

Rt Hon Carwyn Jones AM
First Minister
Welsh Government
Tŷ Hywel
Cardiff Bay

20 October 2015

Dear First Minister,

Amending Primary Legislation

During our recent consideration of the Tax Management and Collection (Wales) Bill, we raised concerns with the Minister for Finance and Government Business about the powers it provides to allow statutory instruments to amend the resulting Act using the negative procedure.

It is a clear principle, articulated in many of our reports, that subordinate legislation that permits the amending of primary legislation (so called “Henry VIII powers”) must be subject to the affirmative procedure at the very least.

However, while some Welsh Government Bills and accompanying Explanatory Memorandum have recognised this important constitutional point, others have not.

We believe it is a concern we have raised on too many occasions during the Fourth Assembly and it has become a source of considerable frustration to us, particularly when the reasons cited for such an approach are because the matter is ‘administrative’ or ‘technical’, both highly subjective arguments. It is disappointing that our views are not being reflected in all Bills coming forward at later stages in the Fourth Assembly.



Recently, we made a recommendation that the power to amend section 110(4) of the Regulation and Inspection of Social Care (Wales) Bill by means of regulations under section 110(5) should be subject to the affirmative procedure. The Minister for Health and Social Services has rejected the recommendation on grounds that it is his intention to use the powers narrowly and keep the Bill up to date.

In our view, any proposed change to an Act (however trivial it is perceived to be), which has been subject to a four stage scrutiny process by the legislature, deserves to be approved by the legislature. If a matter is purely technical or administrative in nature, it will not be delayed by applying the affirmative procedure.

In addition, in this particular case, the power provided by section 110(5) of the Bill would permit a radical overhaul or complete re-writing of section 110(4). While that may not be the current Minister's intention, that is how the power could be used by a future Minister in a future administration. The affirmative procedure suggested for such regulations would provide added protection to ensure the rights of the legislature are protected.

I look forward to hearing your views. It is a matter that we expect to revisit in our legacy work.

I am copying this letter to Jane Hutt AM, Minister for Finance and Government Business and Mark Drakeford AM, Minister for Health and Social Services.

Yours sincerely,



David Melding
Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.

