

Welsh Government Response to the Constitutional and Legislative Affairs Committee's Inquiry into Powers granted to Welsh Ministers in UK Laws: Review of Outcomes.

January 2014

The Welsh Government thanks the Committee for their work in reviewing the outcomes of the 2012 inquiry into power granted to Welsh Ministers in UK Laws.

The Welsh Government welcomes the Committee's general observation that they are broadly content with the progress being made to implement the recommendations in the report of March 2012.

On the recommendations in that 2012 report, further progress has been made on updating the Welsh Government's guidance which mirrors Devolution Guidance Notes 9 and 17 – 'the reciprocal guidance'. This has been sent to the Wales Office for their consideration and will be shared with the Committee when we have heard from them.

In addition, as recommended in the 2012 report, the Declaratory Memorandum on the Legislative Consent Process was laid before the Assembly on 7 January 2014.

Turning to the November 2013 report, Chapter 6 records the Committee's concern at the use of a UK Government Bill to implement the Welsh Government's policy objectives in relation to the control of dogs. The Government's approach is fully consistent with the principles set out in the letter from the First Minister to the Constitutional and Legislative Affairs Committee in November 2011. That letter recognised that while generally primary legislation in devolved areas should be enacted by the Assembly, there are circumstances in which it is sensible and advantageous for provisions which would otherwise be within the Assembly's competence to be included in UK Parliamentary Bills. In our view, there was clear value in pursuing a joint approach in this instance.

The decision to suspend the Control of Dogs (Wales) Bill was taken following very careful consideration of the options. The evidence was compelling that the UK Bill could be shaped to include nearly all of the elements of improvement that had been hoped to achieve via a Welsh Bill. Close co-operation between the Welsh Government and the UK Government via Ministerial and officials meetings on the dog-related aspects of the UK Bill has seen considerable progress maintained. There is still an option to return to the Control of Dogs (Wales) Bill should the UK Bill not deliver what is required.

Turning to the November 2013 report, two of the recommendations are exclusively for the UK Government.

Of the remaining two recommendations, the Welsh Government has supported one in principle and rejected the other. Where we support a recommendation in principle, we consider that the recommendation requires further consideration and discussion, but we support the general principle behind it. In terms of the Welsh Statute book, as the First Minister stated in his written evidence to the Committee in July 2013, it is important that we come to a full understanding of what is meant by the term and that we consider the long and short term requirements of this project.

While we have rejected the Committee's recommendation in relation to formalising an inter-governmental mechanism on non-devolved issues, this reflects our view that these issues can be addressed effectively within the existing inter-governmental machinery.

Our detailed responses to recommendations are set out below.

Recommendation 1: We recommend that the UK Government publishes a formal position regarding its objection to extending the application of the legislative consent process to cover modifications of Welsh Ministers' functions which are outside the National Assembly's legislative competence.

Response: This is a matter for the UK Government.

Recommendation 2: We recommend that the Welsh Government publishes a clear timetable for the preparation of a Welsh statute book, including, as an interim step, improvements to the legislation.gov.uk website, to ensure that there is greater certainty about when the Welsh Government's policy objective will be delivered.

Response: Support in principle. While we support the principle that work on developing a Welsh statute book should continue, we do not accept the Committee's recommendation to publish a timetable for this due to the magnitude of the task.

Work is continuing on improving legislation.gov.uk and making Acts and Statutory Instruments available in their up to date form. The research work on updating primary legislation is complete, but we understand that technical problems have meant that there has been a delay in showing the results of this work on the site. The National Archive's target date for completing the updating work on all primary legislation is by the end of this Westminster Parliament, therefore by May 2015, in 18 months time. We understand that the work is on track, and work is also being done on updating subordinate legislation alongside the primary legislation – though primary legislation is taking priority. Work is also underway to make improvements that will assist in identifying when legislation applies to Wales, or indeed to England and Wales, or Great Britain, or the UK as a whole, and enable Welsh legislation to be read in both languages side by side.

Since the Third Assembly there has been a significant increase in the amount of primary legislation developed. By way of illustration, the Office of the Legislative Counsel has, in the first two years of this Assembly, drafted approximately the same amount of words of primary legislation as were drafted in the 4 years beforehand. Of the Acts passed to date in this Fourth Assembly, only two of them, the Further and Higher Education Act and the NHS Finance Act are made up solely of amendments to existing Acts of Parliaments. In all other cases, free standing Welsh laws have been developed in accordance with the principles outlined to the National Assembly two years ago by the Counsel General, more often than not restating provisions of existing law as well as reforming the law. Examples of this practice include the Schools Standards and Organisation Act, the Local Government (Democracy) Act, the Human Transplantation Act, and the Mobile Homes Act. Many more are to follow. The Social Services and Well-being Bill is also notable in this context as it is an example of wholesale reform of a system and recasting the law for Wales over most of the subject matter.

The Welsh Government reiterates, as we always have, that consolidating and restating legislation within devolved areas in order to develop a distinctive “Welsh statute book” is a huge task. While there are specifically Welsh aspects to the need to improve the accessibility of the statute book, this is a UK-wide issue and is one that nobody is committing to fix within a specified time frame. There is a problem that needs to be addressed but, as we have said before, we must be clear as to the benefit of allocating scarce resources to it, and must be sure that we tackle the problem efficiently. There is scope also to consider how the Law Commission, and indeed the UK Government, may be able to assist. We have said all along that our programme of legislative reform takes precedence and that remains the case. We remain mindful of the need to do more to improve the statute book, but it would not be realistic to put a timescale on such a project.

Recommendation 3: We recommend that the Welsh Government should consider looking at developing formal mechanisms with the UK Government to deal with specific non-devolved policy issues affecting Wales.

Response: Reject

The Welsh Government does not believe that there is a need to develop a formal mechanism to deal with specific non-devolved policy issues affecting Wales. The inter-governmental structures already in place enable discussions and negotiations to occur as and when is necessary. The areas of non-devolved policy are extensive and it would be difficult to establish a mechanism with the purpose of dealing only with such issues. The current devolution settlement makes this situation more complex by creating areas of competence where there is a lack of clarity on the devolution boundary. Officials in both administrations work well to deal with devolved and non-devolved matters side by side in a coherent framework. Adding a new formal mechanism to the current working arrangements is therefore unnecessary.

The complexity of the current model of devolution in Wales calls for a high degree of flexibility in the way that inter-governmental relations are conducted. By and large

working relationships are effective, underpinned as they are by a series of working documents setting out agreements on information sharing, working together and dispute resolution. While these documents are not subject to a formal timetable of review and updating, they are used on a regular basis and are updated when necessary.

The Memorandum of Understanding (MoU) sets out the agreement between the four administrations across the UK about how they will work together. The MoU is reviewed on an annual basis. This process works well; the Memorandum was last updated in October 2013, with, amongst other things, amended guidance on the role of the devolved administrations in the development of European Policy.

While the MoU sets out the general principles of information sharing and inter-governmental working, a number of departments within the Welsh Government and Whitehall have developed Concordats covering specific policy areas within the broad portfolio, both devolved and non-devolved. These Concordats are an important basis for successful inter-governmental working, and are kept under review.

The Devolution Guidance Notes (DGN) were developed at the outset of devolution to provide information and guidance to Whitehall officials on dealing with the new devolved administrations. The DGNs have been updated to reflect the changing circumstances of the Welsh settlement, in particular the two DGNs (9 and 17) that provide guidance on the operation of the Welsh devolution settlement, particularly on how legislation is made for Wales, and on the ways in which the Assembly's legislative competence may be modified. These guidance notes are used effectively as a basis for information sharing and negotiations if need be. The Memorandum of Understanding and Concordats are published on the Welsh Government website in the Inter-Governmental Relations section. This section also includes a link to the Wales Office website where the Devolution Guidance Notes are published. All documentation is accessible by staff and the public.

The most senior forum for inter-governmental working is the Joint Ministerial Committee (JMC) which has an annual plenary meeting chaired by the Prime Minister, and a domestic meeting which occurs two to three times a year and is chaired by the Deputy Prime Minister. This forum promotes good working relationships at Ministerial level, and allows official relationships to be forged through the joint JMC Secretariat which represents each of the administrations.

The nature of devolution results in inter-administrational disputes from time to time. In our view, the current mechanisms for dealing with disputes allow for the majority of disagreements to be resolved swiftly and without the need for a formal process. The JMC dispute resolution process exists to provide the administrations with a formal structure to follow if need be.

To conclude, in the Welsh Government's view the existing machinery works effectively to deal with both devolved and non-devolved matters, including issues which have both devolved and non-devolved aspects, so that new mechanisms are not required.

Recommendation 4: We recommend that the UK Government publishes Devolution Guidance Note 7: Court Proceedings regarding devolution issues as a matter of urgency.

Response: This is a matter for the UK Government.