

Cynulliad Cenedlaethol Cymru

**Tystiolaeth ysgrifenedig am Fil  
Cymru Llywodraeth y DU**

Hydref 2016

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National Assembly for Wales

**Written evidence on the UK  
Government's Wales Bill**

October 2016



Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol  
Constitutional and Legislative Affairs Committee

Cynulliad Cenedlaethol Cymru yw'r corff sy'n cael ei ethol yn ddemocrataidd i gynrychioli buddiannau Cymru a'i phobl, i ddeddfu ar gyfer Cymru, i gytuno ar drethi yng Nghymru, ac i ddwyn Llywodraeth Cymru i gyfrif.

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The National Assembly for Wales is the democratically elected body that represents the interests of Wales and its people, makes laws for Wales, agrees Welsh taxes and holds the Welsh Government to account.

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Cynulliad Cenedlaethol Cymru

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National Assembly for Wales

## **Written evidence on the UK Government's Wales Bill**

October 2016



Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol  
Constitutional and Legislative Affairs Committee

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Mae'r Pwyllgor Busnes wedi trosglwyddo Bil Cymru Llywodraeth y DU i'r [Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol](#). Er mwyn llywio ein gwaith craffu ar y Bil, lanswyd ymgynghoriad ysgrifenedig ar 27 Mehefin. Gellir gweld y cylch gorchwyl ar gyfer ein hymchwiliad ar ein [gwefan](#). Daeth yr ymgynghoriad i ben ar 26 Medi.

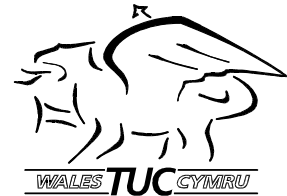
Cyflwynodd y bobl a'r sefydliadau a ganlyn dystiolaeth ysgrifenedig mewn ymateb i ymgynghoriad y Pwyllgor. Mae'r holl ymatebion wedi'u cyhoeddi yn yr un iaith neu ieithoedd y daethant i law ynddynt a gellir eu gweld hefyd ar dudalennau'r [Pwyllgor](#) ar y we:

The Business Committee remitted the UK Government's Wales Bill to the [Constitutional and Legislative Affairs Committee](#). To inform our scrutiny of the Bill we launched a written consultation on 27 June. The terms of reference for our inquiry can be found on our [website](#). The consultation closed on 26 September.

The following people and organisations provided written evidence in response to the Committee's consultation. All responses have been published in the language(s) received and can also be viewed on the [Committee's](#) webpages:

<b>Sefydliad</b>	<b>Tudalen Page</b>	<b>Organisation</b>
TUC Cymru	4	Wales TUC Cymru
Archwilydd Cyffredinol Cymru	7	Auditor General for Wales
Comisiynydd y Gymraeg – 7 Gorffennaf 2016	9	Welsh Language Commissioner – 7 July 2016
Comisiynydd y Gymraeg – 14 Gorffennaf 2016	11	Welsh Language Commissioner – 14 July 2016
Cadeirydd y Pwyllgor Cyllid	17	Chair, Finance Committee
Cytûn – 15 Awst 2016	27	Cytûn – 15 August 2016
Cytûn – 23 Medi 2016	29	Cytûn – 23 September 2016
Y Sefydliad Cynllunio Trefol Brenhinol yng Nghymru	39	Royal Town Planning Institute Cymru
Cadeirydd y Pwyllgor Cydraddoldeb, Llywodraeth Leol a Chymunedau	41	Chair, Equalities, Local Government and Communities Committee
Cadeirydd Pwyllgor yr Economi, Seilwaith a Sgiliau	47	Chair, Economy Infrastructure and Skills Committee
Cyngor Gweithredu Gwirfoddol Cymru	67	Wales Council for Voluntary Action
Gweithgor Morol Cyswllt Amgylchedd Cymru	70	Wales Environment Link Marine Working Group
Prifysgolion Cymru	73	Universities Wales
Cadeirydd y Pwyllgor Diwylliant, y Gymraeg a Chyfathrebu	83	Chair, Culture, Welsh Language and Communications Committee
Cadeirydd y Pwyllgor Plant, Pobl Ifanc ac Addysg	93	Chair, Children, Young People and Education Committee
Cadeirydd y Pwyllgor Newid, Hinsawdd, Amgylchedd a Materion Gwledig	105	Chair, Climate Change, Environment and Rural Affairs Committee

Cadeirydd y Pwyllgor Iechyd, Gofal Cymdeithasol a Chwaraeon	111	Chair, Health, Social Care and Sport Committee
Cymdeithas Ddysgedig Cymru	125	The Learned Society of Wales



Rt. hon. Alun Cairns MP,  
Secretary of State for Wales,  
1 Caspian Point, Caspian Way,  
Cardiff, CF10 4DQ.

8<sup>th</sup> June 2016

Dear Secretary of State,

### **Wales Bill 2016**

Further to the publication of the new draft Wales Bill yesterday. I am writing to request a meeting with representatives of the Wales TUC to discuss the content of the Bill and to provide details of our concerns relating to the provisions it contains.

For background I am attaching the Wales TUC position statement which was unanimously adopted at our 2016 Conference at the end of May.

There are clearly several areas where the draft Bill does not fulfil our aspirations for a clear and lasting settlement and we would want to discuss each of these with you. However we would particularly wish to discuss the reservation on employment (Schedule 1 — New Schedule 7A to the Government of Wales Act 2006 – Head H) as this an area where the exceptions are inadequate to allow the Welsh government to act on workforce matters within devolved areas.

I hope you are able to agree to meet in order to discuss these concerns.

Yours sincerely,

A handwritten signature in black ink that reads 'Martin Mansfield'. The signature is written in a cursive, slightly slanted style.

**Martin Mansfield**  
**General Secretary**



## **Wales TUC General Council Statement May 2016**

### **The draft Wales Bill and future of devolution**

The achievement of devolution for Wales has been hard fought over several decades with successive referenda and elections resulting in the settled will of the Welsh people being overwhelmingly for a Welsh government and Senedd with full legislative powers.

The Wales TUC seeks the greatest possible degree of devolution appropriate for Wales. A clear, robust, sustainable devolution settlement is necessary for any Welsh government to be able to act in the interests of Welsh workers for our economy and our public services.

Specifically, the General Council supports;

- The use of an appropriate reserved powers model for Welsh devolution.
- The establishment of a distinct Welsh jurisdiction appropriate to the development of Welsh law.
- The devolution of powers over policing, the work programme, major energy and infrastructure plans, the Severn bridges tolls, ports and the naming, elections to and functioning of the National Assembly for Wales.
- The devolution of income tax in the context of a just and lasting financial settlement for Wales.

The General Council accepts that general powers over employment law should be a reserved matter. However, the phrasing of this reservation must not undermine the ability of the Welsh Government to act on workforce matters within devolved areas. This is particularly important for the operation of social partnership in Wales and the delivery of a system with fair work and opportunity at its heart.

The General Council rejects the UK Government draft Wales Bill which would see the rowing-back of the devolution settlement and believes the Bill as currently presented must be withdrawn completely. The General Council supports the approach adopted in the Welsh Government's draft Bill 'Government and Laws in Wales, where it reflects Wales TUC policy, and believes the UK Government should adopt this as a format for the revised Wales Bill.

Wales has national devolution, complete with a government and legislature, supported by the will of the Welsh people in referendum results. This is not similar to the decentralisation of budget co-ordination to English mayors, cities

or regions; nor is it necessarily precisely the same as the approach suitable for another devolved nation. It is therefore not appropriate for the implementation of an enhanced Welsh devolution settlement to be limited by, grouped with or delayed by, decentralisation issues within England or the development of the devolution settlements in Scotland or Northern Ireland.

The General Council will work with the incoming Welsh government and will lobby the Secretary of State for Wales & members of the UK Houses of Parliament, to ensure that a new Wales Bill is introduced consistent with our policy.

24 Heol y Gadelrian / Cathedral Road  
Caerdydd / Cardiff CF11 9LJ

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info@audit.wales / [REDACTED]

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Mr Huw Irranca-Davies AM  
Chair of the Constitutional and  
Legislative Affairs Committee  
National Assembly for Wales  
Cardiff Bay  
Cardiff CF99 1NA

Date: 30 June 2016  
Our ref: HVT/2579fgb  
Page: 1 of 2

*Dau Huw*

## THE WALES BILL 2016-17

I am writing in response to the Committee's open request for views on the Wales Bill 2016-17, particularly as the Bill contains important provisions relating to financial control, accounts and audit. My views relate to the Bill as introduced, and are limited to those matters that affect the Auditor General and the Wales Audit Office.

First, I welcome the fact that the provisions protecting the independence of the Auditor General, currently contained in paragraph 2 of Part 2 of Schedule 7 to the Government of Wales Act 2006, have been substantively reproduced in the Bill, in paragraph 5 of the new Schedule 7B that the Bill proposes to insert into the 2006 Act. It is important that the Bill provides for these statutory protections to continue. Such protections safeguard good public scrutiny by ensuring that my work is, and is seen to be, objective, impartial and independent. Without them, the value of the financial control, accounts and audit provisions of clause 12 would be substantially reduced.

The effect of clause 12 of the Bill, by the insertion of new section 130A into the 2006 Act, is that Welsh legislation must provide for certain provisions relating to financial control, accounts and audit. The provisions required by section 130A include, among others, a requirement on the Welsh Ministers, Counsel General and Assembly Commission to prepare proper accounts, for those accounts to be audited by the Auditor General, for the Auditor General to carry out value for money examinations of those persons, and for the Auditor General to exercise control over payments from the Welsh Consolidated Fund<sup>1</sup>. Section 130A will also require Welsh legislation to provide for access to documents reasonably required by the Auditor General or other persons exercising audit functions.

<sup>1</sup> Section 130A sets out that Welsh Legislation may alternatively provide for the Auditor General to ensure the exercise by other persons of these functions of the Auditor General.

It is clearly desirable and necessary for the provisions that are to be required by section 130A to exist and therefore for clause 12 to be included in the Bill to ensure that they do exist. I note, however, that the level of protection afforded clause 12 is less than is currently enjoyed by the relevant provisions of the 2006 Act that deal with these matters, as currently the Assembly is prevented from altering those provisions at all, by virtue of paragraph 5 of Part 2 of Schedule 7 to the 2006 Act.

Paragraph 3 of Schedule 6 to the Bill, together with paragraph 7 of the new Schedule 7B that the Bill proposes to insert into the 2006 Act, would appear to operate so that the Assembly will be able to alter the provisions on financial control, accounts and audit discussed in the previous paragraph from two months after the Bill is passed. This presents an opportunity for the Assembly to pass legislation consolidating provisions relating to accounts and audit and the functions of the Auditor General, which are currently spread across numerous pieces of legislation—not just the Public Audit (Wales) Acts 2004 and 2013, and the Government of Wales Acts 1998 and 2006, but also individual Acts establishing bodies, such as the Public Services Ombudsman (Wales) Act 2005. This would allow for Welsh audit legislation to be harmonised so that audit provisions are more consistent across the range of my audited bodies. It will be important, however, that when doing so the Assembly is cognisant of the need to ensure that the powers afforded by the current audit provisions are not weakened, as that would significantly undermine effective scrutiny and lessen the impact of my work.

Finally, I welcome the new definition of 'Wales public authority' set out in clause 4 of the Bill and the list of specified Wales public authorities to be included at new Schedule 9A to the 2006 Act, as this provides clarity as to which bodies are Wales public authorities. This will help ensure that there are no debates over whether particular bodies are within the remit of the National Assembly, it now not being necessary to consider whether they have functions "exercisable otherwise than in relation to Wales".

I will be keeping the passage of the Bill through Parliament under review, and will set out further views to the Committee should the relevant provisions of the Bill change substantively from those set out in the Bill as introduced. I should be happy to provide further explanation if the Committee would find that helpful.

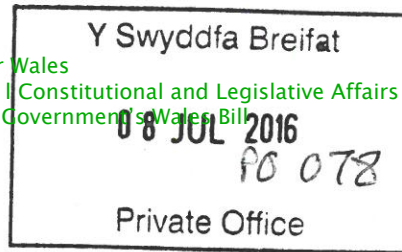


**HUW VAUGHAN THOMAS**  
**AUDITOR GENERAL FOR WALES**



Cynulliad Cenedlaethol Cymru | National Assembly for Wales  
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol | Constitutional and Legislative Affairs Committee  
Ymchwiliad: Bil Cymru Llywodraeth y DU | Inquiry: UK Government's Wales Bill

WB 3a  
Ymateb gan Comisiynydd y Gymraeg  
Response from the Welsh Language Commissioner



Comisiynydd y  
Gymraeg  
Welsh Language  
Commissioner

Elin Jones  
Llywydd  
Cynulliad Cenedlaethol Cymru

07/07/16

Annwyl Lywydd

### Y Bil Cymru drafft a Mesur y Gymraeg (Cymru) 2011

Yn ystod digwyddiad a gynhaliwyd neithiwr gan Gymdeithas yr Iaith Gymraeg ar gryfhau hawliau i'r Gymraeg, tynnwyd sylw at effaith un o ddarpariaethau'r Bil Cymru drafft ar y gallu i weithredu'n llawn Mesur y Gymraeg (Cymru) 2011. Mi ofynnoch i mi ddarparu nodyn ar y mater. Hyderaf y bydd y nodyn hwn yn caniatáu i chi roi ystyriaeth lawn i'r mater ac i weithredu arno fel y gwelwch yn briodol.

Mae Adran 43 Mesur y Gymraeg (Cymru) 2011 yn rhwystro'r Cynulliad rhag gwneud Safonau'r Gymraeg yn benodol gymwys i Weinidogion y Goron mewn rheoliadau, oni bai bod yr Ysgrifennydd Gwladol wedi cydsynio i hynny. Nid oes unrhyw ddarpariaeth yn y Mesur hwnnw sy'n gosod cyfyngiad o'r fath ar bŵer y Cynulliad i wneud Safonau'r Gymraeg yn benodol gymwys i 'adrannau'r Llywodraeth' ac 'awdurdodau sydd heb eu datganoli'. Rwyf wedi cynnal Ymchwiliadau Safonau yn unol ag Adran 61 y Mesur i rhai 'adrannau'r Llywodraeth' ac 'awdurdodau sydd heb eu datganoli'. Yn sgil hynny mae rhai 'awdurdodau sydd heb eu datganoli' eisoes wedi eu henwi mewn rheoliadau a basiwyd gan y Cynulliad dan Adran 39 y Mesur ac arhosaf i'r Cynulliad basio rheoliadau ar gyfer gwneud Safonau'n benodol gymwys i rhai 'adrannau'r Llywodraeth'.

Mae Adran 8, Atodlen 2 y Bil Cymru drafft yn ei gwneud yn ofynnol i'r Cynulliad dderbyn cydsyniad y Gweinidog perthnasol o Lywodraeth y DU i osod swyddogaeth ar Weinidog y Goron, adran o'r Llywodraeth neu awdurdod sydd heb ei ddatganoli, neu i newid neu ddileu swyddogaethau'r personau hynny. Yn unol â hynny, pe bai'r Cynulliad yn disodli Mesur y Gymraeg (Cymru) 2011 gyda Deddf newydd ar gyfer y Gymraeg, yna mi fyddai angen cydsyniad y Gweinidog perthnasol o Lywodraeth y DU i ddarparu yn y Ddeddf honno ar gyfer gwneud dyletswyddau yn ymwneud â'r iaith Gymraeg yn gymwys i'r holl ystod hynny o bersonau. Byddai hynny'n cyfyngu'n sylweddol ar ryddid presennol y Cynulliad i wneud dyletswyddau yn ymwneud â'r iaith Gymraeg yn gymwys i 'adrannau'r Llywodraeth' ac i 'awdurdodau heb eu datganoli'.

Comisiynydd y Gymraeg  
Siambrau'r Farchnad  
5-7 Heol Eglwys Fair  
Caerdydd CF10 1AT

Welsh Language Commissioner  
Market Chambers  
5-7 St Mary Street  
Cardiff CF10 1AT

0845 6033 221

0845 6033 221

Croesewir gohebiaeth yn y Gymraeg a'r Saesneg

Correspondence welcomed in Welsh and English



Comisiynydd y  
Gymraeg  
Welsh Language  
Commissioner

Un o amcanion y gyfundrefn Safonau sy'n ganolog i Fesur y Gymraeg (Cymru) 2011 yw yw sicrhau gwell cysondeb mewn gwasanaethau Gymraeg ar gyfer siaradwyr Gymraeg. Heb y gallu i sicrhau trwy ddeddfwriaeth bod 'adrannau'r Llywodraeth' ac 'awdurdodau sydd heb eu datganoli' yn darparu gwasanaethau yn Gymraeg, rwy'n ansicr i ba raddau y gellid cyflawni'r amcan hwnnw. Mae rhai 'adrannau'r Llywodraeth' ac 'awdurdodau sydd heb eu datganoli' yn darparu gwasanaethau y mae'n ofynnol i bawb i'w defnyddio a gwasanaethau sy'n hollbwysig i les unigolion. Mae'n hanfodol bod gwasanaethau o'r fath ar gael yn Gymraeg i bobl Cymru. Ofnaf y byddai pasio'r Bil Cymru drafft fel mae'n sefyll yn golygu bod llai o'r gwasanaethau angenrheidiol hynny ar gael yn Gymraeg yn y dyfodol ac y byddai hynny'n effeithio'n andwyol ar o leiaf rhai siaradwyr Gymraeg.

Hyd yn oed heb i'r Cynulliad ddisodli Mesur y Gymraeg (Cymru) 2011 gyda Deddf newydd ar gyfer y Gymraeg, mae'n bosib y byddai pasio'r Bil Cymru drafft fel mae'n sefyll yn arwain rhai 'adrannau'r Llywodraeth' ac 'awdurdodau heb eu datganoli' i gwestiynu pŵer y Cynulliad i wneud Safonau'n benodol gymwys iddynt mewn rheoliadau dan Adran 39 Mesur y Gymraeg (Cymru) 2011, heb i Weinidog perthnasol Llywodraeth y DU gydsynio i hynny.

Un ffordd o fynd i'r afael â'r broblem honno o bosib fyddai eithrio'r Gymraeg o ddarpariaethau Adran 8, Atodlen 2 y Bil Cymru drafft, ar y sail bod yr Adran honno yn cyfyngu ar bwerau presennol y Cynulliad yng nghyd destun y Gymraeg.

Hyderaf y byddwch yn rhannu fy mhryder ynghylch y mater pwysig hwn ac y byddwch yn codi'r mater fel rhan o'ch trafodaethau ar y Bil Cymru drafft. Croeso i chi gysylltu pe hoffet drafod y mater ymhellach.

Yr eiddoch yn gywir,

**Meri Huws**  
Comisiynydd y Gymraeg



Y Gwir. Anrh. Alun Cairns AS  
Ysgrifennydd Gwladol Cymru  
Swyddfa Cymru  
1 Pwynt Caspian  
Ffordd Caspian  
Caerdydd  
CF10 4DQ

14/07/2016

Annwyl Alun

### Y Bil Cymru Arfaethedig

Ysgrifennaf i fynegi rhai pryderon ynghylch effeithiau posibl y Bil Cymru arfaethedig ar y Gymraeg, gan obeithio y byddwch yn medru lleddfu'r pryderon hynny trwy gynnig atebion i'r cwestiynau nodir isod. Mae fy mhryderon yn ymwneud â photensial y Bil Cymru arfaethedig i rwystro gweithrediad llawn Mesur y Gymraeg (Cymru) 2011 ac i gyfyngu ar bwerau Cynulliad Cenedlaethol Cymru i ddeddfu dros y Gymraeg.

Mae Mesur y Gymraeg (Cymru) 2011 yn caniatáu i Weinidogion Cymru gyflwyno drwy reoliadau dyletswyddau statudol yn ymwneud â'r iaith Gymraeg, sef Safonau'r Gymraeg, ac i wneud y dyletswyddau hynny'n benodol gymwys i ystod eang o bersonau. Mae gwneud hynny yn ei dro yn caniatáu i mi hysbysu personau perthnasol ei fod yn ofynnol iddynt gydymffurfio â'r dyletswyddau a gyflwynwyd, i osod amserlen ar gyfer cydymffurfio ac i orfodi cydymffurfiaeth lle bo angen. Caniateir gan y Mesur hwnnw ar gyfer gwneud dyletswyddau'n benodol gymwys i Weinidogion y Goron ond os yw'r Ysgrifennydd Gwladol wedi cydsynio i hynny.

Mae Atodlen 1 y Bil Cymru arfaethedig yn rhestru'r materion hynny sydd wedi eu cadw yn ôl. Nodir ym mharagraff 200 yr atodlen honno nad yw gosod swyddogaethau yn ymwneud â'r iaith Gymraeg ar berson, neu orfodi, newid neu ddileu swyddogaeth o'r fath, yn fater sydd wedi ei gadw yn ôl, heblaw mewn perthynas â'r llysoedd.

Mae Atodlen 2, paragraff 8 y Bil Cymru arfaethedig ('Cyfyngiadau Cyffredinol') yn nodi na chaiff Deddf y Cynulliad Cenedlaethol gynnwys darpariaeth ar gyfer gosod swyddogaeth ar Weinidog y Goron, neu orfodi, newid neu ddileu swyddogaeth Gweinidog y Goron,

Comisiynydd y Gymraeg  
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5-7 Heol Eglwys Fair  
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Welsh Language Commissioner  
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0845 6033 221

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Croesewir gonebiaeth yn y Gymraeg a'r Saesneg

Correspondence welcomed in Welsh and English



heblaw bod y Gweinidog perthnasol wedi cydsynio i hynny. Mae hynny'n gyson â darpariaethau Mesur y Gymraeg(Cymru) 2011. Ond ar ben hynny mae'r Bil arfaethedig hefyd yn nodi'r angen am gydsyniad y Gweinidog perthnasol ar gyfer gosod swyddogaeth ar adran o'r llywodraeth neu awdurdod sydd heb ei ddatganoli, neu ar gyfer gorfodi, newid neu ddileu swyddogaeth ar y personau hynny. Ymddengys felly, pe bai'r Cynulliad Cenedlaethol yn penderfynu deddfu ar gyfer y Gymraeg yn y dyfodol, yn dilyn pasio'r Bil Cymru hwn, na ellid cynnwys yn y ddeddf honno ddarpariaeth ar gyfer gosod, gorfodi, newid neu ddileu swyddogaeth yn ymwneud â'r Gymraeg ar yr holl ystod hynny o bersonau, heb gydsyniad y Gweinidog perthnasol. Os yw hynny'n gywir, yna ni fedrai'r Cynulliad Cenedlaethol ddeddfu ar gyfer y Gymraeg yn dilyn pasio'r Bil Cymru hwn heb wneud hynny o fewn cyd-destun lle fo'i bwerau wedi eu cyfyngu'n sylweddol o ran adrannau'r llywodraeth ac awdurdodau sydd heb eu datganoli. Byddwn yn ddiolchgar pe byddech yn cadarnhau bod hynny'n ddehongliad cywir o effaith tebygol paragraff 8, Atodlen 2 y Bil Cymru arfaethedig ar y Gymraeg. Os felly, gwerthfawrogwn dderbyn eglurhad dros y penderfyniad i gyfyngu pwerau'r Cynulliad mewn perthynas â'r Gymraeg fel hyn.

Os yw fy nehongliad yn gywir yna byddai hynny'n achos pryder difrifol o ystyried bod adrannau'r llywodraeth ac awdurdodau sydd heb eu datganoli yn darparu ystod eang iawn o wasanaethau i bobl Cymru, gwasanaethau y mae'n rhaid i lawer o unigolion eu defnyddio ac sydd wedi bod ar gael yn Gymraeg ers cryn amser.

Ofnaf y byddai paragraff 8, Atodlen 2 y Bil Cymru arfaethedig, yn sgil pasio'r Bil, yn arwain rhai adrannau'r llywodraeth ac awdurdodau sydd heb eu datganoli i gwestiynu pŵer y Cynulliad i wneud swyddogaethau yn ymwneud â'r Gymraeg yn benodol gymwys iddynt dan Fesur y Gymraeg (Cymru) 2011, heb i Weinidog perthnasol Llywodraeth y DU gydsynio i hynny. Carwn dderbyn cadarnhad gennych na fyddai pasio'r Bil Cymru arfaethedig yn effeithio ar weithrediad Mesur y Gymraeg (Cymru) 2011 fel hyn nac mewn unrhyw ffordd arall.

Mae paragraff 11(1)(b), Atodlen 2 y Bil Cymru arfaethedig yn nodi na chaiff Deddf y Cynulliad Cenedlaethol ddileu neu newid swyddogaeth yn ymwneud â'r Gymraeg ar Weinidog y Goron, heblaw bod y Gweinidog perthnasol wedi cydsynio i hynny. Byddwn yn ddiolchgar am eglurhad am y rhesymau dros gyfeirio'n benodol at swyddogaethau yn ymwneud â'r Gymraeg yn y paragraff yma. Hoffwn wybod hefyd os oes unrhyw reswm pam fod rhan yma'r Bil yn ei gwneud yn ofynnol i'r Cynulliad geisio cydsyniad y Gweinidog perthnasol er mwyn newid neu ddileu swyddogaeth yn ymwneud â'r iaith Gymraeg ar Weinidog y Goron, yn hytrach na'i wneud yn ofynnol i'r Cynulliad ymgynghori â'r Gweinidog perthnasol, fel sy'n ofynnol ar gyfer dileu neu newid rhai mathau eraill o swyddogaethau ar Weinidog y Goron.

Yn olaf, ac ar fater arall, gwerthfawrogwn dderbyn diweddariad ar gynnydd wrth weithredu'r argymhelliad canlynol gan y Comisiwn Silk mewn perthynas â'r iaith Gymraeg:

*'Credwn y dylai Llywodraeth y Deyrnas Unedig a Llywodraeth Cymru adolygu pob un o'r meysydd a grybwyllwyd gan y Comisiynydd gyda golwg ar ddiwygio'r gyfraith i roi statws cyfartal i'r Gymraeg. Yn fwy cyffredinol, credwn y dylai Llywodraeth y Deyrnas Unedig a*





*Llywodraeth Cymru asesu'n systematig sut y defnyddir y Gymraeg ar draws y llywodraeth ac yna cadw golwg ar y sefyllfa'n barhaus.'*

Ysgrifennais y llynedd at eich rhagflaenydd ynghylch y mater yma a nodwyd y canlynol yn yr ymateb a dderbyniais ym mis Rhagfyr:

*'Bydd y Llywodraeth yn parhau i chwilio am gyfleoedd i ddiwygio deddfwriaeth nad yw'n rhoi statws cyfartal i'r iaith Gymraeg. Mae hyn y cynnwys deddfwriaeth gofrestru lle mae'r Swyddfa Gofrestru Gyffredinol, rhan o Swyddfa Basbort EM, yn gweithio gyda Swyddfa Cymru a Llywodraeth Cymru i chwilio am gyfleoedd deddfwriaethol addas i gyflwyno diwygiadau.'*

Gwerthfawrogwn dderbyn diweddariad ar gynnydd ers mis Rhagfyr diwethaf wrth weithredu'r argymhelliad yma, yn ogystal ag ymateb i'r pwyntiau a godir uchod ynghylch y Bil Cymru arfaethedig. Gan fod y Bil arfaethedig yn teithio'n gyflym trwy Senedd y DU, gwerthfawrogwn dderbyn ymateb prydlon i'r pwyntiau a godir os gwelwch yn dda.

Yr eiddoch yn gywir,

**Meri Huws**  
Comisiynydd y Gymraeg

Comisiynydd y Gymraeg  
Siambrau'r Farchnad  
5-7 Heol Eglwys Fair  
Caerdydd CF10 1AT

0845 6033 221

Croesewir gohebiaeth yn y Gymraeg a'r Saesneg

comisiynyddygyymraeg.org

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Market Chambers  
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Cardiff CF10 1AT

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Correspondence welcomed in Welsh and English

welshlanguagecommissioner.org



WB 3b  
Ymateb gan Comisiynydd y Gymraeg  
Response from Welsh Language Commissioner

The Right. Hon. Alun Cairns MP  
Secretary of State for Wales  
Wales Office  
1 Caspian Point  
Caspian Way  
Cardiff  
CF10 4DQ

14/07/2016

Dear Alun

### The Proposed Wales Bill

I write to express some concerns regarding the possible effects of the proposed Wales Bill on the Welsh language, in the hope that you can alleviate those concerns by addressing the points raised below. My concerns relate to the Bill's potential to hinder the full implementation of the Welsh Language (Wales) Measure 2011 and to limit the current powers of the National Assembly for Wales to legislate for the Welsh language.

The Welsh Language Measure (Wales) 2011 empowers Welsh Ministers to introduce through regulations statutory duties relating to the Welsh language i.e. Welsh Language Standards, and to make those duties specifically applicable to a wide range of persons. Exercising that power enables me to notify relevant persons that they must comply with the duties introduced, to set timetables for compliance and to enforce compliance where necessary. The Measure allows for making duties specifically applicable to Ministers of the Crown only with the consent of the Secretary of State.

Schedule 1 of the proposed Bill lists reserved matters. Paragraph 200 of that schedule specifies that conferring, imposing, modifying or removing Welsh language functions of a person is not a reserved matter, except in relation to courts.

Schedule 2, paragraph 8 of the proposed Bill ('General Restrictions') states that an Act of the Assembly cannot include provision to confer, impose, modify or remove a function of a Minister of the Crown without the consent of the appropriate Minister. This reflects the provisions of the Welsh Language (Wales) Measure 2011. However the proposed Bill also requires the consent of the appropriate Minister in order for an Act of the Assembly to make provision for conferring or imposing functions on government departments and reserved authorities, or for modifying or removing the functions of such persons. It appears

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Correspondence welcomed in Welsh and English



therefore that should the National Assembly decide in future to legislate for the Welsh language, following the passing of the proposed Wales Bill, it would not be able to include a provision in an Act to confer or impose Welsh language functions on government departments and reserved authorities, or modify or remove the Welsh language functions of such persons. If that is an accurate interpretation of the proposed Bill, then the National Assembly for Wales would not be able to legislate for the Welsh language in future without doing so in a context where its powers are significantly reduced in so far as government departments and reserved authorities are concerned. I would be grateful if you would confirm that this is an accurate interpretation of the potential effects on the Welsh language of paragraph 8, Schedule 2 of the proposed Bill. If so, I would appreciate an explanation of the reasons for limiting the Assembly's current powers to legislate for the Welsh language in this way.

If my interpretation is accurate then it would be a matter of grave concern as government departments and reserved authorities provide a very wide range of services to the people of Wales, services that many people are obliged to use and many of which have been available in Welsh for quite some time.

I fear that paragraph 8, Schedule 2 of the proposed Bill, should the Bill become law, would lead some government departments and reserved authorities to question the Assembly's powers to make Welsh language duties specifically applicable to them in accordance with the Welsh Language (Wales) Measure 2011, without the consent of the appropriate UK Minister. I would appreciate an undertaking from you that passing the proposed Bill would not effect implementation of the Welsh Language (Wales) Measure 2011 in this or in any other way.

Paragraph 11(1)(b), Schedule 2 of the proposed Wales Bill specifies that an Act of the Assembly cannot modify or remove a Welsh language function of a Minister of the Crown without the consent of the appropriate UK Minister. I would appreciate an explanation of the reasons for referring specifically to Welsh language functions within this paragraph. I would also like to know the reasons why this paragraph requires the Assembly to seek the consent of the appropriate Minister in order to modify or remove a Welsh language function of a Minister of the Crown, rather than require the Assembly to consult with the appropriate Minister, as is required in order to modify or remove other certain types of functions of a Minister of the Crown.

On another matter, I would appreciate an update on progress in implementing the following recommendation made by the Silk Commission in relation to the Welsh language:

*'We believe that all the areas mentioned by the Commissioner should be reviewed by the UK and Welsh Governments with a view to amending the law to give equal status to the Welsh language. More generally, we believe that the UK Government and Welsh Government should systematically assess and then keep under review the way in which the Welsh language is used across government.'*



Comisiynydd y  
Gymraeg  
Welsh Language  
Commissioner

I wrote to your predecessor on this matter and received a reply in December which noted the following:

*'The Government will continue to seek opportunities to revise laws which do not provide equal status for the Welsh language. This includes legislation on registration where the General Registry Office, part of HM Passport Service, is working with the Wales Office and Welsh Government to seek appropriate legislative opportunities to introduce amendments'* (my translation of a letter received in Welsh only).

I would appreciate an update on progress since December in implementing this recommendation, as well as a response to the questions raised above in relation to the proposed Wales Bill. As the proposed Bill is swiftly making its way through Parliament, I would greatly appreciate a prompt response to this letter.

Yours sincerely

**Meri Huws**  
Welsh Language Commissioner

Huw Irranca-Davies  
Cadeirydd y Pwyllgor Materion Cyfansoddiadol a  
Deddfwriaethol

14 Gorffennaf 2016

Annwyl Huw

### Ystyried Goblygiadau Ariannol Bil Cymru

Yn ein cyfarfod ar 6 Gorffennaf 2016, bu'r Pwyllgor Cyllid yn ystyried goblygiadau ariannol Bil Cymru a llythyr y Llywydd at holl Aelodau Seneddol Cymru ar 5 Gorffennaf yn cynnig cyfres o welliannau i'r Bil.

Mae nifer o ddarpariaethau yn y Bil a oedd o ddiddordeb i'r Pwyllgor, yn arbennig *Cymal 12 ar reolaeth ariannol, cyfrifon ac archwilio*. Mae'r Pwyllgor yn ystyried bod wyth prif fater yn bodoli mewn perthynas â'r darpariaethau ariannol, ac er gwybodaeth atodaf y rhain fel Atodiad A.

Buom yn trafod dileu gofyniad i gynnal refferendwm i ddatganoli cyfraddau treth incwm yng Nghymru. Byddai gwelliant arfaethedig y Llywydd yn golygu y byddai pŵer y Trysorlys yn amodol ar gydsyniad drwy benderfyniad gan y Cynulliad. Trafododd y Pwyllgor a ddylai'r penderfyniad hwn fod yn destun uwch-fwyafrif a chredwn fod hwn yn faes pwysig y dylai eich Pwyllgor ei ystyried yn ogystal â'r defnydd o uwch-fwyafrif ar gyfer materion eraill o bwys arwyddocaol.

Roedd gan y Pwyllgor ddiddordeb hefyd yn y darpariaethau ar bwerau benthyca sydd ar gael i Lywodraeth Cymru. Mae Deddf Cymru 2014 yn rhoi pwerau benthyca i Lywodraeth Cymru fuddsoddi mewn prosiectau cyfalaf. O 2018 ymlaen, bydd Gweinidogion Cymru yn gallu benthyg hyd at £500m i fuddsoddi mewn meysydd cyfrifoldeb sydd wedi'u datganoli. Mae darpariaeth yn Neddf 2014 ar gyfer benthyca hyd at £500m i gefnogi gwariant refeniw i helpu i reoli amrywiadau cyllidebol a allai ddigwydd o ganlyniad i ddatganoli trethi.



Roedd y Pwyllgor a'n rhagflaenodd wedi codi'r mater o bwerau benthyca a sut mae gan y Llywodraeth lai o allu benthyca nag awdurdodau lleol yng Nghymru. Byddem yn gobeithio y byddai hyn yn cael ei ailystyried yn y Bil hwn.

Yn anffodus, oherwydd yr amserlen ar gyfer ystyried y Bil yn Nhŷ 'r Cyffredin, teimlai'r Pwyllgor fod ei waith craffu wedi cael ei gwtogi a'n gallu i ddylanwadu ar hyn y Bil wedi bod yn gyfyngedig, ond rydym yn gobeithio y bydd ein hystyriaeth yn ddefnyddiol i'r Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol.

Rwy'n anfon copi o'r llythyr hwn at Alun Cairns AS, Ysgrifennydd Gwladol Cymru, ac rydym yn edrych ymlaen at ganlyniad ymchwiliad eich Pwyllgor.

Yn gywir

A handwritten signature in black ink, appearing to read 'Simon Thomas'.

**Simon Thomas AC**  
**Cadeirydd**



## **Cymal 12 Rheolaeth ariannol, cyfrifon ac archwilio**

### **Diogelwch ychwanegol ynghylch awdurdodi a defnyddio adnoddau**

Er bod Bil Cymru yn rhoi diogelwch o ran paratoi cyfrifon priodol a threfniadau archwilio, nid yw'n darparu:

- mai dim ond yn unol â deddfwriaeth neu awdurdodiad gan y Cynulliad y gellir rhoi arian o Gronfa Gyfunol Cymru (WCF)
- bod defnyddio adnoddau o'r fath yn gyfyngedig i'r diben a gafodd ei awdurdodi.

### **Darpariaeth ar gyfer atebolrwydd cyrff a ariennir yn anuniongyrchol o Gronfa Gyfunol Cymru**

Nid oes unrhyw ddarpariaeth:

- bod deddfwriaeth ddilynol yng Nghymru yn gallu gwneud darpariaeth i bersonau, y mae eu cyllid yn deillio o Gronfa Gyfunol Cymru, ond nad yw'n cael ei dynnu i lawr yn uniongyrchol ohono (ee grantiau), fod yn atebol am yr arian hwnnw.

Er bod deddfwriaeth gyfredol San Steffan a Chymru yn darparu ar gyfer cyrff fel Comisiynwyr, Cyrff a Noddir gan Lywodraeth Cymru (WGSB), cyrff y GIG a chyrff Llywodraeth Leol, gallai diffyg darpariaeth achosi rhai anawsterau pe bai'r Cynulliad yn dymuno deddfu ar faterion o'r fath a dylid ei chynnwys i gryfhau sefyllfa'r Cynulliad.

## **Atodlen 7B Cyfyngiadau Cyffredinol**

### **Cydsyniad Ysgrifennydd Gwladol Cymru**

Mae Paragraff 7(5)(b) o Atodlen 7B yn golygu y bydd angen cydsyniad Ysgrifennydd Gwladol Cymru ar y Cynulliad ar gyfer darpariaethau yn neddfwriaeth Cymru sy'n atodol neu'n ganlyniadol i ddarpariaethau sy'n ymwneud â gweithdrefnau cyllidebol neu drethi datganoledig. Nid yw'n glir pam fod angen cydsyniad gan na fydd hyn yn cael unrhyw effaith y tu hwnt i weithdrefnau ariannol y Cynulliad, felly dylid ei ddileu.

Mae Paragraff 7(6) o Atodlen 7B yn diffinio gweithdrefnau cyllidebol. Mae angen eglurhad ynghylch cynnwys y paragraff hwn.

### **Cyfansoddiad y Pwyllgor sy'n goruchwylio'r Archwilydd Cyffredinol**

Mae Paragraff 5(6) o Atodlen 7B yn caniatáu ar gyfer rhoi'r swyddogaethau i oruchwylio'r Archwilydd Cyffredinol i un o Bwyllgorau'r Cynulliad (y Pwyllgor Cyllid



ar hyn o bryd). Byddai Pwyllgor o'r fath yn ddarostyngedig i'r un cyfyngiadau o ran cyfansoddiad ag sydd gan y Pwyllgor Archwilio (PAC) ar hyn o bryd yn adran 30 o Ddeddf Llywodraeth Cymru 2006.

O gofio y bydd y Bil yn galluogi'r Cynulliad i addasu adran 30 mae'r darpariaethau hyn yn Atodlen 7B yn cyfyngu yn ddiangen a dylid eu dileu.

### **Cymhwysedd i ychwanegu at y rhestr o 'bersonau perthnasol' - taliadau i mewn ac allan o Gronfa Gyfunol Cymru**

Mae Paragraff 7(7) o Atodlen 7 yn cynnwys rhestr o "bersonau perthnasol" sy'n cael eu hariannu'n uniongyrchol gan Gronfa Gyfunol Cymru. Dylai'r Cynulliad fod yn gallu ychwanegu at y rhestr hon, ond nid dileu unrhyw beth ohoni, er mwyn galluogi corff sy'n annibynnol ar Lywodraeth Cymru i fod yn annibynnol yn ariannol hefyd lle bo'n briodol. Byddai angen diwygio Deddf Llywodraeth Cymru 2006 drwy Fil Cymru er mwyn gwneud hynny. Yn yr un modd, dylai'r Cynulliad fod yn gallu deddfu mewn perthynas â phersonau sy'n atebol i wneud y taliad i mewn i'r Gronfa.

### **Gwelliannau a awgrymwyd i gymalau Deddf Llywodraeth Cymru 2006 drwy Fil Cymru**

#### **Cyllideb ddeddfwriaethol**

Mae Deddf Cymru 2014 yn caniatáu i'r Cynulliad symud i gyllideb ddeddfwriaethol. Mae Adran 124 o Ddeddf Llywodraeth Cymru 2006 yn galluogi'r Cynulliad i newid ei drefniadau cyllidebol yn y dyfodol heb yr angen am ddiwygiadau pellach drwy Ddeddf Seneddol. O ganlyniad, ni fyddai angen penderfyniad cyllidebol ar gyllideb ddeddfwriaethol, ac felly dylid dileu 'resolution' o Adran 124 a dylid cyflwyno gwelliannau canlyniadol priodol i adrannau 125 i 128.

### **Archwiliadau gan y Rheolwr a'r Archwilydd Cyffredinol**

Mae Adran 136 o Ddeddf Llywodraeth Cymru 2006 yn rhoi mynediad i'r Rheolwr a'r Archwilydd Cyffredinol i gyrff cyhoeddus datganoledig Cymru at ddibenion archwilio gan Senedd y DU. Nid yw hyn wedi cael ei ddefnyddio hyd yn hyn, ac nid oes angen darpariaeth o'r fath yn yr Alban nac yng Ngogledd Iwerddon.

O ystyried bod Llywodraeth Cymru a'r Cynulliad yn endidau ar wahân, gellid dadlau nad oes angen y ddarpariaeth hon ar gyfer Cymru bellach ac y dylai gael ei hepgor a chyflwyno gwelliannau canlyniadol priodol i Ddeddf Archwilio Cenedlaethol 1983.





## **Deddf Llywodraeth Cymru 1998 - cymalau sydd heb eu datrys**

Er bod Cymal 12 o Fil Cymru yn gwneud darpariaeth i'r Cynulliad ddeddfu ar drefniadau archwilio, byddai'r Cynulliad yn dal i fethu â deddfu ar bwerau'r Archwilydd Cyffredinol i gynnal archwiliadau gwerth am arian. Ni ellir diwygio Adrannau 145 a 145A o Ddeddf Llywodraeth Cymru 1998, sy'n gwneud darpariaethau ar gyfer bwerau'r Archwilydd Cyffredinol i gynnal archwiliadau gwerth am arian, am eu bod wedi'u diogelu ar hyn o bryd o dan Atodlen 7 o Ddeddf Llywodraeth Cymru 2006.

Mae hyn yn cyfyngu'r Cynulliad rhag creu set safonol o ddarpariaethau archwilio gwerth am arian ar draws yr holl gyrff cyhoeddus datganoledig. Er mwyn sicrhau bod posibilrwydd cael darpariaethau cyson ar gyfer archwiliadau gwerth am arian, dylai fod yn bosibl diwygio Adrannau 145 a 145A o Ddeddf Llywodraeth Cymru 1998.



Huw Irranca-Davies  
Chair, Constitutional and Legislative Affairs  
Committee

14 July 2016

Dear Huw,

### Consideration of the Financial Implications of the Wales Bill

At our meeting on 6 July 2016, the Finance Committee considered the financial implications of the Wales Bill and the Presiding Officer's letter of 5 July 2016 to all Welsh Members of Parliament proposing a series of amendments to the Bill.

There are a number of provisions in the Bill that were of interest to the Committee, in particular *Clause 12 Financial control, accounts and audit*. The Committee considers there are eight main issues in relation to the financial provisions, and for your information I attach these as Annex A.

We discussed the removal of a referendum requirement to devolve Welsh rates of income tax. The Presiding Officer's proposed amendment would make the Treasury power conditional on consent by way of a resolution of the Assembly. The Committee discussed whether this resolution should be subject to a supermajority and we believe this is an important area that your Committee should give consideration to as well as the use of the supermajority for other matters of significant importance.

The Committee were also interested in the borrowing powers provisions available to the Welsh Government. The Wales Act 2014 gives the Welsh Government borrowing powers to invest in capital projects. From 2018, Welsh Ministers will be able to borrow up to £500m to invest in devolved areas of responsibility. The 2014 Act also provides for up to £500m of borrowing to support revenue spending to help manage budgetary fluctuations that may occur as a result of tax devolution.



Our predecessor Committee had raised the issue of borrowing powers and how the Government has less borrowing ability than local authorities in Wales. We would hope this would be revisited in this Bill.

Unfortunately due to the timetable for consideration of the Bill by the House of Commons, the Committee felt its scrutiny has been curtailed and our ability to influence the passage of the Bill has been limited, but we hope our consideration will be useful to the Constitutional and Legislative Affairs Committee.

I am copying this letter to Alun Cairns MP, Secretary of State for Wales and we look forward to the outcome of your Committee's inquiry.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Simon Thomas". The signature is written in a cursive, slightly slanted style.

**Simon Thomas AM**  
**Chair**



## **Clause 12 Financial control, accounts and audit**

### **Additional protection regarding authorisation and use of resources**

Although the Wales Bill provides safeguards covering preparation of appropriate accounts and audit arrangements, it does not provide:

- that funds can only be issued from the Welsh Consolidated Fund (WCF) in accordance with legislation or authorisation by the Assembly
- for the use of such resources are limited to the purpose for which they are authorised.

### **Provision for bodies indirectly funded from WCF to be held accountable**

There is no provision for:

- subsequent Welsh legislation being able to make provision for persons, whose funding is derived from the WCF but not drawn down directly from it (e.g. grants), being made accountable for these funds.

Although current Westminster and Welsh legislation provides for bodies such as Commissioners, Welsh Government Sponsored Bodies (WGSB), NHS bodies, Local Government bodies, lack of provision could cause some difficulties if the Assembly wished to legislate on such matters and should be included to strengthen the Assembly's position.

## **Schedule 7B General Restrictions**

### **Secretary of State for Wales consent**

Schedule 7B Paragraph 7(5)(b) means the Assembly will require consent from the Secretary of State for Wales for provisions in Welsh legislation which are incidental to or consequential on provisions which relate to budgetary procedures or devolved taxes. It is unclear as to why consent is necessary given this will have no impact beyond the Assembly's financial procedures and should be removed.

Schedule 7B Paragraph 7(6) defines budgetary procedures. The inclusion of this paragraph needs to be clarified.

### **Composition of Committee with oversight of Auditor General**

Schedule 7B Paragraph 5(6) allows for the conferral of functions of oversight of the Auditor General on an Assembly Committee (currently Finance Committee). Such a Committee would be subject to the same restrictions on composition as are currently set for the Audit Committee (PAC) in section 30 of GOWA 2006.



Given that the Bill will allow the Assembly to modify section 30 these provisions of Schedule 7B are unnecessarily restrictive and should be removed.

### **Competence to add to list of ‘relevant persons’ – payments into and out of the WCF**

Schedule 7 Paragraph 7(7) includes a list of “relevant persons” which are directly funded from the WCF. The Assembly should be able to add but not remove from this list so it could enable a body independent of Welsh Government to also be financially independent where appropriate. This would need to be amended in GOWA 2006 via the Wales Bill. Similarly the Assembly should be able to legislate in respect of persons liable to make payment into the Fund.

### **Suggested amendments to GOWA 2006 clauses via Wales Bill**

#### **Legislative budget**

The Wales Act 2014 allows the Assembly to move to a legislative budget. Section 124 of GOWA 2006 enables the Assembly to change its future budget arrangements without the need for further amendments by Act of Parliament. Consequently, a legislative budget will not require a budget resolution and so ‘resolution’ should be removed from Section 124 and appropriate consequential amendments made to sections 125 to 128.

#### **Examinations by Comptroller and Auditor General**

GOWA 2006 Section 136 gives the Comptroller and Auditor General access to devolved Welsh public bodies for auditing purposes by the UK Parliament. This has not been used to date and such a provision is not required in Scotland or Northern Ireland.

Given that the Welsh Government and Assembly are separate entities it could be argued this provision is no longer required for Wales and should be omitted with appropriate consequential amendments made to the National Audit Act 1983.

#### **GOWA 1998 - clauses outstanding**

Although Clause 12 of the Wales Bill makes provision for the Assembly to legislate on audit arrangements, the Assembly would still not be able to legislate on the Auditor General’s powers to conduct value for money audits. Sections 145 and 145A in GOWA 1998, which make provisions for the Auditor General’s powers to conduct value for money audits, cannot be amended because they are currently protected under Schedule 7 of GOWA 2006.



This restricts the Assembly from creating a standardised set of value for money audit provisions across all devolved public bodies. To ensure the possibility of consistent provisions for value for money audits, there should be the ability to amend Sections 145 and 145A in GOWA 1998.





Dr Tomos Dafydd Davies  
Special Adviser to the Secretary of State for Wales

15fed Awst 2016.

Annwyl Tomos

Diolch am ddanfon atom gopi o Fil Cymru ynghyd â'r ddogfen **Justice in Wales Working Group - Terms of reference**.

On behalf of our member churches and organisations, we have been following with interest the progress of the Wales Bill. Churches are keen to see a robust and long lasting settlement resulting from the legislative scrutiny of this Bill. In particular, we hope that legislative means might be found to 'Brexit-proof' the Bill so that further extensive amendment is not required when the UK leaves the European Union in due course, and that the Welsh Assembly and Welsh Government may be able to plan ahead as to the additional responsibilities they will have once powers are repatriated from the EU.

We warmly welcome the establishment of the Justice in Wales Working Group and the decision to make its composition and terms of reference known publicly. We hope that the names of the Welsh Government's representatives may also be made known in due course.

We are, however, a little concerned at some aspects of the terms of reference. In particular, the preamble and some of the specific parts of the remit refer to *the emerging body of Welsh law made by the National Assembly for Wales*. We welcome the desire to ensure that this part of Welsh law is incorporated fully into the administration of justice in the England and Wales legal system. However, we would hope that the Working Group will also consider two other areas of emerging Welsh law:

1. Laws made in Westminster which apply wholly or mainly to Wales (not least the Wales Bill and its predecessors).
2. The consequence of Westminster or UK Government ministers changing law in England which is not changed in Wales, leaving residual Welsh law, being the previous England & Wales law now applying only in Wales. Our member churches have been particularly aware of this in the field of the Ecclesiastical Exemption Regulations for Listed Buildings, which were amended in England some years ago, but the old English regulations remain in place for Wales only. We are aware that there are an increasing number of other examples. This can cause confusion even to specialists in the area concerned, and we would urge that the Working Party consider carefully how full account might be taken of this kind of "Welsh law" within the England and Wales justice system.

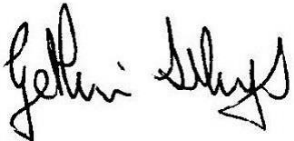
In terms of democratic accountability, we are of the view that the introduction of "English votes for English laws" through the Standing Orders of the House of Commons means that future 'residuary Welsh law' – when law is changed in England but not in Wales – will be enacted with diminished scrutiny by elected representatives in Wales, and would encourage the Working Party to consider ways in which this unintended consequence might be mitigated.

**Oddi wrth / From: Parch./Revd Gethin Rhys**  
**Swyddog Polisi'r Cynulliad Cenedlaethol / National Assembly Policy Officer**

We would therefore suggest that the inter-governmental protocol should cover not only *the procedures for notifying interested parties of impending Assembly legislation* but also procedures for notifying interested parties of impending Westminster legislation that will change the law in England but not in Wales, leading to divergence between the law applying in the respective countries.

We wish the Working Party well in its work, and are grateful for this opportunity to contribute towards it.

Yr eiddoch yn gywir,



Gethin Rhys (Parch.)  
Swyddog Polisi



## Ymgynghoriad Pwyllgor MCAD am Fil Cymru 2016-17: Ymateb gan Cytûn

Ymateb gan Cytûn  
Response from Cytûn

### Cyflwyniad

1. Mae Cytûn yn cynrychioli prif enwadau Cristnogol Cymru a nifer o fudiadau Cristnogol eraill. Gellir gweld rhestr gyflawn o'n haelodau yn: <http://www.cytun.org.uk/ni.html> Mae gan yr enwadau sy'n aelodau ryw 172,000 o oedolion sy'n aelodau gweithredol, a chyswllt â nifer helaeth o blant, pobl ifainc ac oedolion eraill ymhob cymuned ar draws Cymru.
2. Mae gan rai o'n haelod eglwysi hanes hir o ymgyrchu dros a chefnogi datganoli i Gymru; mae eraill yn cadw safiad niwtral am yr egwyddorion hyn, ond maent oll wedi ymrwymo i ymwneud yn adeiladol â'r Cynulliad Cenedlaethol a Llywodraeth Cymru.

### Bil Cymru drafft 2015

3. Fe fu i Cytûn a nifer o'i aelod eglwysi gefnogi dau adroddiad Comisiwn Silk yn 2012 a 2014. Roedd yna gefnogaeth eang ymysg ein haelodau i egwyddorion datganoli deddfwriaethol a amlinellwyd ym mharagraff 3.3.3 yr ail adroddiad<sup>1</sup>. Byddem yn tynnu sylw arbennig at egwyddorion Eglurdeb, Cydlyniant a Sefydlogrwydd. Mae'r egwyddorion hyn wedi derbyn cymeradwyaeth Llywodraethau'r DU a Chymru.
4. Fe ymatebodd Cytûn ar ran ei aelodau i Fil Cymru drafft 2015, gan gefnogi argymhelliad y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol y dylid oedi'r Bil ar gyfer ystyriaeth bellach, ac y dylai unrhyw Fil pellach fod yn ddeddfwriaeth gyfansawdd ddwyieithog. Yn ogystal â'r rhesymau y bu i'r Pwyllgor eu cyflwyno am oedi o'r fath, a methiant y Bil i arddangos yr eglurdeb, cydlyniant a sefydlogrwydd yr oeddem yn eu dymuno, fe fynegom y farn y dylai penderfyniadau parthed aelodaeth y DU yn yr Undeb Ewropeaidd a diwygio Deddf Hawliau Dynol 1998 flaenori pasio Bil Cymru, oherwydd fel arall fe fyddai angen yn fuan ddiwygio pellach ar setliad sydd i fod yn barhaol.

### Pryderon sy'n parhau parthed Bil Cymru 2016-17

5. Mae Cytûn wedi cymryd rhan yn nhrafodaethau'r Pwyllgor am y Bil drafft presennol, ac hefyd wedi gohebu â Swyddfa Cymru parthed Gweithgor Cyfiawnder yng Nghymru a'i gylch gorchwyl. Fe gyhoeddwyd yr ohebiaeth honno ar wefan Loomio y Pwyllgor.
6. Tra'n croesawu'r gwelliannau a wnaed ers Bil drafft 2015, a'r datganoli ar drefniadau etholiadol a mewnol y Cynulliad, rhai trethi a rhai cyfrifoldebau pellach parthed ynni a chlodiant, rydym yn parhau yn bryderus am nifer o agweddau ar y Bil. Mae llawer o'r rhain wedi eu codi gan ymatebwyr eraill hefyd, felly rydym ond yn eu cyflwyno'n gryno yma:
  - 6.1 Mae nifer a rhychwant y materion a gedwir yn ôl yn Atodlen 1 Rhan 2 y Bil yn ymddangos i ni fel petai'n cyfyngu'n sylweddol ar "ofod i ddeddfu" y Cynulliad, yn ôl diffiniad yr Athro Thomas Watkin. Byddem yn tynnu sylw'r Pwyllgor at yr enghreifftiau a gynigir gan Wasanaeth Ymchwil y Cynulliad yn ei gyhoeddiad *Bil Cymru – materion a gedwir yn ôl a'u heffaith ar gymhwysedd deddfwriaethol y Cynulliad*. Rydym yn pryderu'n benodol am y materion a gedwir yn ôl sy'n ymddangos fel petaent yn cyfyngu ar allu'r Cynulliad i ddeddfu yn y meysydd nodwyd ar bapur pleidleisio refferendwm 2011. Rydym wedi rhoi rhestr o'r materion hynny ym mhara 7 isod. Rydym hefyd yn gofidio nad yw'r Nodiadau Esboniadol i'r Bil yn cynnig rhesymeg dros gadw'n ôl materion penodol.

<sup>1</sup><http://webarchive.nationalarchives.gov.uk/20140605075122/http://commissionondevolutioninwales.independent.gov.uk/files/2014/03/Grymuso-a-Chyfrifoldeb-Pwerau-Deddfwriaethol-i-Gryfhau-Cymru.pdf>

- 6.2 Er bod pwerau deddfu'r Cynulliad wedi eu cyflwyno yn y Bil ar ffurf "pwerau a gedwir yn ôl" – h.y. mae popeth wedi'i ddatganoli oni bai iddo gael ei gadw'n ôl – mae datganoli pwerau Gweinidogion y Goron i Weinidogion Cymru yn parhau i fod ar ffurf "rhoddi pwerau", ac mae cryn dipyn o'r Bil yn rhestru materion o'r fath sydd i'w datganoli ac yn caniatáu datganoli fesul tipyn pellach trwy Orchmynion y Cyfrin Gyngor. Mae hyn yn parhau i fod yn wahanol i fodlau datganoli yr Alban a Gogledd Iwerddon, sy'n alinio datganoli deddfwriaethol a gweinyddol lawer yn agosach ar sail cadw pwerau'n ôl. Byddem yn pwysu'n gryf, yn enw egwyddor eglurder i bobl Cymru, y dylid mabwysiadu model tebyg yn achos datganoli i Gymru.
- 6.3 Yn yr un modd, mae'r rhestr o "gyrff cyhoeddus Cymreig" yn Atodlen 4 yn golygu fod cyfrifoldeb dros gyrff cyhoeddus yn cael ei bennu trwy ddull pwerau dyroddedig, yn hytrach na chynnwys yn y Bil restr o gyrff cyhoeddus a gedwir yn ôl, gyda phob un arall wedi ei ddatganoli. Mae Adran 21 yr Atodlen honno yn dileu'r ddyletswydd ar Weinidogion y Goron i drafod gyda Gweinidogion Cymru parthed cyrff traws-ffiniol. Mae hyn yn lleihau gallu Gweinidogion Cymru i ddylanwadu ar y cyrff hynny, ac o ran eglurder a chysondeb mae'r un ystyriaethau yn berthnasol fan hyn ag ym mharagraff 5.2.
- 6.4 Mae i'r cymysgedd modelau hyn y posibilrwydd o greu canlyniadau annisgwyl. Er enghraifft, cymerer y cytundeb cyflogaeth newydd cyfredol ar gyfer meddygon iau yn Lloegr. Mae'r cytundeb newydd wedi'i gyflwyno trwy rymoedd Gweinidogion y Goron sy'n gymwys i Loegr yn unig gan fod y grymoedd cyfatebol wedi'u datganoli i Weinidogion Cymru. Ond pe byddai Senedd y DU yn deddfu ar gyfer y cytundeb newydd hwn, fe allai wneud hynny yn achos Cymru hefyd – ac ni allai'r Cynulliad ei wyrddroi gan fod materion cyflogaeth wedi eu cadw'n ôl trwy eithriad H1 a rheoli proffesiynau meddygol wedi'u cadw'n ôl dan Fater G1 (c).
- 6.5 Mae'r eglwysi Cristnogol wedi chwarae rôl arbennig wrth gadw'r Gymraeg yn iaith fyw ym mywyd pob dydd y gymdeithas. Rydym yn pryderu'n arbennig felly am y cyfyngiadau penodol yn y Bil ynghylch deddfu parthed y Gymraeg mewn meysydd nad ydynt wedi eu datganoli. Mae Atodlen 1 para 200 fel petai'n datganoli pob dim parthed yr iaith Gymraeg a chyrrff cyhoeddus, nes iddo gael ei gyfosod gydag Atodlen 2 cymal 11(1)(b) sy'n nodi na all y Cynulliad newid unrhyw ddyletswydd ar Weinidog y Goron parthed y Gymraeg heb ei ganiatâd.
- 6.5.1 Pan ystyrir gyda hyn Atodlen 4 (gweler ein para 6.3) mae'n arwain at leihad sylweddol yng ngallu'r Cynulliad i ddeddfu parthed defnydd y Gymraeg gan gyrff cyhoeddus a gedwir yn ôl, a gallu Gweinidogion Cymru i ddylanwadu ar benderfyniadau am yr iaith mewn cyrff cyhoeddus trawsffiniol.
- 6.5.2 Mae'r sefyllfa yn fwy cymhleth eto, oherwydd ni fyddai'r Bil hwn yn cael ei ôl-ddyddio, ac felly byddai'r cyrff cyhoeddus hyn a gedwir yn ôl yn parhau i fod yn ymrwymedig o ran eu dyletswyddau presennol dan Gynlluniau'r Iaith Gymraeg neu Safonau'r Gymraeg dan y ddeddfwriaeth bresennol – ond ni ellid newid y rhain trwy ddeddf, gan olygu y byddai tri chynllun cyfochrog o reoleiddio parthed y Gymraeg a chyrrff cyhoeddus.
- 6.6 Rydym yn gresynu na wneir fawr ddim yn Atodlen 1 Rhan 2 (rhestr y materion a gedwir yn ôl) i gyflwyno eglurder i'r meysydd a ddatganolir yn rhannol ar hyn o bryd. Er enghraifft, fe ddatganolir addysg ar y cyfan, ond fe gedwir yn ôl cyflogau ac amodau gwaith athrawon. Yn yr un modd, fe ddatganolir rhai agweddau ar gynllunio, ond mae eraill – megis y Community Infrastructure Levy – wedi eu cadw'n ôl. Mae

yna ddwsinau o enghreifftiau tebyg lle y mae'r Cynulliad Cenedlaethol a Llywodraeth Cymru wedi eu cyfyngu gan gadw materion yn ôl rhag datblygu polisiau a ffyrdd newydd o weithredu.

- 6.7 Rydym yn croesawu sefydlu Gweithgor Cyfiawnder yng Nghymru (para 4) parthed gweithredu awdurdodaeth unedol Lloegr a Chymru, ond rydym yn gofidio efallai na fydd yn adrodd cyn i'r Bil gael ei ddeddfu. Rydym hefyd wedi cyfrannu at ac yn croesawu adroddiad Comisiwn y Gyfraith am [Ffurf a Hygyrchedd y Gyfraith sy'n Gymwys yng Nghymru](#), ac yn rhannu'r gofidiau a fynegir ynddo am allu'r dinesydd cyffredin – neu'r cyfreithiwr profiadol hyd yn oed – i fod yn sicr pa gyfreithiau yn union sy'n weithredol yng Nghymru. Rydym yn gresynu'n fawr na wnaed unrhyw ymdrech i gynnwys rhai o argymhellion yr adroddiad hwnnw yn y Bil.
- 6.8 Rydym yn gresynu hefyd nad yw egwyddor Comisiwn Silk y dylai Llywodraeth y DU a Llywodraeth Cymru gydweithredu wedi'i amlygu yn y Bil. Mae'r Gweithgor Cyfiawnder yng Nghymru yn gam i'r cyfeiriad cywir, ac felly hefyd adfer cyfarfodydd Cyngor Prydain ac Iwerddon. Ond fe ddymunem weld gweithredu argymhellion Pennod 5 adroddiad 2014 Comisiwn Silk<sup>2</sup>. Os yw ein dadansoddiad fod y setliad a ragwelir gan Fil 2016-17 yn hynod gymhleth yna fe fydd mawr angen trefniadau o'r fath i sicrhau llywodraeth gydlynus i bobl Cymru.
- 6.9 Ein barn ni yw fod yr agweddau hyn o'r Bil, o'u cymryd gyda'i gilydd, yn golygu y byddai'r setliad datganoli newydd yn llawer iawn mwy cymhleth nag ar hyn o bryd, ac y byddai lawer yn anos i gymdeithas sifil wybod at ba lefel o lywodraeth i droi er mwyn hybu polisi penodol neu ceisio gweithred weinyddol arbennig.

## Y materion a gedwir yn ôl

7. Fel y nodir ym mhara para 6.1 uchod, ein barn ni yw fod nifer o'r materion penodol a gedwir yn ôl yn Atodlen 1 Rhan 2 y Bil yn cyfyngu ar allu'r Cynulliad i ddeddfu mewn meysydd a oedd yn ddarostyngedig i benderfyniad pobl Cymru yn refferendwm 2011. Credwn fod angen cyfiawnhad llawn am gadw'n ôl meysydd y byddai pleidleisiwr deallus yn refferendwm 2011 wedi'i gredu y byddent yn cael eu datganoli yn dilyn y bleidlais, ac ni ddarperir hynny gan y Memorandwm Esboniadol presennol. Byddem am dynnu sylw arbennig at y canlynol – gan gyfeirio at yr adrannau yn Atodlen 1 ac yn nodi mewn cromfachau y maes datganoledig priodol, fel y'i rhestrir yn: <https://www.gov.uk/guidance/devolution-settlement-wales>

- 7.1 C12 Datblygu diwydiannol (datblygu economaidd)  
C14 Cymorth gydag allforio (datblygu economaidd)  
C16 Côt tafarndai (datblygu economaidd)  
C17 Masnachu ar y Sul (datblygu economaidd)  
D Ynni (datblygu economaidd). Rydym yn gofidio'n arbennig am faterion D3 glo (ag eithrio adfer y tir) a D6 arbed ynni, y ddau yn feysydd o bwys cyfredol a hanesyddol i Gymru.  
E Cludiant (ffyrdd a chludiant). Fe ddeallwn yr angen am gadw'n ôl materion 102, 103, 107, 111, 112, 113, 114, 117, 118, 119, 124 a 125 lle mae angen cysondeb ar draws y DU, ond fe ymddengys y gweddill i ni yn faterion addas i'w datganoli. Mae mater 115 Pont Hafren yn fater arbennig o sensitif yng Nghymru. Mae'r eithriad E2 (a) yn rhwystro cymorthdal i wasanaethau nwyddau ar y rheilffyrdd yng Nghymru yn ddirgelwch i ni (ffyrdd a chludiant, amgylchedd).  
G1 (c) – Rheoli proffesiynau iechyd (iechyd)

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<sup>2</sup> Gweler nodyn 1 uchod.

H1 Cyflogaeth a chyd-berthynas ddiwydiannol, i'r graddau fod y maes hwn hefyd yn ymwneud â datblygu economaidd a gwasanaethau cyhoeddus wedi eu datganoli.

H2 Byrddau hyfforddi diwydiannol (datblygu economaidd, addysg)

H3 Chwilio am waith a chefnogaeth gyda hynny (datblygu economaidd, addysg)

J1-J5 Iechyd a meddyginiaethau (iechyd) – tra'n derbyn y gallai fod angen cadw'n ôl rhai materion cyfyng eu diffiniad er cysondeb ar draws y DU.

K5 Caeau chwarae (chwaraeon a hamdden)

L12 176, 177 Trefniadau ar gyfer plant, mabwysiadu; gofal, goruchwyllo neu gwarchod plant (llesiant cymdeithasol)

M3 "Agricultural charges and debentures" (amaethyddiaeth)

M4 184 (c) Cynllunio parthed rheilffyrdd (ffyrdd a chludiant)

M4 185 "Community infrastructure levy" (datblygu economaidd, ffyrdd a chludiant, llywodraeth leol)

M4 186 Pryniant gorfodol – dylid ei ddatganoli o leiaf i'r graddau ei fod yn ymwneud â materion datganoledig.

M4 187 Rheoliadau adeiladu (tai, datblygu economaidd). Rydym yn pryderu'n arbennig am rychwant eang mater 187 (c) "services, fittings or equipment provided in or in connection with buildings"

N4 191 – Byddem yn awgrymu hepgor gwyliau banc o'r rhestr hon (diwylliant, twristiaeth)

N8 Y Comisiynydd Plant (llesiant cymdeithasol)

N9 Cyflogau ac amodau gwaith athrawon ysgol (addysg)

7.2 Credwn y byddai dileu'r materion hyn o'r rhestr yn symleiddio'r Bil ac yn adfer rhywbeth tebyg i'r sefyllfa bresennol o ran datganoli deddfwriaethol. Byddai hyn yn cyflwyno mwy o eglurder a chysondeb i'r trefniadau datganoli yn hynny o beth. Fe fyddai methu â gwneud hynny yn cyfyngu ar allu deddfwriaethol y Cynulliad i raddau na fyddai'n gydnaws ag asesiad teg o ganlyniad refferendwm 2011.

7.3 Nid ydym yn yr ymateb hwn yn gwneud unrhyw awgrymiadau parthed ehangu gallu deddfu'r Cynulliad i feysydd hollol newydd, er y byddai rhai o'n haelodau yn dymuno hynny.

### **Beth nesaf?**

8. Nid yw aelodau Cytûn yn unfryd unfarn am sut i argymhell i'r Pwyllgor y dylid bwrw ymlaen. Mae rhai o'n haelodau o'r farn y byddai'n well pe byddai'r Cynulliad Cenedlaethol yn gwrthod cydsyniad deddfwriaethol ar gyfer rhan neu'r cyfan o'r Bil, yn parhau i weithio o fewn y ddeddfwriaeth bresennol ac yn aros am Fil cyfansawdd yn nes ymlaen. Credant hyn oherwydd:

8.1 diffygion ac amwysedd y Bil, fel y cyflwynwyd uchod, a'r cymhlethu a ddeuai o ganlyniad o ran dealltwriaeth y cyhoedd am lywodraeth ddatganoledig.

8.2 y potensial i gulhau cymhwysedd deddfwriaethol y Cynulliad a grymoedd Gweinidogion Cymru parthed rhai cyrff cyhoeddus.

8.3 y gallai Bil yn y dyfodol gymryd ystyriaeth lawn o'n hymadawiad â'r Undeb Ewropeaidd.

9. Mae eraill o'n haelodau o blaid gwneud cymaint o welliannau ag y gellir i'r Bil presennol wrth iddo deithio drwy'r Senedd, ond y dylid wedyn ei dderbyn. Credant hyn oherwydd:

9.1 Yr enillion o ran cymhwysedd y cyfeirir atynt ym mharagraff 5 uchod.

- 9.2 Yr annhebygrwydd y gellid cael amser Seneddol ar gyfer Bil arall am nifer o flynyddoedd.
- 9.3 Am y byddai sicrhau model “cadw pwerau’n ôl” cyn i’r DU ymadael â’r Undeb Ewropeaidd yn golygu y byddai pwerau a ddeuai yn ôl o’r Undeb Ewropeaidd wrth i ni ymadael yn cael eu datganoli yn unionsyth i’r Cynulliad Cenedlaethol, oni bai bod San Steffan yn deddfu fel arall. Pe arhosem gyda’r model pwerau dyroddedig, yna fe ddeuai’r holl bwerau hyn i San Steffan, a byddai angen deddfwriaeth bellach i’w datganoli i’r Cynulliad Cenedlaethol, gan achosi oedi a diffyg eglurder pellach wedi’r ymadawiad. Byddai hyn yn peryglu cymhlethu’r setliad datganoli mewn meysydd megis amaethyddiaeth, yr amgylchedd a datblygu economaidd, a rennir ar hyn o bryd rhwng y Cynulliad Cenedlaethol, San Steffan a’r Undeb Ewropeaidd.
10. Dymunwn yn dda i’r Pwyllgor wrth ystyried y mater hwn, a byddwn yn falch i ddarparu unrhyw wybodaeth bellach y dymunai’r Pwyllgor.

**Gellir cyhoeddi’r ymateb hwn yn gyflawn.**

**Parch./Revd Gethin Rhys**  
**Swyddog Polisi’r Cynulliad Cenedlaethol / National Assembly Policy Officer**  
**Cytun - Eglwysi Ynghyd yng Nghymru/Churches Together in Wales**

Tel: [REDACTED]

 ***Hapus i gyfathrebu yn Gymraeg ac yn Saesneg. Happy to communicate in Welsh and English***

Mae Cytûn yn gwmni cofrestredig yng Nghymru a Lloegr | Rhif: 05853982 | Enw cofrestredig: “Cytûn: Eglwysi Ynghyd yng Nghymru/Churches Together in Wales Limited” | Mae Cytûn yn elusen gofrestrredig | Rhif: 1117071 | Cytûn is a registered company in England and Wales | Number: 05853982 | Registered name: “Cytûn: Eglwysi Ynghyd yng Nghymru/Churches Together in Wales Limited” | Cytûn is a registered charity | Number: 1117071

## CLAC consultation on the Wales Bill 2016-17: Draft response from Cytûn

### Introducti

1. Cytûn represents the main Christian denominations of Wales and a range of other Christian organisations. A full list of members can be found at: <http://www.cytun.org.uk/us.html>. The member denominations have about 172,000 active adult members, as well as contact with many children, young people and other adults in every community across Wales.
2. Some of our member churches have a long history of campaigning for and supporting devolution in Wales; others maintain a neutral stance on the principles involved, but all are committed to positive engagement with the National Assembly and the Welsh Government.

### Draft Wales Bill

3. Cytûn and many of its member churches endorsed the two reports of the Silk Commission in 2012 and 2014. There was widespread support amongst our members for the principles of legislative devolution outlined in para 3.3.3 of the second report<sup>1</sup>. We would draw particular attention to the principles of clarity, coherence and stability. These principles have received endorsement from both UK and Welsh Governments.
4. Cytûn produced on behalf of its members a response to the 2015 draft Wales Bill endorsing CLAC's recommendation that the Bill be paused for further reconsideration, and that any future Bill should be a consolidated bilingual piece of legislation. In addition to the reasons adduced by CLAC for such a pause, and the failure of the draft Bill to show the desired clarity, coherence and stability, we expressed the view that the decisions regarding the UK's membership of the European Union and on reform of the Human Rights Act 1998 should precede passage of a Wales Bill, as otherwise a supposedly lasting settlement would inevitably require further amendment in short order.

### Continuing concerns regarding the Wales Bill 2016-17

5. Cytûn has been involved in CLAC's discussions on the current draft Bill, and has also corresponded with the Wales Office regarding the Justice in Wales Working Group and its terms of reference. This correspondence has been published on the CLAC Loomio website.
6. While welcoming the improvements made since the 2015 draft Bill, and welcoming the devolution of electoral and internal arrangements for the Assembly, some taxes and some further responsibilities regarding energy and transport, we remain concerned at a number of features of the Bill. Most of these have also been raised by other respondents, so we only summarise them here:
  - 6.1 The number and variety of individual reservations in Schedule 1 Part 2 of the Bill appears to us to limit the Assembly's "legislative space", as defined by Prof. Thomas Watkin. We would draw CLAC's attention to the examples offered by the Assembly Research Service in its helpful publication [\*The Wales Bill – reserved matters and their effect on the Assembly's legislative competence\*](#). We are especially concerned at the reservations which seem to us to restrict the Assembly's ability to legislate in the areas which were referred to in the ballot paper of the 2011 referendum. We have included a list of these reservations at para 7 below. We are also concerned that the Explanatory Memorandum to the Bill does not provide a rationale for specific reservations.

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<sup>1</sup><http://webarchive.nationalarchives.gov.uk/20140605075122/http://commissionondevolutioninwales.independent.gov.uk/files/2014/03/Empowerment-Responsibility-Legislative-Powers-to-strengthen-Wales.pdf>

- 6.2 We remain concerned that although legislative powers are presented in the Bill as a “reserved powers” model – everything is devolved unless reserved – the devolution of Minister of the Crown functions to Welsh Ministers continues on a “conferred powers” model, and much of the Bill is involved in listing such powers to be devolved, and in permitting further such piecemeal devolution by Orders in Council. This remains different from the Scottish and Northern Irish patterns of devolution, where administrative and legislative devolution is much closer aligned, on a reserved powers basis. We would strongly urge that in the interests of clarity for the people of Wales, a similar model of alignment be adopted for Wales.
- 6.3 Similarly, the list of “Wales public bodies” in Schedule 4 means that responsibility for public bodies is also determined on a conferred powers model, rather than the Bill containing a list of reserved public bodies, with all others devolved. Section 21 of that Schedule removes the obligation on Ministers of the Crown to consult with Welsh Ministers regarding cross-border bodies. This reduces the Welsh Ministers’ leeway with regard to these bodies, and in terms of clarity and consistency, the same considerations apply here as in para 6.2.
- 6.4 This admixture of models may well lead to unexpected consequences. For example, consider the new employment contract for junior doctors in England. The new contract has been introduced using the powers of a Minister of the Crown which relate to England only as the corresponding powers have been devolved to Welsh Ministers. However, were the UK Parliament to legislate to impose the contract, they could do so for Wales also – and the Assembly would be unable to reverse this as employment matters are reserved by Reservation H1 and the regulation of medical professionals by Reservation G1 (c).
- 6.5 Christian churches have played a particular role in the maintenance of the Welsh language as a living language used in everyday life. We are especially concerned, therefore, at the specific limitations in the Bill on legislation with regard to the Welsh language in non-devolved areas. Schedule 1 para 200 appears to devolve all matters relating to the Welsh language and public bodies, until it is read alongside Schedule 2 clause 11(1)(b) which specifies that the Assembly may not alter any responsibility of a Minister of the Crown regarding the Welsh language without their permission.
- 6.5.1 When this is read together with Schedule 4 (see our para 6.3) this results in a considerable diminution in the Assembly’s ability to legislate with regard to use of the Welsh language by reserved public bodies, and the ability of Welsh Ministers to participate in decisions regarding the language relating to cross-border public bodies.
- 6.5.2 To add further complexity, this Bill would not be retrospective, so these reserved bodies would retain their current obligations under Welsh Language Schemes and Language Standards made under existing legislation – but these could no longer be altered legislatively, thus leading to three parallel systems of statutory regulation relating to the Welsh language and public bodies.
- 6.6 We regret that very little is done in Part 2 Schedule 1 (the list of reservations) to clarify the many areas which are currently partly devolved. For example, education is mainly devolved, but teachers’ pay and conditions are reserved. Similarly, some planning functions are devolved, but others – such as the Community Infrastructure Levy – are reserved. There are dozens of similar examples where the National Assembly and Welsh

Government are limited by reservations in their freedom to develop new devolved policies and solutions.

- 6.7 We welcome the establishment of the Justice in Wales Working Party (see our para 4) regarding the operation of the single England and Wales legal jurisdiction, but we are concerned that it may not report prior to passage of the Bill. We have also contributed to and welcomed the Law Commission's report on [The Form and Accessibility of the Law Applicable in Wales](#), and share the concerns expressed therein regarding the ability of the ordinary citizen or even the seasoned lawyer to determine exactly which laws apply in Wales. We very much regret that no attempt has been made to incorporate any of the recommendations of this report into this Bill.
- 6.8 We are concerned that the Silk Commission principle of collaboration between the UK and Welsh Governments is not reflected in this Bill. The Justice in Wales Working Party is a step in the right direction, as is the recent revival of British-Irish Council meetings. However, we would wish to see the recommendations of Chapter 5 of the 2014 Silk Commission report<sup>2</sup> being implemented. If our analysis that the settlement envisaged in the 2016-17 Bill is very complex then such arrangements will be essential to the smooth governance of the people of Wales.
- 6.9 It is our view that, taken together, these aspects of the Bill would mean that the devolution settlement would be made far more complex than is currently the case, and would make it far more difficult for civil society to know to which level of government it needs to turn to promote a particular policy or seek a particular administrative action.

#### Reserved matters

7. As noted in para 5.1 above, it is our view that a number of the specific reservations in Part 2 of Schedule 1 of the Bill restrict the Assembly's legislative competence in areas which were subject to the 2011 referendum decision of the Welsh people. We believe that there should be clear justification for reserving areas which a well-informed voter in the 2011 referendum would have believed to be devolved following that referendum, and that is not provided by the current Explanatory Memorandum. We would draw particular attention to the following – referencing the sections of Schedule 1 and noting in parentheses the devolved area concerned, as listed at: <https://www.gov.uk/guidance/devolution-settlement-wales>
- 7.1 C12 Industrial development (economic development)  
C14 Export assistance (economic development)  
C16 Pubs code (economic development)  
C17 Sunday trading (economic development)  
D Energy (economic development). We are particularly concerned at reservations D3 coal (except land restoration) and D6 energy conservation, both areas of current and historic importance to Wales.  
E Transport (highways and transport). We understand the need for reservations 102, 103, 107, 111, 112, 113, 114, 117, 118, 119, 124 and 125 where consistency is required across the UK, but the remainder appear to us to be appropriate for devolution. Reservation 115 Severn Bridge is an especially sensitive matter in Wales. Exception E(2)(a), restricting the Assembly's ability to subsidise goods services on the railways, is a mystery to us (transport, environment).  
G1 (c) – Regulation of health professions (health)

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<sup>2</sup> See note 1 above



H1 Employment and industrial relations, in so far as this area relates to economic development and to devolved public services.

H2 Industrial training boards (economic development, education)

H3 Job search and support (economic development)

J1-J5 Health and medicines (health) – while accepting that there might be need for some narrowly defined reservations to preserve consistency across the UK in some matters

K5 Sports grounds (sport and recreation)

L12 176, 177 Child arrangements, adoption; care, supervision or protection of children (social welfare)

M3 Agricultural charges and debentures (agriculture)

M4 184 (c) Planning with regard to railways (highways and transport)

M4 185 Community infrastructure levy (economic development, highways and transport, local government)

M4 186 Compulsory purchase – should be devolved at least in so far as it relates to devolved functions

M4 187 Building regulations (housing, economic development). We are especially concerned at the breadth of reservation 187 (c) “services, fittings or equipment provided in or in connection with buildings”

N4 191 – We would suggest the omission of “bank holidays” from this list (culture, tourism)

N8 The Children’s Commissioner (social welfare)

N9 School teachers’ pay and conditions (education)

7.2 We believe that if these reservations were removed, the Bill would be simplified and something approaching the status quo in devolution of legislative powers to Wales would be maintained and a greater degree of clarity and consistency would be introduced to that part of the devolution arrangements. If these reservations remain, it would limit the Assembly’s legislative competence to an extent which we believe to be incompatible with a fair assessment of the result of the 2011 referendum.

7.3 We are not in this response making proposals regarding a deliberate expansion of devolved legislative competence into entirely new areas, although some of our members would support such an expansion of devolution.

### **What should happen now?**

8. The members of Cytûn are not unanimous in their view of how to suggest that the Committee should proceed. Some of our members believe that it would be better if the National Assembly were to refuse legislative consent for all or part of this Bill, continue to work within existing legislation and await a consolidated Bill at a future date. They believe this due to:

8.1 the deficiencies and ambiguities in the Bill as outlined above and the consequent complicating of public understanding of devolved government;

8.2 the potential for narrowing the Assembly’s legislative competence and the powers of Welsh Ministers with regard to some public bodies;

8.3 the ability of a future Bill to take proper account of departure from the European Union.

9. Others of our members favour making as many improvements as might be possible to the current Bill as it proceeds through Parliament, but that it should then become law. They believe this due to:
- 9.1 The gains in competence referred to in para 5 above.
- 9.2 The unlikelihood of securing Parliamentary time for a further Wales Bill in the foreseeable future.
- 9.3 Because by enacting a “reserved powers” model of devolution prior to the UK’s departure from the European Union, repatriated powers in non-reserved areas would be automatically devolved to the National Assembly upon Brexit, unless Westminster legislated otherwise. If we remained with the current conferred powers model, all repatriated powers would come to Westminster, and further legislation would be required to devolve them to the National Assembly, which would cause delay in achieving clarity post-Brexit, and risk complicating the devolution settlement in areas such as agriculture, the environment and economic development, where competence is currently shared between the National Assembly, Westminster and the European Union.
10. We wish the Committee well with its consideration of this matter, and are happy to provide further information should the Committee so desire.

**This response may be published in full.**

**Parch./Revd Gethin Rhys**  
**Swyddog Polisi'r Cynulliad Cenedlaethol / National Assembly Policy Officer**  
**Cytun - Eglwysi Ynghyd yng Nghymru/Churches Together in Wales**

Tel: [REDACTED]

 ***Hapus i gyfathrebu yn Gymraeg ac yn Saesneg. Happy to communicate in Welsh and English***

Mae Cytûn yn gwmni cofrestredig yng Nghymru a Lloegr | Rhif: 05853982 | Enw cofrestredig: "Cytûn: Eglwysi Ynghyd yng Nghymru/Churches Together in Wales Limited" | Mae Cytûn yn elusen gofrestrdig | Rhif: 1117071 | Cytûn is a registered company in England and Wales | Number: 05853982 | Registered name: "Cytûn: Eglwysi Ynghyd yng Nghymru/Churches Together in Wales Limited" | Cytûn is a registered charity | Number: 1117071

Royal Town Planning Institute  
Cymru (RTPI Cymru)

[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

Website: [www.rtpi.org.uk/rtpi\\_cymru](http://www.rtpi.org.uk/rtpi_cymru)

20<sup>th</sup> September 2016

Dear Sir/Madam,

### **RTPI Cymru Response to: Wales Bill 2016-2017**

The Royal Town Planning Institute (RTPI) is the largest professional institute for planners in Europe, representing some 23,000 spatial planners. RTPI Cymru represents the RTPI in Wales, with 1,100 members. The Institute seeks to advance the science and art of spatial planning for the benefit of the public. As well as promoting spatial planning, the RTPI develops and shapes policy affecting the built environment, works to raise professional standards and supports members through continuous education, training and development.

The response has been formed drawing on the expertise of the RTPI Cymru Policy and Research Forum which includes a cross section of planning practitioners from the private and public sectors and academia from across Wales.

We welcome this opportunity to comment on the latest provisions set out in the Wales Bill. There are many aspects of the Bill that are linked to spatial planning, however our comments below focus on RTPI Cymru's longstanding positions in relation to key aspects of the planning system in Wales.

The current version of the Wales Bill states that the Community Infrastructure Levy (CIL) remains reserved and is therefore not devolved to Wales. RTPI Cymru believes that CIL should be fully devolved to the Welsh Government, particularly in the context of the Planning (Wales) Act 2015.

The planning system in Wales is undergoing significant changes to the way it operates, as changes set out in the Planning (Wales) Act 2015 are implemented. New Strategic Development Plans (SPDs) could provide an opportunity for CIL to be considered strategically as part of a Wales-specific funding mechanism. RTPI Cymru believes that CIL is a key planning tool and devolving it to Wales would allow it to become part of the new planning system. If it remains outside the control of the Welsh Ministers we believe it is not possible to develop it to work in harmony with the Wales planning system as a whole.

CIL by definition is a levy to fund infrastructure at the community level, not infrastructure of significance at a national or UK level. It is clearly inappropriate for powers over this to be retained at the UK level. Its role is to help fund the development proposals set out in Local Development Plans (LDPs). It is a key tool in implementing LDPs, and in particular bringing forward much needed housing sites. Decisions based around CIL need to rest with Welsh Ministers so that it can be fully integrated within the Welsh planning system to deliver benefits for communities, not with the UK.

The Welsh Government has a strong track record of implementing planning requirements such as planning conditions and Section 106 agreements in ways which reflect the particular development needs and opportunities of Wales, based on robust evidence and in consultation with all sectors. Devolving responsibility to the Welsh Government for CIL would therefore be likely to lead to its implementation in ways which support specific development interests in Wales, involving all sectors and stakeholders.

In relation to energy, RTPI Cymru supports the argument that decisions on nationally significant renewable energy projects should be devolved to Wales, as they are in Scotland and Northern Ireland. This will facilitate the ability to deliver a comprehensive renewable energy strategy in Wales. However it is important that the legislation and the devolved powers are workable and do not conflict or complicate the system. Discussions with Welsh Government are likely to highlight any such issues.

If you require further assistance, have any queries or require clarification of any points made, please contact RTPI Cymru [REDACTED]

Yours sincerely,



Dr Roisin Willmott FRTPI

**Director  
RTPI Cymru**

Huw Irranca-Davies AC  
Cadeirydd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol  
Cynulliad Cenedlaethol Cymru  
Bae Caerdydd  
Caerdydd

21 Medi 2016

Annwyl Huw,

### **Craffu ar Fil Cymru Llywodraeth y DU**

Diolch i chi am eich llythyr dyddiedig 18 Gorffennaf 2016 yn gwahodd y Pwyllgor Cydraddoldeb, Llywodraeth Leol a Chymunedau i fynegi barn am Fil Cymru. Trafododd y Pwyllgor y Bil, yn enwedig effaith y cymalau cadw ar ei gylch gorchwyl, yn ei gyfarfod ar 15 Medi 2016, a chytunwyd y dylwn ysgrifennu atoch i roi gwybod beth oedd barn y Pwyllgor.

### **Cyffredinol**

Fel y Pwyllgor a'n rhagflaenodd (Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol y Pedwerydd Cynulliad), rydym yn cefnogi'r egwyddor o symud at fodel cadw pwerau. Fodd bynnag, rydym yn pryderu nad yw dull Llywodraeth y DU o weithredu, o ran y profion cymhwysedd yn ogystal â'r profion newydd a gyflwynwyd, a nifer a chwmpas y cymalau cadw, yn gwneud braidd ddim i fynd i'r afael â'r cymhlethdodau sy'n gysylltiedig â'r model presennol nac i wella setliad cyffredinol Cymru.

Hwn fydd y pedwerydd tro y bydd y Senedd wedi deddfu i wneud newidiadau sylweddol yn setliad datganoli Cymru mewn llai nag ugain mlynedd. Yr oeddem wedi disgwyl y byddai'r newidiadau cyfansoddiadol y darperir ar eu cyfer yn y Bil yn sicrhau setliad parhaol a chadarn i Gymru. Fodd bynnag, os caiff y Bil ei basio ar ei ffurf bresennol, rydym yn pryderu na chaiff setliad o'r fath ei wireddu ac y bydd angen rhagor o ddeddfwriaeth ar y mater hwn cyn bo hir.

### **Cymalau Cadw**

Rydym yn cydnabod mai un o'r beirniadaethau mwyaf o'r Bil Cymru drafft oedd nifer y cymalau cadw a'r ffaith nad oedd sail resymegol glir ar gyfer cynnwys y cymalau hynny. Fel y cyfryw, rydym yn siomedig bod y cymalau cadw yn y Bil sy'n berthnasol i gylch gwaith y Pwyllgor heb newid



braidd ddim ar ôl craffu ar y Bil drafft. Fel ein rhagflaenydd, rydym yn pryderu y gallai'r cymalau cadw hyn leihau cymhwysedd y Cynulliad mewn rhai achosion, ac atal y Cynulliad rhag deddfu'n ddilyffethair yn y meysydd y gall eisoes ddeddfu ynddynt. Mae'n gwbl annerbyniol y gallai'r Cynulliad fod mewn sefyllfa, o dan y setliad newydd, lle na all basio Deddf y gellid bod wedi'i phasio o dan y model rhoi pwerau, na diwygio Deddf o'r fath.

Gan droi at y materion penodol a gedwir yn ôl, mae gennym bryderon difrifol am effaith mater cadw 37 (*atal, canfod ac ymchwilio i droseddau*) ar allu'r Cynulliad yn y dyfodol i ddeddfu mewn meysydd polisi allweddol, megis atal trais yn erbyn menywod, cam-drin domestig a thrais rhywiol. Pan gyflwynwyd y Bil Trais ar Sail Rhywedd, Cam-drin Domestig a Thrais Rhywiol (a wnaed yn ddeddf ac a ailenwyd maes o law yn Ddeddf Trais yn erbyn Menywod, Cam-drin Domestig a Thrais Rhywiol (Cymru) 2015 (y Ddeddf)) i'r Cynulliad, bu llawer o sôn bod Cymru yn arwain y ffordd yn y DU yn y maes hwn. Mae'n resyn o'r mwyaf felly ei bod yn debygol y bydd deddfwriaeth o'r fath y tu allan i gymhwysedd o dan y setliad newydd. Efallai y gwyddoch fod y Pwyllgor yn cynnal gwaith craffu ar ôl deddfu ar y Ddeddf ar hyn o bryd. Pe byddai'r Pwyllgor yn awyddus i argymhell newidiadau deddfwriaethol i Lywodraeth Cymru, byddai'n rhaid iddo ystyried unrhyw newidiadau y bydd Bil Cymru wedi'u gwneud i gymhwysedd deddfwriaethol y Cynulliad.

At hynny, rydym yn pryderu am effaith mater cadw 37 ar swyddogaethau llywodraeth leol, ac yn nodi y gallai hyn effeithio ar allu'r Cynulliad i roi i awdurdodau lleol ddyletswyddau a phwerau ymchwilio newydd i droseddau rheoleiddio. I raddau tebyg, rydym yn pryderu y gallai mater cadw 41 (*ymddygiad gwrthgymdeithasol*) atal y Cynulliad rhag grymuso awdurdodau i fynd i'r afael ag ymddygiad gwrthgymdeithasol, er enghraifft yng nghyd-destun tai.

Mae mwyafrif y Pwyllgor o'r farn y dylai'r Bil ddarparu ar gyfer datganoli plismona i'r Cynulliad er mwyn gwneud y sefyllfa yng Nghymru yn debyg i'r gweinyddiaethau datganoledig eraill, sydd wedi cael pwerau dros blismona ers tro. Nodwn benderfyniad diweddar Llywodraeth y DU i uno rôl y Comisiynydd Heddlu a Throseddau ym Manceinion gyda rôl y maer sydd newydd ei ethol yn yr ardal honno. Drwy wneud hyn, byddai gan y Maer hwnnw bwerau ymhell y tu hwnt i'r hyn sydd gan Gymru yn y maes polisi hwn. Felly, mae'n fwy o syndod byth bod Llywodraeth y DU o'r farn bod angen cadw'r pwerau dros blismona yn ôl yn achos Cymru.

Roedd y Bil drafft blaenorol yn cynnwys yr hyn a oedd ar y pryd yn fater cadw 171 (*diogelwch tân*), a oedd yn cynnwys eithriad ar gyfer "provision of automatic fire suppression systems in newly constructed and newly converted residential premises". Mae'r mater cadw hwn a'r eithriad wedi'u dileu ym Mil Cymru. Er bod hyn yn gam cadarnhaol i bob golwg, mae'n aneglur a fyddai chwistrellwyr tân domestig yn dod o fewn mater cadw 186 (rheoliadau adeiladu). Fe wyddoch fod y Cynulliad eisoes wedi pasio deddfwriaeth yn y maes hwn (Mesur Diogelwch Tân Domestig (Cymru) 2011). Dyma enghraifft arall o gam posibl yn ôl, a byddem yn gwrthwynebu hyn.

Rydym yn pryderu y byddai mater cadw 206 (*cyfle cyfartal, gan gynnwys pwnc Deddf Cydraddoldeb 2006 a Deddf Cydraddoldeb 2010*), fel y'i drafftwyd, yn lleihau cymhwysedd y Cynulliad, ac mae hynny'n peri siom inni. Rydym o'r farn y gallai'r mater cadw hwn amharu ar allu'r Cynulliad i ddeddfu yn y maes hwn yn y dyfodol mewn unrhyw ffordd ystyrlon.



Croesawn y cynnydd yng nghymhwysedd y Cynulliad ar gyfer etholiadau llywodraeth leol o dan y setliad arfaethedig newydd (a nodwn y darparwyd ar gyfer y cynnydd hwn yn y Bil drafft hefyd). Byddai hyn yn galluogi'r Cynulliad i ddeddfu ar gyfer bron pob agwedd ar etholiadau llywodraeth leol, gan gynnwys y sawl a gaiff bleidleisio. Mae hefyd yn chwalu unrhyw amheuaeth ynghylch gallu'r Cynulliad i ddeddfu ar gyfer y system bleidleisio, pe bai'n dymuno, sydd unwaith eto, i'w groesawu.

### **Profion cymhwysedd**

Rydym yn cydnabod bod rhai consesiynau wedi'u gwneud o ran y cyfyngiadau ar addasu cyfraith breifat, cyfraith trosedd, ac ar addasu swyddogaethau awdurdodau a gedwir yn ôl a swyddogaethau Gweinidog y Goron. Er bod hyn yn gam i'r cyfeiriad cywir, nid yw'n datrys y broblem allweddol y bydd gosod y rhain, a phrofion eraill ar gymhwysedd, yn gwneud braidd ddim i wella eglurder nac i fynd i'r afael â chymhlethdod y trefniadau presennol.

Gobeithiaf y bydd yr uchod o ddefnydd wrth ichi baratoi eich adroddiad.

Cofion cynnes



John Griffiths AC / AM  
Cadeirydd / Chair



Huw Irranca-Davies AM  
Chair- Constitutional and Legislative Affairs Committee  
National Assembly for Wales  
Cardiff Bay  
Cardiff  
CF99 1NA

21 September 2016

Dear Huw,

### **Scrutiny of the UK Government's Wales Bill**

Thank you for your letter, dated 18 July 2016 inviting the Equality, Local Government and Communities Committee's views on the Wales Bill. The Committee considered the Bill, in particular the impact of the reservations on its remit, at our meeting on 15 September 2016, and agreed that I should write to you to report back its views.

#### **General**

Like our predecessor committee (the Fourth Assembly's Communities, Equality and Local Government Committee), we support the principle of a move to a reserved powers model. However, we are concerned that the approach taken by the UK Government, both in respect of the tests on competence, including the introduction of new tests, and the number and extent of reservations, does little to address the complexities associated with the current model or to improve Wales' overall settlement.

This will be the fourth time that Parliament has legislated for significant changes in Wales' devolution settlement in less than 20 years. We had expected that the constitutional changes provided for in the Bill would deliver a durable and lasting settlement for Wales. However, if the Bill is passed in its current form, we are concerned that such a settlement will not be realised and that further legislation on this matter will be necessary before long.

#### **Reservations**

We recognise that, one of the biggest criticisms of the draft Wales Bill was the number of reservations and the lack of a clear rationale for the inclusion of those reservations. As such, we are disappointed that the reservations set out in the Bill with particular relevance to the Committee's remit remain largely unchanged following the scrutiny of the draft Bill. Like our predecessor, we are concerned that, in some cases, these reservations may reduce the Assembly's competence and prevent the Assembly from legislating freely in areas that it can already legislate in. It is wholly unacceptable that the Assembly could find itself in the position, under the new settlement, where it is unable to pass an Act that could have been passed under the conferred powers model, or to amend such an Act.





Turning to the specific reservations, we have serious concerns about the impact of reservation 37 (*The prevention, detection and investigation of crime*) on the Assembly's future ability to legislate in key policy areas, such as the prevention of violence against women, domestic abuse and sexual violence. When the Gender Based Violence, Domestic Abuse and Sexual Violence Bill (subsequently enacted and renamed the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 (the Act)) was introduced to the Assembly, it was widely reported that Wales was leading the way in the UK in this area. It is therefore entirely regrettable that, under the new settlement, such legislation will likely be outside competence. You may be aware that the Committee is currently undertaking post-legislative scrutiny work on the Act. Should the Committee wish to recommend legislative changes to the Welsh Government, these would have to take account of any changes made to the Assembly's legislative competence by the Wales Bill.

Further to the above, we are concerned about the impact of reservation 37 on local government functions, and note that this may affect the ability of the Assembly to confer new duties and powers of investigation of regulatory offences on local authorities. In similar terms, we are concerned that reservation 41 (*anti-social behaviour*) could prevent the Assembly from empowering authorities to tackle anti-social behaviour, for example in the housing context.

The majority of the Committee believe that the Bill should provide for the devolution of policing to the Assembly, which would bring Wales in line with other devolved administrations who have had powers over policing for some time. We note the recent decision by the UK Government to merge the role of the Police and Crime Commissioner for Greater Manchester with the newly elected mayor for the region. In effect, this will provide the Mayor with powers beyond that of Wales in this area of policy. It is therefore all the more surprising that the UK Government feels the need to retain powers over policing in Wales.

The previous draft Bill contained what was then reservation 171 (fire safety), which included an exception for "provision of automatic fire suppression systems in newly constructed and newly converted residential premises". This reservation and exception has been removed in the Wales Bill. Although this would appear to be a positive step, it is unclear whether domestic fire sprinklers would fall within reservation 186 (building regulations). You will be aware that the Assembly has already passed legislation in this area (Domestic Fire Safety (Wales) Measure 2011). This is another example of a potential roll back, which we would oppose.

We are concerned that, reservation 206 (*equal opportunities, including the subject-matter of the Equality Act 2006 and the Equality Act 2010*), as drafted, would be a reduction in the Assembly's competence, which we are disappointed with. We consider that this reservation could impinge on the Assembly's ability to legislate in this area in future in any meaningful way.

We welcome the increase in the Assembly's competence in relation to local government elections under the proposed new settlement (and note that this increase was also provided for in the draft Bill). This would enable the Assembly to legislate for almost all aspects of local government elections, including who is able to vote. It also erases any doubt about the Assembly's ability to legislate for the voting system, should it wish, which again, is to be welcomed.



## Tests on competence

We acknowledge that some concessions have been made in relation to the restrictions on modifying private law, criminal law, and on modifying functions of reserved authorities and Minister of the Crown functions. While this is a step in the right direction, it does not detract from the key issue that the imposition of these, and other tests on competence, will do little to improve clarity or to address the complexity of existing arrangements.

I hope that you find the above useful in informing your report.

Kind regards

A handwritten signature in black ink that reads "John". The letters are cursive and connected.

John Griffiths AC / AM  
Cadeirydd / Chair



Ysgrifennydd Gwladol Cymru  
Swyddfa Cymru  
Tŷ Gwydyr  
Whitehall

23 Medi 2016

Annwyl Alun,

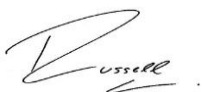
### **Bil Cymru – Cylch Gwaith Pwyllgor yr Economi, Seilwaith a Sgiliau**

Yn ei gyfarfod ar 21 Medi 2016, bu Pwyllgor yr Economi, Seilwaith a Sgiliau yn trafod Bil Cymru.

Byddwn yn ddiolchgar pe byddech yn egluro'r rhannau hynny o'r Bil y tynnir sylw atynt yn yr Atodiad i'r llythyr hwn. Yn benodol, lle'r ydym wedi nodi meysydd lle'r ydym yn pryderu fod gan y Cynulliad lai o gymhwysedd, byddwn yn ddiolchgar pe gallech gadarnhau'r asesiad hwnnw a rhoi eglurhad ynghylch sut y penderfynwyd ar y cymalau cadw. Yn wir, gallai fod yn ddefnyddiol gosod cymal yn y Bil yn cadarnhau nad bwriad y setliad newydd yw lleihau ystod neu gwmpas y pwerau sydd wedi'u datganoli i Gymru.

Byddwn yn gwerthfawrogi ymateb er mwyn cyfrannu at drafodaethau Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol y Cynulliad.

Yn gywir



Russell George AC,  
Cadeirydd



## Atodiad

Ym mis Tachwedd 2015, gofynnodd cyn Bwyllgor Menter a Busnes Cynulliad Cenedlaethol Cymru am eglurhad am y cymalau cadw a'r meysydd penodol hynny o'r Bil Cymru drafft a oedd yn gymwys i'r pynciau yng nghylch gwaith y Pwyllgor.

Fel cyn Bwyllgor y Pedwerydd Cynulliad, mae'r Pwyllgor hwn hefyd yn croesawu'r cynnydd yn y pwerau ar gyfer trafndiaeth, o ran gallu'r Cynulliad i ddeddfu yn ogystal â'r cynnydd yn mhwerau gweithredol Gweinidogion Cymru mewn meysydd penodol. Hefyd, y cymalau cadw a restrwyd yn y Bil Cymru drafft sydd wedi'u dileu o'r Bil presennol, fel y'i gosodwyd, ac sy'n ymwneud â'r canlynol:

- hysbysebu, yn enwedig rheoliadau o ran tybaco a chynnyrch tybaco
- arwyddion traffig yn gyffredinol
- cludiant ar y môr ac ar ddyfrffyrdd

Hefyd, bod eithriad wedi'i ychwanegu i gymal cadw (hynny yw, maes y caiff y Cynulliad ddeddfu ynddo), o ran pwnc Deddf Gwasanaethau Tân ac Achub 2004, sy'n adlewyrchu'r cymhwysedd yn y setliad presennol.

Fodd bynnag, i raddau helaeth, mae'r un materion y nodwyd eu bod yn peri pryder yn y cymalau cadw yn y Bil Cymru drafft, ac a nodir isod yng ngwaith y Pwyllgor hwn, yn dal i fod yn berthnasol ym Mil Cymru fel y'i cyflwynwyd. Felly, mae Pwyllgor yr Economi, Seilwaith a Sgiliau yn parhau i gymeradwyo'n llwyr bryderon y cyn Bwyllgor Menter a Busnes am y cymalau cadw canlynol yn y Bil sy'n dod o fewn cylch gwaith y Pwyllgor hwn ac a allai effeithio ar gymhwysedd y Cynulliad pe byddai'r Bil yn dod i rym, fel y'i drafftwyd ar hyn o bryd.

Mae'r cyfeiriadau isod at *'Atodlen 7 i Ddeddf Llywodraeth Cymru'* yn cyfeirio at y setliad presennol o dan Atodlen 7 i Ddeddf Llywodraeth Cymru 2006.

Mae'r cyfeiriadau at *'setliad newydd'* yn cyfeirio at Atodlen 7A i Ddeddf Llywodraeth Cymru 2006 ym Mil Cymru.

1.0Gweler isod farn y Pwyllgor ynghylch materion penodol a gedwir yn ôl o dan **Atodlen 7A – Pennawd C – Masnach a Diwydiant.**



## 1.1 Adran C6 Diogelu defnyddwyr

- 1.2 Mae'r eithriad presennol yn Atodlen 7 o Ddeddf Llywodraeth Cymru yn rhwystro'r Cynulliad rhag deddfu ynghylch *'consumer protection, including the sale and supply of goods to consumers, consumer guarantees, hire purchase, trade descriptions, advertising and price indication....'*
- 1.3 Mae'r setliad newydd yn cynnwys disgrifiad manylach o'r hyn y mae'r cymal cadw 'diogelu defnyddwyr' yn ei gynnwys. Er enghraifft, **ym mater a gedwir yn ôl 70** mae'r geiriau ychwanegol 'supply of services to consumers' i'w gweld yn y setliad newydd. Nid yw'r rhain yn rhan o'r eithriad presennol ar gyfer diogelu defnyddwyr yn Atodlen 7 i Ddeddf Llywodraeth Cymru. Felly, mae geiriad y mater hwn a gedwir yn ôl yn gulach.

Mae'n dal i fod yn destun pryder i'r Pwyllgor nad yw'n glir a yw cyflenwi gwasanaethau i ddefnyddwyr yn gymwys yng nghyd-destun Deddf Gwerthu Nwyddau 1979 yn unig ynteu a fwriedir iddo fod yn gymwys yn ehangach ar draws gwahanol fathau o wasanaethau i ddefnyddwyr yn fwy cyffredinol, e.e. gwasanaethau bws ac ati.

- 1.4 Yn ogystal, mae'r setliad newydd yn cynnwys y geiriad *'safety of, and liability for, services supplied to consumers'* ym mater a gedwir yn ôl 71. Nid yw'r geiriau hyn ychwaith i'w cael ar hyn o bryd yn Atodlen 7 i Ddeddf Llywodraeth Cymru, ac felly maent yn lleihau cymhwysedd y Cynulliad.

Mae'r Pwyllgor yn pryderu fod cymhwysedd y Cynulliad yn gulach o ran mater a gedwir yn ôl 71.

- 1.5 O ran mater 72 a'r cyfeiriad at 'estate agents', caiff y Cynulliad ar hyn o bryd ddeddfu ar hyrwyddo busnes a chystadleurwydd ac nid oes cyfeiriad penodol at werthwyr tai fel eithriad yn Atodlen 7. Gallai'r mater hwn, felly, **gulhau** cymhwysedd y Cynulliad mewn perthynas â gwerthwyr tai.

Mae'r Pwyllgor yn gwerthfawrogi'r eglurder yn y Nodiadau Esboniadol sy'n cadarnhau bod asiantau gosod yn gyfrifoldeb sydd wedi'i ddatganoli, ond mae'n



**pryderu y gallai'r ffaith fod mater 72 yn cynnwys rheoleiddio gwerthwyr tai leihau cymhwysedd y Cynulliad.**

1.6 Nid yw'r geiriau canlynol ym mater 76 yn eglur ac nid oes rhagor o fanylion yn y Nodiadau Esboniadol i'r Bil – *'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.'*

**Barn y Pwyllgor yw ei bod yn aneglur a yw mater 76 yn lleihau cymhwysedd y Cynulliad.**

**2.0 Adran C12 Ardaloedd a gynorthwyr a chyfyngiadau ar gymorth ariannol i ddiwydiant**

2.1 Mae mater a gedwir yn ôl 87 yn cyfyngu cymhwysedd y Cynulliad o ran:

*Adran 1 ac Adran 8(5)(7) o Ddeddf Datblygiadau Diwydiannol 1982 ('Deddf 1982')*

2.2 Mae Adran 1 yn caniatáu i'r Ysgrifennydd Gwladol, drwy Orchymyn, bennu unrhyw ardal o Brydain yn ardal ddatblygu neu'n ardal ganolradd. Yn ogystal, mae Adran 8 yn caniatáu i Weinidogion Cymru ddarparu cymorth ariannol ar gyfer diwydiant. Yn ôl paragraff 195 o'r Nodiadau Esboniadol, 'O ganlyniad i gadw'r mater sy'n ymwneud â'r terfynau ariannol, ni all cymorth ariannol a roddir i ddiwydiant o dan adran 8 o Ddeddf Datblygu Diwydiannol 1982 gan Weinidogion Cymru, Gweinidogion yr Alban a Gweinidogion y DU fod yn fwy gyda'i gilydd na throthwyon ar gyfer cyfanswm gwariant sy'n cael eu gosod gan Weinidogion y DU'.

2.3 Er bod pwerau gweithredol yn cael eu cadw ar gyfer Gweinidogion Cymru o dan Adran 8 o Ddeddf 1982, fe allai'r ffaith bod pwnc Deddf 1982 wedi ei gynnwys gulhau gallu'r Cynulliad i ddeddfu o dan eiriad presennol Atodlen 7 i Ddeddf Llywodraeth Cymru a'r pennawd cyffredinol 'economic regeneration and development'.

**Mae'r Pwyllgor yn pryderu fod cymhwysedd y Cynulliad yn gulach oherwydd cadw mater 87.**



3.0 Gweler isod farn y Pwyllgor ynghylch materion penodol a gedwir yn ôl o dan **Atodlen 7A – Pennawd E – Trafnidiaeth yn y Bil.**

### 3.1 Adran E1 Trafnidiaeth ffyrdd

3.2 Mae mater 104 yn ymwneud â thrwyddedu gyrwyr ac mae'n cynnwys hyfforddiant, profi ac ardystio. O dan Atodlen 7 o Ddeddf Llywodraeth Cymru 2006, ar y llaw arall, cyfeirir ato fel 'trwyddedu gyrwyr' yn unig.

3.3 Mae'r geiriad, felly, yn gulach o dan y setliad newydd, a gallai'r ffaith bod y gair 'training' wedi'i gynnwys effeithio ar allu'r Cynulliad i ddeddfu mewn perthynas â hyrwyddo diogelwch ar y ffyrdd.

**Mae'r Pwyllgor yn pryderu fod cadw mater 104 yn achosi lleihad yng nghymhwysedd y Cynulliad o ystyried y caiff y Cynulliad, o dan y setliad presennol, ddeddfu ar hybu diogelwch ar y ffordd.**

### 4.0 Adran E2 Trafnidiaeth ar reilffyrdd

4.1 Mae'r eithriad presennol o dan Atodlen 7 i Ddeddf Llywodraeth Cymru, yn cyfeirio at 'provision and regulation of railway services'. O dan y setliad newydd, mae mater 123 yn cyfeirio at '*railway services*' yn unig.

4.2 Mae'r ddarpariaeth ddehongli o dan E2 yn diffinio 'railway services' yn fwy penodol drwy gyfeirio at adran 82 o Deddf Rheilffyrdd 1993. Mae hyn yn cynnwys:

- *services in relation to the carriage of passengers, luggage, parcels mail and goods and services in relation to stations,*
- *maintenance facilities and*
- *the provision and operation of the rail network itself*

**Mae'r diffiniad o 'railway services' yn gulach na'r hyn sydd yn y setliad presennol, ac mae'r Pwyllgor yn pryderu am y lleihad posibl mewn cymhwysedd a allai ddeillio o gadw mater 115.**

### 4.3 Adran E6: materion eraill



4.4 Mae'r eithriad presennol yn Atodlen 7 yn cyfeirio at fanyleb dechnegol ar gyfer tanwydd i'w ddefnyddio mewn peiriannau mewndanio, ac mae'r setliad newydd o dan fater 126 yn cyfeirio at yr un peth, fel a ganlyn:

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

4.5 Mae geiriad y setliad newydd yn fwy cyfyng ac yn cynnwys ffurfiau ehangach eraill o deithio, ac yn cyfeirio at yriant heblaw peiriannau mewndanio, felly mae yma **leihad** o ran cymhwysedd.

**Mae'r Pwyllgor yn pryderu fod cymhwysedd y Cynulliad yn gulach oherwydd cadw mater 126.**

## **5.0 Rheoleiddio bysiau**

Roedd rheoleiddio bysiau yng Nghymru yn faes yr oedd y Pwyllgor blaenorol a Llywodraeth Cymru yn awyddus i gael rhagor o bwerau ar ei gyfer. Rhoddwyd yr enghraifft ganlynol i'r Pwyllgor hwn hefyd i ddangos sut y gellid ystyried Rheoleiddio Bysiau o ran cymhwysedd y Cynulliad yn y setliad newydd.

5.1 Enghraifft: *O dan y setliad newydd, mae modd i'r Cynulliad ddeddfu ynghylch cofrestru bysiau lleol. At hynny, dywedodd yr Adran Drafnidiaeth wrth y Pwyllgor Menter a Busnes ym mis Medi 2015 ei bod yn credu bod gan y Cynulliad/Gweinidogion Cymru bwerau i reoleiddio bysiau eisoes.*

5.2 *Yn y ddeddfwriaeth bresennol, mae pwerau gweithredol cyfyngedig fel y gall Gweinidogion Cymru/awdurdodau lleol gydgyssylltu gweithrediadau bysiau. Ceir y pwerau hynny yn y Ddeddf Trafnidiaeth a Deddf Trafnidiaeth Leol 2008, ac maent yn cynnwys Partneriaethau Gwirfoddol a Statudol a Chontractau Ansawdd Statudol.*

5.3 *Mewn theori, dylai'r ddau ddull uchod ganiatáu ar gyfer rheoleiddio bysiau yng Nghymru. Fodd bynnag, mae cafeat i hyn. Y rheswm am hyn yw bod rhai o'r manteision posibl sy'n gysylltiedig â rheoleiddio yn cynnwys y*





*posibilrwydd y gellid capio a rheoleiddio prisiau tocynnau a thocynnau integredig. Nid yw'n glir a fyddai meysydd fel hyn yn rhan o'r cymalau cadw canlynol:*

***C3: Cystadleuaeth: mater 67 'Regulation of anti-competitive practices and agreements; abuse of dominant position; monopolies and mergers'.***

***C6: Diogelu defnyddwyr: mater 70 'Regulation of the sale and supply of... services to consumers'***

Mae'r Pwyllgor yn pryderu y byddai prisiau a thocynnau integredig ac ati yn dod yn rhan o'r cymalau cadw uchod pe byddai Cymru'n arfer opsiwn o'r fath.

**6.0**Gweler isod farn y Pwyllgor ynghylch materion penodol a gedwir yn ôl o dan Atodlen 7A – Pennawd H – Cyflogaeth yn y Bil.

**6.1 Adran H1 – Cyflogaeth a chysylltiadau diwydiannol**

6.2 Ar hyn o bryd, caiff y Cynulliad ddeddfu ar 'bynciau tawel' (pynciau nad ydynt wedi'u datganoli, nac yn eithriadau o dan Atodlen 7) ar yr amod eu bod yn ymwneud â phynciau y rhoddwyd pŵer i ddeddfu yn eu cylch o dan Atodlen 7 i Ddeddf Llywodraeth Cymru a'r setliad presennol.

6.3 Cadarnhawyd hyn gan benderfyniad y Goruchaf Lys yn achos Deddf Sector Amaethyddol (Cymru) 2014 lle dyfarnwyd bod y Ddeddf o fewn cymhwysedd er ei bod yn ymwneud ag 'amaethyddiaeth', sy'n bwnc datganoledig a 'chfylogaeth', sy'n bwnc tawel.

6.4 Yn y setliad newydd mae pwnc tawel 'cyflogaeth' wedi dod yn fater penodol a gedwir yn ôl o dan Bennawd H '*Employment rights and duties and industrial relations including the subject of...*' [yna cyfeirir at restr o ddeddfwriaeth benodol ynghylch cyflogaeth].

6.5 At hynny, mae eithriad penodol wedi'i wneud i'r cymal cadw hwn sy'n eithrio '*the subject-matter of the Agricultural Sector (Wales) Act 2014*' ac yn gwarchod pwnc y Ddeddf hon.



- 6.6 Trwy gynnwys 'cyflogaeth' yn fater a gedwir yn ôl yn y setliad presennol ar y cyd â'r profion deddfwriaethol newydd, mae cymhwysedd y Cynulliad yng nghyd-destun cyflogaeth wedi'i leihau'n sylweddol.
- 6.7 Mae Pennawd arall hefyd yn y setliad newydd, sef 'Y Proffesiynau', sy'n cynnwys gweithwyr iechyd proffesiynol fel mater na cheir deddfu yn ei gylch. I bob golwg, mae hwn yn gymal cadw ehangach na'r eithriad presennol yn Atodlen 7 i Ddeddf Llywodraeth Cymru.
- 6.8 Rhoddwyd yr enghraifft ganlynol i'r Pwyllgor i ddangos sut y gallai Bil arfaethedig gael ei ystyried o dan y setliad newydd:
- *Gallai Bil Cynulliad geisio deddfu ar gyflogau, amodau a hyfforddiant yn y sector gofal cymdeithasol mewn modd tebyg i Ddeddf Sector Amaethyddol (Cymru) 2014.*
  - *O dan y setliad presennol, ac yng ngoleuni dyfarniad y Goruchaf Lys ar Ddeddf 2014, byddai Bil sy'n ymwneud â'r sector gofal cymdeithasol o fewn cymhwysedd.*
  - *Yn yr Atodlen 7A arfaethedig, o dan Bennawd H, Adran H1, mae hawliau a dyletswyddau cyflogaeth a chysylltiadau diwydiannol yn faterion a gedwir yn ôl. Golyga hynny y gallai'r Bil fod y tu allan i gymhwysedd.*
  - *Mae'r unig eithriad i bwnc Deddf 2014 yn gwneud hyn yn fwy tebygol, gan awgrymu, er bod cyflogau amaethyddol, gwyliau a hyfforddiant o fewn cymhwysedd, y bydd y rhain yn faterion a gedwir yn ôl mewn sectorau eraill.*

Mae'r Pwyllgor yn pryderu'n fawr ac yn dymuno deall pam mae'r cymhwysedd hwn yn cael ei leihau o ran deddfu ar 'bynciau tawel', megis cyflogaeth, ar yr amod eu bod 'yn ymwneud â' phynciau y rhoddwyd pŵer i ddeddfu yn eu cylch o dan Atodlen 7 i Ddeddf Llywodraeth Cymru.

## 7.0 Adran H3 – Chwilio am swyddi a chymorth

7.1 Gallai mater a gedwir yn ôl 141: 'Arrangements for assisting persons to select, train for, obtain and retain employment and to obtain suitable employees', gulhau cymhwysedd y Cynulliad ar ddatblygu economaidd o dan Atodlen 7 i Ddeddf Llywodraeth Cymru. Mae nodiadau esboniadol y Bil yn egluro mai'r 'bwriad wrth gadw'r mater hwn yw cadw cymhwysedd deddfwriaethol mewn perthynas â'r holl raglenni



cysylltiedig â gwaith ar gyfer pobl anabl'. Er gwaethaf yr esboniad, mae'r geiriad o bosibl yn culhau cymhwysedd y Cynulliad o dan 'adfywio a datblygu economaidd' yn Atodlen 7 i Ddeddf Llywodraeth Cymru.

**Mae'r Pwyllgor yn pryderu am y lleihad posibl mewn cymhwysedd wrth gadw mater 141.**

## **8.0 Meysydd penodol o ansicrwydd mewn perthynas â phwerau gweithredol Gweinidogion Cymru**

8.1 Yn y Bil, nid ymdrinnir â datganoli Masnachfaint Cymru a'r Gororau nac â throsglwyddo swyddogaethau gweithredol Gweinidogion Cymru.

8.2 Yn ôl cyhoeddiad Dydd Gŵyl Dewi a pharagraff 2.5.10 o'r ddogfen Pwerau at Bwrpas:

8.3 *'Mae Llywodraeth y Deyrnas Unedig yn datganoli swyddogaethau masnachfreinio i Lywodraeth Cymru i'w galluogi i arwain gwaith caffael a rheoli masnachfaint nesaf Cymru a'r Gororau.'*

8.4 Mewn datganiad ysgrifenedig ar 12 Gorffennaf 2016, cyhoeddodd Ysgrifennydd y Cabinet, fel a ganlyn: 'from early 2017, responsibility for rail franchising will be transferred from the Secretary of State to the Welsh Ministers'.

**Byddai'r Pwyllgor hefyd yn falch o gael eglurhad gan Lywodraeth y DU am yr amserlen sydd ganddi dan sylw wrth ddatganoli swyddogaethau gweithredol i Weinidogion Cymru mewn perthynas â Masnachfaint Cymru a'r Gororau, o ystyried nad oes darpariaeth yn y Bil ar gyfer hyn.**

8.5 Hefyd, mae Llywodraeth Cymru wedi gofyn yn y gorffennol am newid Deddf Rheilffyrdd 1993 mewn ffordd a fyddai'n caniatáu i gyrff yn y sector cyhoeddus gynnig am gontractau masnachfaint. Byddai hyn yn adlewyrchu'r sefyllfa yn yr Alban lle darperir ar gyfer masnachfaint yng



nghymal 49 o Fil yr Alban 'Rail: franchising of passenger services'. Nid oes darpariaeth debyg wedi'i gwneud yn y Bil.

8.6 Wrth drafod goblygiadau Comisiwn Smith i Gymru, dywedodd cyhoeddiad Dydd Gŵyl Dewi y byddai dadansoddiad yn cael ei wneud o argymhellion perthnasol Comisiwn Smith yng nghyd-destun Cymru fel y gellir gwneud penderfyniadau yn fuan yn y Senedd nesaf ynghylch pa argymhellion i'w rhoi ar waith yng Nghymru.

8.7 Dywedodd swyddogion yr Adran Drafnidiaeth wrth y cyn Bwyllgor Menter a Busnes ym mis Medi 2015 fod y mater yn cael ei drafod: *"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"*.

**Mewn perthynas â chyhoeddiad Dydd Gŵyl Dewi a goblygiadau Comisiwn Smith i Gymru, yn enwedig mewn perthynas â diwygio Deddf Rheilffyrdd 1993 (a fyddai'n caniatáu i gyrff y sector cyhoeddus gynnig am gontractau masnachfrait), mae'r Pwyllgor yn pryderu nad yw hyn yn rhan o Fil Cymru.**

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Secretary of State for Wales  
Wales Office  
Gwydr House  
Whitehall

23 September 2016

Dear Alun

### **The Wales Bill – Economy Infrastructure & Skills Remit**

The Economy, Infrastructure and Skills Committee discussed the Wales Bill at our meeting on 21 September 2016.

We would be grateful if you could clarify certain areas of the Bill highlighted in the Annex to this letter. Specifically, where we have identified areas in which we are concerned that the Assembly's competence is reduced, I would appreciate it if you could confirm this assessment and offer an explanation as to how the scope reservations was decided. Indeed, it may be helpful to insert in to the Bill a clause confirming that the new settlement is not intended to reduce the range or scope of powers devolved to Wales.

I would be grateful for a response in order to inform the considerations of the Assembly's Constitutional and Legislative Affairs Committee.

Yours sincerely,



Russell George

Chair



## Annex

In November 2015, the former Enterprise and Business Committee of the National Assembly for Wales sought clarification on the reservations and specific areas of the draft Wales Bill that applied to the subjects remit of the Committee.

Like the former 4<sup>th</sup> Assembly Committee, this Committee also welcomes the additional increase of powers for transport both in terms of the Assembly's ability to legislate and the increase of executive powers of the Welsh Ministers in specific fields. Also, previous reservations listed in the draft Wales Bill that have been removed in the Bill, as laid concerning:

- in relation to advertising, regulation specifically in relation to tobacco and tobacco products
- traffic signs in general
- marine and waterway transport

Also, that an exception to a reservation has been added (i.e. an area which the Assembly can legislate) in respect of the subject-matter of the Fire and Rescue Services Act 2004 that mirrors competence in the current settlement.

However, in large proportion, the same issues that were identified as areas of concern with particular reservations in the draft Wales Bills and set out below in the work of this Committee, continue to apply in the Wales Bill, as introduced. The Economy Infrastructure and Skills Committee therefore, continue to fully endorse the previous concerns of the former Enterprise and Business Committee in relation to the following reservations of the Bill that fall within the remit of the work of this Committee and that could impact on the Assembly's competence if the Bill comes into force, as currently drafted.

Reference to '*Schedule 7 GOWA*' below is reference to the current settlement under Schedule 7 of the Government of Wales Act 2006.

Reference to '*new settlement*' is reference to the Schedule 7A to the Government of Wales Act in the Wales Bill.



1.0 The following set out the Committee's view concerning specific reservations under **Schedule 7A – Head C – Trade and Industry**.

### 1.1 Section C6 Consumer protection

1.2 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.....'*

1.3 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' are included in the new settlement which do not appear in the current exception in relation to consumer protection Schedule 7, GOWA. The wording of this reservation is therefore, narrower.

**The Committee is concerned that it is still not clear 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'* in reservation 71. This wording is also not currently contained in Schedule 7, GOWA and is therefore, **a reduction of the Assembly's competence**.

**The Committee is concerned that the Assembly's competence is reduced in relation to reservation 71.**

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 as an exception in Schedule 7 this reservation therefore, **potentially reduces the Assembly's competence in relation to 'estate agents'**.



The Committee appreciates the clarity provided in the Explanatory Notes that confirms that letting agents are a devolved responsibility but is concerned that the regulation of estate agents listed in reservation 72 is a potential reduction of competence.

- 1.6 The following wording in reservation 76 is not clear and the Explanatory Notes to the Bill do not provide any further detail – *‘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’s view is that it is unclear as to whether reservation 76 represents a reduction in competence.

## 2.0 Section C12 Assisted areas and limits on financial assistance to industry

- 2.1 Reservation 87 limits the Assembly’s competence in relation to:

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

- 2.2 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. Para 195 of the Explanatory notes says that, ‘the reservation on the financial limits means that financial assistance to the industry under section 8 of the Industrial Development Act 1982 by Welsh Ministers, Scottish Ministers and UK Ministers combined cannot exceed total expenditure thresholds which are set by UK Ministers’.
- 2.3 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 is concerned that the Assembly's competence is reduced in relation to reservation 87.

3.0 The following sets out the Committee's view concerning specific reservations under Schedule 7A – Head E– Transport.

### 3.1 Section E1 Road transport

3.2 Reservation 104, concerns driver licensing and includes (training, testing and certification) whereas under Schedule 7, GOWA '06 it is only referred to as 'driver licensing'.

3.3 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.

The Committee is concerned that reservation 104 represents a reduction in the Assembly's competence given that the Assembly in the current settlement is able to legislate in relation to the promotion of road safety.

### 4.0 Section E2 Rail transport

4.1 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*'.

4.2 The interpretation provision under E2 defines 'railway services' more specifically by reference to section 82 of the Railways Act 1993. This includes:

- *services in relation to the carriage of passengers, luggage, parcels mail and goods and services in relation to stations,*
- *maintenance facilities and*
- *the provision and operation of the rail network itself*

The definition of 'railway services' is more restrictive than the current settlement and the Committee is concerned by the potential reduction in competence in relation to reservation 115.



### 4.3 Section E6: other matters

- 4.4 The current exception in Schedule 7 refers to ‘technical specification for fuel in use of internal combustion engines’ whereas the new settlement under reservation 126 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’*

- 4.5 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 is concerned that reservation 126 reduces the Assembly’s competence.**

### 5.0 Bus Regulation

The potential for the regulation of buses in Wales is an area which the previous Committee and the Welsh Government has said it requires further powers. The following example was also provided to this Committee illustrating how Bus Regulation might be viewed in terms of Assembly competence in the new settlement.

- 5.1 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 E&B Committee in September 2015 that it believed that the Assembly / Welsh Ministers already had powers to regulate buses.*
- 5.2 *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.*
- 5.3 *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 is concerned that issues such as fares and integrated ticketing would be caught by the above mentioned reservations should, such an option be pursued in Wales.

6.0 The following sets out the Committee’s view concerning specific reservations under Schedule 7A – Head H – Employment.

6.1 Section H1 – Employment and industrial relations

6.2 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.

6.3 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’.

6.4 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].



6.5 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.

6.6 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.

6.7 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.

6.8 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 is greatly concerned as to why competence is being reduced in relation to legislating on ‘silent subjects’ such as Employment provided they ‘relate to’ a ‘conferred subject’ under Schedule 7 of GOWA.

## 7.0 Section H3 – Job search and support

7.1 Reservation 141 ‘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 Explanatory notes of the Bill explains ‘that the intention behind the reservation is to reserve legislative competence in relation to all work-related programmes for disabled persons’. Despite the explanation the wording potentially narrows the assembly competence under ‘economic regeneration and development’ under Schedule 7 GOWA.

**The Committee is concerned with the potential reduction in competence in relation to reservation 141.**

#### **8.0 Particular areas of uncertainty in relation to Welsh Minister executive powers**

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

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

8.3 *‘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.’*

8.4 In a written statement on 12 July 2016, the Cabinet Secretary announced, ‘that from early 2017, responsibility for rail franchising will be transferred from the Secretary of State to the Welsh Ministers’.

**The Committee would also welcome clarification from the UK Government on the timescales it is working towards, in devolving executive functions to the Welsh Ministers in respect of the Wales and Borders Franchise, given that this is not provided for within the Bill.**

8.5 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 Bill.

8.6 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".

8.7 Department for Transport officials told the former E&B 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 is concerned that in relation to the St David's Day announcement and the discussion of the implications of the Smith Commission for Wales, particularly in relation to the amending of the Railways Act 1993 (that would allow public sector bodies to bid for franchise contracts) is not a feature of the Wales Bill.

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## Consultation into the new Wales Bill

### A response from Wales Council for Voluntary Action

1. Wales Council for Voluntary Action (WCVA) is a registered charity and umbrella body working to support, develop and represent Wales' third sector at UK and national level. We have over 3,350 organisations in direct membership, and are in touch with many more organisations through a wide range of national and local networks. WCVA's mission is to provide excellent support, leadership and an influential voice for the third sector and volunteering in Wales.
2. WCVA is committed to a strong and active third sector building resilient, cohesive and inclusive communities, giving people a stake in their future through their own actions and services, creating a strong, healthy and fair society and demonstrating the value of volunteering and community engagement.
3. We welcome the opportunity to respond to the Constitutional and Legislative Affairs Committee's inquiry into the latest version of the Wales Bill as we firmly believe in a strong devolution model. We certainly feel that the new iteration of the Bill is a great improvement on the previous one.
4. We thank Cytun, Citizens Advice Cymru and Association of Voluntary Organisations Wrexham for contributing to our response.
5. WCVA had some concerns about the first version of the Bill, particularly on the lack of clarity of the Reserved Powers model, and potential restrictions on what the Welsh Government could or could not legislate on due to the 'necessity tests'.
6. We welcome the removal of the aforementioned necessity tests as we believe this ought to create a smoother path for the passing of legislation in future, although we note a similar concept remains where Welsh legislation touches on reserved powers or if it affects any matters beyond the Welsh border.
7. We note the introduction of Justice Impact Assessments to the Bill. In England, these are used to establish whether or not penalties introduced in new legislation are proportionate to the offence. WCVA is aware that in England JIAs are felt to be an administrative burden. This must be avoided, and the benefits and consequences clearly explained. WCVA is optimistic about the introduction of JIAs as we welcome additional scrutiny of the legislative process, but would not like to see unnecessary bureaucracy distracting organisations from their vital work.
8. We welcome the small increase in the number of issues devolved to Wales, such as powers over heritage railways, speed limits, income tax rates, coal mining licences and street trading.
9. However, there remain key reserved areas that we can envision clashing with Welsh Government legislation. For example, employment rights are a reserved

subject, prohibiting Welsh Government from passing legislation around that area even when relating to, for example, social welfare. Potentially, being unable to legislate around the social care workforce could clash with the aims of the Social Services and Wellbeing (Wales) Act.

10. To continue this example, Part 6 of the Social Services and Wellbeing (Wales) Act is concerned with looked-after and accommodated children; however care, supervision or protection of children remain on the reserved powers list. It is very easy to imagine a conflict in this area in future.
11. Similarly, the Assembly has powers over environmental nuisance, but anti-social behaviour remains reserved - potentially causing conflict were the Assembly wish to legislate around, for example, extreme noise and dog fouling.
12. There are other key reserved areas such as fundraising and criminal records which we would still like to see devolved to Wales. Wales is a unique landscape, and allowing Welsh Government to legislate in these fields would allow them to tailor legislation for the characteristics of the country - for example, these areas could then be subjected to Welsh language legislation, ensuring the sector and wider public can access them in their choice of language. However, we recognise the difficulties that devolution can pose to cross-border organisations, and urge clear guidance to be issued as new legislation becomes devolved.
13. We welcome that Welsh Ministers are able to make regulation implementing EU law, for as long as Britain remains within the EU, within devolved competencies without prior designation from the UK Government.
14. We welcome that the Assembly is able in the new Bill to legislate on Minister of the Crown functions.
15. We welcome that the Bill formally recognises 'a body of Welsh law' as part of the jurisdiction of England and Wales, and that the Secretary of State for Wales acknowledges that Welsh law needs 'distinct arrangements' around its jurisdiction. However, we recognise there may be cost implications to setting up these arrangements, and if so steps should be taken to not pass on these costs as the financial climate is already extremely difficult.
16. We note a Justice in Wales working group is to be set up to look at these arrangements. This is welcome, but it is concerning that Welsh Government were not invited to help set the group's Terms of Reference, nor will anyone from Welsh Government be among the people the group reports to. Instead, they are simply one of a list of representatives who will be among the group's membership.
17. We are pleased to note that greater clarity has been made on the subject of which public authorities are Welsh public bodies, and which are reserved authorities. However, there is now no longer an obligation for Ministers of the Crown to consult with Welsh Ministers on cross-border public authorities, potentially leading to a reduction in powers for Wales in the area of cross-border authorities.
18. Further to this, we welcome that amendments to the Equality Act of 2010 mean the Assembly is now able to legislate around equalities issues relating to Welsh public bodies without prior permission of the UK Government.



David Cook  
Policy Officer  
WCVA  
23.9.16



## **Response to the Constitutional and Legislative Affairs Committee inquiry into the Draft Wales Bill**

**September 2016**

Wales Environment Link's Marine Working Group values the opportunity to take part in this inquiry by the Constitutional and Legislative Affairs Committee into the Draft Wales Bill.

WEL would like to comment on specific clauses of the draft Wales Bill that would affect the health and management of Wales' marine environment. Notably clause 36, 42 and 43 (planning consent for generating stations with 350MW capacity or less, marine licensing in the Welsh offshore region and Marine Conservation Zones respectively).

### **Planning consent for generating stations with 350MW capacity or less**

WEL welcomes clarity on the further devolution of energy generation. It is still unclear however whether energy generated from wind will be devolved to Wales or this will be within the UK process. Given the increase from 50MW to 350MW it is unclear whether Wales would have an equivalent of the National Infrastructure Project process to assess all energy developments. WEL would seek clarity on this to ensure all aspects of future projects are fully assessed.

### **Marine licensing in the Welsh offshore region**

WEL welcomes the commitment within the draft Bill to extend the marine licensing powers to the Welsh offshore; this would enable connectivity for the inshore and offshore and coordinated management of the whole Welsh marine area. It would also support the implementation of the Welsh National Marine Plan, which includes the Welsh offshore region out to the median line.

However, it is understood from the explanatory memorandum that there would be no further funding for functions within the Bill. We are already concerned over the current resourcing of the marine licensing functions of the Welsh Government and Natural Resources Wales (NRW) for the inshore. It is not clear where the additional resources would come from, whether there would be sufficient resources within the Welsh Government to extend to the offshore or given the reduction in their duties whether resources would be obtained from the Marine Management Organisation (MMO), who currently license the Welsh offshore. However, the MMO are themselves facing up to 40% cuts as part of the current Comprehensive Spending Review in Westminster, this

leaves the ability of decision makers to enforce marine licenses in Welsh offshore waters open to debate.

It is understood that the UK Government would retain the function of dealing with activities under Part 6 of the Merchant Shipping Act 1995. WEL would welcome further clarity to how this will be enforced and if the Welsh and UK Governments would share resources to cover all marine licensing enforcement in the Welsh offshore.

WEL are currently advocating for full cost recovery of marine licensing functions (currently open for consultation). This is for current marine licensing activities, so that the Welsh Government and NRW are able to gain full cost recovery to these functions and that as part of the licensing process developers have to provide all data to the Welsh Government and NRW.

### **Marine conservation powers in the offshore zone**

WEL cautiously welcomes the commitment to enable the Welsh Government to designate Marine Conservation Zones (MCZs) in Wales' offshore marine region. This will ensure site boundaries can be designated based on the location of their features and allow for sites to span the current legislative boundary of twelve nautical miles, providing site boundaries that protect the entire feature, not just those elements residing within a given legislative area. It will also ensure that the whole of the Welsh territorial seas have one governing body responsible for site designation, management, protection and enforcement, providing clarity.

With the existing powers to manage fisheries within the offshore area, these additional powers enable the Welsh Government to make a significant contribution to the well managed and ecologically coherent UK network of Marine Protected Areas (MPAs). These are sites that are required under the UK's Programme of Measures to achieve Good Environmental Status (GES) under the EU Marine Strategy Framework Directive, and committed to under the OSPAR Convention, as well as to protect species and habitats of national importance offshore. Currently there are 4 proposed MCZs identified and agreed as far back as 2011 by the stakeholder-led Irish Sea regional MCZ Project<sup>1</sup> and it is vital that a smooth transition occurs as soon as possible so that these highly pressurised sites do not remain in limbo. The Minister Carl Sargeant in a letter to the Environment and Sustainability Committee stated (3<sup>rd</sup> November 2015)

*'In respect to MCZ should responsibility for nature conservation in the offshore area be transferred to Welsh Ministers we will then consider the needs of the wider network before making any decision about designation of additional sites'*

We welcome Welsh Governments commitment to ensure Wales contributes to the wider ecological coherent network of protected sites and if needed, the designation of further offshore sites.

As with marine licensing, however, WEL are concerned over how these extra duties will be resourced and if the UK Government will provide additional funding to cover these costs. These concerns refer to both the resourcing of the Welsh Government and NRW, as there has already been a review and reduction of current funding for the

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<sup>1</sup> <http://webarchive.nationalarchives.gov.uk/20120502154706/http://www.irishseaconservation.org.uk/>



**National Assembly for Wales Constitutional and Legislative Affairs Committee  
Consultation on the Wales Bill 2016-17:  
A response by Universities Wales**

## **1. About Universities Wales**

- 1.1. Universities Wales represents the interests of universities in Wales and is a National Council of Universities UK. Universities Wales' Governing Council consists of the Vice-Chancellors of all the universities in Wales and the Director of the Open University in Wales.

## **2. Introduction**

- 2.1. We offer the following comments in response to the consultation of the National Assembly for Wales Constitutional and Legislative Affairs Committee's consultation on the UK Government's Wales Bill 2016-17.<sup>1</sup> This confirms the initial comments we made at the Committee's stakeholder event on 11 July 2016. Unless otherwise stated, references are to the latest version of the Bill as introduced to the House of Lords on 13 September 2016.

## **3. Classification of universities as 'Wales public authorities'**

- 3.1. Universities in Wales are independent organisations whose academic and institutional autonomy is widely regarded as fundamental to its provision of world-class education and research. Universities do not form part of the public sector for national accounting purposes, and universities are currently only treated for legal purposes as public bodies for a number of very specific purposes e.g. freedom of information provisions. Although higher education provision and fees are highly regulated, less than ten per cent of universities' income in Wales comes from direct public funding.<sup>2</sup> The charitable status of universities also requires them to act exclusively for their charitable purpose of providing education for the public benefit, independently from government.<sup>3</sup>
- 3.2. Clause 4 of the Wales Bill inserts a definition of 'Wales public authorities' into the Government of Wales Act 2006 ('GOWA 2006'), and expressly includes institutions within the further and higher education sectors in the list of public authorities.
- 3.3. Based on our initial reading, it appears that the proposed legislation increases the extent to which universities in Wales are treated as public authorities, and inadvertently in some instances this could potentially raise significant issues for universities. We include an appendix which sets out our research at this stage, in the hope that this may be of assistance in further investigation of this issue. For instance, it would appear to allow the potential extension of the Office of Budgetary Responsibility's right to access information to universities, inappropriately enable universities and the Welsh Government to carry out

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<sup>1</sup> See <http://www.senedd.assembly.wales/mgConsultationDisplay.aspx?id=213&RPID=1507604415&cp=yes>

<sup>2</sup> See Universities Wales, A short guide to university funding and student finance in Wales, (2016), [here](#).

<sup>3</sup> See e.g. Charity Commission, Policy Paper, Independence of charities from the state (RR7), (2009), [here](#).

each other's functions (s.83 GOWA 2006), and to extend the role and powers of the Auditor General to universities (Sched 8, GOWA 2006). Similar provisions would not apply to universities elsewhere in the UK, and in particular we are concerned that these could have a potential impact on the national accounting classification and charity status of our universities.

- 3.4. Irrespective of whether or not the current drafting has this unintended consequence, we are very concerned that it may encourage the inadvertent extension of their treatment as public authorities in future legislation. We regard it as very unhelpful for universities to be characterised as carrying out 'functions' of the Welsh Government in the light of their independent and charitable status. Further treating universities as public authorities, as we have highlighted in relation to other legislation relating to higher education in Wales, would increase the cumulative risk to national accounting classification and charitable status.
- 3.5. We would therefore welcome the Draft Bill being reviewed and amended as appropriate to address our concerns. In particular, we ask that universities (as variously defined in the Bill) are removed from the list of public authorities.

#### 4. Further comments

- 4.1. Higher education is a devolved subject and has been the subject of a significant amount of legislation in the early years of devolution. As highlighted by the Law Commission's study on the Accessibility of the Law in Wales, to which Universities Wales contributed, higher education can be regarded as a key case study for legislative development in Wales. Any changes to the boundaries of legislative competence are likely to have direct impact on universities, and as a key stakeholder, we offer the following further brief comments:

- (a) Overlap of subject matters.

The Wales Bill is expressly intended to address the lack of clarity in the current law, highlighted e.g. by recent cases in relation to the agriculture sector and insurance, which has left considerable room for uncertainty, also potentially affecting higher education. Although the reserved powers model alters the approach it does not appear to have fully resolved the underlying issues at this stage. In the Bill, for instance, education and employment are not reserved matters, but 'the subject matter' of specified acts relating to employment (e.g. TUPE, minimum wage) are reserved. Employment law, in our view, should remain UK wide and further clarity to avoid potential issues in future would be welcomed.

- (b) Territorial application

In particular, we query the extent of competence in relation to activities of Welsh institutions/bodies in other parts of the UK or overseas. This issue was recently highlighted in the Assembly in the context of discussions of section 17 of the HE (Wales) Bill. This established a new duty of the Higher Education Funding Council for Wales (HEFCW) to assess the quality of education of a regulated institution. In contrast to the UK legislation which it replaced,<sup>4</sup> however, HEFCW's new duty and powers only extended to provision in Wales on grounds that the Welsh Government

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<sup>4</sup> Further and Higher Education Act 1992, s.70.

lacked competence to extend them to other parts of the UK or beyond.<sup>5</sup> The issue was partially resolved by the Secretary of State making an order under s.150 of Government of Wales Act 2006 which allowed a regulated institution's provision in England to be treated as if it was in Wales.<sup>6</sup> The apparent lack of legislative competence, however, appears to have prevented provision elsewhere in the UK or beyond it being similarly covered.

We assume that this issue could potentially have significant implications for other devolved sectors too, and for the future transfer of UK statutory provisions onto the Welsh statute book (e.g. consolidation/codification) more generally.

(c) The test of necessity and interpretation of ancillary.

Discussions at the stakeholder debate in July highlighted in particular that it is not clear how narrowly these could be interpreted.

**Universities Wales**  
**26 September 2016**

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<sup>5</sup> See for instance, the evidence of Minister for Education and Skills to the Children, Young People and Education Committee, 5 November 2014 (Transcript para 209, 11:15).

<sup>6</sup> The Higher Education (Wales) Act 2015 (Consequential Provision) Order 2015, 2015 No.1353 (see [here](#)),

## Appendix - Treating universities as public authorities

### 1. Introduction

- 1.1. The following paragraphs attempt to identify the potential issues with the current inclusion of universities in the new definition of 'Wales public authorities' which may require further research to avoid unintended consequences in the drafting of the Wales Bill. It is stressed that the comments below are provisional and simply set out our own research at this stage, and have not benefited from professional legal advice.
- 1.2. Further work/professional advice would be required to confirm these issues. We fully expect that in some instances, these issues will be clarified or addressed through a closer reading of the Bill and related legislation. We hope, however, that they may be useful in identifying matters that warrant further investigation.

### 2. The definition of Wales public authorities

- 2.1. Clause 4 of the Wales Bill inserts a definition of 'Wales public authorities' into the Government of Wales Act 2006 ('GOWA 2006'). The proposed s.157A of GOWA 2006 specifies that for purposes of that Act a 'Wales public authority' is:
  - (a) a public authority whose functions are exercisable only in relation to Wales and are wholly or mainly functions that do not relate to reserved matters. A public authority is defined in this clause as a body, office or holder of an office that has functions of a public nature.
  - (b) a body specified in Schedule 9A as a Wales public authority. The list in Schedule 9A can be amended by statutory instrument, if a draft has been approved by both Parliament and the Assembly.
- 2.2. Schedule 9A, as inserted by the Bill, adds HEFCW and institutions within the further and higher education sectors to the list of public authorities.

#### Institutions falling within the definition

- 2.3. It is further noted that precise definition of 'institutions in the higher education sector' covers all universities in Wales at the moment, but it does not cater for all institutions that could potentially in future be considered to be part of the higher education sector. Specifically, Schedule 9A includes:
  - A regulated institution within the meaning of the Higher Education (Wales) Act 2015 (ignoring section 26 of that Act) other than the Open University.
  - The governing body of an institution in Wales within the higher education sector within the meaning of section 91(5) of Further and Higher Education Act 1992.
- 2.4. The FHEA 1992 in turn provides that 'institutions within the higher education sector' are:
  - universities receiving financial support under FHEA 1992 (i.e. HEFCW grant funding),



- Higher education corporations (i.e. currently in Wales, all universities that are not incorporated by Royal Charter), and
- ‘designated institutions’ as defined by the Act (this doesn’t apply to any at the moment).

2.5. From September 2017 (subject to commencement), this definition will be amended by the Higher Education (Wales) Act 2015, to also include ‘universities that are regulated institutions i.e. those who have a fee and access plan approved by HEFCW under the HE(W)A 2016.

2.6. We note that Wales public authorities will accordingly include universities only if they are regulated institutions or funded by HEFCW - which may not remain the case in future. HE providers who are not universities or Higher Education Corporations, but receive funding from HEFCW would also not be included in this definition.

#### Use of the definition

2.7. The definition of a ‘Wales public authority’ or ‘public authority’ will be used in a number of instances as discussed in more detail below. The Bill operates by amending the GOWA 2006 rather than setting out provisions of its own. It provides that the definition of ‘Wales public authorities’ applies to the whole Act. However, it appears that other definitions of ‘public authorities’ will continue to be used in GOWA 2006 as amended by the Bill. We would have expected the drafting, for instance, to have included the proviso ‘unless otherwise specified in this Act’ or similar, to ensure clarity about which definition is applicable.

2.8. The full set of amendments to GOWA 2006 have to be traced carefully to see the effect of this new provision. In addition, to appreciate their full impact, the use of GOWA 2006 in other legislation needs to be investigated. Our initial comments on each of these in so far as we have been able to investigate them at this stage, is set out under sections 3 (new provisions), 4 (existing provisions) and 5 (external references to GOWA) respectively below.

### **3. New provisions inserted by the Bill relating to public authorities**

3.1. The definitions of ‘public authorities’ and ‘Wales public authorities’ are used in a number of the new provisions inserted into GOWA 2006 by the Bill.

3.2. In the main part of the Act, this includes the following new provision in particular:

#### Provision of information to the Office for Budget Responsibility (Clause 47).

3.3. Clause 47 enables the Secretary of State to pass regulations which would give the Office for Budget Responsibility a right to access information held by Wales public authorities. Section 9 of the Budget Responsibility and National Audit Act 2011 sets out the Office’s right to access information and this only extends to government information held by a Minister of the Crown or a Government department. If the Secretary of State chooses to exercise this power, it could mean that the OBR has a right to access information held by universities.

***Issue: Not only does this extend the legislative treatment of universities as public authorities but the same right to information would not apply to universities in England.***

Schedule 1 (the new Schedule 7A of GOWA 2006)

- 3.4. The term ‘public authority’ is also used in Schedule 1 (the new Schedule 7A of GOWA 2006) in the specification of ‘reserved matters’ which will fall outside the legislative competence of the Assembly, and the ‘exceptions’ to reserved matters which will fall within its competence. This includes air transport (E4), public access to information (L7), and equal opportunities (N1):

E4 - Air Transport (para 124).

- 3.5. The Act in general reserves matters relating to air transport. The listed exceptions include ‘strategies by the Welsh Ministers or local or other public authorities about the provision of air services’.

***Issue: Universities are unlikely to have strategies about the provision of air services, but if they do the current definition would mean that they fall within the Assembly’s legislative competence. This issue is technical/unlikely to be an issue in practice.***

L7 - Information rights (para 170).

- 3.6. The Act reserves matters relating to the public access to information held by a public authority. However, it excepts information held by a Welsh public authority, unless supplied by a Minister of the Crown and held in confidence.
- 3.7. It appear that for this paragraph, the definitions of ‘public authority’ and ‘Welsh public authority’ are taken from the Freedom of Information Act 2000 and not the new definitions inserted by Clause 4 of the Bill (but see our comments above and the need for greater clarity).
- 3.8. The result is similar to the current position for universities under the ‘delegated powers’ model. The GOWA 2016 devolves ‘access to information held by open access public authorities’ under the subject of ‘public administration’ (Schedule 7, para 14). Open access public authorities are defined to include authorities which are Welsh public authorities, within the meaning of the Freedom of Information Act 2000.
- 3.9. The FOI 2000 (s.83) expressly provides that a “Welsh public authority” includes a university receiving financial support under the provisions of the FHEA 1992, an institution conducted by a higher education corporation, and designated institutions. The Higher Education and Research Bill currently proposes to extend this to include registered higher education providers (in England) but there is no equivalent for regulated institutions (in Wales) which may be an issue in future.

***Issue: Minor issue only. It would be helpful to clarify that the Clause 4 definitions do not apply in this context.***

N1 - Equal opportunities (para 188).

3.10. The Act provides that, in general, equal opportunities are a reserved matter i.e. fall outside the Assembly's legislative competence. The exceptions to this include:

- Imposing duties on any Wales public authority to ensure that its functions are carried out with due regard to the need to meet the equal opportunity requirements.
- Equal opportunities relating to the inclusion of persons with particular protected characteristics in non-executive posts on boards of Wales public authorities.
- Equal opportunities in relation to the functions of any Wales public authority, other than a function that relates to the inclusion of persons in non-executive posts on boards of Wales public authorities. The provision falling within this exception does not include any modification of the Equality Act 2010, or of any subordinate legislation made under that Act, but does include provision that supplements or is otherwise additional to provision made by that Act (e.g. a requirement to take action that the Act does not prohibit).

3.11. The interpretation section of this paragraph did not define public authorities, i.e. we assume that the definition inserted by Clause 4 of the Bill would apply.

3.12. By contrast, the current provisions of the GOWA 2016 only devolve 'equal opportunities in relation to equal opportunity public authorities' under the subject of 'public administration' (Schedule 7, para 14). 'Equal opportunity public authorities' include in particular (a) persons who exercise functions of a public nature and in respect of whom the Welsh Ministers exercise functions, and (b) persons who exercise functions of a public nature and at least half of the cost of whose functions in relation to Wales are funded (directly or indirectly) by the Welsh Ministers. These definitions are far from straightforward and would require further research to confirm how they have been interpreted in the past. However, it appears that for universities this could potentially depend on whether the majority of their costs are met by public funding (which could differ between institutions) and what is considered to be indirect funding e.g. student loans/student grants.

***Issue: From an initial reading, this appears to extend the Assembly's power to legislate in respect of equal opportunities relating to higher education providers in Wales where public funding only meets a minority of their costs.***

3.13. We note that UK legislation on equal opportunities currently applies to universities in Wales, but the precise definition/coverage is different in its detail again. The Equality Act 2010, for instance, imposes a public sector equality duty on public authorities and any person who is not a public authority but who exercises public functions (s.149). A public authority is a person specified in Schedule 19 of the Act, and includes the governing body of an institution in Wales within the higher education sector within the meaning of section 91(5) of FHEA 1992. At the moment this only covers higher education institutions with university title who receive funding from HEFCW (see comments on this above for the coverage of this), but from September 2017 this will include universities who are regulated institutions as well (see comments above on the coverage of this definition). Higher Education providers who do not fall within this precise definition of the Schedule could still be treated as public authorities. A 'public function' is defined as a function of a public

nature for the purposes of the Human Rights Act 1998 (s.150) and this has been interpreted very broadly in the past.<sup>7</sup>

#### General Provisions – Wales public authorities (Paras 197-8)

- 3.14. The reservations relating to public authorities have to be read as subject to the ‘provisions’ in Schedule 7A. Paras 196-7 specifically provides that certain matters concerning Wales public authorities are not reserved (i.e. will fall within the Assembly’s legislative competence), including e.g. the constitution of a public authority, imposing accounting or public procurement functions on a public authority.

***Issue: We would welcome the interpretation/effect of this being clarified to ensure that this cannot be interpreted to expressly allow the Welsh Government/the Assembly to legislate on the constitution of universities, or to impose accounting or public procurement functions on them, by virtue of including them in the definition of ‘public authority’. On an initial/provisional reading, this change to the legislation, if used, could place the charity status/ONS classification of universities at risk.***

#### Schedule 2 (the new Schedule 7B to GOWA 2006)

##### Reserved authorities (paras 7-10)

- 3.15. The new Schedule 7B to GOWA 2006 (paras 8-10) also provides (in summary) that the Assembly cannot alter the functions or constitution of a reserved authority. This includes any public authority other than a Wales public authority.

***Issue: We would welcome the interpretation/effect of this being clarified to ensure that this cannot be interpreted to expressly allow the Welsh Government/the Assembly to legislate to alter the functions of constitution of a university, by virtue of including them in the definition of ‘public authority’. On an initial/provisional reading, this change to the legislation, if used, could place the charity status/ONS classification of universities at risk.***

## 4. The existing GOWA 2006 provisions

- 4.1. The existing GOWA 2006 contains a number of provisions relating to ‘public authorities’.
- 4.2. Most of these, however, are contained in Schedule 5 (setting out the devolved ‘matters’ for purposes of Assembly Measures) which is no longer in force, or Schedule 7 (setting out the devolved ‘subjects’ for purposes of Assembly Acts) which will be replaced by the Bill. Notably, these currently do not attempt to set out their own definition of ‘public authority’ but instead adopt the definition contained either in the Human Rights Act 1998, or the Freedom of Information Act 2000.
- 4.3. The following instances, however, will remain in force in the GOWA 2016:

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<sup>7</sup> See for instance, the *Equality and Human Rights Commission interpretation in its Equality Act 2010 Technical Guidance* (e.g.1.7, 1.15, 3.3) [here](#) and Code guidance [here](#) (e.g. paras 11.3-11.6).

s.83 (agency arrangements and provision of services).

- 4.4. Making universities public authorities would appear to mean that arrangements may be made between the Welsh Ministers and universities for any functions of one of them to be exercised by the other, any functions of the Welsh Ministers to be exercised by university staff, any functions of the university to be exercised by Welsh Government staff, or for provision of administrative, professional or technical services by one of them for the other.
- 4.5. It is not entirely clear on an initial/provisional reading whether this would enable an arrangement to be imposed on public authorities (including universities) or would be interpreted as implying that there must be agreement. If this power is extended to universities as a result of the Bill, this would clearly be objectionable and could affect charity status/ONS classification for purposes of national accounting, both of which would have serious consequences for the sector (and government).
- 4.6. We note that the power to make arrangements for universities to exercise Welsh Government functions (or the other way round) is likely to be inappropriate even where arrangements are voluntary. Charity law, for instance, requires universities to act independently from the Government in pursuit of their charitable objectives (see the Charity Commission's guidance RR7, for instance).

***Issue: This appears to extend current legislation in relation to universities. At best it appears that this provision is inappropriate for universities; if it allows arrangements to be imposed on universities it would potentially cause serious issues for charity status/ONS classification.***

Sch.8 (Auditor General for Wales), para 20 (certification of claims, returns etc).

- 4.7. This provides that the Auditor General must, if required by a relevant body, make arrangements for (a) certifying any claim or return in respect of a grant made or subsidy paid to that body by ... any public authority, (b) certifying any account submitted by that body to ... any public authority with a view to obtaining payment under a contract between that body and ... the public authority.
- 4.8. The term 'public authority' for these purposes means 'a body established by or under the Community treaties or any enactment'. This would presumably include HECs, for instance, but it is not immediately clear whether this includes, for instance, universities established by Royal Charter, and would not apply to private providers in general (even if they are regulated institutions).
- 4.9. At the moment, public audit arrangements/the Auditor General's powers relate primarily to public bodies specified in the GOWA 1998, Schedule 17. This includes HEFCW, for instance, but not universities.

***Issue: This appears to extend the role and powers of Auditor General to universities, and effectively now treat them as public bodies for purposes of the public accounting arrangements.***

Sch.8 (Auditor General for Wales), para 21 (Ancillary powers).

- 4.10. This allows arrangements to be made between the Auditor General and a 'relevant authority' for the function of the authority to be exercised by the Auditor General, or for the Auditor General to provide services to the relevant authority. Relevant authorities include public authorities. However, 'public authorities' does not appear to be specifically defined in this context (in contrast to paragraph 20 – see above).
- 4.11. The application of the definition provided by Clause 4 of the Bill in this context would mean that universities are included. However, before the insertion of Clause 4, it would probably have been interpreted in line with paragraph 20 of the Schedule (see above).

***Issue: Making universities public authorities in this context would extend the current scope of this provision. The applicable definition of 'public authorities' also needs to be clarified in this context.***

## **5. Other legislation using the GOWA 2006 provisions**

- 5.1. Potentially, the change of definition could have wider impact than is clear from the Bill and GOWA 2006 themselves. This depends on how far the relevant provisions or definitions in GOWA 2006 are adopted or cross-referenced by other legislation. From the limited resources and tools at our disposal it has been hard to verify this.
- 5.2. From an initial survey, however, GOWA doesn't appear to have been used in this way.
- 5.3. However, a significant issue remains that, if the Bill inserts a new definition of public authorities in GOWA 2006, that this could be adopted by future legislation, encouraging the further treatment of universities as public authorities in future legislation.

***Issue: Further research may be required to identify the impact of the changes for other legislation. However, the key issue is that the Bill inserts a new definition of public authorities in GOWA 2006, that this could be adopted by future legislation, encouraging the further treatment of universities as public authorities in future legislation.***

Huw Irranca–Davies AC  
Cadeirydd  
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol  
Cynulliad Cenedlaethol Cymru  
Tŷ Hywel,  
Bae Caerdydd CF99 1NA

28 Medi 2016

Annwyl Huw

## Bil Cymru

Diolch am eich llythyr dyddiedig 18 Gorffennaf, pan wnaethoch ofyn am farn Pwyllgor Diwylliant, y Gymraeg a Chyfathrebu ar Fil Cymru.

Cynhaliodd Cynghorwyr Cyfreithiol y Cynulliad sesiwn friffio i'r Pwyllgor ar oblygiadau'r Bil a'r cymalau cadw penodol sy'n berthnasol i waith y Pwyllgor. Er gwybodaeth, rwyf wedi atodi rhestr o'r cymalau cadw hynny i'r llythyr hwn, yn ogystal â disgrifiad o'r effaith y gallant ei chael ar gymhwysedd deddfwriaethol y Cynulliad.

Roedd y Pwyllgor hefyd yn ymwybodol o'r pryderon a fynegwyd gan Gomisiynydd y Gymraeg i Ysgrifennydd Gwladol Cymru ynghylch effaith y Bil ar allu'r Cynulliad i ddeddfu ar yr iaith Gymraeg. Ar 14 Medi, clywsom dystiolaeth lafar gan staff uwch y Comisiynydd am bryderon y Comisiynydd. Amgaeaf lythyr y Comisiynydd at Alun Cairns, dyddiedig 14 Gorffennaf, ynghyd â'r ymateb a gafwyd gan Guto Bebb AS, yr Is-ysgrifennydd Gwladol, a'u gohebiaeth ddilynol. Mae trawsgrifiad o'n sesiwn gyda staff y Comisiynydd wedi'i gyhoeddi ar-lein.

Trafododd y Pwyllgor y Bil eto yn ein cyfarfod ar 22 Medi. Mynegodd yr Aelodau nifer o bryderon am y Bil ar ei ffurf bresennol.

O ran y materion a godwyd gan Gomisiynydd y Gymraeg, roedd y Pwyllgor yn fodlon na fyddai'r Bil yn cael effaith ôl-weithredol ar y broses o roi Mesur y



Gymraeg (Cymru) 2011 ar waith. Fodd bynnag, roedd y Pwyllgor yn pryderu y gallai'r Bil gyfyngu ar allu'r Cynulliad i ddeddfu yn y meysydd hyn yn y dyfodol, ac mai effaith y Bil yn y cyd-destun hwn fyddai dileu rhywfaint o'r cymhwysedd sydd gan y Cynulliad ar hyn o bryd. Ein dealltwriaeth yw os diwygir Mesur y Gymraeg mewn unrhyw ffordd yn y dyfodol, ar ôl deddfiad Bil Cymru, bydd pwerau'r Cynulliad i ddeddfu yn y maes hwn yn gyfyngedig. Mae hyn yn wir yn achos pryder mawr.

O ran y gofyniad i geisio caniatâd Llywodraeth y DU mewn perthynas â gosod dyletswyddau yn ymwneud â'r iaith Gymraeg ar gyrff cyhoeddus y DU, awgrymodd un o'r Aelodau y byddai'n ddefnyddiol cynnwys eithriad 'de minimis' o ryw fath yn y Bil.

Mynegodd yr Aelodau bryder hefyd ynghylch y cymal cadw ar ddarlledu. Mae'r Pwyllgor yn derbyn bod darlledu ar hyn o bryd yn eithriad o dan Ddeddf Llywodraeth Cymru 2006. Fodd bynnag, ymddengys fod y cymal cadw newydd hefyd yn dynodi bod y BBC yn destun cymal cadw penodol ychwanegol, ac nid yw'r rhesymau am hyn yn gwbl glir. Ymddengys fod y drefn hon yn mynd ymhellach na'r eithriad presennol, ac nid yw'n cymryd i ystyriaeth unrhyw dueddiadau ehangach o ran sicrhau bod y BBC a darlledwyr gwasanaeth cyhoeddus eraill yn atebol yn gyhoeddus i'r Cynulliad Cenedlaethol. Mae hefyd yn awgrymu y byddai'r cymal cadw newydd yn cynnwys pob gweithgaredd gan y BBC, nid y gweithgareddau'n ymwneud â darlledu yn unig. Roeddem hefyd yn pryderu am gynnwys 'cyfryngau eraill' yn y cymal cadw. Eto, mae'n ymddangos bod hwn yn cael yr effaith o gulhau ein cymhwysedd presennol y tu hwnt i ddarlledu.

Yn fwy cyffredinol, roedd Aelodau'r Pwyllgor yn bryderus iawn ynghylch y posibilrwydd y byddai unrhyw gymal cadw yn cael yr effaith o leihau cymhwysedd deddfwriaethol presennol y Cynulliad. Efallai ei bod yn amserol nodi bod pwerau presennol y Cynulliad yn deillio o'r refferendwm a gynhaliwyd yn 2011, ac felly, fel mater o egwyddor, ni ddylai'r Bil arwain at sefyllfa lle bydd gan y Cynulliad llai o bwerau, neu bwerau gwannach, na'r pwerau y pleidleisiodd pobl Cymru drostynt yn y refferendwm. Yn wir, efallai y byddai'n ddefnyddiol cynnwys cymal yn y Bil

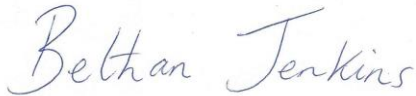




sy'n cadarnhau nad bwriad y setliad newydd yw lleihau amrediad neu gwmpas y pwerau a ddatganolwyd i Gymru.

Rwy'n gobeithio y bydd hyn yn ddefnyddiol. Er gwybodaeth, rwy'n anfon copi o'r llythyr hwn at Ysgrifennydd Gwladol Cymru a Chomisiynydd y Gymraeg.

Yn gywir

A handwritten signature in cursive script that reads "Bethan Jenkins". The signature is written in black ink on a light-colored background.

**Bethan Jenkins AC**

**Cadeirydd**



## ATODIAD - TABL O'R CYMALAU CADW SYDD FWYAF PERTHNASOL I'R PWYLLGOR

Cymal cadw – Adran a rhif	Disgrifiad	Effaith y cymal cadw ar gymhwysedd deddfwriaethol y Cynulliad
B16, 54 a 55	54 Dosbarthiad ffilmiau a recordiadau fideo (gan gynnwys gemau fideo)  55 Trwyddedu– darparu adloniant, a lluniaeth hwyr y nos.	Geiriad ychydig yn wahanol i'r eithriad presennol; <b>lleihad bychan</b> mewn cymhwysedd. Nid yw "gemau fideo" yn cael eu cynnwys fel eithriad ar hyn o bryd.
B17, 56	Gwerthu a chyflenwi alcohol	Y geiriad ychydig yn ehangach na'r eithriad presennol ond bod yr effaith yn debygol o fod yr un peth.
B18, 57	Betio, hapchwarae a loteriau	Heb ei newid.
B22, 61–62	Elusennau a chodi arian	Ddim yn eithriad o gymhwysedd ar hyn o bryd, felly ymddengys ei fod yn <b>leihad</b> mewn cymhwysedd.
J6, 153–155	Materion sy'n ymwneud ag iechyd a diogelwch – gan gynnwys diogelwch tân (ac eithrio hyrwyddo diogelwch tân heblaw drwy wahardd neu	Y geiriad yn ehangach na'r eithriad presennol; yr effaith ymarferol yn <b>aneglur</b> , yn arbennig pan fydd wedi'i gyfuno â



	reoleiddio).	chyfyngiad arall ar gymhwysedd.
K1, 156 a 157	Darlledu a chyfryngau eraill; y BBC.	Y geiriad yn ehangach na'r eithriad presennol; yr effaith ymarferol yn <b>aneglur</b> .
K2, 158	Hawl fenthyca gyhoeddus	Heb ei newid.
K3, 159	Cynllun indemniad y Llywodraeth ar gyfer gwrthrychau sydd ar fenthyg	Heb ei newid.
K4, 160	Eiddo a dderbyniwyd yn lle treth a gwaredu eiddo o'r fath	Y geiriad yn ehangach na'r eithriad presennol – <b>lleihad</b> mewn cymhwysedd.
K5, 161	Diogelwch meysydd chwaraeon	Ddim yn eithriad o gymhwysedd ar hyn o bryd – <b>lleihad</b> mewn cymhwysedd.



Huw Irranca Davies AM  
Chair  
Constitutional and Legislative Affairs Committee  
National Assembly for Wales  
Tŷ Hywel,  
Cardiff Bay CF99 1NA

28 September 2016

Dear Huw

## Wales Bill

Thank you for your letter of 18 July seeking the Culture, Welsh Language and Communications Committee's views on the Wales Bill.

The Committee received a briefing from the Assembly's Legal Advisers on the implications of the Bill and the specific reservations that are of relevance to the work of the Committee. Annexed to this letter for your information is a list of those reservations and a description of the impact they may have on the Assembly's legislative competence.

The Committee was also aware of concerns that the Welsh Language Commissioner conveyed to the Secretary of State for Wales about the Bill's impact on the Assembly's ability to legislate on the Welsh language. On 14 September, we took oral evidence from the Commissioner's senior staff about the Commissioner's concerns. I attach the Commissioner's letter of 14 July to Alun Cairns, the response she received from the Parliamentary under Secretary of State, Guto Bebb MP, and subsequent correspondence between them. The transcript of our session with the Commissioner's staff has been published online.

The Committee considered the Bill again at our meeting on 22 September. Members expressed a number of concerns about the Bill as it currently stands.



On the issues raised by the Welsh Language Commissioner, the Committee was content that the Bill would not retrospectively affect the working of the Welsh Language (Wales) Measure 2011. However, the Committee was concerned that the Bill may constrain the Assembly's ability to legislate in these areas in future and that the effect of the Bill in this area is to remove a degree of the competence that the Assembly currently has. Our understanding is that if the Welsh Language Measure is amended in any way in the future, after the Wales Bill is enacted, the powers of the Assembly to legislate in this area may be limited. This is very concerning indeed.

In relation, to the requirement to seek consent from the UK Government for in relation to imposing Welsh language duties on UK public bodies, a Member of the Committee suggested that some sort of 'de minimis' exception might usefully be included in the Bill.

Members also expressed concern about the broadcasting reservation. The Committee accepts that broadcasting is currently an exception in the Government of Wales Act 2006. However, the new reservation seems to also include the BBC as a specific additional reservation, the reasons are not entirely clear. This seems to go further than the current exception and does not take account of wider moves toward the BBC, and other public service broadcasters, being publicly accountable to the National Assembly. It also suggests that the new reservation would include all BBC activity not just that related to broadcasting. We were also concerned at the inclusion of 'other media' in the reservation. Again, this appears to have the effect of narrowing our current competence beyond broadcasting.

On a broader point, Committee Members were very concerned that the effect of any reservation should be to reduce the Assembly's current legislative competence. It may be timely to point out that the 2011 referendum provided the Assembly with its current powers and that the Bill should not, as a matter of principle, provide fewer or diminished powers than were voted for by the people of Wales in the referendum. Indeed, it may be helpful to insert in to the Bill a clause confirming that the new settlement is not intended to reduce the range or scope of powers devolved to Wales.



I hope this is helpful. I am copying this to the Secretary of State for Wales and to the Welsh Language Commissioner for information.

Yours sincerely

*Bethan Jenkins*

**Bethan Jenkins AM**  
**Chair**



## ANNEXE - TABLE OF RESERVATIONS WHICH ARE OF MOST RELEVANCE TO THE COMMITTEE

Reservation – Section and number	Description	Impact of the reservation on the Assembly’s legislative competence
B16, 54 and 55	54 Classification of films and video recordings (including video games)  55 Licensing of– the provision of entertainment, and late night refreshment.	Wording slightly different from current exception; <b>slight reduction</b> in competence. “Video games” is not currently included as an exception.
B17, 56	The sale and supply of alcohol	Wording slightly wider than current exception but effect likely to be equivalent.
B18, 57	Betting, gaming and lotteries	Unchanged.
B22, 61–62	Charities and fund–raising	Not currently an exception from competence so appears to produce a <b>reduction</b> in competence.
J6, 153–155	Reservations concerning Health and safety – including fire safety (save for the promotion of fire safety otherwise than by prohibition or regulation).	Wording wider than current exception; effect in practice <b>unclear</b> , especially when combined with another restriction on competence.
K1, 156 and	Broadcasting and other media;	Wording wider than current exception; effect



157	the BBC.	in practice <b>unclear</b> .
K2, 158	Public lending right	Unchanged.
K3, 159	Government indemnity scheme for objects on loan	Unchanged.
K4, 160	Property accepted in satisfaction of tax and the disposal of such property	Wording wider than current exception – <b>reduction</b> in competence.
K5, 161	Safety of sports grounds	Not currently an exception from competence – <b>reduction</b> in competence.





Huw Irranca-Davies AC  
Cadeirydd y Pwyllgor Materion Cyfansoddiadol a  
Deddfwriaethol

29 Medi 2016

Annwyl Huw

## Bil Cymru

Diolch am eich llythyr dyddiedig 18 Gorffennaf 2016, yn glŷn â'r gwaith craffu y mae'r Pwyllgor Materion Cyfansoddiadol yn ymgymryd ag ef ar hyn o bryd mewn perthynas â Bil Cymru. Rydym yn ddiolchgar iawn am y cyfle i gyfrannu at y broses honno.

Fel y gwyddoch, bu'r Pwyllgor â'n rhagflaenodd yn trafod Bil Cymru drafft gan ganolbwyntio ar dri maes penodol:

- A oedd Bil Cymru drafft yn glir?
- A oedd yn effeithio ar gymhwysedd y Cynulliad mewn perthynas â phlant, pobl ifanc ac addysg?
- Beth oedd goblygiadau'r Bil drafft o ran gallu'r Cynulliad i ddeddfu yn y dyfodol?

Wrth ystyried Bil Cymru yn awr, mae'r Pwyllgor yn credu bod y tri maes hyn yn berthnasol iawn o hyd, ac mae wedi ystyried effaith Bil Cymru drwy ganolbwyntio ar yr un meysydd i raddau helaeth. Yn gyffredinol, nid yw safbwyntiau'r Pwyllgor Plant, Pobl Ifanc ac Addysg wedi newid ers iddo ysgrifennu at yr Ysgrifennydd Gwladol ym mis Tachwedd 2015. Yr agweddau sy'n peri pryder penodol yw (a) y modd y mae'r Bil yn lleihau cymhwysedd mewn meysydd penodol, a (b) pa mor eglur yw'r materion a gedwir yn ôl.

Mae'r ddwy agwedd hon yn debygol o beri pryder i holl bwyllgorau'r Cynulliad. Mae'r ymateb hwn yn nodi pryderon penodol y Pwyllgor Plant, Pobl Ifanc ac Addysg yn glŷn ag effaith y Bil ar faterion sy'n rhan o glch gwaith, ynghyd â sylwadau cyffredinol gan aelodau'r Pwyllgor.



## **A yw Bil Cymru yn glir ac a allai fod yn gliriach?**

Mae'r Bil yn cynnwys dros 200 o faterion penodol a gedwir yn ôl, materion amrywiol a gedwir yn ôl, profion "angenrheidrwydd" newydd a gofynion ehangach o ran cydsyniad. Mae'r holl brofion a'r materion a gedwir yn ôl yn ei gwneud yn anodd asesu'n hyderus effaith y Bil ar y meysydd hynny sy'n rhan o gylch gwaith y Pwyllgor.

Yn anffodus, nid yw'r Nodiadau Esboniadol sy'n cyd-fynd â'r Bil yn egluro na'n rhesymoli pam mae rhai materion a gedwir yn ôl wedi'u cynnwys neu wedi'u mynegi fel y maent. Hefyd, nid oes yr un egwyddor gwmpasog sy'n rhoi dealltwriaeth glir o'r rheswm dros gynnwys rhai materion i'w cadw'n ôl nac o ba mor bellgyrhaeddol y byddant. Mae hyn wedi gwneud y gwaith craffu'n anoddach, ac, mewn perthynas â llawer o'r materion isod a gedwir yn ôl, mae angen eglurhad pellach o hyd a lled eu heffaith.

## **A yw Bil Cymru yn effeithio ar gymhwysedd presennol y Cynulliad mewn perthynas â phlant, pobl ifanc ac addysg?**

Yn ystod ein trafodaethau (ar y Bil drafft a Bil Cymru) nododd y Pwyllgor amheuan penodol am y modd yr ymddengys bod rhai materion penodol a gedwir yn ôl yn lleihau cymhwysedd y Cynulliad mewn perthynas â phlant, pobl ifanc ac addysg a'r materion sy'n effeithio arnynt.

## **Mater a gedwir yn ôl 37 - Atal, darganfod ac ymchwilio i droseddau**

Gallai'r mater hwn a gedwir yn ôl fod yn eang iawn a gallai fod â goblygiadau sylweddol pe bai'r Cynulliad yn dymuno deddfu mewn meysydd sy'n ymwneud ag amddiffyn plant, er enghraifft.

Byddai eithriad i'r mater hwn a gedwir yn ôl (meysydd y bydd gan y Cynulliad gymhwysedd ynddynt) yn caniatáu i'r Cynulliad ddeddfu mewn perthynas â "phwerau i fynd i mewn i eiddo, i chwilio a chadw eitemau'n ymwneud ag ymchwiliad i drosedd os yw'r ddarpariaeth i greu trosedd o'r fath o fewn cymhwysedd deddfwriaethol y Cynulliad." Fodd bynnag, er bod yr eithriad hwn wedi'i gynnwys, mae'n bosibl y byddai'r mater hwn a gedwir yn ôl yn cael effaith eang iawn a, heb eglurhad pellach, nid yw'n glir beth y byddai'r cyfyngiad penodol hwn yn ei gynnwys. Mae'r Pwyllgor yn pryderu y gallai'r mater hwn a gedwir yn ôl gyfyngu ar bŵer y Cynulliad i ddeddfu, ac mae'n credu bod angen eglurhad pellach o ddibenion mater a gedwir yn ôl 37.



## Mater a gedwir yn ôl 61 – Elusennau

Fel y'i drafftwyd, gallai'r mater hwn a gedwir yn ôl effeithio ar allu'r Cynulliad i ddeddfu mewn perthynas ag ysgolion preifat sydd â statws elusennol yn ogystal â sefydliadau yn y sectorau addysg uwch ac addysg bellach, er enghraifft.

Mae'r nodiadau esboniadol yn datgan "na fydd y mater a gedwir yn ôl yn effeithio ar allu'r Cynulliad neu Lywodraeth Cymru i roi, gosod, neu addasu swyddogaethau cyrff cyhoeddus sy'n gweithredu o fewn meysydd datganoledig sydd hefyd yn digwydd bod yn elusennau". Er y gall nodiadau esboniadol fod yn ddefnyddiol i'r llysoedd wrth iddynt ddehongli'r gyfraith, nid oes iddynt unrhyw effaith gyfreithiol a gellid eu newid cyn cael Cydsyniad Brenhinol. Felly, er mwyn eglurder, mae'r Pwyllgor yn credu y dylid gosod yr esboniad a roddwyd yn y Nodiadau Esboniadol ar wyneb y Bil.

## Materion a gedwir yn ôl 174 i 177 – perthynas teuluol a phlant

O dan Ddeddf Llywodraeth Cymru, roedd elfennau penodol o gyfraith teulu wedi'u datganoli. Dyma sut y cânt eu rhestru o dan Ddeddf Llywodraeth Cymru yn:-

*"(a) cyngor i'r Llysoedd ynghylch lles, cynrychiolaeth a darparu gwybodaeth, cyngor a chymorth arall i blant sy'n preswyllo fel arfer yng Nghymru a'u teuluoedd, a*

*(b) swyddogion achosion teuluol Cymru. "*

Fodd bynnag, nid yw'r meysydd hyn wedi'u rhestru fel eithriadau yn y Bil mwyach ac nid yw'n glir a fyddai'r materion a gedwir yn ôl, fel y'u drafftwyd, yn dileu'r cymhwysedd cyfyngedig hwn sydd gan y Cynulliad ar hyn o bryd. Mae'r Pwyllgor yn credu bod angen egluro'r sefyllfa.

Mae mater a gedwir yn ôl 175 yn cynnwys "bod yn rhiant, cyfrifoldeb rhiant, trefniadau ar gyfer plant a mabwysiadu."

Yn y dehongliad, mae'r diffiniad o'r adran "trefniadau plant" yn cynnwys y pynciau yn Rhan 2 o Ddeddf Plant 1989. Mae Rhan 2 yn ymdrin â gorchmynion llys mewn perthynas â phlant mewn achosion teulu a byddent wedi'u cynnwys beth bynnag yn yr eithriad ar gyfer "cyfraith ac achosion teuluol" ym mhennawd 15 o Atodlen 7 i Ddeddf Llywodraeth Cymru. Nid yw cynnwys Rhan 2 yn y mater a gedwir yn ôl yn newid cymhwysedd deddfwriaethol y Cynulliad o gwbl. Fodd bynnag, nid yw'r mater hwn a gedwir yn ôl yn gyfyngedig i Ran 2 o'r Ddeddf Plant yn unig gan mai dim ond ei "gynnwys" o dan "trefniadau plant" y mae. Nid yw'r nodiadau esboniadol o fawr o gymorth ac nid ydynt yn cynnwys rhagor o fanylion. Mae'r Pwyllgor yn credu bod angen eglurhad pellach cyn y gellir dod i gasgliad clir nad yw hyn yn newid cymhwysedd deddfwriaethol y Cynulliad.

Mater pwysicach, ac sy'n peri mwy o bryder i'r Pwyllgor, yw bod mater a gedwir yn ôl 175 yn cynnwys mabwysiadu. Ar wahân i fabwysiadu plentyn o wlad arall, mae'r gwasanaethau mabwysiadu yn eu cyfanrwydd (fel recriwtio rhieni i fabwysiadu



plant, hyfforddiant, paru a darparu cymorth ar ôl mabwysiadu) wedi'u datganoli ar hyn o bryd. Byddai'r newid hwn yn golygu mai dim ond cymhwysedd mewn perthynas ag asiantaethau mabwysiadu a'u swyddogaethau fyddai gan y Cynulliad. Mae hyn yn amlwg yn lleihau cymhwysedd deddfwriaethol presennol y Cynulliad, ac ni all y Pwyllgor gefnogi hyn.

Mae mater a gedwir yn ôl 176 yn cynnwys pynciau Rhannau 4 a 5 o Ddeddf Plant 1989 ac achosion eraill sy'n ymwneud â gofalu am blant, eu goruchwyllo neu eu hamddiffyn. Fodd bynnag, nid yw'n glir a yw ystyr "pynciau Rhannau 4 a 5" yn golygu cynnwys Rhannau 4 a 5. Os felly, er mwyn eglurder, mae'r Pwyllgor yn credu y dylai Llywodraeth y DU gadarnhau hyn, a gwell fyth fyddai mewnosod diffiniad yn adran dehongli'r Bil.

Pennawd Rhan 5 o Ddeddf Plant 1989 er enghraifft yw "amddiffyn plant." Er nad oes gan deitl deddfwriaeth unrhyw effaith gyfreithiol yn dechnegol, mae'r Pwyllgor yn credu bod angen sicrwydd nad yw "amddiffyn plant" yn fater a gedwir yn ôl, yn enwedig gan fod gan y Cynulliad gymhwysedd deddfwriaethol llawn ar hyn o bryd mewn perthynas ag "amddiffyn a lles plant."

### **Mater a gedwir yn ôl 187 – Cyfle cyfartal**

O dan y trefniadau presennol, gall y Cynulliad ddiwygio deddfwriaeth cydraddoldeb i'r graddau y mae ei deddfwriaeth yn ymwneud â chyfle cyfartal ar gyfer awdurdodau cyhoeddus. Er y byddai rhywfaint o gymhwysedd cyfyngedig yn parhau drwy gyfrwng rhai eithriadau yn y Bil, mae'r Pwyllgor yn hynod bryderus bod y mater hwn a gedwir yn ôl yn cynnwys pynciau Deddf Cydraddoldeb 2006 a Deddf Cydraddoldeb 2010 ac felly byddai'n lleihau cymhwysedd deddfwriaethol y Cynulliad yn sylweddol.

Ni all y Pwyllgor gefnogi'r gostyngiad hwn mewn cymhwysedd deddfwriaethol, ac mae'n gofyn am eglurhad ar fyrder ynghylch pam mae cymhwysedd deddfwriaethol yn cael ei leihau yn y cyswllt hwn.

### **Mater a gedwir yn ôl 194 – Tâl ac amodau athrawon ysgol**

Mae tâl ac amodau athrawon ysgol yn bendant yn fater a gedwir yn ôl yn y Bil. Nid oedd tâl ac amodau athrawon yn faes a oedd wedi'i ddatganoli o dan y setliad presennol ac roedd wedi'i ddiogelu o dan y darpariaethau presennol ar gyfer cydsyniad Gweinidogion y Goron.

Mae Llywodraeth Cymru wedi gofyn i hyn beidio â bod yn fater a gedwir yn ôl a dylid ailystyried y mater, yn enwedig o ystyried bod Llywodraeth y DU ei hun wedi gofyn i Gomisiwn Silk ystyried datganoli tâl ac amodau athrawon. Yn ei lythyr dyddiedig 3 Medi 2015 at Brif Weinidog Cymru, ymrwymodd Ysgrifennydd Gwladol Cymru i roi ystyriaeth bellach i ddatganoli tâl athrawon ac amodau. Mae'r Pwyllgor felly yn gofyn am eglurhad ar fyrder ynghylch pam mae tâl ac amodau athrawon wedi'i restru fel eithriad.



## Cyfyngiadau ar y gyfraith droseddol

Mae'r Pwyllgor yn nodi mai un o'r cyfyngiadau newydd o dan y Bil yw na all Deddf Cynulliad addasu na chreu trosedd mewn "categori a restrir." Mae troseddau rhywiol (gan gynnwys troseddau'n ymwneud â delweddau anwedus neu bornograffig) wedi'u cynnwys yn y categori o droseddau a restrir. Mae'r enghraifft isod yn dangos sut y byddai'r setliad arfaethedig yn lleihau cymhwysedd y Cynulliad mewn perthynas â'r gyfraith droseddol ac yn effeithio'n benodol ar gylch gwaith y Pwyllgor hwn.

### Enghraifft: cam-fanteisio'n rhywiol ar blant

Yng nghyd-destun cam-fanteisio'n rhywiol ar blant, mae'r diffiniad o "gam-fanteisio'n rhywiol" yn Neddf Troseddau Rhywiol 2003 yn cynnwys "recordio" delweddau anwedus o blentyn. Mae'r Bil Plismona a Throseddu yn diwygio'r diffiniad hwnnw gan egluro bod "ffrydio" a "throsoglwyddo" delweddau anwedus o blentyn yn cael eu cynnwys yn y diffiniad.

Mae hyn o fewn cymhwysedd deddfwriaethol presennol y Cynulliad oherwydd ei fod yn ymwneud â'r pwnc a ganlyn yn Atodlen 7:

- amddiffyn a lles plant.

Nid oes dim eithriadau perthnasol (er enghraifft, nid yw troseddau rhywiol yn eithriad). Felly, mae'r rhan hon o'r Mesur Plismona a Throseddu o fewn cymhwysedd deddfwriaethol y Cynulliad ar hyn o bryd ac mae angen cydsyniad y Cynulliad cyn y gall Senedd y DU ddeddfu yn y maes hwn.

O dan Fil Cymru, ni all deddfwriaeth y Cynulliad addasu na chreu trosedd rywiol. Drwy ddiwygio'r diffiniad yn y Bil Plismona a Throseddu, mae trosedd rywiol yn cael ei haddasu (neu ei chreu o bosibl). Felly, o dan Fil Cymru byddai'r tu allan i gymhwysedd y Cynulliad ac ni fyddai angen Memorandwm Cydsyniad Deddfwriaethol.

## **Sut y bydd y Bil drafft yn effeithio ar allu'r Cynulliad i ddeddfu'n effeithiol yn y dyfodol?**

Mae'r Pwyllgor yn parhau i bryderu y bydd y materion a gedwir yn ôl, y profion angenrheidrwydd a'r cyfyngiadau eraill yn y Bil yn cyfyngu'n ddiangen ar allu'r Cynulliad i ddeddfu'n effeithiol yn y meysydd lle mae ganddo swyddogaethau neu bwerau eisoes. Cyfeiriaf y Pwyllgor at yr enghraifft a nodwyd yn ein llythyr at Ysgrifennydd Gwladol Cymru ynghylch dynodi prif swyddog yr heddlu fel partner ar fyrddau diogelu.

Roedd y Pwyllgor, fodd bynnag, yn croesawu'r cynnig i gael gwared ar y mater a gedwir yn ôl sy'n ymwneud â Chomisiynydd Plant Lloegr. Mae hyn yn golygu y bydd Comisiynydd Plant y DU yn parhau'n awdurdod a gedwir yn ôl, ond y gallai'r



Cynulliad ddeddfu yn y dyfodol i ymestyn cylch gorchwyl Swyddfa Comisiynydd Plant Cymru yn amodol ar gydsyniad yr Ysgrifennydd Gwladol perthnasol.

Mae hyn yn gam ymlaen. Fodd bynnag, mae'r Pwyllgor yn nodi y bydd Gweinidogion y DU yn dal yn medru gwrthod unrhyw gynigion yn y dyfodol i ymestyn pwerau'r Comisiynydd.

O ystyried mor aneglur yw'r materion a gedwir yn ôl a'r cyfyngiadau cyffredinol, rhaid sicrhau y bydd modd diwygio'r rhain yn y dyfodol. Mae'r Pwyllgor yn cydnabod bod Gorchmynion Adran 109 o Ddeddf Llywodraeth Cymru yn debygol o barhau, ond gall hyn fod yn broses hir a chymhleth. Er mwyn symleiddio'r broses, dylid creu system fwy hyblyg sy'n caniatáu i faterion a gedwir yn ôl neu gyfyngiad cyffredinol gael eu diwygio, a hynny gyda chaniatâd Gweinidog y Goron, o bosibl.

## Casgliad

Mae'r Pwyllgor yn pryderu'n arw am y ffaith y bydd y Bil yn lleihau cymhwysedd y Cynulliad mewn meysydd sy'n rhan o gylch gwaith y Pwyllgor.


Mae'r Pwyllgor yn hynod bryderus am y ffaith bod y Bil mor aneglur, ac yn credu:

- y dylid seilio'r materion a gedwir yn ôl ar egwyddorion y gellir eu hesbonio'n glir ac yn syml; ac
- y dylid esbonio hyd a lled y materion penodol a gedwir yn ôl yn y Nodiadau Esboniadol sy'n cyd-fynd â'r Bil drafft.

Ym marn y Pwyllgor, dylid creu system fwy hyblyg sy'n caniatáu i faterion a gedwir yn ôl neu gyfyngiad cyffredinol gael eu diwygio, a hynny gyda chaniatâd Gweinidog y Goron, o bosibl.

Mae'r Pwyllgor yn cydnabod bod yr amserlen ddeddfwriaethol ar gyfer y Bil yn ei gwneud yn anodd ystyried y materion hyn, ond mae'n credu bod rhaid ymdrin â nhw cyn cwblhau hynt y Bil drwy'r Senedd.

Yn gywir



**Lynne Neagle AC / AM**  
Cadeirydd / Chair



Huw Irranca-Davies AM  
Chair, Constitutional and Legislative Affairs  
Committee

29 September 2016

Dear Huw

## Wales Bill

Thank you for your letter of 18 July 2016, regarding the Constitutional and Legislative Affairs Committee's current scrutiny of the Wales Bill. We very much appreciate the opportunity to feed into that process.

As you are aware, our predecessor committee considered the draft Wales Bill with three specific things in mind:

- Was the draft Wales Bill clear?
- Did it affect the Assembly's competence in relation to children, young people and education; and
- What did the draft Bill mean for the Assembly's ability to legislate in the future.

In considering the Wales Bill now, the Committee believes that these three areas are still very relevant, and looked at the impact of the Wales Bill along these same broad lines. In general terms, the views of the Children, Young People and Education Committee (CYPE) remain as set out in our letter to the Secretary of State in November 2015. Of particular concern are (a) the roll back of competence in specific areas, and (b) the clarity of the reservations.

These two areas are likely to cause concern across Assembly Committees. This response sets out the specific concerns of CYPE Committee, in relation to the effect of the Bill on matters within its remit, together with general observations of Committee members.



## **Is the Wales Bill clear and are there ways it can be made clearer?**

The Bill contains over 200 specific reservations, wide-ranging general reservations, new “necessity” tests and broadened requirements for consents. The combination of these tests and reservations has made it difficult to assess with confidence the impact of the Bill on those areas that fall within the Committee’s remit.

Unfortunately the Explanatory Notes that accompany the Bill do not explain or rationalise why certain reservations have been included or expressed as they have been. There is also no overarching principle that enables a clear understanding of why certain reservations have been included and how wide reaching they will be. This has made scrutiny more difficult, and in relation to many reservations listed below, further clarification as to the extent of their effect is required.

## **Does the Wales Bill affect the Assembly’s current competence in relation to children, young people and education?**

During our discussions (both on the draft Bill and the Wales Bill) the Committee identified specific reservations which appear to reduce the Assembly’s competence in relation to children, young people and education and the matters that affect them:

### **Reservation 37 – The prevention, detection and investigation of crime**

This reservation is potentially very wide and could have significant implications if the Assembly wished to legislate in areas concerning child protection, for example.

The exception to this reservation (areas where the Assembly will have competence) would allow the Assembly to legislate in relation to “powers of entry, search and seizure relating to the investigation of an offence of a kind provision for the creation of which is within the Assembly’s legislative competence.” However, despite the inclusion of this exception, this reservation is potentially wide-ranging and it is not clear without further clarification what this particular restriction could cover. The Committee is concerned that this reservation could limit the Assembly’s power to legislate, and believes that further clarification on the intention of reservation 37 is required.

### **Reservation 61 – Charities**

As drafted, this reservation could impinge on the Assembly’s ability to legislate in relation to private schools with charitable status as well as, for example, institutions in the Higher and Further Education sectors.

The explanatory notes state that the “reservation will not affect the ability of the Assembly or Welsh Government to confer, impose, or modify functions of public





bodies operating within devolved areas who also happen to be charities”. While explanatory notes can be a useful interpretative tool for the courts, they have no legal effect and could be changed prior to Royal Assent. Therefore, for the sake of clarity, the Committee believes that the explanation provided in the explanatory notes should be placed on the face of the Bill.

### **Reservation 174 to 177 – Family relationships and children**

Under GOWA, specific elements of family law were devolved. These are listed under GOWA as being:-

*“(a)Welfare advice to Courts, representation and provision of information, advice and other support to children ordinarily resident in Wales and their families, and  
(b)Welsh family proceedings officers.”*

However, these areas are no longer listed as exceptions in the Bill and it is unclear whether the reservations as drafted would remove this limited competence that the Assembly currently possesses. The Committee believes that the position must be made clear.

Reservation 175 includes “Parenthood, parental responsibility, child arrangements and adoption.”

In the interpretation section “child arrangements” is defined as including the subject matter of Part 2 of the Children Act 1989. Part 2 covers Court Orders with respect to children in family proceedings and would have been regarded in any event as coming within the “family law and proceedings” exception in heading 15 of Schedule 7 to GOWA. The inclusion of Part 2 in the reservation makes no change in the Assembly’s legislative competence. However, the reservation does not limit itself to only Part 2 of the Children Act as it merely “includes” it under “child arrangements”. The explanatory notes are unhelpful and give no further detail. The Committee believes that further clarification is needed before a clear conclusion can be reached that this does not represent a change in the legislative competence of the Assembly.

More significant, and of greater concern to the Committee, is that reservation 175 includes adoption. Apart from inter-country adoption, adoption services (such as the recruitment of adopters, training, matching and post-adoption support) is currently devolved in its entirety. This change would only leave the Assembly competence in relation to adoption agencies and their functions. This is clearly a reduction in the Assembly’s current legislative competence, and the Committee cannot support this.



Reservation 176 includes the subject-matter of Parts 4 and 5 of the Children Act 1989 and other proceedings related to the care, supervision or protection of children. However, it is not clear whether “subject matter of Parts 4 and 5” means the contents of Parts 4 and 5. If so, for clarity, the Committee believes this should be confirmed by the UK Government or preferably a definition inserted into the interpretations section of the Bill.

Part 5 of the Children Act 1989 for example is headed “protection of children.” Although technically a title in legislation has no legal effect, the Committee believes that there needs to be an assurance that the “protection of children” is not being reserved, especially as the Assembly currently has full legislative competence in relation to “protection and well-being of children.”

### **Reservation 187 – Equal Opportunities**

Under the current arrangements the Assembly can amend equality legislation insofar as its legislation relates to equal opportunities for public authorities. While some limited competence would exist by virtue of some exceptions in the Bill, the Committee is extremely concerned that this reservation includes the subject matter of the Equality Act 2006 and the Equality Act 2010 and would therefore reduce the Assembly’s legislative competence significantly.

The Committee cannot support this reduction in legislative competence, and seeks urgent clarification as to why legislative competence is being rolled back in this respect.

### **Reservation 194 – School teachers’ pay and conditions**

School teachers’ pay and conditions are expressly reserved in the Bill. Teachers’ pay and conditions was not a devolved area under the current settlement and was protected by the current provisions on Minister of the Crown consents.

The Welsh Government have asked that this should not be a reservation and should be reconsidered especially in light of the fact that it was the UK Government that requested the Silk Commission to consider the devolution of Teachers’ Pay and Conditions. The Secretary of State for Wales gave a commitment in his letter dated 3<sup>rd</sup> September 2015 to the First Minister to give further consideration to the devolution of teachers’ pay and conditions. The Committee therefore seeks urgent clarification as to why teachers’ pay and conditions has been listed as a reservation.

### **Restrictions on Criminal law**

The Committee notes that one of the new restrictions under the Bill is that an Assembly Act must not modify or create a criminal offence in a “listed category.” Sexual offences (including offences relating to indecent or pornographic images) is included in the listed category of offences. The example below demonstrates



how the proposed settlement would reduce the Assembly's competence in relation to the criminal law and specifically affect the remit of this Committee.

#### Example - Sexual exploitation of children

In the context of sexual exploitation of a child, the definition of "sexual exploitation" in the Sexual Offences Act 2003 includes "recording" indecent images of a child. The Policing and Crime Bill amends that definition to clarify that "streaming" and "transmitting" indecent images of a child are included in the definition.

This is within the legislative competence of the Assembly because it relates to the following Schedule 7 subject:

- the protection and well-being of children.

There are no relevant exceptions (for example, sexual offences is not an exception). Therefore, this part of the Policing and Crime Bill is currently within the legislative competence of the Assembly and the Assembly's consent is needed before the UK Parliament can legislate in this area.

Under the Wales Bill, Assembly legislation will not be able to modify or create a sexual offence. The Policing and Crime Bill's amendment to the definition is modifying (or possibly creating) a sexual offence, therefore under the Wales Bill it would be outside the Assembly's competence and no LCM would be needed.

#### **How will the draft Bill affect the Assembly's ability to legislate effectively in future?**

The Committee remains concerned that the reservations, necessity tests and other restrictions in the Bill will unnecessarily constrain the Assembly's ability to legislate effectively in areas where it already has powers or functions. I refer the Committee to the example set out in our letter to the Secretary of State for Wales with regard to the designation of the Chief Officer of police as a partner on safeguarding boards.

The Committee did, however, welcome the removal of the reservation relating to the Children's Commissioner in England. This means that while the UK Children's Commissioner will remain a reserved authority, the Assembly in future could legislate to extend the remit of the Office of the Children's Commissioner for Wales subject to the consent of the relevant Secretary of State.

This represents a step forward from the current position. However, the Committee notes that any future proposals for the extension of powers for the Commissioner could still be vetoed by a UK Minister.



The Committee believes that, given the lack of clarity in the reservations and general restrictions, there must be scope to amend these in the future. The Committee acknowledges that GOWA Section 109 Orders are likely to remain in place, but that this can be a lengthy, and complicated, process. In order to secure a more streamlined process, there should be a more flexible system whereby a reservation or general restriction could be amended, possibly with the consent of a Minister of the Crown.

## **Conclusion**

The Committee has grave concerns about the proposed reduction in the Assembly's competence in areas that fall within the Committee's remit.

The Committee is extremely concerned about the lack of clarity in the Bill, and believes that:

- reservations should be underpinned by principles, which can be explained clearly and simply; and
- the full extent of the specific reservations should be explained in the explanatory notes accompanying the draft Bill.

The Committee believes there should be a more flexible system whereby a reservation or general restriction could be amended, possibly with the consent of a Minister of the Crown.

The Committee acknowledges that the legislative timetable for the Bill makes consideration of these matters difficult, but believes that these matters must be addressed before the passage of the Bill is complete.

Yours Sincerely



**Lynne Neagle AC / AM**  
Cadeirydd / Chair



Huw Irranca-Davies

Cadeirydd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

26 Medi 2016

Annwyl Huw

### **Bil Cymru: Cymalau cadw o fewn cylch gwaith y Pwyllgor Newid Hinsawdd, Amgylchedd a Materion Gwledig**

Ar 14 Medi 2016, rhoddwyd ystyriaeth i'r cymalau cadw ym Mil Cymru sy'n berthnasol i gylch gwaith y Pwyllgor Newid Hinsawdd, Amgylchedd a Materion Gwledig.

I gefnogi'r drafodaeth hon, darparodd Gwasanaeth Cyfreithiol Comisiwn y Cynulliad friff ysgrifenedig yn crynhoi'r materion sy'n gysylltiedig â'r cymalau cadw hyn. Amgaeir y briff hwn, a gofynnwn ichi ei ystyried wrth lunio eich casgliadau mewn perthynas â Bil Cymru ('y Bil').

Yn ychwanegol at y materion a godwyd yn y briff hwn, mae gennym dri phryder arall yr hoffem dynnu eich sylw atynt.

### **Addasu cymhwysedd deddfwriaethol y Cynulliad wedi i'r DU adael yr Undeb Ewropeaidd**

Mae polisi a deddfwriaeth yr UE yn dylanwadu'n gryf ar lawer o'r meysydd polisi y mae'r Pwyllgor yn gyfrifol am graffu arnynt. Yn arbennig meysydd amaethyddiaeth, pysgodfeydd a'r amgylchedd.

O dan y setliad presennol, mae rhyddid i'r Cynulliad ddeddfu'n eang yn y meysydd hyn. Mae hyn yn parhau i fod yn wir o dan Fil Cymru (yn amodol ar unrhyw bryderon a godwyd yn y papur briffio cyfreithiol amgaeedig).

Mae'r Pwyllgor am gadw cymhwysedd deddfwriaethol y Cynulliad yn y meysydd hyn ar ôl i'r Deyrnas Unedig adael yr Undeb Ewropeaidd. Byddem yn croesawu cadarnhad gan Lywodraeth y DU ynghylch a yw'n derbyn y safbwynt hwn.



## Caniatâd i gynlluniau ynni

Ysgrifennodd y Pwyllgor a'n rhagflaenodd, y Pwyllgor Amgylchedd a Chynaliadwyedd, at Ysgrifennydd Gwladol Cymru i fynegi pryderon ynghylch ffiniau cul y pwerau sy'n cael eu datganoli o ran rhoi caniatâd i gynlluniau ynni.

Rydym yn rhannu rhai o'r pryderon hyn.

Mae'r Bil yn cynnig y bydd y Cynulliad yn ennill cymhwysedd dros:

- bob prosiect cynhyrchu trydan gwynt ar y tir yng Nghymru; a
- phob prosiect cynhyrchu trydan arall yng Nghymru ac yn nyfroedd tiriogaethol Cymru, hyd at 350MW.

Galwodd y pwyllgor a'n rhagflaenodd am ddatganoli'n llawn y drefn o roi caniatâd i gynlluniau ynni pan gyflawnwyd gwaith dilynol ar ei adroddiad ar *Bolisi Ynni a Chynllunio yng Nghymru yn 2012*.

Galwodd y Pwyllgor hwnnw hefyd am ddatganoli'r cymhellion ariannol sy'n gysylltiedig ag ynni adnewyddadwy a'r system ganiatâd ar gyfer gwelliannau i seilwaith y grid.

Nodwn ddau achos arall sy'n peri pryder o ran yr agwedd hon ar y cynigion.

Yn gyntaf, rydym yn pryderu bod y terfyn uchaf o 350MW yn fypwyol. Rhoddodd y Comisiwn Silk gyfiawnhad dros y cyfyngiad hwn, ond gellir cwestiynu'r cyfiawnhad hwnnw, yn enwedig gan fod y sefyllfa yng Nghymru wedi symud ymlaen yn sylweddol ers i Gomisiwn Silk edrych ar y mater.

Rydym wedi gweld prosiectau fel morlyn llanw Bae Abertawe yn symud yn eu blaenau, ac mae cynigion ar gyfer morlynnoedd llanw mwy o faint ar y gweill.

O dan y cynigion yn y Bil, gallai Gweinidogion Cymru fod wedi rhoi caniatâd i'r prosiect yn Abertawe. Ond ni allent fod wedi rhoi caniatâd ar gyfer prosiectau mwy o faint sy'n cael eu cynllunio mewn mannau eraill yn Aber Afon Hafren ger Caerdydd a Chasnewydd ac oddi ar arfordir Gogledd Cymru. Ni fu dim eglurhad ar y rhesymeg sy'n sail i'r penderfyniad hwn.

Yr ail beth sy'n ein pryderu yw bod mwy o wahaniaeth yn datblygu rhwng polisi ynni yng Nghymru ac ar lefel y DU.

Os na wneir dim mwy na chynyddu'r nenfwd ar gyfer y mathau o ddatblygiad a all gael caniatâd yng Nghymru, ni fydd Cymru yn gallu gwneud fawr mwy na gwneud rhai penderfyniadau cyfyngedig o fewn fframwaith polisi'r DU. Ni all ddatblygu a gweithredu polisi ynni sydd wir wedi'i ddatganoli ar gyfer Gymru, heb gael pwerau



llawer ehangach mewn meysydd fel cyflenwi trydan, rheoleiddio'r grid a'r gyfundrefn cymhellion.

### **Gwresogi ac oeri**

Mae hwn yn gymal cadw newydd nad oedd yn y Bil drafft.

Mae paragraff 217 o'r Nodiadau Esboniadol yn nodi bod yr adran yn cadw'r pŵer ar gyfer prosesau cynhyrchu, dosbarthu a chyflenwi o safbwynt systemau gwresogi ac oeri. Mae'n diffinio systemau cyfun gwres a phŵer (a elwir hefyd yn systemau cyd-gynhyrchu) fel gosodiadau sy'n cynhyrchu pŵer trydanol ac ar yr un pryd yn casglu gwres i'w ddefnyddio.

Gwelir datblygiadau gwres ac ynni cyfun fel arfer yng nghyd-destun datblygiadau lleol. Hoffem ragor o eglurhad ynghylch y sail resymegol dros gynnwys y cymal cadw hwn.

Yn gywir,



**Mark Reckless AC**

**Cadeirydd y Pwyllgor Newid Hinsawdd, Amgylchedd a Materion Glwedig**

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



Huw Irranca-Davies

Chair, Constitutional and Legislative Affairs Committee

26 September 2016

Dear Huw,

**Wales Bill: Reservations within the remit of the Climate Change, Environment and Rural Affairs Committee**

On 14 September 2016, we considered the reservations included in the Wales Bill that relate to the remit of the Climate Change, Environment and Rural Affairs Committee.

To support this discussion, the Assembly Commission's Legal Service provided a written briefing summarising the issues associated with these reservations. This briefing is enclosed and we ask that you consider it when drawing your conclusions in relation to the Wales Bill ('the Bill').

In addition to the issues raised in this briefing, we have three further concerns that we would like to draw to your attention.

**Adjustment to legislative competence of the Assembly following the UK's exit from the European Union**

Many of the policy areas which fall to be scrutinised by the Committee are strongly influenced by EU policy and legislation. In particular the areas of agriculture, fisheries and the environment.

Under the existing settlement these are areas where the Assembly has a wide scope to legislate. This also (subject to any concerns raised in the enclosed legal briefing) remains the position under the Wales Bill.

The Committee wishes to maintain the Assembly's legislative competence in these areas after the United Kingdom leaves the European Union. We would welcome confirmation from the UK government as to whether it accepts this position.





## Energy consenting

Our predecessor committee, the Environment and Sustainability Committee, wrote to the Secretary of State for Wales to express concerns around narrow devolution of energy consenting powers.

We share some of these concerns.

The Bill proposes that the Assembly will gain competence over:

- all onshore wind electricity generating projects in Wales; and
- All other electricity generating projects in Wales and in Welsh territorial waters up to 350MW.

Our predecessor committee called for the full devolution of energy consenting when following-up on its 2012 report on *Energy policy and planning in Wales*.

Our predecessor also called for devolution of the financial incentives related to renewable energy and for consenting of grid infrastructure improvements.

We offer two further causes for concern in relation to this aspect of the proposals.

Firstly, we are concerned that the 350MW ceiling is arbitrary. The Silk Commission provided a justification for this limit, but it can be questioned, particularly as the situation in Wales has moved on considerably since the Silk Commission looked at this issue.

We have seen projects such as the Swansea Bay tidal lagoon progress, and proposals for larger tidal lagoons are now on the table.

Under the Bill's proposals, Welsh Ministers could have consented the Swansea project. But they could not consent the larger projects that are being planned elsewhere in the Severn Estuary near Cardiff and Newport and off the north Wales coast. There has been no explanation of the rationale behind this decision.

Our second concern is that the development of energy policy in Wales is increasingly diverging from the UK position.

Simply increasing the ceiling for the types of development that can be consented in Wales will not enable Wales to do much more than take some limited decisions within the UK policy framework. It cannot develop and implement a truly devolved energy policy for Wales without far broader powers in areas such as electricity supply, grid regulation and the incentives regime.



## Heat and Cooling

This is a new reservation which did not appear in the Draft Bill.

Paragraph 217 of the Explanatory Notes states that the section reserves production, distribution and supply of heat and cooling. It defines combined heat and power systems (also known as co-generation) as installations which simultaneously produce electrical power and also capture heat for use.

Combined heat and power developments are usually seen in the context of local developments. We would like further clarity around the rationale for including this reservation.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M Reckless', is centered within a light grey rectangular box.

Mark Reckless AM  
Chair of the Climate Change, Environment and Rural Affairs Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



## Huw Irranca–Davies AC

Cadeirydd y Pwyllgor Materion Cyfansoddiadol a  
Deddfwriaethol

29 Medi 2016

Annwyl Huw

### Bil Cymru Llywodraeth y DU

Diolch am eich llythyr dyddiedig 18 Gorffennaf yn ymwneud â'r gwaith y mae'ch Pwyllgor yn ymgymryd ag ef ar hyn o bryd ar Fil Cymru. Yn y llythyr hwnnw, fe'n gwahoddwyd ni i ysgrifennu atoch i roi ein barn am y Bil, gan roi sylw penodol i effaith y cymalau cadw ar ein cylch gwaith ac unrhyw newidiadau yn y safbwyntiau a fynegwyd gan y Pwyllgor blaenorol ar Fil Cymru drafft.

### Sylwadau cyffredinol

Trafododd y Pwyllgor y Bil ar 15 Medi. Rydym yn parhau i fod o blaid symud tuag at fodel cadw pwerau gan ein bod yn credu y gallai gynnig darlun cliriach o'r setliad datganoli yng Nghymru. Fodd bynnag, rydym o'r farn bod yn rhaid addasu'r model hwn yn benodol ar gyfer Cymru, gan roi ystyriaeth lawn i'r datblygiadau hyd yma ym maes datganoli, gan gynnwys canlyniad y refferendwm yn 2011 i gynyddu pwerau'r Cynulliad Cenedlaethol.

Yn anffodus, ymddengys nad yw'r Bil sydd gerbon yn gwneud hynny. Fel y Bil drafft, mae'n darparu ar gyfer nifer sylweddol o brofion cymhwysedd cymhleth. Yn ein barn ni, mae effaith gronnus y profion hyn yn cyfyngu'n sylweddol ar allu'r Cynulliad i ddeddfu, gan leihau cymhwysedd mewn nifer o feysydd polisi.

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Yn ogystal â'r profion cymhwysedd, roedd y Pwyllgor blaenorol yn pryderu ynghylch nifer ac amrywiaeth y materion a gedwir yn ôl o dan y Bil drafft ac effaith hyn ar allu'r Cynulliad i ddeddfu'n effeithiol. Yn anffodus, ymddengys nad yw'r Bil sydd gerbron y Senedd ar hyn o bryd y gwella'r sefyllfa, ac mae llawer o'r pryderon a godwn yn y llythyr hwn yn adlewyrchu'r pryderon a fynegwyd eisoes gan y Pwyllgor hwnnw am y Bil drafft.

Gyda'i gilydd, mae'r profion cymhwysedd a'r rhestr helaeth o faterion a gedwir yn ôl o dan y Bil yn debygol o olygu y bydd gan y Cynulliad lai o bwerau i ddeddfu nag sydd ganddynt ar hyn o bryd. Mae hyn, yn ein barn ni, yn annerbyniol.

Yng ngweddill y llythyr hwn, byddwn yn ehangu ar y pryderon uchod ynghylch y profion cymhwysedd a'r materion a gedwir yn ôl, gan roi enghreifftiau ymarferol lle y bo'n bosibl.

### **Prawf "yn ymwneud â"**

O dan y model cadw pwerau, ni chaiff deddfwriaeth y Cynulliad 'ymwneud â' mater a gedwir yn ôl. Gan hynny, bydd unrhyw ddeddfwriaeth sydd â mwy na 'chysylltiad llac neu ganlyniadol' ag unrhyw fater a gedwir yn ôl yn y Bil, yna bydd y tu allan i gymhwysedd y Cynulliad. Gyda chryn bryder y nododd y pwyllgor blaenorol fod mwy na 200 o faterion a gedwir yn ôl wedi'u rhestru yn y Bil drafft. Rydym yn siomedig o weld mai dyma'r achos o hyd yn y Bil hwn. O fewn cylch gwaith y Pwyllgor hwn yn unig, gallai'r trefniadau newydd hyn fod yn niweidiol iawn i allu'r Cynulliad i basio (neu addasu) deddfwriaeth mewn meysydd polisi arwyddocaol lle y gall wneud hynny ar hyn o bryd. Mae'r enghreifftiau a ganlyn yn egluro'r pwynt hwn.

*Materion a gedwir yn ôl sy'n berthnasol i gylch gwaith y Pwyllgor*

### Cyflogaeth

Yn y cyswllt hwn, rydym yn pryderu am hawliau a dyletswyddau cyflogaeth. O dan y model presennol o roi pwerau, nid yw cyflogaeth wedi'i rhestru fel pwnc datganoledig yn Atodlen 7- gan hynny, mae'n 'bwnc tawel' ac mae'r Cynulliad yn



gallu deddfu yn y maes hwn, ar yr amod bod y ddeddfwriaeth yn ymwneud â mater datganoledig ac nad yw'n ymwneud ag eithriad.

Ym Mil Cymru, fodd bynnag, mae cyflogaeth yn newid o fod yn bwnc tawel i fod yn fater a gedwir yn ôl, gan atal y Cynulliad rhag deddfu mewn unrhyw ffordd arwyddocaol ar faterion fel hawliau gweithwyr ac isafswm cyflog. Felly, o dan Fil Cymru, ni fyddai'r Cynulliad yn gallu pasio deddfwriaeth yn ymwneud â hawliau gweithwyr a'r isafswm cyflog hyd yn oed pe bai'r ddeddfwriaeth hefyd yn ymwneud â mater datganoledig fel 'lles cymdeithasol', er enghraifft. Mae hyn yn ostyngiad sylweddol ac annerbyniol yng nghymhwysedd deddfwriaethol presennol y Cynulliad.

### Trwydded gwerthu a chyflenwi alcohol

Rydym ninnau, fel y Pwyllgor blaenorol, yn pryderu am y ffaith bod gwerthu a chyflenwi alcohol yn fater a gedwir yn ôl. Mae yfed alcohol yn creu problemau iechyd difrifol a llwyddodd y Pwyllgor blaenorol i ymgymryd â chryn dipyn o waith yn y maes hwn. Mae'r hyn ddywedodd y Gweinidog Iechyd y Cyhoedd a Gwasanaethau Cymdeithasol yn ddiweddar<sup>1</sup> yn peri pryder inni: er bod Llywodraeth Cymru yn awyddus i gyflwyno isafbris uned oherwydd y buddion cysylltiedig o safbwynt iechyd cyhoeddus, roedd yn credu y gallai Bil Cymru fod yn "faen tramgwydd" pe bai'n dileu cymhwysedd y Cynulliad i deddfu yn y maes hwn.

### Pwerau'r heddlu o dan Ddeddf Iechyd Meddwl 1983

Mae'r Pwyllgor wedi ystyried ac wedi cyflwyno adroddiad ar y Memorandwm Cydsyniad Deddfwriaethol (y Memorandwm) ar gyfer y Bil Heddlu a Throsedd yn ddiweddar. Ymhlith pethau eraill, mae'r Bil yn ymestyn pwerau'r heddlu o dan Ddeddf Iechyd Meddwl 1983 i fynd i mewn i eiddo er mwyn symud pobl sy'n dioddef o anhwylder meddwl oddi yno a mynd â nhw i le diogel. Mae hefyd yn darparu dulliau diogelwch penodol i gyfyngu ar y pwerau estynedig hynny, gan

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<sup>1</sup> Y Pwyllgor Iechyd, Gofal Cymdeithasol a Chwaraeon



gynnwys mwy o reolaeth dros y mathau o leoedd y gellir eu defnyddio fel 'lle diogel'. Ar hyn o bryd, mae'r darpariaethau hyn o fewn cymhwysedd deddfwriaethol y Cynulliad oherwydd maent yn ymwneud â phynciau a restrir yn Atodlen 7, ac nid yw 'plismona' wedi'i eithrio. Gan hynny, mae angen cydsyniad y Cynulliad cyn y gall Senedd y DU ddeddfu yn y maes hwn.

O dan Fil Cymru, fodd bynnag, mae 'plismona' yn fater a gedwir yn ôl. Gan hynny, bydd y rhannau hynny o'r Bil a oedd wedi'u cynnwys yn y Memorandwm diweddar, y tu allan i gymhwysedd y Cynulliad os bernir bod ganddynt fwy na chysylltiad llac neu ganlyniadol ar blismona. Dyna fyddai'r achos hefyd hyd yn oed os gellid barnu bod y rhannau hynny o'r Bil yn ymwneud ag atal anhwylderau meddyliol neu â gofalu am bobl agored i niwed, nad ydynt yn faterion a gedwir yn ôl o dan y Bil.

Yn yr achos hwn, ni fyddai angen Memorandwm, a byddai rhwydd hynt i Senedd y DU ddeddfu mewn maes y mae angen cydsyniad y Cynulliad arno ar hyn o bryd cyn y gall ddeddfu yn ei gylch.

### **Diwygio'r gyfraith yn ymwneud â materion a gedwir yn ôl**

O dan Fil Cymru, yn ogystal â sicrhau nad yw deddfwriaeth y Cynulliad yn 'ymwneud â' mater a gedwir yn ôl, ni chaiff ychwaith 'ddiwygio'r gyfraith' yn ymwneud â materion a gedwir yn ôl. Fel y nododd y Pwyllgor blaenorol, nid yw'r gwahaniaeth rhwng y ddau'n glir ac mae'r deddfwriaeth y mae'n ei gwmpasu'n anferthol, gan ei fod yn cynnwys yr holl gyfraith yn ymwneud â'r materion a gedwir yn ôl y mae'r Bil yn darparu ar eu cyfer.

Mae'n cyfyngu ymhellach ar allu'r Cynulliad i ddeddfu, a hynny mewn modd annerbyniol yn ein barn ni, gan ei fod yn golygu na fydd deddfwriaeth y Cynulliad yn gallu diwygio'r gyfraith swmpus hwnnw oni bai ei fod yn gwneud hynny mewn ffordd ategol ac nad yw'n cael mwy o effaith nag sy'n angenrheidiol i gyflawni diben deddfwriaeth y Cynulliad. At hyn, mae'n debygol mai'r Goruchaf Lys fydd yn gorfod penderfynu a yw rhywbeth yn 'angenrheidiol'.



## Y gyfraith droseddol

Yn ogystal â'r uchod, fel y Pwyllgor blaenorol, rydym yn pryderu am y cyfyngiadau a osodir gan y darpariaethau ym Mil Cymru sy'n ymwneud â defnyddio'r gyfraith droseddol.

Rydym yn cytuno â'r Pwyllgor blaenorol mai rôl gyfreithlon deddfwrfa etholedig ddemocrataidd yw penderfynu sut i orfodi ei deddfwriaeth ac i wneud hynny mewn ffordd y mae'n ei ystyried yn briodol. Yn ein barn ni, mae'r darpariaethau ym Mil Cymru sy'n ymwneud â diwygio'r gyfraith droseddol yn gosod cyfyngiad annerbyniol ar allu'r Cynulliad i orfodi rhwymedigaethau a sicrhau hawliau drwy ei ddeddfwriaeth.

Mae'r enghraifft a ganlyn yn amlwg yn lleihau cymhwysedd y Cynulliad ym maes y gyfraith droseddol.

### Cam-fanteisio'n rhywiol ar blant

Fel y nodwyd uchod, trafododd y Pwyllgor Femorandwm ar gyfer y Mesur Plismona a Throsedd yn ddiweddar. Yn ogystal ag ymestyn pwerau penodol yr heddlu, mae'r Memorandwm yn ceisio cydsyniad er mwyn i Senedd y DU ddeddfu i ddiwygio'r diffiniad o "gam-fanteisio'n rhywiol" yn Neddf Troseddau Rhywiol 2003, fel bod y diffiniad o "recordio" delweddau anwedus o blentyn yn cynnwys "ffrydio" a "throsoglwyddo" delweddau anwedus o blentyn.

O dan y setliad presennol, mae'r mater hwn o fewn cymhwysedd y Cynulliad gan ei fod yn ymwneud â phwnc yn Atodlen 7 ac nid yw 'troseddau rhywiol' yn eithriad penodol. Fodd bynnag, o dan Fil Cymru, ni all deddfwriaeth y Cynulliad ddiwygio na chreu unrhyw droseddau rhywiol. Mae'r newidiadau i'r diffiniad yn y Mesur Plismona a Throsedd yn diwygio/creu trosedd rywiol, ac felly byddai hyn y tu allan i gymhwysedd y Cynulliad. Gan hynny, ni fyddai angen Memorandwm.



## Cydsyniad Gweinidogion y Goron (Llywodraeth y DU)

Roedd y Pwyllgor blaenorol yn pryderu am y gofynion yn y Bil drafft i Lywodraeth y DU gydsynio â deddfwriaeth y Cynulliad os ydynt yn effeithio ar swyddogaethau Gweinidogion y Goron, adrannau'r Llywodraeth ac awdurdodau a gedwir yn ôl. Rydym yn cytuno bod y gofynion hyn yn niweidio'n sylweddol allu'r Cynulliad i ddeddfu mewn ffordd gyson a chynhwysfawr, ac felly siomedig yw gweld eu bod yn cael eu hadlewyrchu yn y Bil a gyflwynwyd.

Unwaith eto, rydym wedi ceisio dangos hyn drwy roi'r enghraifft ymarferol a ganlyn.

### Dyletswyddau e-sigaréts ar awdurdodau a gedwir yn ôl sydd â gweithleoedd yng Nghymru

Nod gwreiddiol y Bil Iechyd Cyhoeddus (Cymru) oedd gwahardd y defnydd o e-sigaréts yn gyffredinol mewn gweithleoedd ledled Cymru. Fel rhan o'r gwaharddiad hwnnw, gosododd rai dyletswyddau penodol ar reolwyr gweithleoedd, gan gynnwys ei gwneud yn ofynnol i reolwyr osod arwyddion yn y gweithle. Ar hyn o bryd, mae hyn o fewn cymhwysedd y Cynulliad, nid oes dim eithriadau perthnasol, ac nid oes angen cydsyniad Llywodraeth y DU.

Fodd bynnag, o dan Fil Cymru, byddai angen cysyniad Llywodraeth y DU cyn y gellid gosod dyletswyddau o'r fath ar awdurdodau a gedwir yn ôl sydd â gweithleoedd yng Nghymru (fel y DVLA, Gwasanaeth Erlyn y Goron, y Gofrestrfa Tir). Y rheswm am hyn yw y byddai'r dyletswyddau hynny'n gyfystyr â gosod swyddogaethau ar awdurdodau a gedwir yn ôl.

Heb gydsyniad Llywodraeth y DU, ni fyddai'r ddyletswydd i gymryd camau i atal unigolion rhag defnyddio e-sigaréts na'r ddyletswydd i osod arwyddion yn gymwys i adeiladau awdurdodau a gadwyd yn ôl. Byddai hynny'n arwain at anghysondeb yn y modd y byddai'r dyletswyddau hynny'n cael eu cymhwyso ledled Cymru.





## Sylwadau i gloi

Yn gyffredinol, rydym yn cytuno â'r Pwyllgor blaenorol na fydd y Bil yn darparu setliad cliriach a chryfach yng Nghymru, sy'n debyg o barhau. Yn hytrach, rydym yn pryderu y bydd cymhwysedd y Cynulliad yn lleihau, ac y bydd modd o hyd i ddehongli'r Bil mewn nifer o wahanol ffyrdd ac, yn anorfod, y bydd angen troi'n fuan at y Goruchaf Lys, a gwneud hynny droeon o bosibl. O ran y pwynt olaf, rydym yn credu y byddai'n fuddiol ystyried y posibilrwydd o greu system i ymdrin ag unrhyw eithriadau i faterion a gadwyd yn ôl a gafodd eu hepgor o'r Bil drwy amryfusedd, os oes ewyllys da o'r ddwy ochr i wneud hynny. Gallai hyn helpu i leihau'r angen i droi at y Llys, yn sicr yn ystod y dyddiad cynnar, os daw'r Bil yn ddeddf. Er bod proses ddeddfwriaethol arbennig y gellir ei defnyddio i newid rhai agweddau ar y setliad datganoli, gall y broses honno fod yn feichus ac yn araf ac mae'n annhebygol y bydd yn ddigon hyblyg i ymdrin â'r ansicrwydd a fydd yn codi o dan y setliad newydd.

Yn gywir,



Dr Dai Lloyd AC

Cadeirydd y Pwyllgor Iechyd, Gofal Cymdeithasol a Chwaraeon



## Huw Irranca–Davies AM

Chair, Constitutional and Legislative Affairs Committee

29 September 2016

Dear Huw

### The UK Government's Wales Bill

Thank you for your letter of 18 July about the work currently being undertaken by your Committee on the Wales Bill. In that letter, you invited us to write to you with our views on the Bill, particularly the impact of the reservations on our remit and any changes to the views expressed by our predecessor committee on the draft Wales Bill.

### General observations

The Committee considered the Bill on 15 September. We remain supportive of the move to a reserved powers model, which we believe has the potential to clarify the devolution settlement in Wales. However, we maintain that such a model must be specifically tailored to Wales, taking full account of the developments in devolution thus far, including the outcome of the 2011 referendum to increase the powers of the National Assembly.

Regrettably, this does not seem to have been achieved in the Bill before us which, as with the draft Bill, provides for a considerable number of complex tests of competence. It is our view that the cumulative effect of these tests amounts to a significant constraint on the Assembly's ability to legislate, rolling back competence in a number of policy areas.

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In addition to the competence tests, our predecessor Committee expressed concerns about the sheer number and breadth of the reserved matters listed in the draft Bill and the impact this would have on the Assembly's ability to legislate effectively. Unfortunately, this situation does not seem to have improved in the Bill currently before Parliament, and many of the concerns we raise in this letter mirror those already expressed by that Committee about the draft Bill.

Taken together, the competence tests and the extensive list of reserved matters under the Bill are likely to mean that the Assembly has fewer powers to legislate than at present. We find this unacceptable.

In the remainder of this letter, we expand on the concerns expressed above about the competence tests and the reserved matters, providing practical examples where possible.

### **The 'relates to' test**

Under the reserved powers model, Assembly legislation must not 'relate to' a reserved matter. As such, any Assembly legislation which has more than a 'loose or consequential connection' with any reservation in the Bill will be judged to be outside competence. Our predecessor noted with concern that there were more than 200 reservations listed in the draft Bill. We are dismayed to see that this is still the case in this Bill. Within the remit of this Committee alone, these new arrangements could be deeply detrimental to the Assembly's ability to pass (or modify) legislation in significant policy areas where it is currently able to do so. The following examples illustrate this point.

#### *Reservations relevant to the Committee's remit*

##### Employment

Our concern here relates to employment rights and duties. Under the current conferred powers model, employment is not listed as a devolved subject in Schedule 7 – as such, it is a 'silent subject' and the Assembly is able to legislate in



this area, provided that the legislation relates to a devolved matter and does not relate to an exception.

The Wales Bill, however, turns employment from a silent subject into a reservation, thus preventing the Assembly from legislating in any significant way on matters like employee rights and the minimum wage. Therefore, under the Wales Bill, the Assembly would not be able to pass legislation which related to employee rights and the minimum wage even if that legislation also related to a devolved matter such as 'social welfare'. This represents a significant and unacceptable reduction in the Assembly's current legislative competence.

#### Licensing of sale and supply of alcohol

We share the concerns of our predecessor about the reservation of the sale and supply of alcohol. The consumption of alcohol is a serious health issue and is an area where the previous Committee has undertaken a significant amount of work. We were concerned to hear recently<sup>1</sup> from the Minister for Social Services and Public Health that, although keen to introduce minimum unit pricing because of the associated public health benefits, the Welsh Government believed that the Wales Bill might be a "stumbling block" to this if it were to remove the Assembly's competence to legislate in this area.

#### Police powers under the Mental Health Act 1983

The Committee has recently considered and reported on an LCM for the Policing and Crime Bill. Amongst other things, the Bill extends the powers of the police under the Mental Health Act 1983 to enter premises in order to remove people who suffer from a mental disorder and to take them to a place of safety. It also provides certain safeguards as a check on those extended powers, including greater controls over what kind of place can be used as a 'place of safety'. These provisions are currently within the legislative competence of the Assembly

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<sup>1</sup> RoP, Health, Social Care and Sport Committee, 15 September 2016, para 178



because they relate to subjects listed in Schedule 7, and ‘policing’ is not an exception. As such, the Assembly’s consent is needed before the UK Parliament can legislate in this area.

Under the Wales Bill, however, ‘policing’ is a reservation. Therefore, the parts of the Bill that were the subject of the recent LCM would be outside the Assembly’s competence if they were judged to relate to policing in more than a loose or consequential way. This would be the case even if those parts of the Bill could also be judged to relate to the prevention of mental disorders or care of vulnerable persons, which are not reserved matters under the Bill. In this event, an LCM would not be needed and Parliament would be able to legislate freely in an area where previously the consent of the Assembly would have been sought.

### **Modifying the law on reserved matters**

In addition to not ‘relating to’ a reserved matter, Assembly legislation under the Wales Bill must not ‘modify the law’ on reserved matters. As noted by our predecessor, this is a very fine distinction and one which captures a vast amount of law, as it encompasses all of the law on all of the reservations provided for in the Bill.

It serves to further restrict the Assembly’s ability to legislate in a way that we consider to be unacceptable, as it means that Assembly legislation will only be able to modify that vast amount of law if it is doing so in an ancillary way and there is no greater effect than necessary to give effect to the purpose of the Assembly legislation. Further, the question of whether something is ‘necessary’ is likely to be something that will have to be decided by the Supreme Court.

### **The criminal law**

In addition to the above, we share the concerns of our predecessor about the limiting effect of the provisions in the Wales Bill relating to the use of the criminal law.



We agree with the previous Committee that it is the legitimate role of a democratically elected legislature to decide how to enforce its legislation and to do so in a way that it considers appropriate. In our view, the provisions in the Wales Bill relating to modifications to the criminal law place an unacceptable limitation on the Assembly's ability to enforce obligations and secure rights via its legislation.

The following example is a clear roll-back of Assembly competence in the criminal law.

#### Sexual exploitation of children

As referred to above, the Committee recently considered a Legislative Consent Memorandum for the Policing and Crime Bill. In addition to extending certain police powers, the LCM seeks consent for Parliament to legislate to amend the definition of "sexual exploitation" in the Sexual Offences Act 2003, so that the definition of "recording" indecent images of a child includes "streaming" and "transmitting" indecent images of a child.

Under the current settlement, this matter is within the Assembly's competence as it relates to a subject within Schedule 7 and 'sexual offences' is not a specific exception. However, under the Wales Bill, Assembly legislation will not be able to modify or create any sexual offence. The Policing and Crime Bill's amendment to the definition does modify/create a sexual offence, and therefore this would be outside the Assembly's competence. As such, no LCM would be needed.

#### **Minister of the Crown (UK Government) consent**

Our predecessor expressed concerns about the requirements in the draft Bill for the UK Government to give consent to Assembly legislation that affect the functions of Ministers of the Crown, government departments and reserved authorities. We agree that these requirements present a significant risk to the Assembly's ability to legislate in a comprehensive and consistent way, and we are therefore disappointed to see them reflected in the Bill before us.



Again, we have sought to illustrate this point with the following practical example.

#### E-cigarette duties on reserved authorities with workplaces in Wales

The Public Health (Wales) Bill was originally intended to prohibit the use of e-cigarettes generally across workplaces in Wales. As part of that prohibition, it imposed certain duties on managers of workplaces, including requiring managers to put up signs in the workplace. Currently this is within the Assembly's competence, there are no relevant exceptions, and UK Government consent is not needed.

However, under the Wales Bill, UK Government consent would be needed to impose such duties on reserved authorities with workplaces in Wales (such as the DVLA, Crown Prosecution Service, Land Registry), as those duties would amount to imposing functions on reserved authorities.

If UK Government consent was not given, the duty to take steps to stop persons using e-cigarettes and the duty to put up signs would not apply to buildings occupied by reserved authorities. This would result in an inconsistent application of those duties across Wales.

#### **Closing remarks**

Overall, we share the view of our predecessor Committee that the Bill will not deliver a clearer and stronger settlement in Wales which is durable and long lasting. Instead, we are concerned that there will be a rolling back of competence, and that there will continue to be considerable room for interpretation, with the inevitable need for early and even repeated recourse to the Supreme Court. On this last point, we believe there is some merit in exploring the options for making available a mechanism to work through any exceptions to reservations that have been inadvertently missed out of the Bill, where there is good will on both sides to do this. This may help to reduce the need for the Court's involvement, certainly in the early days of implementation should the Bill be enacted. While there is a special legislative process that can be used to change **some** aspects of the



devolution settlement, that process can be cumbersome and slow and is unlikely to be flexible enough to deal with the uncertainties that will arise under the new settlement.

Yours sincerely,

A handwritten signature in black ink, appearing to read "David Lloyd". The signature is written in a cursive style with a large initial 'D'.

Dr Dai Lloyd AM  
Chair, Health, Social Care and Sport Committee







## THE LEARNED SOCIETY OF WALES CYMDEITHAS DDYSGEDIG CYMRU

THE NATIONAL ACADEMY — CELEBRATING SCHOLARSHIP AND SERVING THE NATION  
YR ACADEMI GENEDLAETHOL — YN DATHLU YSGOLHEICTOD A GWASANAETHU'R GENEDL

WB 16

Ymateb gan Cymdeithas Ddysgedig Cymru  
Response from The Learned Society of Wales

### *Constitutional and Legislative Affairs Committee:*

UK Government's Wales Bill

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*September 2016*

### *Learned Society of Wales Response*

The [Learned Society of Wales](#) (LSW) is an independent, all-Wales, self-governing, pan-discipline educational charity that was established back in 2010. As Wales's first National Academy of science and letters, the Learned Society of Wales, like similar societies in Ireland and Scotland, brings together the most successful and talented Fellows connected with Wales, for the shared purpose and common good of advancing and promoting excellence in all scholarly discipline across Wales.

1. The Learned Society of Wales welcomes this opportunity to submit comments on the Wales Bill 2016. In doing so, we note the growing participation of Welsh civic society in public debates, and the Society itself is an exemplar of this encouraging and positive trend in Welsh civic life.
2. We acknowledge too the readiness of the promoters of this bill and its predecessor, the Draft Wales Bill 2015, both to engage with Welsh civic society regarding their proposals and to respond to that debate. We note also, however, that the timetable envisaged for the scrutiny and possible amendment for this bill is very tight, and that consequently there is little realistic opportunity for substantial change to the proposals and their detail. We confine ourselves here therefore to broader issues of principle, rather than suggest detailed amendments, and note issues which in our view will almost certainly require further legislative action at a future date.
3. The Bill is intended to achieve 'clarity, coherence and stability' by adopting a 'reserved powers' model. In our view, it will not succeed in doing so. The structure of the constitutional arrangements remain extremely complex.
4. There are several features of its content which also undermine the stated objectives.
5. The list of reserved matters remains lengthy, and does not appear to be the result of an analysis of what needs to be retained centrally according to the principle of subsidiarity. It will remain almost impossible for the citizen to understand the division of responsibilities between UK institutions and those of Wales, to the detriment of democratic participation.
6. It is unlikely also that greater clarity will result regarding the boundary of the Assembly's legislative competence. In many cases, it may in practice be that exceptions under the existing settlement, rendering outside of competence provisions which 'fall within' them, have simply been converted into reserved matters, rendering outside of competence provisions which relate to them. This in itself may narrow the Assembly's law making powers. How the 'relates to' test will be interpreted in this new context cannot be predicted with certainty, and it is difficult therefore to be confident that periodical references to the Supreme Court will have been consigned to history.

7. It is disappointing that a clear resolution of the issues concerning Minister of the Crown functions along the lines of that contained within the Scottish devolution settlement has not been achieved. An obvious opportunity to achieve clarity and coherence has been missed.
8. As an example of specific concerns, and one of particular interest to the Learned Society, is the categorization of governing bodies of institutions within the higher education sector as public authorities. We share the concerns of universities that this categorization may result in unintended and unwelcome consequences for the institutions concerned, and we would seek assurance that the consequences are being thoroughly scoped or that universities are removed from the list of public authorities. Our question illustrates the lack of clarity and certainty in the proposed arrangements.
9. It is worth reflecting upon other consequences for Wales of such uncertainty. How likely is it, for example, that businesses will choose to locate in a country where there is a lack of clarity as to the powers of its legislature and government? A potential investor needs to know what the law is in Wales and what are the powers of the National Assembly to affect that law.
10. Clarity and accessibility of law are fundamental to democracy. . Both the administration of justice and law making are part of government. For legislation to be effective, it must be capable of being enforced or applied to resolve disputes in the courts. The late Lord Bingham of Cornhill regarded the provision of means to resolve disputes involving citizens without prohibitive cost or inordinate delay as a feature of the rule of law. Citizens in Wales, and their legal advisors, need to know what laws apply to them, and it is of little relevance whether the laws have been enacted by the UK Parliament or the National Assembly. For the citizen, Welsh law is the law which applies to them in Wales regardless of who made it. We agree. It is unhelpful if there is a plethora of laws on the same subject made by different bodies. The Law Commission of England and Wales has drawn attention to the fact that in addition to 13 Assembly Measures and Acts on education, the UK Parliament has also continued to legislate for education in Wales. Depending on how 'education law' is defined, the law which applies in relation to education in Wales is distributed between 17 and 40 Acts of Parliament, 7 Assembly Measures and 6 Assembly Acts, as well as hundreds of statutory instruments. (Law Comm No. 366; *Form and Accessibility of the Law Applicable in Wales*, ¶ 7.2, on p. 70.)
11. We note that, other than recognizing the existence of a body of Welsh law defined by source rather than application, the bill does not expressly address the practical issues relating to justice which specifically arise in Wales. We believe strongly that the administration of justice according to law within Wales needs to reflect the distinct differences which are arising. This does not mean that Wales needs a separate courts system, but it does mean that the exercise of jurisdiction by the courts in Wales (that is their administration of justice according to the body of law which applies in Wales), must reflect the fact that the laws they administer are no longer always common to those of neighbouring England. We recognise that the legal services industry is a key contributor to the British economy. That is not sufficiently the case in Wales. We would like to see stronger legal services in Wales, with Wales becoming more of a place to do legal business, and the full range of legal services available to the general benefit of the economy with the potential of devolution better exploited. We therefore urge further discussion about the establishment of a body in Wales that could examine these issues and promote legal services and education aimed at the needs of the people of Wales and the Welsh economy.
12. The devolution of revenue raising powers raises many issues. We note that allocation of revenues is largely based on the Barnett formula. When this Bill is becomes law, there will be enhanced scope for disagreements between governments and legislatures. Federal jurisdictions often have processes – sometimes intergovernmental, sometimes judicial – to provide for arbitration or determination of such disputes so as prevent one level of government having the power to impose outcomes on the other. We recommend that these avenues be investigated.

13. Brexit looms large over most aspects of life in the United Kingdom. All levels of government have a substantial capacity problem to deal with the huge number of complex issues involved. This is not the time to speculate on outcomes. But Brexit will complicate the implementation of this Bill, and its provisions will further complicate the negotiation involved to deliver Brexit. We note that currently the legislative competence of the Assembly and the powers of the Welsh government are limited by the requirement of compatibility with EU law. The bill proposes no change to that requirement, but the requirement will have to be repealed if and when the UK leaves to EU. Whatever the outcome of the Brexit negotiations, it will undoubtedly remain the case that the devolved legislatures will be prevented from enacting provisions which are incompatible with the terms by which the UK may continue to, for instance, access or be a member of the single market. If those terms are in the form of an International Treaty, then any consequent disputes regarding the compatibility of Assembly legislation with the international obligations concerned would, as things currently stand, be resolved through the intervention of the Secretary of State preventing an Assembly bill proceeding to royal assent by order subject to annulment in either the Commons or the Lords. . In other words, disinterested judicial determination of this boundary of competence would be replaced by discretionary political judgement. We believe this needs consideration in due time.





Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol  
Constitutional and Legislative Affairs Committee