

Hannah Blythyn AS/MS  
Y Dirprwy Weinidog Partneriaeth Gymdeithasol  
Deputy Minister for Social Partnership



Llywodraeth Cymru  
Welsh Government

Eich cyf/Your ref  
Ein cyf/Our ref HB-622-21

Huw Irranca Davies MS  
Chair  
Legislation, Justice and Constitution Committee

19 November 2021

Dear Huw,

I am writing to you regarding the Welsh Government's Legislative Consent Memoranda on the Armed Forces Bill ("the Bill").

I would like to express my thanks to the Committee for its scrutiny of the memoranda and subsequent report. I know there is a great deal of support across the Senedd for our Armed Forces community and I appreciate the work of fellow Members to help promote the interests and wellbeing of those who have served and those who continue to serve our nation.

I note the recommendation and conclusions in the Committee's report and, as requested, I would like to address the points raised prior to the debate on the Bill scheduled for 23 November.

***Recommendation 1.*** *The Deputy Minister should, in advance of the Senedd's debate on the relevant consent motion, provide the Committee and the Senedd with the Welsh Government's assessment of the UK Government's change in position regarding the seeking of consent for clause 8 of the Bill, including details of any relevant discussions the Deputy Minister has had with the UK Government.*

I share the Committee's concern regarding the UK Government's change of position on whether clause 8 would be within the legislative competence of the Senedd. The UK Government's initial position, as outlined in the Explanatory Notes (EN) to the Bill introduced in the House of Commons on 26 January 2021, was that the consent of the Senedd was required in respect of clause 8. The UK Government's position had changed by the time the Bill was reintroduced on 12 May 2021 and this was reflected in a change to the EN.

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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.

I wrote to the Minister for Defence People and Veterans on 28 May expressing my extreme disappointment and seeking clarification as to the reasoning for the change of position. In his response to my letter the Minister suggests that at the time the Bill was initially introduced, in January 2021, the matter of whether clause 8 engaged the Senedd's Legislative Consent Motion process was not settled. He explained that having considered the effect of the Covenant provisions as a whole they came to the conclusion that while the provisions are expected to have an effect on devolved matters, and will apply to "devolved bodies", the effect is consequent upon, and supplementary to, the primary purposes. They consider the primary purpose to relate to the Armed Forces of the Crown, which is a reserved matter, and therefore conclude that the LCM process is not engaged.

Our conclusion on legislative competence is clearly different to that of the UK Government and we consider, and have explained to the UK Government, that our view is that clause 8 relates to areas within the devolved competence of the Senedd, namely health, education and housing. We have therefore continued with the LCM process to provide the Senedd with an opportunity to debate this important matter. I would add, however, that all other provisions of the Bill relate to reserved matters and our assessment is consistent with the UK Government on those issues.

Whilst there is a divide in our assessments of this provision of the Bill, I would like to emphasise that despite this difference in opinion I support the provision's inclusion in a UK wide Bill to further embed the Armed Forces Covenant in law across the UK.

In Conclusion 2, due to the rejection by the UK Government of my request for consent requirements to be included (before the issuing or revising of guidance under new section 343AE and before making regulations under new section 343AF), the Committee expressed its concern about the UK Government's understanding of the Welsh Government's position as the elected Government in Wales. While I remain disappointed about the position the UK Government has adopted I consider the benefits, for those in Wales who would be covered by the clause 8 due regard duty, outweighs any detriment that results from the UK Government's position on this matter.

I am somewhat reassured by the inclusion of duties to consult the Welsh Ministers, on changes to broaden the scope of the due regard duty to include other bodies and functions and prior to the issuing of guidance, that are contained in the Bill. To date we have enjoyed a collaborative working relationship with the Ministry of Defence on the drafting of guidance to explain, and give examples of, how the due regard duty may work in practice. We believe this collaborative approach between officials is likely to continue.

I hope this addresses your concerns and I thank you once again for your work.

Yours sincerely,



**Hannah Blythyn AS/MS**

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