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6th August 2019

Dear Jeremy,

Legislation (Wales) Bill

Thank you for your letters of 26 June and 24 July 2019 in relation to the Legislation (Wales) Bill. I can confirm that I do not intend to make a reference to the Supreme Court in relation to the Bill under section 112 of the Government of Wales Act 2006. My decision not to refer the Bill should not be taken as an indication of the UK government's position regarding legislative competence. I have considered the arguments made on legislative competence in your letter and I disagree with the conclusions reached therein.

The UK government is keen to work closely and positively with the Welsh government in a manner that upholds all of the United Kingdom's reputation for the rule of law, and provides legal certainty for those affected by legislation in Wales. I am therefore disappointed that you were not more proactive in dealing with our concerns, only having responded to them substantively after the Bill had reached Stage 3.

The growing body of legislation in devolved areas in the Welsh language is a positive development and I am glad to see that the Assembly desires to clarify the position on interpretation of that law. However, the Bill goes significantly beyond doing so. Contrary to its aims, the Bill will leave the Welsh people using this legislation in a more difficult position in certain areas. The Bill creates ambiguity over what interpretation provisions should apply to instruments made under Acts of Parliament. It does so in a manner that brings with it issues around accessibility of the statute book and the rule of law.

We remain of the view that provision about the interpretation of legislation goes to the meaning of words used in legislation, and cannot be distinguished from the subject matter of those words. Where rules are set which affix a set meaning to words within legislation, that is fundamental and critical to the substance of the legislation itself. Even if purported to be limited to Welsh law, the cross-cutting and thematic approach you wish to apply here runs counter to the Act and the Welsh devolution settlement.

Many of the concerns we raised could have been straightforwardly dealt with by the clear and express exclusion for the law on reserved matters that my predecessor Robert Buckland QC had requested in his letter of 24 April. Instead the Bill leaves the individual user having to rely on the assumption that the Bill would be read down by a Court, in accordance with s 154(2) of the Act, if and when they or someone else challenge it. While the UK government will do all it can to work with the Welsh government and

individuals to limit the impact of the uncertainty created by the Bill, I find this an unsatisfactory place in which to leave Welsh law.

I am copying this letter to the Presiding Officer of the National Assembly for Wales and the Secretary of State for Wales, and I have written separately to the Presiding Officer notifying her of my decision not to refer the Bill to the Supreme Court.

*Yours Sincerely,
Michael Ellis*

**MICHAEL ELLIS QC MP
SOLICITOR GENERAL**