster or Cardiff, and that full scrutiny should be undertaken by the appropriate Assembly Committee to ensure total transparency and appropriateness of any new legislation implemented in Wales.
7. The current practice, where the National Assembly does not have the power to formally scrutinise those UK Acts of Parliament which confer powers directly onto Welsh Ministers is a cause of concern to the Union.
8. The FUW believes that unless the National Assembly, through an appropriate scrutiny Committee, is able to influence primary legislation through Assembly Ministers prior to its drafting in Westminster, then the opportunity to shape the content of such legislation could be compromised.
9. The Union believes that the various scrutiny Committees within the Assembly play a vital role in informing and shaping the activities undertaken by the Welsh Government.
10. During the third Assembly, the Union became increasingly concerned over the decline in emphasis given to the reports, recommendations and advice provided by scrutiny Committees to Assembly Ministers.
11. The FUW was particularly disappointed that, under the current Welsh Government, the Business Committee abolished the Rural Development Sub-Committee, thus, in its view, weakening the opportunity for discussion and debate on the particular challenges facing the rural economy in Wales.
12. While acknowledging that the Environment and Sustainability Committee will establish, when needed, 'Task and Finishing Groups' to look at specific issues affecting rural areas, such as the recently formed Common Agricultural Policy Task and Finish Group, the FUW believes that, due to the predominately rural nature of Wales and the importance of agriculture to rural areas, a separate Committee was needed to consider and scrutinise any issues and legislation which affects agriculture or rural Wales.
13. The Union believes that, for the scrutiny process to be seen to be working, the current process whereby Westminster can confer powers directly onto Welsh Ministers, without involving the National Assembly, needs to be amended so that the National Assembly is able to fully scrutinise any relevant pieces of legislation.

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

14. As outlined in the Annex document issued with the Inquiry letter, the National Assembly has no formal role in scrutinising powers transferred to Welsh Ministers through UK Acts of Parliament.

15. The FUW believes that the Assembly's role in the process needs to be formalised to prevent inappropriate legislation or parts of legislation being implemented in Wales.
16. At present, when a UK Act of Parliament confers powers directly onto Welsh Ministers, the Standing Orders, particularly Standing Order 30, only requires a written statement regarding the Bill and its provisions. Once this statement has been laid, there is no requirement for it, or the actual legislation, to be scrutinised by the Business Committee or, by referral, a relevant Committee.
17. The Union supports the comments made by the Constitutional Affairs Committee during the third Assembly regarding amending the Standing Orders to enable legislation applied to both the Assembly and individual Welsh Ministers to be scrutinised at an appropriate point. The subsequent changes made to the Standing Orders, particularly Standing Order 30, appear to be insufficient to address these recommendations and subsequently the level of scrutiny which can be undertaken.
18. If Welsh Ministers are to be more accountable to the National Assembly and the relevant Assembly Committees, the Union believes that Standing Order 30 should be amended to increase the level of scrutiny of UK legislation which confers powers directly onto Welsh Ministers.
19. These amendments should include referral of the statement and the actual legislation to the Business Committee who, in turn, would be able to scrutinise and comment on the documents or refer them to the Committee with the relevant knowledge and expertise to undertake this work. Similar provisions are contained within paragraph 29.4 of Standing Order 29 which the Union believes could be used as a basis to amend Standing Order 30.
20. Standing Order 21, paragraphs 21.8 and 21.9, already confers powers on a 'responsible Committee' to consider draft European Union legislation and make written representations on behalf of the National Assembly, to the relevant Committee in the House of Commons or the House of Lords. The Union also believes that, with some minor amendments, there is scope within this Standing Order to extend this to include the scrutiny of UK legislation which confers powers directly onto Welsh Ministers.

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

21. The Union is concerned that the Devolution Guidance Notes have yet to be updated to reflect the changes in the powers afforded to the National Assembly following the outcome of the Referendum. It believes that this work should be undertaken as a matter of urgency to ensure that UK Government acts appropriately following the changes brought about by the Referendum.

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

22. The Union welcomes the changes to Standing Order 29, for the fourth Assembly, which bestows the appropriate Assembly Committee with the ability to scrutinise and report on a Legislative Consent Motion (LCM) and the legislation which led to it being tabled.
23. In practice, this scrutiny can only take place if the Business Committee refers the LCM to the relevant Committee. The Union believes that the Business Committee should be required to refer all LCMs to the most appropriate Committee. This would allow the legislation to be fully debated and reported and allow the tabling of amendments which would allow the legislation to be adapted for Wales.
24. The Union also believes that an Assembly Committee should be able to request the referral of an LCM to it if it believes that it is important or could have implications for the work areas within its remit.
25. The FUW supports the conclusion of the Scottish Parliament's Procedures Committee in its report on 'The Sewel Convention' that "any legislation must either be the product of its own deliberations [the Scottish Parliament] or require its explicit consent. Either way, it remains in control".

29th September 2011