

DRAFT HEADS OF REPORT

WORKING TITLE:

EMPOWERMENT & RESPONSIBILITY: LEGISLATIVE POWERS TO STRENGTHEN WALES

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Chapter 1 – Remit and Approach

1.1 Overview

- 1.1.1 This chapter outlines the Commission's remit and how we approached our work.

1.2 Background and establishing the Commission

- 1.2.2 How the Commission was set up – Coalition Agreement made a commitment to establish a process similar to the Calman Commission in Scotland following the yes vote in the referendum on primary legislative powers in March 2011.
- 1.2.3 Commission was launched in October 2011.
- 1.2.4 Membership based on four independent members and four political nominees
- 1.2.5 Supported by Secretariat of five officials from Wales Office, HMT and Welsh Government

1.3 Remit

- 1.3.1 Commission's work is divided into two parts

Part I

- 1.3.2 Published its first report 'Empowerment and Responsibility: Financial powers to strengthen Wales' in November 2012. The report made 33 recommendations on tax and borrowing powers for the National Assembly for Wales.
- 1.3.3 The Commission was pleased that the report received all party support in the Assembly and was generally well received. [Reference to Government response].

Part II

- 1.3.4 Following the publication of its first report, the Commission began work on Part II of its remit reviewing the non-financial and wider powers of the National Assembly for Wales.
- 1.3.5 New members for Part II – list of names. Commissioners come from different backgrounds which has benefited the commission. Membership includes a wide breadth of experience, drawn from Welsh business, academia, the four main political parties and civic society.

- 1.3.6 What ToR doesn't include. [We have interpreted "modifications" broadly.](#) Commission considered what to examine based on the evidence presented.

1.4 Our approach

- 1.4.1 Commission [held one or two day formal meetings](#) ~~met formally~~ every three weeks at its office in Cardiff and also held meetings in London.
- 1.4.2 Wanted to be as open and transparent as possible about our work. Approached our task in a consensual manner and come up with an ~~evidence-based~~ report [based on the evidence and our own knowledge and experience](#) which is likely to command a wide degree of support.
- 1.4.3 Part II remit very wide and we felt it was vitally important to hear as many views as possible to help inform work

Awareness raising

- 1.4.4 Agreed a wide ranging communications and public engagement strategy in order to raise awareness of our work and give people opportunity to share their views.
- 1.4.5 Encouraged awareness raising via media – issued press releases and a communiqué following every Commission meeting. Also placed articles in national and regional papers to promote our work / activities and Chair and Commissioners have undertaken a range of interviews.
- 1.4.6 Our bilingual website hosted information about the Commission's work. This included the publication of all agendas, minutes and evidence submitted to us. Also, made website interactive providing another method for people to engage with us.
- 1.4.7 Our twitter account (@silkcommission) provided short updates to our followers. Regularly tweeted throughout part II and provided links to key documents and related sites and articles relevant to our work.
- 1.4.8 Produced a short leaflet outlining the Commission's work and how to get involved. This was distributed at our public events and at summer shows.
- 1.4.9 Placed adverts in newspapers, national and regional to promote our call for evidence and evidence and directing public and stakeholders to our website to find out more about the Commission's work. Also arranged all Wales radio adverts to promote public events.
- 1.4.10 Developed a questionnaire to gather views. These were used to support our public events and were available in hard copy and online. Received over 500 responses – analysis paper is available on our website under 'papers' tab.
- 1.4.11 Our website also hosted a number of forums inviting people to join the debate. Held six different debates and received 70 responses.

Evidence gathering

- 1.4.12 Issued an initial Call for Evidence to X interest groups and stakeholders in November 2012 inviting contributions until 1 March 2013. Approached task

with open mind and deliberately kept the call for evidence general to encourage a wide range of views.

- 1.4.13 Received over 200 submissions. The quantity and quality of submissions have been very helpful to the Commission, and we were impressed with the number of thoughtful responses people have given us.
- 1.4.14 Range of views presented to us but many pieces of evidence related to the same subject areas. This meant we could focus our task and begin thinking about the issues that needed particular consideration and further examination. Decided on the areas to consider based on the evidence presented to us.
- 1.4.15 We invited expert opinion on specific policy areas – oral evidence was given to the Commission and we arranged specific expert sessions with academics and stakeholders to support our deliberations. We also sought international evidence, for example, from the Forum for Federations.

Public Events

- 1.4.16 We wanted to hear the views of the public across Wales and made a commitment to hold a series of public events throughout the country.
- 1.4.17 We held a variety of different types of events and at different times of the day in order to cater for the needs of as many people as possible. These included information drop in sessions, business breakfast and evening public meetings. Encouraged those who attended to engage in debate, ask questions, share their views and provided opportunity to speak directly with Commissioners. [Extremely wide range of opinions presented.](#)

Map: Events across Wales

- 1.4.18 Pleased that over 400 people attended our public events and a summary of the points raised is available on our website under the ‘papers’ tab.

Opinion poll

- 1.4.19 We believed it was also important to gather statistical data on public opinion to Welsh devolution and decided to commission a public opinion survey to gather attitudes.
- 1.4.20 Held an open and fair tender exercise through GPS and appointed Beaufort Research Ltd.
- 1.4.21 Researchers held six focus groups throughout the country to initially discuss people’s views and to test and refine the questions to be used in the opinion poll.
- 1.4.22 Beaufort Research interviewed a representative sample of 2,009 members of the Welsh population aged 16 and above between 21 May and 12 June 2013. The sample was fully representative of the Welsh general public [and there is no basis for suggesting that there was any element of bias.](#)

1.4.23 Pleased that the results were consistent with previous polls on attitudes to Welsh devolution and the powers of the National Assembly for Wales.
[footnote ref to Roger Scully blog]

1.4.24 The opinion poll report can be found on our website and some of the key findings are reflected in the evidence boxes throughout this report.

Stakeholder engagement

1.4.25 The Commission visited Scotland and Northern Ireland to hear their devolution experiences. We were particularly conscious and mindful to the fact that we would be reporting during a period of evolving developments for devolution within the United Kingdom and in particular the Scottish independence referendum in October 2014.

1.4.26 We held regular briefing sessions with AMs, MPs and peers throughout Part II, providing updates on our work and timescales. Also invited contributions from cross border MPs.

1.4.27 Commissioners attended a number of conferences and events organised by stakeholders and gave keynote speeches – e.g Legal Wales conference, UK Changing Union, British Academy, National Eisteddfod and a debate on devolution within the UK at Hay festival. We participated in events aimed at gaining young people's views, for example, the Urdd's youth forum conference with over 40 young people attending and Funky Dragon's annual conference. We also contributed articles to various journals and stakeholder websites – e.g LSE politics blog and Institute of Welsh Affairs 'click on Wales'.

Research and analysis

1.4.28 ~~1.4.27~~ Our report is evidence based, drawing on the evidence presented to us, what we have heard at our public events and opinion poll. We were also able to draw on research by stakeholders and analysis presented in other reports such as the Richard and Calman Commission. We also drew on analysis undertaken internally by the Secretariat and a number of these research papers are available on our website. [As a Commission, it was our job to assess all these inputs, apply our judgement, knowledge and experience to them and to agree a report.](#)

1.4.29 [\[Our report is unanimous. Importance of this.\]](#)

1.5 Conclusions

1.3.4 Commissioners would like to thank all who engaged with the commission – the views submitted have been invaluable in helping us reach our recommendations. The views and evidence presented to the Commission have also helped us meet our ToR in producing an evidence based report which is likely to command a wide degree of support.

1.3.4 In the next chapter, we look at current devolution arrangements within the UK.

Chapter 2 – Current Devolution Arrangements

BOX ON KEY DATES IN WELSH DEVOLUTION – 1964 WELSH OFFICE; 1997 REFERENDUM; 1998 GOWA; 1999 NAFW; 2004 RICHARD COMMISSION; 2006 GOWA; 2011 REFERENDUM¹

2.1 OVERVIEW

2.1.1 In this chapter we look at the current devolution arrangements in Wales and consider its historical context. We also take an overview look at the devolution settlements in Scotland, Northern Ireland and England, and look at an international case study. Finally we consider the context in which devolution currently operates within the United Kingdom.

2.2 DEVOLUTION IN WALES

2.2.1 Wales is in its third phase of devolution.

2.2.2 The first phase came after the 1997 referendum where 50.3% of Welsh voters voted in favour of a devolved government for Wales. The National Assembly for Wales was created under the Government of Wales Act 1998. The National Assembly for Wales only had administrative or executive devolution, [and the power which allowed them](#) to make secondary legislation in eighteen specified areas.

2.2.3 The powers of the Assembly in 1998 broadly corresponded with to the responsibilities of the Secretary of State for Wales which had been accumulated [in a haphazard fashion](#) over time prior to devolution.

THE GOVERNMENT OF WALES ACT 1998

The Government of Wales Act 1998 created the National Assembly for Wales. The National Assembly was a body corporate that had no primary legislative powers. Instead it was given executive powers which allowed the National Assembly to make secondary legislation in eighteen areas. These areas were broadly based on the administrative powers of the old Welsh Office. Powers were transferred to the National Assembly through Transfer of Functions Orders. Between 1999 and 2006 the National Assembly was dependent on the UK Parliament if it wanted primary legislation to be passed in relation to Wales.

2.2.4 The second phase of devolution followed the Richard Commission report in 2004 and resulted in the Government of Wales Act 2006 which created the Welsh Assembly Government and gave the National Assembly for Wales incremental powers to make laws in specified areas.

¹ Further information is available in the research paper on the development of devolution in Wales.

THE GOVERNMENT OF WALES ACT 2006

The Government of Wales Act 2006 formally separated the National Assembly for Wales and the Welsh Assembly Government into a legislature and executive and repealed section 1 of the Government of Wales Act 1998 which had established the National Assembly as a body corporate.

The Act also conferred on the National Assembly for Wales restricted primary law making powers. This meant that from the 2007 elections the National Assembly had powers to make Assembly Measures on a matter within the twenty devolved fields in Schedule 5 of the Act. Before a matter could be legislated on it had to be added to the field in Schedule 5 either through provisions in an Act of the UK Parliament or through a Legislative Competence Order.

While the National Assembly gained legislative powers the executive powers that were first granted to the National Assembly between 1999 and 2006 were transferred to Welsh Ministers that made up the Welsh Assembly Government. Powers continue to be granted to Welsh Ministers either through Transfer of Functions Orders or UK Parliament Acts which means that in Wales the legislative functions of the National Assembly do not necessarily match up to those executive functions of the Welsh Ministers.

2.2.5 We are currently in the third phase of devolution which started after the 2011 referendum on enhanced law making powers. While Wales is still governed by the Government of Wales Act 2006 the National Assembly has full law making powers in those twenty areas that have been devolved to Wales.

BOX ON THE 2011 REFERENDUM - KEY INFO

2.2.6 The system of devolution in Wales is based on the conferred powers model. The UK Parliament has transferred the power to legislate in twenty subject areas to the National Assembly for Wales. These areas are listed in Schedule 7 of the Government of Wales Act 2006.

2.2.7 Through these 20 areas the National Assembly has responsibility of the majority of domestic policies, however there are exceptions within the devolved areas [meaning that the National Assembly has no legislative power in relation to those exceptions, where the UK Parliament retain the power to legislate over some areas of domestic policy.](#)

BOX ON THE 20 AREAS THAT ARE DEVOLVED

2.2.8 There are a number of areas where the National Assembly cannot legislate at all. While there are some general restrictions and exceptions, fundamentally any area that is not listed as a devolved power under Schedule 7 of the Government of Wales Act cannot be legislated upon by the National Assembly. There is no comprehensive list of these areas, however some of the main areas that are non-devolved are: foreign affairs, defence, [policing, immigration and justice,](#) macro-economic policy and the tax and welfare system.

- 2.2.9 Within the United Kingdom the UK Parliament is sovereign and as such the National Assembly for Wales (like all other devolved administrations) is a subordinate body. This means that the UK Parliament can legislate on any area it wishes, whether it is devolved or not. However, over the years a convention has arisen whereby the UK Parliament seeks agreement from the National Assembly before legislating in a devolved area. However, the UK Parliament does not have to abide by the decision of the Assembly and can legislate regardless of the outcome.
- 2.2.10 The legislation that created the National Assembly for Wales (and all other devolved administrations) is subject to the same conditions as all other legislation. That is to say, that it can be repealed or amended by the UK Parliament. However, many people consider the devolution Acts within the UK to be “Constitutional legislation” in the same vein as [legislation like the Bill of Rights](#)~~the Human Rights Acts~~.
- 2.2.11 [The series of changes in powers have not provided the stability that is desirable for government, citizens and business and have led to the view that Wales is over-concerned with issues of process.](#)

2.3 DEVOLUTION IN SCOTLAND

- 2.3.1 The first devolution referendum in 1997 took place in Scotland where the people of Scotland voted to create a Scottish Parliament with tax varying powers.
- 2.3.2 The Scotland Act 1998 created the Scottish Parliament and the Scottish Executive (now the Scottish Government). While Wales operates under the conferred powers model of devolution, Scotland operates under the reserved power model.
- 2.3.3 This model of devolution means that the UK Parliament lists as part of the Scotland Act 1998 those areas where the Scottish Parliament cannot legislate. These areas are listed under Schedule 5 of the Act.
- 2.3.4 From 1998 onwards the Scottish Parliament have had powers to make legislation in any area that is devolved to them. Given that there is no list of devolved powers the principle of “if it is not reserved then it is devolved” applies.
- 2.3.5 In 2008 a Commission was set up to review devolution in Scotland within the context of the United Kingdom. The Calman Commission reported in June 2009 and made a number of recommendations mainly in the field tax devolution and borrowing powers, however it did make a number of constitutional recommendations also.
- 2.3.6 The result of the Calman recommendations was the Scotland Act 2012 which amended the Scotland Act 1998 in the main by giving the Scottish Parliament powers to set a new Scottish rate of income tax; new borrowing powers; and the devolution of stamp duty and landfill tax.
- 2.3.7 More details in published research paper.

2.4 DEVOLUTION IN NORTHERN IRELAND

- 2.4.1 Devolution in Northern Ireland has a long history.
- 2.4.2 The current devolution settlement came out of the Belfast Agreement in 1998. The Northern Ireland Act 1998 is the statutory result of this Agreement. The Act created the Northern Ireland Assembly and the Northern Ireland Executive.
- 2.4.3 Devolution in Northern Ireland is governed by the reserved power model. While in principle this is the same model as Scotland it is slightly different.
- 2.4.4 In addition to a list of powers that are reserved to the UK Government where the Northern Ireland Assembly cannot legislate there is also a list of powers that are currently reserved to the UK Government but may be considered for devolution in the future. (Until 2010 powers over Justice and policing existed on this list).
- 2.4.5 The Northern Ireland Assembly has operated intermittently since 1999. The longest period of suspension was between 2002 and 2007.
- 2.4.6 More details in published research paper.

2.5 DEVOLUTION IN ENGLAND

- 2.5.1 Currently there is no devolution in England beyond the London Assembly which was created in 2000 and [has the duty of holding to account](#)~~is led by~~ the Mayor of London who has executive responsibility over local domestic policies, for example policing, transport and housing.
- 2.5.2 As part of the initial devolution proposals of 1997 consideration was given to devolution within England. At the time proposals were put forward for regional Assemblies and the people of the North East went to the polls in 2004 to vote on this issue. The North East voted against devolution and under the terms of the referendum no more votes were held in UK regions.
- 2.5.3 Since then research has suggested growing support for localism and there is also a sense of an English polity.

[NEEDS TO BE UPDATED IN LIGHT OF GOVT. RESPONSE TO MCKAY]

BOX ON ATTITUDES IN ENGLAND TOWARDS ENGLISH DEVOLUTION]

2.6 INTERNATIONAL COMPARISONS

- 2.6.1 There are examples all over the world of devolution in federal and non-federal states and countries. We have looked at a number of international examples to learn from their constitutional structure and developments.

BOX ON CASE STUDY OF INTERNATIONAL EXAMPLE (EG SPAIN)

2.6.2 While we have looked at Wales and the United Kingdom in an international context we have been acutely aware that the United Kingdom is not a federal country and is the only country in the world to have devolution but no written constitution.

2.6.3 More details in published research paper

2.7 CURRENT AND FUTURE CONSTITUTIONAL DEVELOPMENTS ACROSS THE UK

2.7.1 Our report is one of a number of recent and future events that will shape the future of the United Kingdom.

2.7.2 We have considered our work in this context and have developed recommendations with these events in mind.

2.7.3 It is without a doubt that the referendum in Scotland on the issue of independence will help shape the future of devolution as will the report from the McKay Commission on the implications of devolution for the UK Parliament.

2.7.4 The extent of the possible consequences of constitutional change in the United Kingdom is something that we have been mindful of and we believe that the recommendations within this report will stabilise devolution in Wales for its benefit and the benefit of the United Kingdom in whatever form that will take.

2.7.5 These issues are further discussed in Chapter 12.

2.8 CONCLUSIONS

2.8.1 Wales is currently in its third phase of devolution.

2.8.2 Wales has been subject to more changes in the devolution settlement than Scotland and Northern Ireland since 1998. [These changes have not provided the stability that is desirable.](#)

2.8.3 While international comparisons have been useful we have to recognise the unique position of devolution within the UK as a result of its unwritten constitution.

2.8.4 Future constitutional developments will impact on devolution in Wales, however we have been mindful of these and have recommended changes that will allow Wales to benefit itself and the UK whatever the constitutional future looks like.

Chapter 3 – Principles for Welsh Devolution

3.1 Overview

3.1.1 Commission agreed a vision to make clear how it interpreted devolution better serving the people of Wales, and also some principles to guide its work.

Evidence Box

3.2 Our Vision

3.2.1 The Commission's terms of reference asked it ~~to~~ ultimately to make recommendations that would allow devolution to better serve the people of Wales. The Commission was keen to agree what it believed 'better serve' would mean.

3.2.2 In doing this, it reflected on some of the criticisms made ~~of~~ fr devolution, that it was unstable and unclear, with uncertainty over which government was responsible for what policy, and that constitutional issues were a distraction from the delivery of excellent public services.

3.2.3 The Commission agreed the following vision.

We believe that the people of Wales will be best served by:

- *a clear, well founded devolution settlement that allows coherent political decisions to be made in a democratic and accountable manner, and*
- *political institutions that operate effectively and efficiently and work together in the interests of the people they serve.*

Devolution of power to Wales should benefit the whole of Wales and the United Kingdom.

3.2.4 A number of people had pointed out in evidence that the first 14 years of devolution had not been stable, that the settlement was unclear with difficulty establishing who made decisions on the citizen's behalf fr in all policy areas.

3.2.5 Some also suggested that they were not satisfied with the performance of devolution to date, though a key point made in evidence that the Commission agreed was that policy decisions of administrations in Westminster or Cardiff should not determine where powers ought to rest. It is not our remit to judge whether powers have been exercised in relation to Wales well or badly, whether in Cardiff or London, but where powers should best lie.

3.2.6 This vision was discussed during the public engagement meetings, which allowed the Commission to reflect any views held on the vision. People who attended these meetings were generally content with the vision, and

encouraged the Commission to include efficiency, which the Commission fully agreed governance arrangements should be.

3.2.7 Attendees at a number of public meetings held across Wales shared the opinion that devolution had not benefited their local area as much as others. The Commission therefore included in its vision a view that devolution should benefit the whole of Wales.

3.3 Principles for Devolution

3.3.1 As set out in Chapter 2 above, devolution has developed in Wales in a number of stages. The Commission were keen to set out some guiding principles that could be used as the basis for devolution in the future.

3.3.2 The Commission agreed a series of principles, against which it could consider proposals put to it in evidence. These emerged from the vision, as well as the evidence received, and are in line with those adopted in Part I.

3.3.3 The principles the Commission adopted were:

- *Accountability* – voters should be able to hold the relevant institutions to account for delivering devolved policies in a transparent and responsible way;
- *Clarity* – voters should understand where decisions are made and the settlement should be straightforward and simple to operate;
- *Coherence* – the National Assembly for Wales should have freedom and autonomy to use devolved policy and legislative levers, within a coherent framework of powers;
- *Collaboration* – Governments should work constructively together;
- *Efficiency* – the arrangements should be affordable and provide value-for-money to the taxpayer, and should not place undue burdens on individuals or business;
- *Equity* – common standards and rights should be enjoyed by citizens across the UK, subject to variation to reflect the National Assembly for Wales' policy preferences;
- *Stability* – the settlement should be well founded, sustainable and predictable in its operation, and meet the needs of current and future generations; and
- *Subsidiarity/Localism* – decisions should be made as close as possible to the person they affect consistent with addressing the relevant matter effectively, thus promoting empowerment.

3.3.4 Inevitably, there may be a trade-off between some of these principles, and the key ones for the Commission were Accountability, Clarity, Coherence, Effective Governance (collaboration and efficiency) and Stability.

3.4 Conclusions

- 3.4.1 The Commission believe that the people of Wales will be best served by a clear, well-founded devolution settlement; and by political institutions that operate effectively and efficiently and work together in the interests of the people they serve. Devolution of power to Wales should benefit the whole of Wales and the United Kingdom.
- 3.4.2 Any proposed changes to the devolution settlement would be tested according to the principles of accountability, clarity, coherence, efficiency, equity, stability and subsidiary would be considered.

Chapter 4 – The Model of Devolution

4.1 Overview

- 4.1.1 This chapter sets out the arguments for a conferred or a reserved powers model for the Welsh Devolution Settlement, and assesses the two models against our principles. It goes on to set out the broad shape of the devolution settlement.

Evidence box

Acknowledge almost entirely in favour of reserved powers model, with EHRC highlighting a positive feature of the current arrangements.

4.2 Remit

- 4.2.1 ~~It has been suggested by some that this topic would be beyond the Commission's remit, which was to consider modifications to the current arrangements.~~
- 4.2.2 ~~The Commission are satisfied that it is, in part because it was addressed by parties who agreed the Commission's terms of reference and partly because it would only represent a modification to the fundamental constitutional arrangements of Wales.~~

4.3 Arguments in favour of conferred powers model

- 4.3.1 Should allow what is devolved to be clearly set out – including specific ~~areas of~~ non-devolved areas.
- 4.3.2 ~~No benefit from moving to a reserved powers model if v~~Very little change ~~if a reserved powers model~~ in terms of powers; would ~~mean~~ instead have a longer, more complicated schedule setting out all the powers reserved.
- 4.3.3 Presumption in favour of devolution would transfer risk to National Assembly of future, forgotten or poorly-defined policy issues.
- 4.3.4 Argument of SoS/FM in 2005 – complication of reserving fundamental legal principles and large aspects of law.
- 4.3.5 Flexibility and appropriateness to Wales's circumstances
- 4.3.6 Onus of proof that a matter does not come within a conferred area rests with those who want to show that it does not

4.4 Arguments in favour of reserved powers model

- 4.4.1 More stable, as shown by Scottish settlement, which can accommodate routine clarifications.

- 4.4.2 Better alignment between demands to change the settlement and the ability to change it.
- 4.4.3 More certainty on the scope of the settlement, with the boundary clearly defined. Therefore Assembly more confident of being able to use its powers.
- 4.4.4 Would be more straightforward for Westminster and the UK Government to follow three reserved settlements – currently internationally anomalous. [Do we want to discuss McKay/Westlothian Question?]
- 4.4.5 Reservations would be more clearly and hopefully coherently defined – in practice, the exceptions currently treated more seriously – eg, the UK’s evidence, and the reserved powers model would reflect that.
- 4.4.6 [Difficult, but not impossible, to reserve fundamental principles of English and Welsh law/areas of law.](#)

4.5 Assessment against the Commission’s Principles

- 4.5.1 Ultimately, and without regard to further changes to the settlement we propose, the reserved powers model fits better with the Commission’s principles of clarity, coherence, accountability, subsidiarity, stability, effectiveness and efficiency.
- 4.5.2 As the non-devolved powers will be clearly set out as reservations, the non-reserved powers should be more coherent than a set of specific devolved powers.
- 4.5.3 The specificity on powers not available, rather than those that are, should allow law-makers to be more confident in making viable legislation, creating greater effectiveness of the settlement.
- 4.5.4 As law-makers are likely to be more confident in the law, and with a clearer settlement less likely to generate uncertainty or impasses for the Supreme Court to resolve, the system of law-making should also be more efficient.
- 4.5.5 The public should be clearer [on](#) the role of Parliament and the Assembly in their everyday lives.
- 4.5.6 As a reserved powers model would clearly define decisions that must be taken at the Westminster-level, by default all appropriate decisions will be taken more closely to the citizen, which may not be achieved in a conferred powers model, even where it seeks to achieve subsidiarity.
- 4.5.7 Ultimately, the position should be also more stable, with Westminster’s sovereignty allowing it to clarify areas of responsibility it has retained for itself if required (as seen with the Antarctic Act) as an in-built mechanism for righting the settlement if problems are found, in a way the Assembly cannot do for itself under the conferred powers model.

4.6 How a Reserved Powers model would operate

- 4.6.1 Acknowledge the process of drafting a new Government of Wales bill will require a clear political commitment, and a period of [constructive](#) engagement between the Welsh Government and UK Government (and National Assembly/WAC?). We set out the timetables later in the report.
- 4.6.2 Advantage of the reserved powers model is that it would show clearly the matters that would not be devolved within the United Kingdom. This would include the constitution, macroeconomic policy, foreign affairs and defence.
- 4.6.3 Opinion poll showed that there was some interest in devolving benefits and the welfare system. While some aspects will be considered in later chapters, it was felt that the transfer of costs and risks to Wales was not appropriate.
- 4.6.4 We would expect the existing devolved areas to remain devolved, with the existing exceptions to what is devolved to be maintained as reservations, unless otherwise set out below.
- 4.6.5 Current example of Agricultural Wages Board shows that an issue can be confused as it pertains to something devolved (agriculture) and non-devolved (employment). Had hoped for guidance of Supreme Court judgement in this area [before reporting](#), but in its absence, can suggest that a reserved powers model would be more definitive – that is, a reservation would take primacy.
- 4.6.6 While some power can currently appear to be both re
- 4.6.7 However, the reserved powers model is not a panacea, and would not in itself make the Welsh settlement perfect – England and Wales will remain the most intertwined countries of the United Kingdom. It would require a continuing political and administrative commitment to making the settlement work according to the public's will.
- 4.6.8 [Nor will the reserved powers model of itself increase the NAW's powers](#)
- 4.6.9 We discuss later ~~how we suggest~~ the operation of the settlement, and how any future modifications – such as responsibilities in new areas or issues not considered in the drafting (such as Antarctica) can be considered and settled
- 4.6.10 Significant issue would be residual powers – or unnamed areas of responsibility. Currently, they would rest with Westminster, as they are not conferred. Significant risk transfer under reserved powers model, as they would be assumed to be devolved. Hence need for strong political commitment, and acknowledge that ultimately, Westminster is sovereign and can re-define reservations over time.
- 4.6.11 Would not change the nature of devolution (as opposed to law-making/tax-raising), nor scope in itself, so do not believe a referendum is required.
- 4.6.12 Some evidence referred to alternative models of Scotland or Northern Ireland. Subject to our suggested implementation below, we do not believe Northern Ireland's model would be required for Wales's different circumstances, and so would recommend a single list of reservations.
- 4.6.13 Some evidence linked reserved powers and separate legal jurisdiction. Discuss below.

Recommendation

- We recommend that the existing conferred powers model should be replaced by a reserved powers model, recognising that with more powers being devolved as we propose, a model which defines which powers are not devolved would be simpler than one which defined which powers are devolved. Such a model would give greater clarity to law-makers and a more stable settlement;
- We recommend that the two Governments should determine a process for agreeing the necessary legislative drafting instructions, with a view to minimising complex exceptions while avoiding inadvertently devolving unintended powers;
- We recommend that under our proposed reserved powers model, where powers have not been reserved to the UK Government, the National Assembly should be able to introduce its own legislation. The scope of these reserved powers should broadly be similar to the non-devolved powers under the existing conferred powers model, while taking into account the additional powers which we propose in this report. The way that reserved powers are set out in the Scotland Act provides a good model for a new Wales Act although the scope of the reservations would be somewhat wider than in Scotland;

4.7 Minister of the Crown Functions

- 4.7.1 The model of devolution relates to the legislative powers of the National Assembly. Issue that arose in evidence, perhaps particularly in light of the Supreme Court consideration of the Local Government Bye-Laws Bill, was the Minister of Crown functions, that is, the executive functions of UK Ministers.
- 4.7.2 Whereas Minister of the Crown functions in devolved areas were transferred in general terms to Scottish Ministers in the Scotland Act 1998, they have been transferred to Welsh Ministers on a case-by-case basis and the Government of Wales Act 2006 requires consent before amending or removing these powers. This requires close reading of relevant statute before introducing Assembly Acts in order to identify any Minister of the Crown functions, some of which may be rather anomalous, as implied by the Supreme Court's consideration of the Bye-Laws Bill.
- 4.7.3 In order to promote coincidence between legislative and executive competence, unless there is a reason otherwise, the Commission believes that a future Government of Wales Act should include a general transfer of Minister of Crown functions in devolved (that is, non-reserved) areas, with any specific functions in devolved areas that UK Ministers continue to require being set out clearly.
- 4.7.4 [In the meanwhile, recommend expeditious consideration of proposed NAW legislation by UK Government to ascertain whether Minister of Crown powers are affected, and presumption in favour of permitting any change proposed.](#)

Recommendation

- We recommend that under such a model, the boundaries of executive competence of the Welsh Government Ministers should be based on the legislative powers of the NAW. However as in Scotland, Welsh Ministers should also be able to discharge executively some defined statutory functions which, as reserved matters, remain within the legislative competence of the UK Parliament. As In Scotland, UK Ministers should not be permitted to discharge the functions of the Welsh Ministers, unless there are specified powers to intervene. In addition, as in Scotland there may also be specified concurrent powers where either but not both Ministers may carry out a function.

4.8 Conclusions

- 4.8.1 The reserved powers model would allow a better system of devolution in Wales that would be clearer to the citizen and allow law-makers to more confidently undertake their role, to the benefit of the people of Wales.
- 4.8.2 Next chapters discuss what changes within the settlement would be required.

Chapter 5: Economic and social issues

5.1 Overview

5.1.1 In this chapter we use the principles outlined in Chapter 3 to assess whether there should be changes in powers in economic and social areas and the scope for other changes. In particular we cover economic powers; transport; broadcasting; health and social security.

5.2 Economic powers

Current position

- 5.2.1 Economic development is devolved, and is a key subject in terms of the Welsh devolution settlement. The scope of the Assembly's legislative competence includes economic regeneration and development, the social development of communities and the promotion of business and competitiveness.
- 5.2.2 Significant aspects of economic policy however are non-devolved, and Schedule 7 to GoWA includes a number of exceptions relating to macro-economic policy, anti-competitive practices, insolvency, product standards, consumer protection and trade, and business regulations, where there is a clear interest in preserving a single market conducive to business at the UK-wide, GB-wide or England and Wales levels.
- 5.2.3 Underpinning the Assembly's competence are a number of executive functions that are devolved to Welsh Ministers including grant-awarding powers and the broad power under section 60 of GoWA which enables Welsh Ministers to do anything they consider appropriate to achieve the promotion or improvement of the economic and social well-being of Wales, and the promotion or improvement of its environmental wellbeing. Welsh Ministers have used their executive functions extensively, principally to set up business and employment support schemes and to invest in infrastructure.

Box on Evidence

Key facts on the Welsh economy

- Wales contributed almost 4 per cent of the UK's gross value added (GVA) in 2010. Wales has the lowest GVA per head in the UK. Labour productivity (gross value added per hour worked) was 16.1 per cent below the UK average.

- Gross disposable household income (GDHI) of Wales' residents was the fourth lowest of the UK countries and English regions at £13,800 per head in 2010.
- The employment rate stood at 68.1 per cent in the first quarter of 2012, compared with the UK rate of 70.5 per cent.
- In April 2011, the median gross weekly earnings for full-time employees on adult rates who were resident in Wales was £460, which compares with £491 in Scotland and £451 in Northern Ireland.
- In terms of public spending, HMT figures show that spending per head in Wales on economic development was 242 as an index of UK as 100 ie more than double, with employment policies being 114.

Assessment

- 5.2.4 Improving the performance of the economy is the top policy objective for both Governments. There have been no calls for fundamental changes to the allocation of economic powers between the UK and Welsh Governments. On the other hand concerns have been expressed about the poor performance of the Welsh economy and the apparent lack of a positive economic dividend from devolution.
- 5.2.5 The biggest proposed change in the evidence to us is the devolution of DWP employment programmes. GB spending on Job Centre Plus is over £2 billion a year. On the one hand, devolution would tend to weaken the GB wide approach to a single GB labour market and associated tax credits. On the other hand devolution would enable the Welsh Government to create a more unified approach to employment and training. Devolution would go beyond the current Scotland settlement. It is not clear whether Wales would gain or lose financially, although assuming Welsh unemployment rates move more or less in line with UK trends there may not be a substantial impact either way. Given that there have been limited calls for this change we suggest there should be further consideration by the two Governments, including in relation to whether the Welsh Government could have a bigger role in the administration of these policies.
- 5.2.6 We tend to agree with the UK Government that a more coherent treatment of employment law should be investigated taking into account the outcome of the Supreme Court hearing on agricultural wages, which could be taken forward in the context of a reserved powers model.
- 5.2.7 So far as consumer protection is concerned, we agree with the Welsh Government that Welsh consumers currently have the benefit of comprehensive and specialist consumer advice from UK or GB-wide bodies. Consumer protection in general is not currently devolved, and much of the legislative framework on consumer protection is in any event determined by European legislation. This should be a matter Reserved to Westminster, although the Assembly's existing competence should be maintained in

relation to food, agriculture and horticultural products, fish and fish products, seeds, fertilisers and pesticides, and the representation of consumers of water, as should Welsh Ministers' executive functions in respect of Consumer Focus (Wales) and the consumer councils for water and public transport. But we suggest that this is an area which is not very transparent; the two Governments and interested bodies should examine the scope for simplifying the existing system drawing on experience in Scotland.

- 5.2.8 We agree with the UK Government that through the BRDO-coordinated Welsh Regulators Forum, which comprises national and local regulators in Wales, there is opportunity and ambition to develop a co-ordinated and consistent approach to regulation. This is an area where a strengthened joint approach by the UK and Welsh Governments would be welcome.
- 5.2.9 We have heard some concerns about the decline in inward investment. Responsibility is split between UKTI and the Welsh Government and should be carefully coordinated.
- 5.2.10 We have also heard concerns about lack of data and modelling capacity, where Scottish experience is more advanced.
- 5.2.11 We agree with the Welsh Government that the taxation Reservation should be made subject to an Exception, to enable the Assembly to legislate on devolved taxes (including in relation to their collection and management) in light of the Commission's First Report on fiscal powers for the Assembly, with a mechanism, such as an Order in Council procedure, to allow for additions to the list of devolved taxes without the need for new primary legislation. In addition, the Exception should be expressed so as to remove the existing doubts about competence in relation to council tax and allow the Assembly to legislate on local taxes i.e. those such as council tax and non-domestic rates, which help to fund local authority expenditure. The Exception should also permit the Assembly to legislate on the Community Infrastructure Levy (CIL). There may be implications for the process of registering land and property sales in Wales that follow from the proposal to devolve stamp duty.
- 5.2.12 The above changes would meet our principles including subsidiarity and coherence, while maintaining a strong UK wide focus on managing and improving the economy. They would represent a pragmatic package which is likely to command wide support.

Box on economic strategy and learning from north Wales (MDA etc)

Recommendations

- we recommend that the Assembly should be able to legislate on devolved taxes in light of the Commission's First Report on fiscal powers for the Assembly, with a mechanism, such as an Order in Council procedure, to allow for agreed additions to the list of devolved taxes without the need for new primary legislation. The Assembly should also be able to legislate on the Community Infrastructure Levy (CIL).

- we recommend that the two Governments should consider the scope for the Welsh Government to have a bigger role in the administration of DWP employment programmes and in the longer term whether the DWP employment programmes should be devolved to align with devolved training programmes;
- we recommend that the handling of employment law in the devolution settlement should be considered by the two Governments taking into account the Supreme Court hearing on agricultural wages;
- we recommend that consumer protection should remain non ~~devolved, devolved,~~ although the Assembly's existing competence should be maintained in relation to food and other products as should Welsh Ministers' executive functions in respect of consumer representation and the consumer councils for water and public transport. The two Governments and interested bodies should look to simplify the existing system;
- we recommend that the two Governments should develop a better coordinated approach to business regulation and inward ~~investment, investment,~~ while recognising the distinctive policies of the two Governments, to create a more competitive Welsh economy;
- we recommend that the two Governments should develop a Wales economic strategy with key stakeholders drawing on devolved and non devolved policies to deliver their joint objective of increasing economic growth; and there should be increased inter-agency cooperation building on the MDA and North Wales Economic Ambition Board examples;
- we recommend that ~~Welsh economic data and modelling capacity should be improved by the two Governments,~~the two Governments should improve Welsh economic data and modelling capacity.

5.3 Transport

5.3.1 Highways and transport are devolved subjects under Schedule 7 of the Government of Wales Act. This includes responsibility for bridges and tunnels, street works, traffic management and regulation, and transport facilities and services.

5.3.2 There are however a number of exceptions within the Highways and Transport subjects specified in Schedule 7 where the power remains with the UK Government. These cover, for the most part:

- aviation;
- shipping;
- rail (including the provision and regulation of railway services, apart from financial assistance in specific circumstances, transport security and railway heritage);
- ports and harbours;
- transport security;

- driver licensing;
- driving instruction;
- speed limits; and
- regulation of the construction and equipment of motor vehicles and trailers and their use on roads.

Box on evidence

Key facts on transport

Wales generally has relatively good east - west transport links in North and South Wales, but poor North-South links. There is an extensive road and rail network serving the Valleys. Rural public transport provision is limited. Ports are generally not as large as they used to be, but still significant. Wales has only one major airport, Cardiff airport, recently acquired by the Welsh Government.

Major rail spending is planned by Network Rail, including electrification. The Welsh Government is considering a city region approach to transport planning. Investment to improve the M4 at Newport is being discussed by the two Governments.

In 2011-2012 (latest available year), transport public spending per head in Wales was 19 per cent higher than England, higher than any English region and only exceeded by London and Scotland, with the bulk being on roads and rail. In 2010-2011 (latest available year) £470m was by the Welsh Government, £468m by local government and £260m by the UK Government.

Assessment

Unchanged powers

- 5.3.3 Both the Welsh Government and the UK Government and most other evidence have called for shipping and maritime safety, road and vehicle standards, and driver licensing to remain at a UK level.
- 5.3.4 Both the Welsh Government and the UK Government and most other evidence have recommended that aviation policy should remain at a UK level and have indicated that the management and direction of the policy will benefit from a continued close working relationship. Responsibility for Air Passenger Duty in Wales was considered as part of the Commission's Part I remit.

- 5.3.5 Maintaining the above functions at UK level would meet our principles in relation to a coherent and effective settlement, and be consistent with Scotland.

Rail

- 5.3.6 The majority of evidence received has called for the Welsh Government to take on greater responsibility for the rail network in Wales. This included the specification and running of the Wales and Borders franchise process and the High Level Output Specification process for rail infrastructure.
- 5.3.7 Transferring of the UK Government's residual rail responsibilities in respect to the franchise would still mean that cooperation would be required for any decisions affecting Wales and Borders services in England as is the case with the Welsh Government for First Great Western services in Wales. Some redrawing of the franchise boundary may be appropriate.
- 5.3.8 ~~Although~~ ~~But the case for and against devolving the rail network is quite finely balanced. On the one hand~~ the Welsh network is closely linked to England, ~~on the other hand~~ there is ~~a strong~~the case for a more closely integrated Welsh transport system. ~~On balance, the latter argument is in our view stronger~~ as evidenced by Scotland.

Ports

- 5.3.9 Both the Welsh Government and the UK Government agree that the devolution boundary for port development should be considered by the Commission. The evidence received on this matter mostly calls for devolution of port development to ensure that a distinct Welsh policy can be created for the economic development of this sector and the creation of an integrated transport infrastructure for freight. It would however be important to maintain and enhance the competitiveness of Welsh ports. Devolution would improve the coherence between local transport, planning and port development.

Roads

- 5.3.10 A number of respondents drew attention to the current arrangements for infrastructure improvements of major transport routes across Wales (including the M4, A48 and A55), cross-border roads and the Severn Crossings. ~~Although UK Government has default obligations to EU on TENs in Wales, it has default responsibilities in other areas – eg agriculture. No reason to change devolved responsibility in this area. North/South routes that cross border a much more important issue for Wales than England. These areas is~~ should be best addressed with improving inter-governmental cooperation.

Bus and taxi regulation

- 5.3.11 We have received a number of calls for the devolution of bus and taxi regulation. Devolution would allow the Welsh Government to introduce local control and improvements to service standards for public transport, taxi and

private hire vehicles. It would also facilitate an integrated approach to transport initiatives across Wales.

- 5.3.12 An argument is made by some respondents for Wales to have its own Traffic Commissioner with greater devolved powers. This would bring Wales in line with Scotland on this issue and allow for better controls of standards of safety and provide a specialised tribunal service.

Drink drive and speed limits

- 5.3.13 A number of respondents, including the Welsh Government, have called for the responsibility for speed and drink drive limits to be devolved. This would bring Wales in line with Scotland and Northern Ireland. [Area where porous border argument works in Wales's favour – people who travel regularly will be more aware of differences, if any. UK Government's linkage of health and drink-driving limit in Scotland applies equally to Wales.](#)

Waterways

- 5.3.14 On 2 July 2012 all of British Waterways' responsibilities for England and Wales's waterways were transferred to the Canal & River Trust, a charitable trust. The Scottish Government, however, decided the waterways in Scotland would not be part of the new charity, with British Waterways Scotland remaining a state-owned entity operating as Scottish Canals. We did not receive much if any evidence and we suggest no changes.

Integrated transport planning

- 5.3.15 Giving Wales more powers as above would fit our principles well, for example simplicity and coherence and achieve better alignment with Scotland. The proposals would benefit the people of Wales by providing the opportunity to develop a more coherent approach to transport in Wales.

Costs

- 5.3.16 In cost /benefit terms, the above proposals would not carry large financial costs and risks to Wales or the UK, provided they are carefully agreed and planned by the two Governments. Further discussion would be required to ensure the appropriate transfer of funding for rail infrastructure in Wales in time for the next High Level Output Specification process in 2019. The Barnett formula transport comparability factor would be adjusted.

Recommendations

- we recommend that the following should be devolved:
 - o port development including harbour orders and oversight of Trust ports;
 - o Wales and Border rail franchise;
 - o funding of Network Rail in relation to the Welsh network;
 - o speed limits and drink drive limits;
 - o bus regulation; and

- 0 taxi regulation;
- we recommend that while responsibility for inter city cross border rail franchises (Great Western, CrossCountry and Virgin Trains) should remain non-devolved, the Welsh Government should have a greater role in the consultation process for appointing a new franchise operator for these routes;
 - we recommend that there should be close cross border coordination between the two Governments for ensuring good quality cross border networks including the trans European network; and an agreed approach to upgrading the M4 at Newport and the future of Severn bridge tolls, and A55. Network improvements on either side of the border, including north - south routes, should be formally coordinated to reflect their strategic importance for Wales;

5.4 Broadcasting

Current position

5.4.1 Broadcasting is not devolved to the National Assembly for Wales. Welsh Ministers do not have any executive powers in the area of broadcasting. Responsibility for the regulation of broadcasting through Ofcom, funding and oversight of the BBC and funding S4C are all non-devolved subjects. The Welsh Government does however use its economic development powers to fund local radio.

Evidence box

Key facts on broadcasting

In terms of performance, outputs and outcomes, broadcasting plays an important role in the Welsh economy e.g. the recent expansion of BBC production capacity in Cardiff Bay. Welsh language broadcasting also plays a key cultural role in Wales.

Stats on public service broadcasting hours

Assessment

- 5.4.2 Both the Welsh Government and UK Government agree that neither want to see broadcasting devolved citing the importance of broadcasting to a common cultural citizenship across the United Kingdom.
- 5.4.3 Most of the evidence tends to suggest that the National Assembly and Welsh Government take an enhanced role in broadcasting, but not full devolution. In this, the evidence broadly corresponds with the analysis of the Richard and Calman Commissions.

- 5.4.4 In terms of our devolution principles, there appears to be no ~~goodstrong~~ case to devolve the regulation of broadcasting. A fragmented approach to regulation would neither be more efficient ~~nor~~ fair and would not improve accountability given the UK wide nature of the broadcasting market. We note that Plaid Cymru advocate a federalisation of the BBC and Ofcom. While this does not appear to be the majority view in Wales, some movement in this direction could be achieved by strengthening the Welsh element of BBC governance. [The Welsh Committee of Ofcom already appears to work well.](#)
- 5.4.5 An argument is made by some respondents, including the Welsh Government, for the UK Government to seek formal agreement of Welsh Ministers in the appointment of Welsh Members of the BBC Trust. This would bring Wales in line with Scotland on this issue.
- 5.4.6 There is also a call by some that the Welsh Government should have more of a role to play in appointments to the S4C Authority.
- 5.4.7 A number of respondents drew the link between the powers the National Assembly has over Welsh language and issues surrounding broadcasting.
- 5.4.8 ~~A number of suggestions (from the Welsh Government, Plaid Cymru and the Changing Union project in particular) for greater devolved influence in broadcasting.~~ There has been an ~~ongoing-on-going~~ issue since the Richard Commission ~~wrote~~ about how the Assembly is able to influence and hold to account public bodies working in non-devolved areas that impact on the responsibilities of the Assembly in Wales. This can best be addressed by improving governance and intergovernmental cooperation. Given the unique importance of the BBC Wales Welsh language output, the UK Government should consider the case for a devolved Trust (replacing the Wales Audience Council) within the UK Trust framework, with oversight of BBC Wales outputs in Wales.
- 5.4.9 Finally it ~~isdoes appear somewhat~~ anomalous in terms of our devolution principles that the power to subsidise S4C public service broadcasting lies with the UK Government rather than the Welsh Government. ~~Plaid Cymru drew attention to this.~~ It is not clear whether this can be justified against our principles of accountability, efficiency and fairness. For the present the funding issue has been in effect resolved by the removal of responsibility for most of the funding from DCMS to the BBC. It is not clear what will happen after March 2017. Assuming the current arrangements were to be rolled forward in 2017, responsibility for S4C could then be devolved with a transfer of the residual DCMS budget with little financial risk to the Welsh Government.

Costs

- 5.4.10 In cost /benefit terms, the above proposals would not carry large financial costs and risks to Wales or the UK, provided the bulk of the S4C subsidy continues to be met by the licence fee. They would benefit the people of Wales by providing the opportunity to develop a more coherent approach to

broadcasting in Wales within a continuing framework of UK wide media regulation.

Recommendations

- we recommend the creation of a devolved governance ~~bodystructure ie Trust~~ (replacing the Wales Audience Council) within the UK Trust framework with powers to provide oversight and scrutiny of BBC Wales outputs in Wales; and that the appointment of ~~the representative of Wales to the overall~~ BBC governance ~~body~~ ~~member for Wales~~ (ie currently the ~~UK~~ BBC Trust) ~~by the UK Government~~ should be ~~by~~with formal ~~Welsh Government~~ agreement ~~between the Welsh and UK Governments~~;
- we recommend that, within a framework that the bulk of funding should continue to be met from the licence fee, responsibility for S4C should be devolved to the National Assembly for Wales; in the meantime the appointment of the S4C Authority members by the UK Government should require Welsh Government agreement;
- we recommend that public sector broadcasters of specific content to Wales should provide an annual report on performance to the National Assembly for Wales, including more transparent data on trends in Welsh broadcasting output.

5.5 Teachers pay

Evidence box

Assessment

5.5.1 [Short assessment]

Recommendation

- We recommend that teachers' pay and conditions should be devolved;

5.6 Building regulations

Evidence box

5.6.1 [Short assessment]

Recommendation

- regulations in respect of all buildings in Wales including energy;

5.7 Licensing

Evidence box

5.7.1 [Short assessment]

- we recommend that the following should be devolved subject to satisfactory resolution of cross border compliance concerns: licensing of sale and supply

of alcohol; provision of entertainment and late night refreshment; and the provision of advice and assistance overseas by local authorities, in connection with carrying on there of local government activities; Sunday trading;

5.8 Bank holidays

Evidence box

5.8.1 [Short assessment]

Recommendation

- we recommend that the Assembly should have the power to choose St David's day (or another day) in lieu of another bank holiday subject to an acceptable cost/benefit assessment by the two Governments;

5.9 Higher education and science

Evidence box

5.9.1 [Short assessment]

Recommendation

- [Noel updating] we recommend that there should be a formal intergovernmental committee to ensure a coherent approach to education and science issues, while respecting devolved boundaries, to promote Welsh international competitiveness. The allocation of non devolved science funding should reflect the priority which the two Governments give to rebalancing the UK economy;

5.10 Defence and the economy

Evidence box

5.10.1 [Short assessment]

Recommendation

- We recommend that there should be greater transparency on the amount of defence spending in Wales in relation to other countries and regions of the UK and its economic impact;

5.11 Health

5.11.1 Health is the largest devolved function so we gave close consideration to this issue.

Evidence box

Assessment

5.11.2 We concluded in favour of no changes in powers but make recommendations for strengthening the way in which health is handled under devolution.[to be expanded]

Recommendations

- We recommend no change to the devolution boundary on health including non devolved areas such as UK wide regulation of health professionals; and there should be a consistent approach to mental health capacity tests across the devolution settlement recognising the executive functions of Welsh Ministers in the health area;
- we recommend that, given that patients on either side of the border expect the two Governments to cooperate, cross border access for patients should be developed further on a fair and equitable basis building on the Governments' joint protocol of April 2013; and we recommend that there should be a cooperative and coherent approach to delivery including of highly specialist facilities, public health and efficiency savings on both sides of the border;

5.12 Social security

5.12.1 Social security is the largest non-devolved function so we similarly considered this carefully.

Evidence box

5.13.1 We concluded in favour of no changes in powers particularly bearing in mind the importance of the social union [to be expanded] but make recommendations for ensuring this is kept under review pending developments in Scotland.

Recommendation

- we recommend that bearing in mind the importance of the social union for Wales[NB to be defined in the text], the social security system should remain non devolved in Wales; developments in other parts of the UK including Northern Ireland and Scotland should continue to be monitored; if parts of the social security system were to be devolved in Scotland at some future date, any implications for Wales should be considered at that time;

5.14 Welfare issues

5.14.1 We have also received evidence on welfare issues.

Evidence box

Assessment

5.14.2 Short assessment

Recommendation

We recommend that the two Governments should work together to reduce the complexity of the present family welfare system based on the principle that the Assembly should be able to legislate in relation to the powers and responsibilities of public authorities in connection with vulnerable adults and children, including taking

children into care, and fostering and adoption (public child law), but not for predominantly private law aspects of family relationships;

5.15 Conclusions

[to follow]

Chapter 6: Natural Resource issues

6.1 Overview

6.1.1 In this chapter we use the principles outlined in Chapter 3 to assess whether there should be changes in powers in natural resource areas and the scope for other changes. In particular we cover water; energy; Crown Estate; and environment.

6.2 Water

Current position

- 6.2.1 Water and flood defence are devolved to the National Assembly for Wales under Schedule 7 of the Government of Wales Act 2006. However sewerage is not devolved. Water industry regulation is not devolved. Schedule 7 does contain exceptions to the devolved competence of the Assembly relating to water; these exceptions are “appointment of water undertakers or sewerage undertakers for any area most of which is in England. Licensing of water suppliers”. [Reference to EU aspects]
- 6.2.2 ~~6.2.2.~~The Assembly’s legislative competence is currently limited to ~~these~~ parts within Wales of the appointment areas of three water undertakers – Dŵr Cymru/ Welsh Water; Dee Valley Water and Albion Water. Under the Water Bill this distinction is maintained; the competition requirements are a matter for Welsh Ministers for water companies operating wholly or mainly in Wales.
- 6.2.3 Under section 114 of GOWA 2006 the Secretary of State has the power to make an order preventing an Assembly Bill being submitted for Royal Assent if he has reasonable grounds to believe that the Bill may contain provisions which might have a serious adverse impact on water resources in England, water supply in England or the quality of water in England.
- 6.2.4 The second power of intervention the Secretary of State has under the 2006 Act is set out~~detailed~~ in section 152 and relates to the executive powers of Welsh Ministers. The Secretary of State may intervene if it appears to him that the exercise of an executive function (or failure to exercise that function) might have a serious adverse impact on water resources, water supply or quality in England.

Evidence box

Key facts

Welsh Water is the biggest Welsh water company and operates under a not for profit model pioneered in Wales and not found among other UK water companies. Wales is a major exporter of water.

Assessment

- 6.2.5 Water and sewerage issues in England and Wales are complex especially when it relates to cross border issues and the exceptions to the National Assembly for Wales' legislative competence as [set out](#) in Schedule 7 of GoWA 2006.
- 6.2.6 Based on our principles of subsidiarity, accountability and transparency, we think the presumption should be in favour of aligning Assembly competence with the geographic border. However at the same time there is clear evidence that these issues need to be considered on an inter-governmental and river basin basis. [Nothing should be done that will increase including](#) the costs to consumers. So there should be a formal protocol and intergovernmental arrangements for resolving this issue and protecting the interests of English and Welsh consumers and producers.
- 6.2.7 In relation to sewerage no strong arguments have been put forward for maintaining the status quo, and it is unclear why legislative competence in relation to sewerage was not devolved as in Scotland and Northern Ireland and subject to the same restrictions as water. This clearly causes issues to water undertakers and consideration should be given to devolution of powers relating to sewerage.
- 6.2.8 The powers of intervention of the Secretary of State need to be given close scrutiny. If a formal inter-governmental mechanism in relation to water is established which included protection of the rights of English consumers of water from Wales, these powers of intervention could be replaced by a mechanism within that remit.
- 6.2.9 Finally we have heard in our public meetings that Wales should exploit its water resources more effectively. The Holtham report explored this issue. Around one third of Welsh water supplies residents of England. However the overall value (annual turnover) of Welsh water is only around £300m a year. Holtham argued against introducing a Welsh water tax. But with increasing water shortages in the south-east the scope for developing the industry further may increase over time.

Recommendations

- we recommend that there should be a clear statement to inform the public of the respective roles of the private sector water industry, the regulator and the two Governments; and we recommend that the scope for increasing the benefits which Wales derives from its water resources should be considered by the two Governments, in line with the recommendations of the Holtham report;
- we recommend that powers over sewerage should be devolved to the National Assembly for Wales on the same basis as water supply;

- We recommend that, given the complexities surrounding water boundaries in England and Wales, an inter-governmental committee and protocol should be established to set out the appropriate boundaries of competence for the various water company functions taking into account both the general devolution principle that competence should be aligned with the administrative boundary and the need to avoid increasing water company costs and [bills to consumers](#);
- We recommend that the Secretary of State's existing legislative and executive powers of intervention in relation to water should be removed in favour of the above formal inter-governmental agreement, which should cover inter alia the issue of democratic representation of cross border interests.

6.3 Energy

Current position

6.3.1 The majority of energy and climate policy is non-devolved with UK Government retaining responsibility for:

- overall strategic approach to renewables and associated policies;
- international negotiations on energy and climate change, including engagement with the European Union, in consultation, as appropriate, with the Devolved Administrations;
- economic development to cover the generation, transmission, distribution and supply of electricity; oil and gas; nuclear energy and nuclear installations; and coal, apart from environmental matters;
- all development consents relating to electricity generating infrastructure above 50MW onshore and 100MW offshore and certain pipeline, overhead electricity line and harbour facility projects.
- Licensing of oil and gas exploration and production activities and related consenting decisions.
- Coal, including mining and subsidence, overseeing the current coal industry in the UK, managing the environmental impacts of current and previously active coal mines, and managing the UK Government's responsibilities and liabilities arising from the previously nationalised coal industry, such as the rights of retired miners.
- Energy conservation, except for the encouragement of energy efficiency otherwise than by prohibition or regulation.

6.3.2 Environmental protection, economic development and some aspects of planning are devolved. Welsh Ministers also have executive powers in some non-devolved areas, including powers under the Climate Change Act 2008.

Evidence box

Key facts

The Wales energy market forms part of the overall GB energy market. Some key statistics are:

- 13% of the electricity generated in Wales is exported
- Of the electricity generated in Wales, 7.9% is renewables. This compares with 26.8% for Scotland, 6.2% for England, 12.6% for NI and 9.4% for the UK
- The majority of energy consumed in Wales is oil and gas
- Milford Haven handles 29% of GB's seaborne trade in oil and gas.

Assessment

- 6.3.3 There are a number of different issues to consider.
- 6.3.4 The evidence generally supports the view taken by the Calman Commission in Scotland that the single GB energy market requires a GB wide approach to regulation and overall energy strategy.
- 6.3.5 Similarly no substantial evidence was received against the current UK-wide approach to international negotiations on energy and climate change, and nuclear.
- 6.3.6 The majority of evidence received has called for the responsibility for development consents for renewable energy projects greater than 50MW (onshore) and offshore (above 1MW) to be devolved. [Compare with Scotland]. [There was less evidence suggesting that development consents should be devolved in the case of non-renewable generation. However some renewable projects have a greater generation capacity than some non-renewable projects. There is therefore no logical case for distinguishing one from the other.](#)
- 6.3.7 Devolution would reduce the current complexity surrounding the planning and consent arrangements and give the Welsh Government greater accountability for developments in Wales which is missing from the current regime. It would also allow decisions for nationally significant infrastructure projects to be made in line with Welsh planning policy and resolve the current situation where by the UK Government's National Policy Statement takes precedence over the Welsh Government's planning policy and TAN 8 guidance for onshore developments in Wales.
- 6.3.8 It would therefore meet our principles including subsidiarity, coherence and accountability.
- 6.3.9 We do however need to take account of our principle of effectiveness in the context of UK wide energy security of supply. [On the one hand, the larger the generation capacity, the greater its contribution to UK security of supply; on the other, any cut-off point is arbitrary.](#) ~~Wand~~ we suggest that for the present time responsibility for non renewable energy projects of national importance should remain non devolved. [\[Issue to be discussed further\]](#)

- 6.3.10 If development consents for energy projects in Welsh offshore waters are to be devolved then there is an argument for the consents for marine licensing in that area to be also devolved.
- 6.3.11 Currently, in England only, the relevant legislation makes provision for 'associated development' (e.g. roads, substations) that is part of a larger development to be consented to at a national level, as it forms part of a Nationally Significant Infrastructure Project (e.g. power stations, overhead lines). In Wales, any 'associated development' is determined at local authority level which can result in additional complexity, cost and uncertainty. We suggest the two Governments should agree how to streamline the system to avoid unnecessary complexity.
- 6.3.12 The Welsh Government and a number of organisations have called for responsibility for Renewables Obligation Certificates (ROC) to be devolved. Discussions are [ongoing](#) between the UK Government and the Devolved Administrations on the Electricity Market Reform and the proposed Contracts for Difference (CfD) which will replace ROC from 2014. The UK Government has stated that the Welsh Government will be statutory consultees on the design and delivery of CfDs alongside Scotland and Northern Ireland.
- 6.3.13. We suggest that the new CfD system should be agreed with the devolved administrations and should ensure parity for Wales with the other Devolved Administrations.

Costs

- 6.3.14 In cost /benefit terms, the above proposals would not carry large financial costs and risks to Wales or the UK. Further discussion would be required to ensure the appropriate capacity is in place in the Welsh Government to manage additional responsibilities. The proposals would benefit the people of Wales by providing the opportunity to develop a more coherent approach to energy in Wales.

Recommendations

- a. We recommend that responsibility for development consents for renewable energy projects greater than 50MW (onshore) and offshore (above 1MW) should be devolved to the Welsh Government in order to facilitate achievement of renewable targets;
- b. We recommend that there may be a case in principle for devolving non renewable consents in the future and this should be kept under review; in the meantime there should be full consultation between the two Governments when consents are considered by HMG for non renewable energy to ensure that the Welsh Government's planning and environmental policies are met;
- c. We recommend that responsibility for issuing marine licences in Welsh offshore waters should be devolved;
- d. We recommend that Associated Development consents should be rationalised by the two Governments to reduce complexity in the context of improving the handling

of nationally significant energy infrastructure projects carried out by the Planning Inspectorate;

e. We recommend that the Welsh Government should receive parity with Scotland and Northern Ireland for the proposed Contracts for Difference (CfD) which will replace Renewables Obligation Certificates from 2014 as part of the wider Electricity Market Reform;

6.4 Crown Estate

Current position

6.4.1 The Crown Estate is land and property that belongs to the reigning Monarch “in right of the Crown” but is not the private property of the Monarch. The term is also used for the body that administers the Estate. This administrative body was established under the Crown Estate Act 1961 and is a trust estate, independent of the government and the Monarch with a public function to:

- Invest in and manage certain property assets belonging to the Monarch; and
- Remit its revenue surplus each year to the UK consolidated fund.

6.4.2 The Treasury is the Crown Estate’s sponsor department with the Economic Secretary as its sponsoring Minister. It is led and directed by its board of eight Commissioners. The board includes a member that represents Scotland, but no other part of the United Kingdom is specifically represented on the board.

6.4.3 For management purposes the estate is divided into four business groups: urban, marine, rural and Windsor.

Evidence box

Key facts

The following are key figures about revenue raised and money spent in Wales:

- Wales accounts for a relatively small percentage of the value of the Crown Estates portfolio (about 1.8%)
- it also accounts for a relatively small percentage of the revenues (£8.6m last year and £6.8m the year before – about 2.6% of the UK last year)
- although last year they only invested £1.6m in Wales, the year before it was £84.3m

- in addition Wales benefits from the Coastal Communities Fund, which invests in Wales half of the revenue from Welsh marine activities ie around £1.15m a year.

Assessment

- 6.4.4 There does not appear to be majority support for the transfer of ownership of the Crown Estate in Wales to the Welsh Government. The Calman report noted the benefits derived to Scotland from being part of a much wider and more profitable Estate and this argument also applies to Wales.
- 6.4.5 ~~Already the Crown Estate benefits Wales, for example by~~ the new Coastal Community Fund ~~brings benefits to Wales. It could do more, especially by investment in its Welsh supply chain, particularly when it is developing off-shore energy.~~
- 6.4.6 ~~This strengthens the~~ ~~However, there is an~~ argument that the arrangement for Scotland's representation on the Crown Estate Commissioner's board ~~should be~~ replicated ~~in Wales.~~
- 6.4.7 As with the Scottish representative it ~~is~~ ~~may be considered~~ appropriate that the Welsh Government should be formally consulted on the appointment of the Welsh Commissioner.
- 6.4.8 In addition, there is a case for the following:
- a Crown Estate office should be established in Wales, subject to normal value for money criteria as in Scotland
 - the existing memorandum between the Crown Estate and Welsh Government should be published and periodically updated-
 - ~~and appropriate emphasis should be given by the Crown Estate, UK Government and Welsh Government to the Welsh supply chain in developing renewable energy in Wales.~~

Recommendation

- we recommend that in the light of the growing importance of the Crown Estate in Wales and its impact on devolved interests, there should be a Welsh Crown Estate Commissioner appointed in consultation with the Welsh Government; a Crown Estate office should be established in Wales, subject to normal value for money criteria; the existing memorandum between the Crown Estate and Welsh Government should be published and periodically updated; and
- appropriate emphasis should be given by the Crown Estate, ~~UK Government and Welsh Government~~ to the Welsh supply chain, especially in developing off-shore renewable energy in Wales.

6.5 Environment

Current position

- 6.5.1 Environmental matters are for the most part devolved and we have not had much evidence to suggest changes in powers. The Planning Inspectorate

reports to both HMG and WG Ministers and these arrangements appear to work well. However the Welsh Government has suggested that the existing executive responsibilities of Welsh Ministers for marine conservation and licensing in the Welsh inshore area should be extended to the Welsh offshore area as in Scotland.

Assessment

6.5.2 We agree that this would bring a more coherent approach.

Recommendation

- the existing executive responsibilities of Welsh Ministers for marine conservation and licensing in the Welsh inshore area should be extended to the Welsh offshore area;

6.6 Conclusions

[to follow]

Chapter 7: Policing and Justice

7.1 Overview

7.1.1 In this chapter we use the principles outlined in Chapter 3 to assess whether there should be changes in powers in policing and justice and the scope for other constitutional changes.

7.2 Policing

Current position

7.2.1 Policing is non-devolved. It is worth noting that the introduction of Police and Crime Commissioners last year represented a substantial decentralisation from the Home Office, reversing a previous trend towards centralisation. The Home Secretary is essentially responsible for the legislative framework for policing, funding and setting the strategic policing requirement. The Home Secretary nevertheless retains wide powers which she could use.

7.2.2 However, many areas of devolved policy influence levels of offending and criminality, including local government, health and education. The four police forces in Wales work closely with their devolved partners to identify shared priorities and deliver efficient, value for money and citizen focused services; for example, police work alongside local authorities and Community Safety Partnerships to deliver Domestic Abuse and Substance Misuse strategies. They have developed strong relationships with devolved and non devolved partners and are fully involved in Local Service Boards in the 22 local authorities in Wales, and the Public Service Leadership Group in Wales, which provides leadership for collaborative work to improve public services in Wales.

7.2.3 Collaboration between the police forces in Wales and the Welsh Government has developed over time and the introduction of elected Police and Crime Commissioners (PCCs) presents an opportunity for further collaboration.

7.2.4 Collaboration to date has delivered a number of jointly funded projects:

- 500 additional community support officers;
- Tarian, the Southern Wales response to Serious Organised Crime -£642k in 2012/13; and
- £2.5m funding from the Welsh Government for the All Wales Community Schools Liaison Core Programme (matching the UK Government's contribution).

Evidence box

Key facts

Wales generally has relatively good crime and policing statistics compared to England:

- in 2011-12 recorded offences per 1000 population was 63 compared to 71 for England
- the detection rate was 35 per cent compared to 28 per cent for England, and was up from 28 per cent in 2002-03
- in terms of fairness 62 per cent thought the criminal justice system in England was fair compared to 65 per cent in Wales, for effectiveness 44 per cent and 45 per cent.

In terms of spending per head, the England/Scotland/Wales/NI figures for 2011-12 are: £255/247/243/488. So Wales has the cheapest system but the figures are similar to the devolved system in Scotland.

Police Funding

- 7.2.5 The police in Wales get their funding from two main sources – central Government (the UK Government, via the Home Office, and the Welsh Government) and the police precept component of council tax. Through the Spending Review process, the Home Secretary determines the amount of central Government funding to the police in Wales.
- 7.2.6 The Home Secretary decides the overall allocation of UK Government funding to Welsh police force areas. In 2011/12 and 2012/13 all police force areas in England and Wales have had their UK Government funding reduced by the same percentage. The Welsh Government decides the allocation of Welsh Government funding between police force areas. The Home Office also provides ring-fenced funding to Welsh police force areas for counter terrorism policing.
- 7.2.7 In 2012-13 the Home Office provided £229m, the Welsh Government provided £151m and the police precept funding provided £221m. Whilst the Home Secretary determines the quantum, and in effect, the allocation of Central Government funding to Welsh police forces, the Welsh Local Government Minister has control over council tax policy in Wales, including on capping the precept.

Assessment

- 7.2.8 Opinion is somewhat divided on whether policing should be devolved. On the one hand there are those like the UK Government who argue that the present system works well. The statistics on performance noted above seem to support this view.
- 7.2.9 On the other hand, there are those like the Welsh Government who argue that policing should be devolved. Policing is a public service like health, education and the fire service which are devolved; there is a subsidiarity argument for devolution; there is a coherence argument in favour of tackling crime and the causes of crime holistically; and an accountability argument in

terms of aligning funding and policy responsibility. A majority in Wales appears to favour devolution.

7.2.10 [Devolution of responsibility for policing might sensibly come with reservations so that basic principles on which police officers work in Wales and England would remain the same – for example, the subject matter of the Police and Criminal Evidence Act might be reserved.](#)

7.2.11 The box below sets out what devolving policing would mean for Wales.

Box: what devolving policing would mean

7.2.11 It is worth considering whether the four concerns raised by the UK Government can be met

- Is policing inextricably linked with the Criminal Justice System (CJS)? Some have argued that policing and justice powers go together. But some have disputed this arguing that policing is a separate operation. While this is technically true, in policy terms we would suggest that a holistic approach to the CJS is desirable and that breaking the link on a permanent basis would reduce the coherence and stability of the devolution settlement. Examples of interaction across the CJS are improving efficiency and effectiveness e.g. through coordinated IT systems; coordinated planning of capacity and policy bearing in mind that police crime detection largely determines the caseload of the courts and prisons; a coherent approach to sentencing and penalties bearing in mind the police have wide powers to issue penalties (for example traffic and ASBOs). This suggests that if policing is devolved there should be a presumption that other parts of the justice system should be devolved in due course;
- Do the present arrangements provide a significant level of integration and autonomy? We suggest that while these are desirable characteristics of the present system which should be retained, devolution would enable the Welsh Government to develop integration and autonomy further;
- Are there cost and complexity issues? This is not clear cut. The four police services are coterminous with Wales. We would not advocate breaking up the UK wide arrangements, for example, on organised crime. Where there are cross border economies of scale, such as on procurement, we would advocate that the arrangements should be maintained post devolution. It is true that criminals do not respect borders so continued cross border cooperation would be essential. In addition, the porous border may in practice limit the extent to which the WG could follow radically different policing policies from England without adversely distorting criminal behaviour, for example, in relation to drug crime. There would be additional WG civil service costs but there may also be scope for savings. Police pay and pensions, the police college and other areas such as police complaints and independent inspection of policing could continue on an England and Wales basis;
- Would devolution weaken the existing management of national threats such as organised crime, terrorism, cyber threats? Clearly the

management of national threats would remain a top priority for both Governments and devolution arrangements would need to address how best to do so, drawing on experience in Scotland and Northern Ireland, including retention of the National Crime Agency.

Costs

7.2.12 Provided there is a fair transfer of resources from the Home Office and provided devolution is designed to minimise additional costs, we think that devolution should ~~be~~ affordable. Devolution also provides opportunities to make savings.

7.2.13 To conclude devolution of policing would fit well with our principles of coherence, subsidiarity and accountability, provided the effectiveness of policing at the UK level was maintained and provided devolution as carried out in a way which does not involve substantial additional costs, as we propose.

Recommendations

- We recommend the devolution of policing to the Assembly and related areas of community safety and crime prevention;
- We recommend that when devolved existing levels of cross border cooperation should be maintained and enhanced through formal inter- force and inter- governmental agreements;
- We recommend that there should not be devolution of [legislative powers in respect of arrest, interrogation and charging of suspects, or of the general powers of constables; or of](#) bodies which tackle UK wide national crime such as the National Crime Agency; and police pay and pensions, the police college, independent complaints and regulation bodies should continue to operate on an England and Wales basis to ensure economies of scale, with the precise sharing arrangements being agreed by the two Governments.

7.3 Conclusions

[to follow]

7.4 Justice

Current position

7.4.1 Justice is non-devolved under the Welsh devolution settlement. The Assembly exercises no legislative competence in terms of justice, and the Welsh Ministers have no executive powers directly in relation to the justice system. However, Acts of the Assembly can create offences [and could, for example, make certain contracts that are lawful in England unlawful in Wales.](#) ~~and~~ Welsh Ministers [also](#) have executive powers in relation to devolved tribunals.

7.4.2 The justice system in Wales is administered by the Ministry of Justice (MoJ).

7.3.1 This includes the courts, prisons, probation services, ~~and~~ youth justice, [sentencing guidelines, legal aid and the judiciary](#). The CPS, [sentencing guidelines, legal aid and judiciary which is answerable to the Attorney General, is](#)are also not devolved.

7.3.2 The Government is committed to protect the public and reduce reoffending; provide a more effective, transparent and responsive criminal justice system for victims and the wider public (on which HMG published their plans for reform in July 2012); and provide fair and simple routes to civil and family justice.

7.3.3 While justice is not devolved, the Welsh Government does play a role in the delivery of justice services in Wales. MoJ's responsibilities interact to a degree with those of the Welsh Government, and there is a good deal of co-operation and good practice on the ground. In particular, MoJ responsibilities for offender management, youth justice and criminal, civil, family and administrative law and justice interrelate strongly with the Welsh Government's responsibilities in respect of education and training, health and health services, housing, local government and social welfare.

Evidence box

Key facts

Wales generally has similar criminal justice statistics compared to England:

- in terms of fairness 62 per cent thought the criminal justice system in England was fair compared to 65 per cent in Wales, for effectiveness 44 per cent and 45 per cent.

In terms of spending per head, the England/Scotland/Wales/NI figures for 2011-12 for law courts are: £103/95/106/161; and for prisons £64/62/70/99. So the figures for Wales are a little more than for the devolved system in Scotland.

Assessment

Box: creating a more administratively devolved justice system in Wales

Box: what would a Welsh legal system involve?

Box: a separate jurisdiction for Wales?

- 7.3.4 The 'justice system' is a shorthand term for something very complex.
- 7.3.5 The over-riding principle of our recommendations is that access to justice is paramount and that therefore the justice system should be brought as closely as possible to the community it serves while maintaining the quality of justice dispensed.
- 7.3.6 Criminal justice should be distinguished from civil justice.
- 7.3.7 In criminal justice, there are a number of stages: the determination by the legislature of what is a crime; the deterrence and prevention of crime; the detection of offences; the prosecution of offenders; the determination of guilt; the imposition of penalties (ranging from on-the-spot fines to life imprisonment); the treatment of offenders; the system of appeals; the treatment and rehabilitation of offenders.
- 7.3.8 Civil justice is the system under which disputes between people, businesses and other organisations are determined. It is governed by statute, by legal principles such as tort and by the rules of the court. Examples are family law and commercial law.
- 7.3.9 There is also public law and administrative justice, governing the way in which public bodies work.
- 7.3.10 Separate arrangements for Wales should not be established 'just to be different': giving responsibility for strategic direction to Welsh institutions does not preclude using mechanisms which operate on an England and Wales basis in order to take advantage of existing experience, provided this is consistent with the principle of local access to justice enunciated above.
- 7.3.11 In relation to criminal justice, we believe that the NAW should have responsibility in those areas that have the greatest impact on the community and the day-to-day lives of the citizens of Wales - reflecting the principle above.
- 7.3.12 So we have proposed the devolution of policing, while ensuring that there remains co-operation in dealing with serious crime.
- 7.3.13 We also believe the treatment and rehabilitation of youth offenders should be executively devolved to Welsh Ministers.
- 7.3.14 In due course, the treatment and rehabilitation of adult offenders in the community should also be devolved to the National Assembly for Wales.
- 7.3.15 It will be logical then to see the devolution of responsibility for prisons, though we recognise that there will need to be cross border cooperation, and that serious offenders may need to be dealt with on a Wales and England basis. We recognise the practical difficulties in this area and suggest a feasibility assessment as a first step. Whatever the results of this, we propose that a formal mechanism be established for Welsh Ministers to contribute to policy development on adult offender management.

- 7.3.16 Prosecution of offenders is not just a matter for the CPS, but once policing has been devolved, the case for devolving responsibility for other aspects of the prosecution of offenders should be considered, including the CPS.
- 7.3.17 So far as the courts are concerned, below the High Court, justice is already administered in Wales by Welsh courts by magistrates (who are appointed locally) and judges who are appointed to the Wales circuit.
- 7.3.18 Cases involving laws which apply only in Wales should be heard, whenever possible, at first and second instance in Wales. (This is in the context of Law applying in Wales only but extending to England and Wales). *[we will have to recognise that this is in the context of Law applying in Wales only but extending to England and Wales]*.
- 7.3.19 The various divisions of the High Court should sit in Wales on a regular basis to hear cases that arise in Wales. A High Court office might be established in Wales to coordinate High Court sittings in Wales.
- 7.3.20 High Court judges should be allocated to sit in Wales only if they satisfy the Lord Chief Justice that they understand the distinct requirements of Wales and Welsh law. *[the High Court issue needs further discussion]*
- 7.3.21 The divisions of the Appeal Court should continue to sit in Wales on a regular basis to hear cases that arise in Wales.
- 7.3.22 Appeal Court judges should be allocated to sit in Wales only if they satisfy the Lord Chief Justice that they understand the distinct requirements of Wales and Welsh law. *[comment as above]*
- 7.3.23 Welsh-domiciled defendants, appellants or plaintiffs who wish to use the Welsh language in court proceedings should be able to do so, wherever the case is heard. *[this needs further discussion, especially in circumstances where the parties do not all agree]*
- 7.3.24 It will be necessary to ensure that there are enough judges able to conduct hearings at all levels in Welsh.
- 7.3.25 Some laws created by the NAW under its devolved powers already carry criminal sanctions for breach, and we do not propose that the NAW should be limited in its power to impose criminal sanctions in areas of devolved responsibility. However whereas the criminal law has been devolved in Scotland and Northern Ireland, we do not recommend the devolution of the criminal law of England and Wales generally so that the law of theft or of offences against the person will remain the same in England and Wales. But we expect that a wider debate on these issues will emerge over time.
- 7.3.26 It will be important to ensure that the reserved powers model does not inadvertently remove the ability of the NAW to create criminal laws where it is necessary to support its wider devolved law making powers *[issue needs further discussion ~~and will also need to be mentioned elsewhere]~~*
- 7.3.27 The NAW already has wide legislative powers in the civil law area, but it will be important to protect the single economic market by ensuring that fundamental principles of civil law remain the same in Wales as in England –

this includes contract and tort. [*How do we define fundamental principles of civil law?*],

- 7.3.28 Other areas of civil and administrative law and procedure should remain the same as in England, including matrimonial, inheritance and property law.
- 7.3.29 Again, it will be important to ensure that the reserved powers model does not inadvertently remove powers from the NAW.
- 7.3.30 There should be [at least one](#) judge on the UK Supreme Court with particular knowledge and understanding of the distinct requirements of Wales and Welsh law.
- 7.3.31 Welsh Ministers should continue to have executive competence on tribunals in devolved areas of policy; and there should be clarity and coherence in the relationship between devolved and non devolved tribunals; the process of appointment, training and terms and conditions of employment should be consistent [*this area needs further discussion*]
- 7.3.32 Legal aid should not be devolved at the present time, although the UK Government should fully consult the Welsh Government and other key stakeholders to ensure that the operation of the legal aid system reflects Welsh circumstances.
- 7.3.33 Welsh Ministers should be able to propose law reform projects to the Law Commission on a similar basis to UK Government Ministers.
- 7.3.34 There should be improved access to all legislation in areas of devolved powers through publication of a consolidated body of legislation.
- 7.3.35 As an example of the liaison we are suggesting elsewhere between UK Ministers and the NAW, there should be a periodic report by the Lord Chancellor to [Parliament and](#) the Assembly on how access to justice is improving in Wales.
- 7.3.36 There should be regular dialogue between the Lord Chief Justice of England and Wales and Welsh Ministers on the administration of justice in Wales.
- 7.3.37 We have concentrated on the administration of justice since the term 'jurisdiction' has several distinct meanings. Since the courts will increasingly need to deal with laws made in Wales and applying only in Wales, it is possible that, in due course, a separate Welsh jurisdiction in the sense of separate devolved courts and judiciary may develop, but for the time being we are recommending that distinctive Welsh provision in the court system should be strengthened in the administrative ways we have proposed.

Costs

- 7.3.37 The evidence we have received suggests the additional costs to the Welsh Government would be fairly modest [details] except in the case of prisons, where much would depend on whether prison services continued to be shared across the border as we propose [details].

Recommendations

- a. We recommend that the treatment and rehabilitation of youth offenders should be executively devolved to Welsh Ministers;
- b. We recommend that In due course, the treatment and rehabilitation of adult offenders in the community ie probation services should also be devolved to the National Assembly for Wales;
- c. We recommend the devolution of responsibility for prisons, though we recognise that there will need to be cross border cooperation, and that serious offenders may need to be dealt with on a Wales and England basis. We recognise the practical difficulties in this area and suggest a feasibility assessment as a first step. Whatever the results of this, we propose that a formal mechanism be established for Welsh Ministers to contribute to policy development on adult offender management
- d. We recommend that once policing has been devolved, the case for devolving responsibility for other aspects of the prosecution of offenders should be considered, including the CPS;
- e. We recommend that cases involving laws which apply only in Wales should be heard, whenever possible, at first and second instance in Wales. ~~(This is in the context of Law applying in Wales only but extending to England and Wales)~~
- f. We recommend that the various divisions of the High Court should sit in Wales on a regular basis to hear cases that arise in Wales. A High Court office might be established in Wales to coordinate High Court sittings in Wales. ~~High Court judges should be allocated to sit in Wales only if they satisfy the Lord Chief Justice that they understand the distinct requirements of Wales.~~ The divisions of the Appeal Court should continue to sit in Wales on a regular basis to hear cases that arise in Wales. High Court and Appeal Court judges should be allocated to sit in Wales only if they satisfy the Lord Chief Justice that they understand the distinct requirements of Wales.
- g. We recommend that Welsh-domiciled defendants, appellants or plaintiffs who wish to use the Welsh language in court proceedings should be able to do so, wherever the case is heard. It will be necessary to ensure that there are enough judges able to conduct hearings at all levels in Welsh
- h. We do not recommend the devolution of the criminal law of England and Wales generally. But we expect that a wider debate on these issues will emerge over time. It will be important to ensure that the reserved powers model does not inadvertently remove existing criminal law powers from the NAW
- i. We recommend that it will be important to protect the single economic market by ensuring that fundamental principles of civil law remain the same in Wales as in England – this includes contract and tort. Other areas of civil and administrative law and procedure should remain the same as in England, including matrimonial, inheritance and property law. Again, it will be important to ensure that the reserved powers model does not inadvertently remove existing powers from the NAW.

- j. We recommend that there should be [at least one](#) judge on the UK Supreme Court with particular knowledge and understanding of the distinct requirements of Wales
- k. We recommend that Welsh Ministers should continue to have executive competence on tribunals in devolved areas of policy; and there should be clarity and coherence in the relationship between devolved and non devolved tribunals; the process of appointment, training and terms and conditions of employment should be consistent
- l. We recommend that legal aid should not be devolved at the present time, although the UK Government should fully consult the Welsh Government and other key stakeholders to ensure that the operation of the legal aid system reflects Welsh circumstances
- m. We recommend that Welsh Ministers should be able to propose law reform projects to the Law Commission on a similar basis to UK Government Ministers
- n. We recommend that there should be improved access to all legislation in areas of devolved powers through publication of a consolidated body of legislation
- o. We recommend that as an example of the liaison we are suggesting elsewhere between UK Ministers and the NAW, there should be a periodic report by the Lord Chancellor to [Parliament and to](#) the Assembly on how access to justice is improving in Wales. There should be regular dialogue between the Lord Chief Justice of England and Wales and Welsh Ministers on the administration of justice in Wales
- p. Since the courts will increasingly need to deal with laws made in Wales and applying only in Wales, it is possible that, in due course, a separate Welsh jurisdiction in the sense of devolution of separate devolved courts and judiciary may develop if there is a consensus at the time, but for the time being we are recommending that distinctive Welsh provision in the court system should be strengthened in the administrative ways we have proposed.

7.4 Conclusions

[\[to follow\]](#)

7.5 Civil contingencies

[Current position](#)

7.5.1 [\[brief description\]](#)

[Evidence box](#)

[Assessment](#)

7.5.2 [brief assessment]

Recommendation

- we recommend that the two Governments should ensure that there is a clear understanding of the respective roles of the two Governments in relation to civil contingencies and emergencies, including any agreed transfer of executive powers if necessary to ensure effective resilience;

7.6 Lords Lieutenant

Current position

7.6.1 [brief description]

Evidence box

Assessment

7.6.2 [brief assessment]

Recommendation

- we recommend that the responsibility for recommending the appointments of Lords Lieutenant should be formally agreed between the two Governments;

7.7 Equal opportunities

Current position

7.7.1 [brief description]

Evidence box

Assessment

7.7.2 [brief assessment]

Recommendation

- we recommend that Welsh Ministers should continue to have powers over rights in devolved areas of policy, and consideration should be given to extending these to legislative competence in the context of a reserved powers model, including the existing power to introduce specific equality duties for the Welsh devolved public sector, powers over the socio economic duty in the devolved public sector, accountability for the Equality and Human Rights Commission in devolved areas, and powers over positive discrimination in the devolved public sector;

7.8 Welsh language

Current position

7.8.1 [brief description]

Evidence box

Assessment

7.8.2 [brief assessment]

Recommendation

- we recommend that the scope of devolved legislative competence over the Welsh language should be kept under review, including any restrictions on the use of Welsh more generally such as in relation to registration of births and deaths, cremation, and marriage;

7.9 Elections

Current position

7.9.1 [brief description]

Evidence box

Assessment

7.9.2 [assessment]

Recommendation

- we recommend devolving to the Welsh Government powers in relation to the conduct Order, so aligning the administration of devolved elections with Scotland; and devolving to the Welsh Government local authority electoral administration including rules for the conduct of elections. We also recommend devolving to the Presiding Officer powers in the Government of Wales Act for varying the date of devolved elections if the Assembly resolves that it should be dissolved.

7.10 Conclusions

7.10.1 [To follow]

Chapter 8 – The National Assembly for Wales and Parliament

8.1 OVERVIEW

8.1.1 In this chapter we use the principles outlined in Chapter 3 to assess whether there should be changes in the ~~law arrangements within the policy and procedures~~ relating to the National Assembly for Wales ~~and how, including~~ inter-parliamentary relations ~~could be improved~~. ~~While we have looked at the procedures of the National Assembly~~ Our terms of reference specifically excluded us from considering “the structure of the National Assembly for Wales, including issues relating to the election of Assembly Members”.

8.2 CURRENT POSITION

The structure and procedures of the National Assembly for Wales

8.2.1 In 1998 the Government of Wales Act created a 60 member National Assembly for Wales. ~~This which~~ continued ~~underwith~~ the Government of Wales Act 2006, ~~but became a separate legal entity from the Welsh Government~~. The National Assembly for Wales ~~(the National Assembly)~~ has the classic parliamentary purposes of representation, scrutiny of government and public bodies and legislation ~~purpose of representing the people of Wales, scrutinising legislation put forward and holding the Welsh Government to account~~.

8.2.2 National Assembly business is conducted through Plenary sessions twice a week and Committee sessions. Important stages of primary legislation are considered in Plenary; there are debates on topics initiated both by the Welsh Government and the opposition parties; Ministers are held to account through question time and questions on statements, and a number of other scrutiny activities take place.

8.2.3 ~~Although~~ the structure and purpose of the National Assembly’s Committees has changed somewhat since 1998. Currently they have a formal role in the consideration of primary legislation as well as scrutinising ~~old a scrutiny role for both primary and secondary legislation and the expenditure, administration and policy of the Welsh Government and devolved public bodies~~ Government policies. The National Assembly is given freedom to design a committee structure based on ~~its~~ the priorities ~~they have~~. However, there is a requirement to ensure that key functions listed in Standing Orders are delivered by the committee structure. With the attainment of legislative powers in the Fourth Assembly, the number of Committees was reduced, and subject committees took on responsibility for scrutinising relevant legislation also. At present the National Assembly for Wales has 10 Committees.

- 8.2.4 The committee remits are broad and, in the main, cut across Ministerial portfolios. However, committees have the flexibility to examine any issue of relevance to the broad remit defined by their titles and are not constrained in examining any issue of relevance. European issues are mainstreamed into the work of the Constitutional Affairs Committee and the five “thematic” committees. The five subject-based committees have been established with the purpose of undertaking multiple streams of work by establishing formal sub-committees and informal group as well as operating as a full committee. [Scrutiny Policy](#) and legislative work is expected to take place simultaneously.
- 8.2.5 National Assembly procedures are generally governed by Standing Orders. The Government of Wales Act 2006 made provision for the Secretary of State for Wales to make Standing Orders up until the National Assembly convened after the 2007 election. Since then the Assembly has been able to amend or suspend Standing Orders ([subject to a two-thirds majority](#)) and has done on several occasions.
- 8.2.6 The Government of Wales Act 2006 ~~continues the also makes~~ provisions [in the 1998 Act](#) for the Secretary of State for Wales’s participation in National Assembly proceedings. While the Secretary of State is not allowed to vote in the National Assembly, he or she is entitled to participate in proceedings, and to have copies of any document made available to Assembly Members or relating to any proceedings of the National Assembly made available to him or her.
- 8.2.7 The Secretary of State is also required by the Government of Wales Act 2006 [\(as he was by the 1998 Act\)](#) to consult with the National Assembly regarding the UK Government’s legislative programme as soon as is practically possible following the Queen’s Speech, normally within a month. He or she is also required to participate at least once in plenary session as part of this consultation, which normally immediately follows the presentation of the UK Government’s legislative programme.
- 8.2.8 Additionally the Secretary of State is required to make a statement of estimated payments to the National Assembly. He or she must make a statement each financial year and lay it before the National Assembly.

Legislative Competence in relation to the National Assembly for Wales

- 8.2.9 Some matters relating to the National Assembly for Wales are devolved. Schedule 7 of the Government of Wales Act 2006 lists the following matters relating to the National Assembly as within the competence of the National Assembly (Subject 13):
- Complaints about Assembly members (including provision for and about an office or body for investigating such complaints and reporting outcomes of investigations). Assembly Commission. Salaries, allowances, pensions and gratuities for and in respect of Assembly Members, the First Minister, Welsh Ministers appointed under section 48, the Counsel General and Deputy Counsel General. Meaning of Welsh words and phrases in Assembly Measures and Acts of the Assembly, in subordinate legislation made under Assembly*

Measures and Acts of the Assembly and in other subordinate legislation if made by the Welsh Ministers, the First Minister or Counsel General. Private legislation in the Assembly. Financial assistance for political groups to which Assembly members belong. The Welsh Seal. Arrangements for printing of Acts of the Assembly, of subordinate legislation made under Assembly Measure or Acts of the Assembly and other subordinate legislation if made by the Welsh Ministers, the First Minister or the Counsel General.

- 8.2.10 However, while Schedule 7 does not feature exceptions to this Subject, other areas are prescribed by statute as non-devolved mainly under Part 1 of the Government of Wales Act 2006. These include National Assembly elections; terms of office of AMs; disqualification; oath of allegiance; the Presiding Officer and Clerk; how Committees are composed; the Audit Committee; standing orders; participation by UK Ministers in Assembly proceedings; integrity (including roles of regional AMs); power to call witnesses and defamation.

The Capacity of the National Assembly for Wales

- 8.2.11 ~~The figure of 60 Members is equivalent to 1 per xxx of the population of Wales. Evidence provided to us stated that~~ of the 60 members that sit in the National Assembly for Wales, 13 are currently Ministers, the limit set in the Government of Wales Act 2006. This is 21.7 per cent of the National Assembly's membership (an additional member could be added to the Cabinet as Counsel General, an appointment which does not have to be given to an Assembly Member, equivalent to 23.3 per cent). ~~The number of Assembly members has not changed since 1999.~~

- 8.2.12 44 Assembly Members currently participate in the National Assembly's five main Committees (excluding the Welsh Ministers and Deputy Ministers, the Presiding Officer, and the Leaders of the Conservative and Plaid Cymru Groups). Of these 44, 14 currently serve on one Committee, 24 on two, and six on three. In order to ensure proportional representation on the Committees smaller parties have a higher level of demand on their Members, but there are also only 16 members of the majority party who must provide the majority on each committee.

~~With the attainment of legislative powers in the Fourth Assembly, the number of Committees was reduced, and subject committees took on responsibility for scrutinising relevant legislation also.~~

Welsh representation in Parliament

- 8.2.13 Wales returns 40 Members of Parliament, currently elected from the same constituencies as the 40 ~~constituency First Past the Post~~ Assembly Members. The recent Parliamentary Voting Systems and Constituencies Act would have harmonised the number of electors per constituency throughout the UK and reduced the number of Members of Parliament from 650 to 600, and would have meant ten fewer MPs for Wales. The impact would have been greater for Wales than any other part of the United Kingdom as Wales has the fewest

electors (and population) per MP. The reduction of the number of MPs has been postponed until at least 2018.

- 8.2.14 There are four main [forums](#) for discussion of Welsh matters in the House of Commons. The first is the Welsh Affairs Committee, comprised of 12 MPs broadly reflecting the wider party balance in the Commons and not necessarily elected from Welsh seats. [Its](#) terms of reference are to examine matters within the responsibility of the Secretary of State for Wales, including relations with the National Assembly. The second is the Welsh Grand Committee, comprised of all 40 Welsh MPs and up to five additional MPs. This meets [from time to time sporadically](#) at the behest of the Secretary of State to discuss issues relevant to Wales. The third is the five-weekly questions to the Secretary of State, in which all members of the House of Commons can participate. The fourth is the very rarely used Welsh Parliamentary Party, convened by the longest serving Member from Wales. Unlike the other three [forums](#), there is no administrative support given to the Welsh Parliamentary Party [and its proceedings are not in law "proceedings in Parliament"](#).
- 8.2.15 There is no official nor definitive list of Peers from Wales or those with an interest in Wales. The House of Lords does not have a specific [forum](#) for consideration of Welsh matters.

Inter-Parliamentary Relations

- 8.2.16 The main link between [the UK](#) Parliament and the National Assembly is the inter-governmental convention relating to Legislative Consent Motions, which is the means by which the National Assembly gives the UK Parliament consent to legislate in areas where the National Assembly has competence. This is in practice conducted between the UK Government and Welsh Governments, who negotiate the Legislative Consent Motion which the Welsh Government lay before the Assembly.

Evidence Box

Key Facts

Procedures in the Scottish Parliament and the Northern Ireland Assembly

- 8.2.17 Procedurally the Scottish Parliament is governed by Standing Orders which were agreed by the Scottish Parliament in 1999 and have been amended four times since. [The practices of the Northern Ireland Assembly reflect the history of a divided community. Neither the Scottish Parliament nor the Northern Ireland Assembly are able to change certain aspects of the law under which they were established and operate.](#)
- 8.2.18 The Scotland Act 2012 made changes to the arrangements for the election of the Presiding Officer and Deputy Presiding Officers. These changes meant that following a general election the new Scottish Parliament did not need to elect a Presiding Officer or Deputies for 14 days, rather than the seven previously.
- 8.2.19 There is no [power requirement](#) for the [relevant](#) Secretary of State to [take part-be involved](#) in Scottish Parliamentary [or Northern Ireland Assembly](#).

proceedings and there is no provision for them~~does not need to present/deliver~~ the UK legislative programme to the Scottish Parliament or Assembly. There are other differences [to be elaborated]

Capacity of UK and other Legislatures

- 8.2.20 The Scottish Parliament is made up of 129 members. This is broadly the equivalent of 1 member for every 41,000 members of the public.
- 8.2.21 The Northern Ireland Assembly is made up of 108 members. This is broadly the equivalent to 1 member for every 17,000 members of the public.
- 8.2.22 While it is necessary to be cautious in drawing conclusions from other countries' practices, some relevant figures are [range of electors/legislator ratios in German Lander/Spanish communities/US States]
- 8.2.23 In its 2004 report, the Richard Commission recommended the capacity of the National Assembly for Wales be increased to 80 members.

8.3 ASSESSMENT

- 8.3.1 The size and capacity of the Assembly is clearly a contentious issue on which there is no overall consensus in Wales. We recognise that the National Assembly is small in relation to Scotland and Northern Ireland and that this causes problems for effective governance. There is a problem in the capacity to scrutinise and specialise, given the number of Members on more than one committee, which would grow if new powers were given;
- 8.3.2 The lack of provision for the new role of the National Assembly since 2011 as a full legislature is stretching its capacity towards the limit;
- 8.3.3 Other possible remedies such as unelected, non-voting Members, are problematic. Greater flexibility on the number and membership of committees; increased research staff and better use of Assembly Members' time are not adequate solutions, though they may provide some relief.
- 8.3.4 For it ~~to~~ fully to use its new powers, including those recommended by the Commission for the future, the NAW~~it~~ will require more backbench government and opposition members able to scrutinise ~~the~~ Welsh Government legislation and policy. The Scottish Parliament has sometimes struggled to do this adequately because of its size.;
- 8.3.5 Consideration needs to be given to the implications offrom recommending increasing the size, including the read-across to changing the voting system; ~~and disadvantages of other possible remedies such as unelected, non-voting Members. A menu of options should be considered for increasing capacity, including greater flexibility on the number and membership of committees, increased research staff and better use of Assembly Members time;~~
- 8.3.6 Consideration of reducing the number of Welsh MPs should be balanced by the case for increasing the number of Assembly Members with appropriate resource transfer;

- 8.3.7 We recognise that the Government of Wales Act 2006 was drafted with the purpose of enacting devolution in Wales in its second phase and moving it into its third phase. It is therefore appropriate for some of the restrictions listed under the Government of Wales Act 2006 to be reviewed e.g. the composition of committees and the appointment of Commissioners;
- 8.3.8 A great deal of evidence provided to us discussed the growing maturity of the National Assembly and how this should be reflected in its relationship with the UK Parliament and especially with the Secretary of State for Wales. Under the 1998 Act, the Assembly had no primary powers and under the first stage under the 2006 Act, there remained a role for Parliament in deciding on the Assembly's legislative competence. The Westminster legislative programme was therefore of direct relevance to the Assembly. As stated above certain functions within the Government of Wales Act 2006 facilitated the second phase of devolution where UK Parliamentary legislation played a vital role in the development of policy in Wales. However, given the changes in powers of the National Assembly since the 2011 referendum, it is no longer- consideration should be given as to whether or not it is still appropriate that there should be a statutory duty on the Secretary of State for Wales to makes an annual legislative statement to the National Assembly nor and also has a seat in the National Assembly so that he or she has the power to may participate in proceedings if they so wish;
- 8.3.9 Nevertheless, it is important that UK Government Ministers, and especially the Secretary of State for Wales, regularly attend Assembly proceedings and that they be invited to do so.
- 8.3.10 It is ~~also~~ however essential that a strong link between the National Assembly and UK Parliament is upheld in relation to UK or England and Wales legislation as the UK Parliament is still able to, and does frequently, legislation on behalf of Wales in non-devolved and devolved matters;
- 8.3.11 ~~As there is an inextricable link between the National Assembly and UK Parliament it was felt by some that steps should be taken to ensure that Welsh issues were adequately represented in the second chamber of Parliament,~~ it was noted that Welsh issues were represented well in the House of Commons especially at Committee level. More could be done in the House of Lords.
- 8.3.12 In relation to the growing maturity of the Assembly we recognise that there is a case for the National Assembly for Wales to lose procedural restrictions which are no longer appropriate and to become similar to Scottish Parliament and Northern Ireland Assembly;
- 8.3.13 We recognise the need for improved inter-parliamentary cooperation, particularly on Legislative Consent Motions, to increase accountability and transparency.
- 8.3.14 ~~While the Legislative Consent Motion (LCM) is presently the only mechanism for inter-Parliamentary relations~~ good general working relations are essential to both the National Assembly and the UK Parliament. ~~As~~

~~devolution matured in Wales~~ it is essential that these relationships are fostered and maintained beyond the LCM process especially in relation to Parliamentary and National Assembly Committees;

- 8.3.15 Proposals put ~~into~~ relation to improving legislature to legislature relations appear sensible, including learning lessons from abroad and drawing on the McKay Commission report. However to achieve change will require the commitment of the House of Commons. [Welcome support of Commons Speaker's evidence Procedure Committee](#);
- 8.3.16 The proposal that the annual financial statement to the Assembly should be presented by the Welsh Government rather than the UK Government appears to be sound as does the proposal to confirm the legal title Welsh Government;
- 8.3.17 ~~The size and capacity of the Assembly is clearly a contentious issue on which there is no overall consensus in Wales. A menu of options for increasing capacity should be considered in light of changes to the powers of the National Assembly~~;
- 8.3.18 Some detailed changes to Assembly elections, including devolving to the Presiding Officer powers in the Government of Wales Act for varying the date of elections, and devolving to the Welsh Government powers in relation to the conduct Order, so aligning the administration of devolved elections with Scotland;
- 8.3.19 A number of people responding to our call for evidence drew attention to the fact that even though the National Assembly for Wales is a subordinate legislature within the United Kingdom they did not feel that its existence should depend on the UK Parliament alone. A number of arguments were made for cementing the constitutional position of the National Assembly. [The British Constitution does not allow for the entrenchment of any law except in the sense that a law can achieve a perceived constitutional status. ~~And~~ even though the UK Parliament would still have the power to ~~abolish dissolve the National Assembly, the Assembly has now achieved a constitutional status that means the legislature it has become inconceivable that Parliament would they should not~~ be able to ~~abolish the Assembly do so~~ without a clear mandate from the people of Wales.](#)

Recommendations

- we recommend a menu of [short-term](#) options should be considered for increasing the capacity within the existing Assembly, including greater flexibility on the number and membership of committees, increased research staff and better use of Assembly Members' time;
- we recommend that beyond that, the two Governments should consider increasing the size of the Assembly taking into account the wider context of political representation in Wales and taking into account the Richard Commission and Williams Commission, any future changes to the number of MPs and any implications for the electoral system. Between 80 and 100 members would be more in line with international norms than the current 60.

- We recommend that the Assembly and Secretary of State should agree -appropriate engagement on the UK Government’s legislative programme, rather than based on the legislative requirement for the Secretary of State’s appearance before the Assembly; and the unused right for the Secretary of State to participate in the Assembly should be removed;
- we recommend that there should be improved inter-parliamentary cooperation to increase mutual understanding of the work of the Assembly and both Houses of Parliament , formalising the convention on LCMs, facilitating concurrent committee meetings, and fostering further engagement with the European Parliament. The National Assembly for Wales should provide a regular consolidated update for both the House of Commons and the House of Lords on its legislative and committee work;
- we recommend that prescriptions affecting the National Assembly for Wales in GOWA 2006 should be reviewed and amended or repealed where no longer appropriate. Such changes include that it should be free to determine the composition of committees, appointment of Commissioners, the behaviour of regional and constituency Members, it should have standing in any Supreme Court proceedings concerning the legislative competence of the Assembly, and Statutory Instruments which are made jointly by Minister of the Crown and Welsh Ministers should be laid before the Assembly in English and Welsh. If the Assembly wishes to change its name to Welsh Parliament, this should be respected;
- we recommend that the annual financial statement to the Assembly should be presented by the Welsh Government rather than the UK Government;
- we recommend that Parliamentary and Assembly Committees should be able to invite Welsh and UK Ministers, with a presumption that invitations will be accepted as appropriate;
- we recommend that [there should be a detailed statement published with every government-proposed Parliamentary Bills on its which impact on Wales should include a detailed assessment of any](#) implications for Wales; and similarly with Assembly Bills in relation to any [implications for acts on](#) the wider UK;
- we recommend that the devolution settlement should recognise that the [National Welsh](#) Assembly is permanent, reflecting the settled will of the great majority of the Welsh people;
- We recommend that the [House of Lords second chamber of the UK Parliament](#) should ensure adequate ~~Welsh representation and~~ consideration of Welsh matters, [and that future appointments to the House should fairly represent Welsh-domiciled people. Any reformed second Chamber should also represent Wales fairly.](#)

8.4 Conclusions

- 8.4.1 The National Assembly for Wales is growing in maturity and this should be recognised in its procedures and enacting legislation.

- 8.4.2 The statutory role of the Secretary of State for Wales in relation to the National Assembly should be reviewed in light of the changing nature of the National Assembly and its relationship with the UK Parliament.
- 8.4.3 Given that the National Assembly now has enhanced law-making powers it is appropriate to consider increasing the number of Assembly Members and so enhancing the ~~whether or not there is a need to increase the~~ capacity of the National Assembly.
- 8.4.4 It is essential that good inter Parliamentary relations are established between the National Assembly and the UK Parliament beyond the current Legislative Consent Motion procedure.
- 8.4.5 The constitutional position of the National Assembly needs to be recognised ~~considered and while it continues to be subject to UK Parliamentary legislation~~ it should not be dissolved without a clear mandate from the people of Wales.

9. Chapter 9 – Intergovernmental Relations

9.1 Overview

- 9.1.1 This chapter examines the current intergovernmental relations between the Welsh Government and the UK Government, and considers the possible scope for improving the current mechanisms for communication between the two governments.
- 9.1.2 We have received a considerable amount of evidence stating that the current mechanisms should be improved to ensure there is strong communication between the two governments. The main areas identified include the sharing of information on policy development and the introduction of legislation, resolving disputes, and negotiations on EU matters.

Box 9.1 – Evidence Box on intergovernmental relations (Submissions, Opinion Poll, Questionnaire, Public Events)

9.2 Current mechanisms for engagement

Current position

- 9.1.1 The way in which the UK Government and all three Devolved Administrations work together is set out in a Memorandum of Understanding (MoU). The MoU, and supplementary agreements, defines the principles which underpin relations between the four administrations. It is a statement of political intent rather than a binding agreement and is not a statutory document. The MOU is reviewed on an annual basis, with the most recent version dating from September 2012.
- 9.1.2 In the MoU, the four administrations commit themselves to the principles of good communication and consultation, the importance of co-operation, and the open and full exchange of information, statistics and research with one another, especially where one administration's work may have a bearing on the responsibilities of another, with confidentiality being observed in appropriate cases. The primary aim is not to constrain the discretion of any administration, but to allow administrations to make representations to each other in sufficient time for those representations to be fully considered.
- 9.1.3 The MOU provides for a Joint Ministerial Committee (JMC) and three separate overarching Concordats which apply broadly uniform arrangements across the governments on the handling of the co-ordination of EU policy and [its](#) implementation; financial assistance to industry; and international relations touching on the responsibilities of the devolved administrations. Box 9.2 summarises the role of the JMC.

Box 9.2 - Box on Joint Ministerial Committee

- 9.1.4 The working arrangements between the UK Government and the Welsh Government are set out in a series of devolution guidance notes (DGNs). The

notes are published by the UK Government with agreement from the Welsh Government and are an introduction to the main principles involved in the managing of the Welsh devolution settlement, bilateral relations, correspondence, parliamentary business, legislation and concordats. Similar separate DGNs have also been issued on handling legislation affecting Scotland and Northern Ireland; and for the roles of the Secretary of State for Northern Ireland and Scotland. Box 9.3 outlines the DGNs that are particularly relevant to Wales.

Box 9.3 – Box on DGNs applicable to Wales

9.1.5 Individual Welsh Government departments and their counterparts in the UK Government have also agreed and published bilateral concordats. These are not legally binding. They are informal and flexible agreements to which both parties commit themselves and set out existing administrative best practice. Concordats generally specify when they will be reviewed, either on a yearly or 'regular' basis, and any reviews will need to be agreed by both parties. Similar arrangements are in place between the UK Government and the other devolved administrations.

Assessment

9.1.6 The MoU, DGNs and concordats provide clear explanation on how both governments should communicate on various issues including the legislative process. However, the evidence we have received indicates that a number of Whitehall departments are unaware of [them](#) or do not consider [them](#) ~~in the~~ during the legislation process or when developing policy. In previous reports both the Welsh Affairs Committee and the National Assembly for Wales Constitutional and Legislative Affairs Committee have recommended that the status of DGNs should be strengthened and reviewed on a regular basis to ensure that the knowledge of Whitehall departments on the Welsh devolution settlement is refreshed.

9.1.7 The Wales Office has indicated in its Annual Report that it continues to raise the importance of engaging with the Welsh Government on policy and legislation with other UK Government departments. However, there seems to be no consultation with the Welsh Government to pinpoint areas which are currently failing.

9.1.8 We believe that it is vital that the MoU, DGNs and concordats are adhered to by both governments to ensure that engagement on policy development, legislation and other matters is conducted at an early stage. We acknowledge that there are examples of good engagement between the two governments; however, there are still instances where there has been a lack of consideration for Wales in relation to legislation or policy development. [There was some striking exemplification of this in evidence from the Welsh Government, and while the Head of Home Civil Service told us that things mostly worked extremely well, he acknowledged that this was not always the case.](#) Both governments should work together to improve awareness of guidance across their respective departments. This should be aided by a

formal arrangement for regular meetings between Directors General / Permanent Secretaries of both Welsh and UK Government departments to discuss upcoming issues and ongoing concerns. We also believe that this should be reinforced by a regular independent audit of intergovernmental relations between the two governments to ensure standards are first improved then maintained in both Wales and Whitehall.

Recommendations

- We recommend that the two Governments should identify and circulate guidance on what constitutes good practice and areas for development, drawing on examples provided to us; agree a concordat governing relations between the two Governments; and existing guidance notes should be regularly reviewed;
- We recommend that the National Audit Office and the Wales Audit Office should jointly audit intergovernmental relations with a view to bringing all relations up to the standard of the best; this audit should be reported to the Welsh Affairs Committee and the corresponding Assembly committee who should jointly periodically review intergovernmental communication and engagement;

9.2 Monitoring the devolution settlement

Current position

- 9.2.1 The MoU and the JMC process are agreed / conducted on a quadrilateral basis. There are no formal mechanisms for bilateral engagement between the Welsh Government and the UK Government.
- 9.2.2 Matters in relation to the existing devolution settlement are discussed at private bilateral meetings between the First Minister and the Secretary of State for Wales and in ministerial meetings between the two governments.

Assessment

- 9.2.3 We believe that there needs to be a formal mechanism for bilateral engagement between the Welsh Government and the UK Government. There is a case for establishing a joint Welsh Government/Wales Office Ministerial standing committee to oversee the operation of the Welsh devolution settlement. The committee would consider simplifying the existing devolution model including the process for moving to a reserved powers model as outlined in chapter four, and any proposals to change the devolved boundary. The expectation would be that these discussions are held and recorded in a more transparent way with both the National Assembly for Wales Constitutional and Legislative Affairs Committee and the Welsh Affairs Committee having a role in scrutinising the committee's work.

Recommendation

We recommend that there should be a Welsh Government/Wales Office joint Ministerial standing committee. It should oversee the operation of the Welsh devolution settlement by:

- seeking to simplifying the existing devolution model including the process of moving to a reserved powers model; and
- consider detailed proposals to change the devolved boundary raised in evidence to us and in the future;

9.3 Dispute avoidance and resolution

Current position

- 9.3.1 The MoU states that all efforts should be made to resolve differences between the UK Government and the Devolved Administrations informally and at working level if possible. Bilateral concordats between the Devolved Administrations and UK Government departments also outline how disputes should be resolved, generally committing to resolve differences at official level, where possible.
- 9.3.2 If no agreement is reached at senior official level, then the matter is raised at Ministerial level. The MoU recognises the responsibility of the relevant territorial Secretary of State for resolving disputes by convening further talks between the parties at ministerial or official level.
- 9.3.3 For resolving financial issues, the Statement of Funding Policy sets out the UK Government's rules. It states that issues, including the interpretation of the Statement of Funding Policy, should generally be first discussed bilaterally between the Treasury and the relevant Devolved Administrations or if appropriate at a timely Finance Quadrilateral meeting, which brings together Treasury ministers and finance ministers of the Devolved Administrations.
- 9.3.4 If disputes are unable to be resolved through the steps outlined above then the JMC offers a mechanism for resolving differences between the UK Government and one or more of the Devolved Administrations.

Box 9.4 – Box on JMC dispute resolution process

Assessment

- 9.3.5 The evidence we have received has highlighted that there is a need to improve the resolution of disputes between the Welsh Government and the UK Government. We have heard during a number of oral evidence sessions that intergovernmental negotiations are often reliant on good personal relationships between officials and Ministers. If there is a dispute between the Welsh Government and UK Government and negotiations breakdown, there seems to be a reluctance to use the JMC option to resolve the matter.
- 9.3.6 We believe that there needs to be a mechanism between informal resolution and the JMC process. The joint Welsh Government/Wales Office Ministerial standing committee should include within its remit responsibility for

resolution of disagreements. Where there are communication problems between the Welsh Government and UK Government departments, it would be a forum for resolving these quickly while not invoking the full dispute resolution machinery. The expectation would be that any disagreement brought to the attention of the committee would be recorded and included in an annual report to the National Assembly for Wales and the UK Parliament.

Recommendation

- We recommend that the Welsh Government/Wales Office joint Ministerial standing committee should have responsibility for resolving disagreements without invoking the full dispute resolution process.

9.4 EU Matters

Current position

- 9.2.1 The formal relationship between the UK Government and the Devolved Administrations on EU matters are set out in the Memorandum of Understanding and the Concordat on Coordination of EU Policy.
- 9.2.2 This process is overseen by the JMC(E) which meets every quarter to discuss the UK Government's and Devolved Administrations' priorities in Europe, and the cooperation between them. A Welsh Minister attends the JMC(E) which is chaired by a Foreign Office Minister. The Welsh Minister is also responsible for ensuring that all developments concerning Europe are communicated to the Assembly's European and External Affairs Committee.
- 9.2.3 The MoU between the UK Government and the Devolved Administrations contains provisions for attendance at European Council of Ministers meetings. Decisions on Ministerial attendance are taken on a case-by-case basis by the lead UK Government Minister. Ministers from the Devolved Administrations may also request to speak at Council meetings, with the expectation they will follow the agreed UK line. In reaching decisions on the composition of the UK team, and who will represent the UK Government, the lead Minister will take into account that the Devolved Administrations should have a role to play in meetings of the Council of Ministers at which substantive discussion is expected on matters likely to have a significant impact on their devolved responsibilities.

Assessment

- 9.2.4 We have received evidence highlighting the needs of Wales to be considered and represented by the UK Government during EU negotiations. It is worth noting that the MoU on EU policy negotiation and was agreed by the UK Government and the Devolved Administrations last year. However, we feel that greater transparency on EU policy decisions and the impact of the EU on Wales should be encouraged. We believe that the Welsh Government / Wales Office joint Ministerial standing committee proposed in the recommendation above should have responsibility for monitoring and influencing EU impacts on Wales.

9.3 Data Sharing

Current Position

- 9.3.1 The formal relationship between the UK Government and the Devolved Administrations on the exchange of information, statistics and research is set out in the Memorandum of Understanding.
- 9.3.2 It emphasises that the UK Government and the Devolved Administrations will aim to provide each other with as full and open as possible access to scientific, technical and policy information including statistics and research subject to restrictions or requirements. It also states that there is a common interest in the provision of statistical advice and information in relation to both devolved and reserved matters that is coherent for the UK and adheres to high professional standards.
- 9.3.3 Specific arrangements for co-operation between the Devolved Administrations and the UK Government on official statistics are contained within an inter-administration agreement between National Statistician and the Chief Statisticians of the Devolved Administrations. The agreement was last reviewed in June 2012. Bilateral concordats between Welsh and UK Government departments can also specify arrangements on the sharing of data.

Assessment

- 9.3.4 We have received evidence indicating that there should be greater consultation and data sharing on policy development between both the Welsh and UK Government.
- 9.3.5 Our view is that both governments should work together to share best policy and delivery practice especially as devolution has encouraged policy divergence in a number of areas. We would also encourage both administrations to be open to considering / adopting policies from other administrations in the UK and further afield. This should be aided by developing and publishing more comprehensive comparative data across the countries and regions of the UK.

Recommendation

- We recommend that to facilitate a more informed public understanding, the two Governments should:
- identify and learn from each other what works best in policy and delivery to improve public services and the economy; and
- publish more comprehensive comparative data and analysis on public service and economic outcomes across the countries and regions of the UK building on existing data sources as far as possible.

9.4 Conclusions

- 9.4.1 In assessing the current mechanisms for engagement between the two governments, we recognise that the relations between the ~~m-two~~ **Governments** should be based on the principles of mutual respect and equality of esteem.
- 9.4.2 We make a number of recommendations to enhance the existing mechanisms for communication between both governments. This includes identifying what constitutes good practice and areas for development and updating existing guidance notes through regular reviews; and commissioning the National Audit Office and the Wales Audit Office to conduct a joint audit of intergovernmental relations between the two governments.
- 9.4.3 We recommend that there should be formal mechanism to oversee the Welsh devolution settlement in the form of a Welsh Government/Wales Office joint Ministerial standing Committee. The Committee should have responsibility for simplifying the existing Welsh devolution settlement including the process of moving to a reserved powers model, considering detailed proposals to change the devolved boundary and monitoring and influencing EU impacts on Wales.
- 9.4.4 On the issue of dispute resolution we believe that the committee should also be a forum for resolving disagreements between the two governments without invoking the full dispute resolution process.
- 9.4.5 In addition there should be joint working between the Welsh and UK Governments to share best policy and delivery practice including adopting policies from other administrations. This should be complemented by developing more comprehensive comparative data across the countries and regions of the UK.
- 9.4.6 In the next chapter we will consider public sector capacity.

Chapter 10: Public Sector Capacity

10.1 Overview

- 10.1.1 This chapter sets out some of the issues of capacity of the public sector in Wales and at Westminster to [satisfactorily](#) govern Wales [well and](#) in the interests of its people.

Evidence box

Some concerns about the capacity to administer existing powers, and need to develop before having further. Whitehall consideration (Church in Wales). Also role of civil society.

10.2 Current Arrangements

- 10.2.1 The Welsh Government is served by approximately 5 000 officials, who work within the Home Civil Service.
- 10.2.2 The main responsibility for Welsh matters in Whitehall rests with the Wales Office, of approximately 50 staff, with each department having a working-level devolution contact and senior devolution champion. There are approximately 27 000 officials working in Wales for UK departments, some providing local services, such as JobCentrePlus officials, and some GB-wide, such as the DVLA in Swansea.

10.3 Improving the Capacity of Government

- 10.3.1 With regard to the Welsh Government's civil service, there would clearly be a need to increase capacity to deal with the additional powers we recommend above. Welcome the early action taken by the WG to increase capacity in its finance function/Welsh Treasury as recommended in Part I.
- 10.3.2 An issue raised with the Commission was the current performance of the Welsh Government. [Not for us to make a judgement, but t](#)The Commission believes the perception that performance could be improved could be assessed and debated in a more sophisticated way with the recommendations we make above in Chapter 9 on the availability of information.
- 10.3.3 An issue that arose in evidence was the regard Whitehall had for Wales as a distinct country, rather than as another region of England. [There was also evidence that sometimes Whitehall believes that areas are devolved that are, in fact, not. It](#)Furthermore, it was suggested that Whitehall departments could be clearer on when they act on behalf of England only, or for Wales or other parts of the UK also.

- 10.3.4 We welcome the commitment of the Head of the Civil Service to further develop Whitehall's capacity to deal with devolution. The Welsh Affairs Committee made some helpful recommendations in this area in 2010.
- 10.3.5 It would be helpful for citizens in Wales and officials in UK Departments if the departments were clear publically for the parts of the UK they are responsible for in relation to specific policy areas, given that some departments have a UK-wide remit for some matters, some for England and Wales, and some for England-only. This could be done within departmental business plans, which are ultimately the basis of all officials' job descriptions.
- 10.3.6 As a means of improving both the Welsh Government's general capacity and that of Whitehall, particularly in its understanding of Welsh issues, we would encourage efforts to increase levels of staff interchange, eg, the FastStream.
- 10.3.7 We could also see a role for the National Audit Office and Wales Audit Office undertaking enquiries of the capacity of governments to administer devolution successfully, in addition to comparative work on performance of public services. We acknowledge it is for the NAO and WAO to establish its own priorities.

10.4 Improving the Accessibility of Government

- 10.4.1 An issue raised in evidence was that the Welsh Government did not always engage well with Welsh civil society, with civil service reform an issue specifically identified. A further point was that Welsh civil society, which has grown significantly since the advent of devolution, remained underdeveloped.
- 10.4.2 For WG to decide how to undertake its own business, but we would welcome a collaborative approach as a means of capitalising on and further developing Welsh Civil Society's capacity. Greater engagement may also help focus energy and scarce resources to common priorities.
- 10.4.3 It would be helpful if Civil Society were routinely informed of and engaged in the work of Whitehall departments to draw attention to Welsh circumstances. This could be encouraged by the Wales Office routinely advising organisations of UK Government consultations.

10.5 A Welsh Public Sector

- 10.5.1 Some evidence suggested the Welsh Government be served by a distinct Welsh civil service, separate from the Home Civil Service.
- 10.5.2 An advantage put forward would be the greater clarity of to whom the administration was loyal to, and potential for a Welsh Public Service to emerge across devolved- and local-government levels, as well as other public sector employees (eg, the c.27 000 officials of HMG departments).
- 10.5.3 We believe current arrangements of Home Civil Service serve Wales well within the United Kingdom, with greater potential for interchange and with

a distinct code of conduct making clear who Welsh Government civil servants serve (as well as the Perm Sec being appointed by the Cabinet Secretary with input from the FM).

10.5.4 We believe that there could be greater efforts to develop a Welsh Public Service, to encourage a greater cooperative spirit and shared ethos. This could include non-Welsh Government or local government civil service – for example in policing, the Department for Work and Pensions and DVLA. Some examples of how this could be achieved could be in shared back-office functions, greater interchange of staff, and sharing training provision.

Recommendations

- we recommend that the Welsh Government should continue to be supported by civil servants who are members of the Home Civil Service. However there should be mechanisms in place to encourage greater interchange between the Welsh Government and the UK Government or other devolved administrations, including FastStream placements; appropriate flexibilities should continue to be developed, building on the separate Civil Service Code for the Welsh administration; and reforms to the Welsh Civil Service should draw on wider Home Civil Service reforms;
- we recommend that the two Governments should consider how best to develop a wider Welsh public service, improving capacity to deliver improved efficiency and effectiveness by better integration between the different public service agencies in Wales; and in this context we note the work of the Commission chaired by Sir Paul Williams;
- we recommend that Whitehall departments' capacity for effective consideration of Welsh matters should be strengthened, including by departments creating greater internal clarity over the parts of the United Kingdom they are responsible for;

10.6 Conclusions

10.6.1 The Welsh Government should continue to be staffed by officials of the Home Civil Service, and a wider Welsh Public Service should be nurtured.

10.6.2 Capacity should be developed with a more structured system of interchange, and overseen by NAO/WAO.

10.6.3 Greater engagement with Welsh Civil Society could better nurture it and benefit the Welsh Government's capacity for policy-making, delivery and reform.

Chapter 11: Implementation

11.1 Overview

11.1.1 In this chapter we set out a timetable for the implementation of our recommendations.

Evidence box

11.2 Referendum

11.2.1 Referendum not necessary beyond that recommended in Part 1, but democratic endorsement through manifestos at next UK and Welsh Assembly elections.

11.3 Timetable

11.3.1 As in Part 1 our recommendations are expected to fall into two categories:

- those which can be implemented administratively without legislation such as improving intergovernmental relations; and
- those which require legislation.

11.3.2. The former are likely to be relatively uncontentious and assuming they receive cross party support we do not see why they should not be implemented by the current two Governments, given that the recommendations will generally promote good governance.

11.3.3 The legislative changes may be of two kinds:

- those which require primary Parliamentary legislation; and
- those which require secondary legislation including transfers of functions or giving Welsh Ministers executive powers.

11.3.4 In theory it may be possible to introduce all our recommendations through secondary legislation. Some evidence has said that a reserved powers model would not require primary legislation. However in practice we think that the UK Government would regard this as a substantial change to the settlement and justify primary legislation. [We agree.](#)

11.3.5 While we do not think that a referendum would be necessary, it would be advantageous if the UK political parties sought endorsement of prospective Parliamentary legislation through their manifestos in the 2015 general election, assuming that by then the Welsh political parties and Welsh Government had given their broad support.

11.3.5 However preparatory work by the two Governments should begin before then by establishing a joint committee to consider and take forward our recommendations.

11.3.6 If this were done, a possible scenario is that secondary legislation could be introduced over the first three years of the next Parliament to achieve a phased transfer of powers to the Assembly, staged to ensure that the Welsh Assembly and Government had the capacity to absorb the increased powers. The box below sets out further details. A Bill could then be introduced to create a reserved powers model, which by that stage would be simpler and involve fewer reserved powers than now because of the transfer of powers in the interim. This Bill could also introduce major transfers such as devolution of policing [and provide a mechanism for the longer-term devolution of justice that we propose](#).

11.3.7 So the new system would be in place in time for the Assembly after next.

Box on phased transfer of powers through secondary legislation

Box on implementing the reserved powers model

11.3.8 Most of the justice functions might be on a longer timescale so they could be transferred in the Parliament after next, assuming that by that stage there was a sufficient consensus to support such a transfer. This would fit with the ten year time horizon referred to in evidence to us.

11.3.9 To summarise a possible timetable might be:

Year	Part II implementation
2014	Mar: Commission report published Apr: NAFW discusses, initial views Sept: Scottish referendum Oct: HMG and WG respond
2015	By April: preparatory joint HMG/WG implementation committee established Administrative recommendations introduced April: Manifesto Commitments include Part II response; May: UK election
2016	May 2016: Welsh election
2017	Phased transfer of functions and executive powers
2018	
2019	June: Wales Bill enacted introducing reserved powers model, devolution of policing, provisions for devolution of justice
2020	May: UK election
2021	May: Welsh election May: New Assembly elected operating under reserved powers model

By
2025

Justice powers devolved if sufficient support

11.3.10 Of course it is not clear at this stage to what extent the UK and Welsh parties will endorse our recommendations. The above timetable assumes all our recommendations are accepted. However we envisage that some of the recommendations are unlikely to be controversial e.g. the administrative recommendations and transfer of transport functions etc.

11.3.11 In addition, the whole programme and timetable would need to be kept under review to take account of changing external circumstances e.g. to review the implications for Wales if there were a further substantial increase in powers of the Scottish Government.

11.3.12 While the significant modifications to the devolution settlement would largely be made with Westminster legislation, it would be appropriate for the National Assembly to assent to changes.

Recommendations

We recommend a ten year programme of reform, with four phases:

- implementation of administrative recommendations before the next UK general election
- subject to endorsement through election manifestos, a staged transfer of functions after the general election and
- a Wales Bill introducing a reserved powers model and devolution of police
- transfer of remaining justice functions after 2020 if there is a consensus in favour at that time.

11.4 Conclusions

11.4.1 [to follow]

Chapter 12: Overall impact and looking to the future

12.1 Overview

12.1.1 This chapter assesses the overall impact of our package of recommendations in a number of areas, particularly in terms of their impact on public finances, on households and individuals in Wales, and on the Welsh economy and businesses. We also consider here whether the package meets our original remit and discuss how the package might take account of possible future developments in devolution in both the UK and EU contexts.

12.1.2 This impact assessment is inevitably high-level. If the UK and Welsh Governments decide to implement our recommendations, as we believe they should, we would expect them to carry out more detailed impact assessments of their specific proposals in accordance with their normal practices.

Box on evidence

12.2 Fiscal impacts

12.2.1 We have received evidence that our proposals should be affordable and should not carry unacceptable fiscal risks to either the UK Government or Welsh Government. A number of possible fiscal impacts are assessed below.

12.2.2 Our package has four elements:

- replacing the conferred powers model by a reserved powers model
- devolving more powers
- improving the effectiveness and capacity of the Assembly and Welsh Government
- improving inter-institutional relations.

12.2.3 The public expenditure impacts are set out below.

12.2.4 A reserved powers model is unlikely to have a substantial public expenditure impact although the Scotland and Northern Ireland models have involved fewer Supreme Court referrals, so there could be some savings here eg perhaps around £160,000 per referral.

12.2.5 Devolving more powers involves a transfer of funding from the UK Government to the Welsh Government. Any additional spending or savings beyond that absorbed by the Welsh Government.

12.2.6 Some of the transfers in powers are about transfers of regulatory functions eg energy consenting powers, which do not involve substantial levels of public spending. The biggest spending items are:

- policing: around half the costs of policing is already borne within the Wales budget. The rest would be transferred from the Home Office. Provided there is sensible cost sharing on items such as the police college as we propose we do not think there should be substantial additional costs for the Welsh budget
- justice: apart from prisons, the additional costs are expected to be around [£m] ie fairly modest. For prisons the cost depend heavily on whether a self contained system is adopted, which we do not recommend
- rail: the franchise costs are already devolved. There would be a transfer from DfT in respect of Network Rail. There would be some transfer of risk, but we think this should be manageable if well planned.

12.2.7 In terms of increasing the capacity of the Assembly and Welsh Government, we do not recommend any overall increase in political representation in Wales; nor do we recommend any overall increase in the Welsh Government, other than through transfers from the UK Government.

12.2.8 We do not expect our recommendations on improving inter- institutional relations to involve substantial additional costs, [and indeed we would expect better co-operation to lead to cost-savings.](#)

Recommendations on funding and costs

- we recommend that transfers of powers should be accompanied by and conditional on transfers of provision to be fully agreed between the two Governments in each case and to agreed changes to the Barnett formula comparability factors;
- we recommend that any additional costs to the Welsh Government ,for example, arising from diseconomies of scale or transitional costs should be kept to a minimum and to levels which are absorbable within the Welsh Government's budget; where costs are particularly problematic to identify there should be further work by the two Governments before devolution is agreed;
- we recommend that the Welsh Government should maximise any opportunities to increase efficiency which devolution of further powers might bring, for example, through a more holistic approach to transport planning and reducing crime;
- we recommend that devolution of functions should be carefully designed to minimise additional costs, for example, through shared use of facilities by the two Governments and buying in appropriate expertise;
- we recommend that there should be no net additional UK public spending as a result of our recommendations;
- we recommend that in terms of impacts on third parties including business, there should be careful impact assessments in the normal way to ensure our proposals are implemented to maximise benefits and minimise costs.

12.3 Impact on the size and effectiveness of the public sector in Wales

12.3.1 We expect our package will be broadly neutral in terms of the size of the public sector in Wales.

12.3.2 We have heard evidence that devolution has not led to an improvement on public services in Wales. We have considered this evidence carefully and our response is:

- devolution is widely regarded as a success, albeit a qualified success (e.g. as in our opinion poll and our discussions with health and transport etc experts);
- we are responsible for the consideration of where powers should lie, and not how powers are used;
- it is not certain that Wales's performance (e.g. in health and education standards) would be better in the absence of devolution;
- the Welsh Government has recognised the need for improvement by setting up the Williams Commission;
- better data should be collected and published so people can know in a more informed way how Wales is performing comparatively and make more informed judgements; and
- a mature National Assembly for Wales and Welsh Government should not be afraid to identify what works best and adopt policies from elsewhere in the UK and beyond; and vice versa.

12.3.3 More generally we expect that by improving the coherence of the devolution settlement, this will facilitate more effective public service delivery in Wales eg an integrated transport policy.

12.4 Impact on Welsh individuals and households

12.4.1 Outline of key day-to-day differences that people would notice – may not be obvious, but allows a more clear settlement and more holistic approaches to be taken.

12.4.2 There are more specific effects that Welsh citizens would notice:

- where powers are devolved as a result of our recommendations eg transport, energy, policing etc, different policies would emerge reflecting what people in Wales want and Welsh values and priorities
- governance in Wales would be more effective and more accessible to people in Wales
- the Welsh devolution settlement would be easier for people in Wales to understand.

12.5 Impact on different parts of Wales

- 12.5.1 As noted in Chapter 3, we heard in our visits around Wales that some people feel that devolution has not delivered positive outcomes for their area as much as others.
- 12.5.2 While the devolution of powers does not itself differentiate between different parts of Wales or different parts of the population, we have made some other recommendations, such as in the provision of information on service provision and cross-border healthcare ~~to~~ either [to enable an objective](#) assessment of how areas are performing, or to address concerns heard. We have not commented on the policy decisions of successive governments, but our recommendations provide opportunities for any future Welsh Government to use its new powers for the benefit of all parts of Wales.
- 12.5.3 We would also expect the powers that we have suggested, such as the devolution of rail infrastructure and policing, to be used in a way that is sensitive to the needs of service users across the border.
- 12.5.4 Our proposals would facilitate a positive approach to improving social justice in Wales, for example by improving access to justice.

12.6 Impact on the Welsh economy and business

- 12.6.1 We have received a good deal of evidence in support of the view that devolving more powers would provide the Welsh Government with more instruments to increase economic growth in Wales.
- 12.6.2 In our view the two objectives of increasing accountability and increasing growth are complementary. Increasing accountability by devolving more powers would give the Welsh Government mechanisms it could use to make Wales more prosperous. This would be in the interests of both Wales and the United Kingdom more generally.
- 12.6.3 Elsewhere in this report we make a large number of recommendations, many of which have a bearing on increasing economic growth. Of course the devolution of powers does not by itself increase growth but depends on how the Welsh Government chooses to use these powers. The potential impacts could include those set out in the box below.

Box on impact of our proposals on the Welsh economy and business
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12.7 Possible future developments

- 12.7.1 We recognised in our first report the need to “future proof” our report to safeguard our recommendations against being overtaken by wider events. This is also an important consideration in the work of the UK Changing Union project.
- 12.7.2 We consider the main issues below.

Scottish independence vote

- 12.7.3 While we are making our recommendations before the referendum on 18 September 2014, our recommendations will be implemented, if accepted, after the vote. The UK Government may not give a full response to the Commission's report in advance of the referendum.
- 12.7.4 If there is a yes vote, this will clearly mean a massive change for Scotland. What it will mean for Wales is less clear. There may be some increased support for independence. In addition, England would be even more dominant within a smaller Union, although Wales's population share of the remaining United Kingdom would increase. It may make Barnett reform more likely. But it is unlikely ~~to~~ fundamentally to invalidate our conclusions.
- 12.7.5 If there is a no vote, the implications may be affected by the scale of the no vote. The Prime Minister has stated he will consider a further increase in powers for Scotland. It is not clear where this will be although some speculate that it might be e.g. in the areas of tax and benefits, although as the Calman report made clear, there are no very easy options. Again our conclusions are unlikely to be invalidated, although there may be pressure to go further if more powers are devolved to Scotland – for example, in the area of social security.

A UK constitutional convention

- 12.7.6 The current UK Government has not accepted the case for a UK constitutional convention in advance of the referendum in Scotland. If this changed in the future, our report would be of great value to the convention part of this wider picture, and we hope the convention would use our conclusions as a basis for its consideration of Wales. ~~But it is unlikely that our conclusions would be invalidated—however,~~ one would expect inter-governmental relations to be part of this convention, and the allocation of responsibilities and citizens' rights would presumably be part of the work. If a UK constitution emerged, this might be a vehicle for making permanent the existence of the three devolved legislatures.

English devolution

- 12.7.7 There is a growing trend in England towards greater localism. The devolutionary thrust of our approach is compatible with devolution within England, a point made in our meeting with the MDA in Wrexham. There is a growing sense of an English polity, as seen in the work of the McKay Commission and the IPPR's recent research.

The McKay Commission

- 12.7.8 The McKay Commission on the implications of devolution for the UK Parliament made a number of recommendations which go with the grain of our conclusions:
- The development of an England-specific legislative process within the House of Commons on the basis of a constitutional principle that decisions at the UK level with a separate and distinct effect for England (or England and Wales) should normally be taken only with the consent of a majority of MPs for

constituencies in England (or England and Wales). The greater clarity over Welsh devolution which we propose would help to facilitate this process.

- The report believes that there is scope to give LCMs a more formal status in a more clearly structured, explicitly parliamentary communication between Westminster and the devolved legislatures, which would emphasise the co-operative nature of the law-making process after devolution. Our proposals are consistent with this.
- In order to consider fully the consequences for the devolved nations of the UK of decisions made for England, the report recommends the establishment of a House of Commons Devolution Committee. In addition to providing a more articulated Westminster response to the challenges of devolution, the report envisages such a committee as a central element in the machinery by which the House of Commons holds UK ministers to account for their responsibilities in connection with devolution and their relations with the devolved administrations. A stronger Parliamentary focus on devolution would be consistent with our approach.

English views on Welsh devolution

12.7.9 The IPPR has noted an increasing trend in England towards greater assertiveness; and greater hostility towards Scottish and to a lesser extent Welsh devolution. Our report sets out what the benefits are to England of a stronger and more self-reliant Wales within the UK; that our approach will strengthen the UK by strengthening Wales; and that there will be no call on English taxpayers from our conclusions.

Federalism

12.7.10 There have been recently calls for a more federalist United Kingdom, wanting the formal recognition of the sovereignty of the “home nations” over their domestic affairs; and describing the principle that it would never be possible for Westminster to unilaterally abolish the Scottish Parliament or Welsh Assembly.

12.7.11 While a fully federal UK would seem to be difficult in the absence of an English Parliament, such more limited calls seem to be broadly compatible with our recommendations, though we are not proposing a federal UK, which would go beyond our remit.

Asymmetric devolution

12.7.12 Our conclusions would bring Wales more into line with Scotland. The issue therefore arises as to whether we see asymmetric devolution as essentially transitional, as it is in Spain.

12.7.13 Our recommendations would still leave devolution being asymmetric. It is not clear whether in the very long run differences will disappear. It seems likely that there may be some objective justification for differences e.g. arising from the more porous Welsh border.

The European Union

- 12.7.14 The UK Government is currently undertaking a department-by-department Review of the Balance of Competences, which considers if competence is properly allocated at the UK- or EU-levels. This work is scheduled to conclude by Autumn 2014. (It is envisaged to comprise part of the Prime Minister's proposal of a renegotiation of membership in advance of a 2017 referendum). This review has reflected on some devolved matters already, for example health, where it reinforced the importance of consultation with the Devolved Administrations on EU discussions of health.
- 12.7.15 The principle of subsidiarity informs our own report as well as the above review.

12.8 Does our proposed package meet our remit and devolution principles?

- 12.8.1 We have carefully considered the views of all, including those who have expressed scepticism about the benefits of devolution, and we have addressed the concerns which many people have expressed.
- 12.8.2 We are satisfied our package of recommendations meets the Commission's remit:
- We have reviewed the existing powers of the UK and Welsh Governments. We have not proposed changes in a majority of the existing powers, where devolution is working well but have suggested modifications which would increase the scope of devolution as measured by devolved spending by [less than 10 per cent];
 - We have suggested recasting the devolution settlement as a reserved powers model, strengthening accountability and responsibility by defining the powers of the National Assembly for Wales and Welsh Government in a clear and coherent way;
 - We have suggested other ways of improving the effectiveness in the way devolution works;
 - We have proposed a realistic phased timetable over ten years.
- 12.8.3 Our package will strengthen Wales and the UK by providing additional levers to strengthen the Welsh economy and management of natural resources; it would promote equity and fairness including by improving access to justice; and it would promote a stable and lasting devolution settlement based on the principles of agreement and mutual consent.
- 12.8.4 We have produced a report on which we have [all] agreed and which we commend for implementation as above.