



Rt Hon Alun Cairns MP
Secretary of State for Wales
Wales Office
Gwydyr House
London
SW1A 2NP

20th October 2016

Dear Alun

Wales Bill Lords Committee Stage

Now that the House of Lords has given the Bill its Second Reading, I thought it important to write to set out my views on how matters should go forward, and to avoid any misunderstandings arising between us.

Legislative Consent

As the UK Government has publicly acknowledged, the Bill can only proceed to Royal Assent if the Assembly has resolved to give its Legislative Consent to the UK Parliament legislating along these lines. For Consent to be given, there will first need to be a process of scrutiny by the relevant Assembly Committee, with no doubt a published report. This process will need to be informed by a Legislative Consent memorandum laid before the Assembly by the Welsh Government under Standing Order 29, and a parallel Standing Order 30 statement about the additional executive functions envisaged for Welsh Ministers under the Bill.

My expectation is that, following the detailed discussions your officials and mine have pursued over the last four months, the UK Government will bring forward a significant number of amendments to the Bill at Lords Committee and Report stages. I understand that Committee stage is to begin towards the end of this month. My intention therefore is to lay the Legislative Consent memorandum and SO 30 statement as soon as possible after that Committee stage has been completed, so that the memorandum can present, for scrutiny purposes, as up-to-date as possible an account of the Bill; if there are then further amendments at Report stage, a supplementary memorandum will be laid. It will be essential that Lords consideration, up to and including Third Reading, should not be completed until the Assembly has had the chance to consider the outcome of the scrutiny process and has made its decision on Legislative Consent.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

YP.PrifWeinidog@llyw.cymru • ps.firstminister@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

It is also essential that the UK Government understands what is implied, and more importantly not implied, by the Welsh Government laying its memorandum. That action is required by Standing Orders, to facilitate scrutiny; it must not be taken as indicating any view on the part of the Welsh Government as to whether we will or will not be recommending that the Assembly give its consent. That is a decision to be taken later, in light of all the relevant information becoming available. As you are aware, the necessary information will be in relation to two sets of matters, the proposed fiscal framework, and of course the Bill itself in its amended form. In respect of each matter, the Welsh Government will need to be satisfied that it can properly recommend to the Assembly that consent be given.

Fiscal Framework

I am pleased that our governments have made a positive start to the negotiations on a fiscal framework, but there is much to be resolved and agreed. The methodology for adjusting the Welsh Block Grant (including interaction with the Barnett formula and funding floor) is central, but the Welsh Government's capital borrowing ceiling and budget management practices also need to be reviewed and addressed.

Discussions are currently planned until early December, which would suggest the Assembly will not be in a position to decide on Legislative Consent until the New Year.

The amended Bill

I refer you to my letter of 9 June, written shortly after the Bill was published. In that letter I noted a number of matters on which I was expecting to see progress made. These included:

- Improvements to the devolution model, particularly in order to enable the Assembly to make its legislation fully effective, and to address the issues around a Welsh jurisdiction
- The number and breadth of reservations. I specifically mentioned those on CIL, on Teachers' Pay and Conditions, and on Alcohol licensing, sale and supply, all of which I wanted to see removed. And I also urged that other reservations should be narrowed in scope, mentioning as examples Compulsory Purchase and Buildings as ones either for removal or considerable narrowing
- Ministerial consents: here I referred to the fact that, under the Bill, there is no 'incidental or consequential' exception when the consent requirement bites, so that the legislation in issue in the Byelaws case could not have been passed without UK Ministers' consent
- Water, where I identified several specific issues and said that there needed to be substantial movement by the UK Government on all of these, given the acute sensitivity of the subject-matter. This is a vitally important matter.

It is a matter of considerable concern that, four months on, all of these issues remain for remedial action by way of amendment to the Bill. Amendments will be coming forward in respect of each of them, and on other important issues, for consideration at Lords Committee stage. I will be looking for a positive and constructive response from the UK Government. The judgement on whether to recommend that the Assembly should give its Legislative Consent will inevitably be heavily influenced by the way the UK Government deals with these matters at Committee and Report stages in the Lords.

In this context, I underline the importance I attach to making tangible progress on the jurisdiction issue. The Assembly plenary debate yesterday on the Constitutional and Legislative Affairs Committee's report on the Bill reaffirmed that the interaction of the reserved powers model with the joint jurisdiction is a fundamental problem and barrier to a lasting settlement. It is essential to put in a place a credible, independent process for keeping this under active review and bringing forward constructive solutions. Without this, we are in danger of replacing one unstable settlement with another.

In considering whether to recommend Legislative Consent, protecting the Assembly's current competence will be a central concern: the CLA report highlights major risks in this regard. In particular, in the absence of a suitable exception, the reservation of employment rights and duties, will amount to a clear rowback of competence, and I have no doubt this will be a key issue in the Lords, as well as in the Assembly itself at the LCM stage.

Conclusion

We are now moving towards the endpoint for this Bill. Our officials should continue to discuss and so far as possible resolve the many technical issues the Bill still presents. But I will be looking to you to use your influence within the UK Government to secure the necessary amendments so that the Welsh Government can commend the Bill to the Assembly. We are certainly not yet in that position, but I stand ready to discuss further with you as necessary.

I am copying this letter to the Presiding Officer; to Leanne Wood AM, Andrew RT Davies AM, Kirsty Williams AM and Neil Hamilton AM; and to Huw Irranca Davies AM (Chair, Constitutional and Legislative Affairs Committee) and Eluned Morgan AM.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Carwyn Jones', written in a cursive style.

CARWYN JONES