

Subject	Draft emerging conclusions	Issues for clarification	Further areas for discussion
<p>National Assembly for Wales 17th Meeting – 12th April</p>	<ul style="list-style-type: none"> • in relation to the capacity of the Assembly, we recognise that the 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 scrutinize and specialise, given the number of Members on more than one committee, which would grow if new powers were given. But there are political downsides of and implications from recommending increasing the size, including the read-across to changing the voting system as the Richard Commission recognised; 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 AMs' time; • in relation to the growing maturity of the Assembly we recognise that there is a case for the NAW to lose procedural restrictions which are no longer appropriate and to become similar to Scottish Parliament/NI Assembly (e.g. the Assembly and Secretary of State should agree an enhanced form of engagement on the UK Government's legislative programme, rather than solely fulfilling the legislative requirement for the Secretary of State's appearance before the Assembly, and removing the unused right for the Secretary of State to participate in the Assembly); • but we recognise that safeguards are needed so that the Assembly cannot control, for example, its own franchise by a simple majority (see elections); and • we recognise the need for improved inter-parliamentary cooperation, particularly on LCMs, to increase accountability and transparency. • the various proposals put forward by the Presiding Officer under the 	<p>1. Compulsion of witnesses (including whether Scotland can)</p>	<p>1. Secretary of State appearances/Queen's Speech. 2. Should the Assembly's existence be 'guaranteed' (eg, a higher threshold for abolition than an Act of Parliament) 3. Size of Assembly and related issue of electoral system (to be covered at 24th Meeting)</p>

	<p>umbrella of reflecting the growing institutional maturity of the National Assembly appear sensible, and might be widened (in relation to budget procedures). It would be for the Assembly to change its name to Parliament and there is merit in retaining a commitment for the Secretary of State for Wales to attend, though it might be more appropriate if this were by agreement, rather than a legislative requirement;</p> <ul style="list-style-type: none">• the various proposals put forward by the Presiding Officer and Speaker in relation to improving legislature to legislature relations also appear sensible, including learning lessons from abroad and drawing on the McKay report. However to achieve change will require the commitment of the House of Commons Procedure Committee;• the proposal hinted at by the UK Government 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 by the Welsh Government to confirm the legal title Welsh Government;• on the issue of the size of the Assembly, this is clearly a contentious issue on which there is no overall consensus in Wales. The issue of the number of politicians in Wales is relevant. As noted above a menu of options for increasing capacity should be considered and the Commission will wish to revisit this issue once it has considered whether any additional responsibilities be devolved; and• the Commission also agreed to revisit the issue raised in Scotland of whether the existence of a permanent Assembly should be enshrined in legislation.		
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<p>Elections 17th Meeting – 12th April</p>	<ul style="list-style-type: none"> • major changes to the electoral system, as discussed in the recent Wales Office Green Paper, are beyond our terms of reference; • however we suggest 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; • we also suggest changes to local government elections, including devolving to the Welsh Government electoral administration including rules for the conduct of elections; • there is no substantial evidence to support the devolution of the electoral franchise; and • we recognise that safeguards are needed so that the Assembly cannot control, for example, its own franchise by a simple majority. 		
<p>Health 18th Meeting – 3rd May</p>	<ul style="list-style-type: none"> • no change to the devolution boundary; • continuing to develop cross border access for patients on a fair and equitable basis building on the protocol of April 2013; • continuing to develop a cooperative and coherent approach to the delivery of specialist facilities on both sides of the border, recognising that Wales is too small a unit to provide efficiently the full range of medical services; • developing a cooperative approach to the delivery of efficiency savings, for example through the economies of scale offered by an England and Wales approach e.g. joint procurement and use of high – tech equipment; • developing better comparative data across the UK; 		

	<ul style="list-style-type: none"> • identifying best practice from the policy diversity which devolution is bringing; • in response to the Welsh Conservative group recommendation that the Commission explores the feasibility of healthcare for MOD personnel in Wales being provided by the Welsh NHS rather than MOD, we have not received substantive evidence on this issue but we suggest that the UK Government should discuss this issue with the devolved administrations (may need to be updated in the light of the 2013 spending review); • in response to the UK Government’s suggestions of an exemption to avoid different mental health capacity tests and an exemption to ensure consistent mental health protection of rights, we suggest there should be constructive dialogue between the two governments to ensure a coherent approach and common standards across England and Wales; • while the devolution settlement for health is relatively clear, there may be some jagged edges e.g. illustrated by the organ donation issue which might be addressed if there were a reserved powers model; and • note that health is being addressed in the Welsh Government’s public services Commission. 		
<p>Broadcasting 19th Meeting – 24th May</p>	<ul style="list-style-type: none"> • There is no strong argument that the Ofcom regulation functions should be devolved; • There is evidence to support that, as in the 2012 Scotland Act, the appointment of the BBC Trust member for Wales by the UK Government should require Welsh Government agreement; • In addition, given the unique importance of the BBC Wales output, the UK Government should consider with the Welsh Government the case for a devolved Trust (building on the Wales Audience Council) within the UK Trust framework, with oversight of BBC Wales outputs in Wales; Assuming the funding arrangements for S4C are rolled forward 	<p>1. Discussion with Geraint Talfan Davies (done at 23rd Commission meeting dinner)</p>	

	<p>after 2017 (i.e. with the bulk of funding continuing to be met from the licence fee) there is an argument to be made for responsibility for S4C to be devolved from DCMS along with the DCMS funding element; in the meantime the appointment of the S4C Authority members by the UK Government should require Welsh Government agreement;</p> <ul style="list-style-type: none"> • There is evidence to support that both the UK Government and Welsh Government and civic Wales should work together with the media to promote a strong and vibrant Welsh media and production facilities which is at least on a par with the Scottish media; • There is no argument to support the devolution of press regulation; • There is a case for broadcasters of specific content to Wales to provide an annual report on performance to the National Assembly for Wales; and for the publication of more transparent data on trends in Welsh broadcasting. 		
<p>Transport 19th Meeting – 24th May</p>	<ul style="list-style-type: none"> • the following powers should remain non devolved: <ul style="list-style-type: none"> o aviation; o shipping and maritime; o Driver Vehicle Licensing Agency, Driver Standards Agency, VOSA, VCA; o GB wide road traffic legislation and regulations; o rail regulation; • the following should remain devolved: <ul style="list-style-type: none"> o roads; o bus subsidies; o existing powers in relation to rail; and 	<ol style="list-style-type: none"> 1. Cross-border roads 2. Trans-European Networks 	<ol style="list-style-type: none"> 1. Drink drive and speed limits

	<ul style="list-style-type: none">o provision for cycling and pedestrians.• the following should be devolved, subject to agreement of the details between the two Governments:<ul style="list-style-type: none">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 as for Scotland;o bus regulation; ando taxi regulation as in Scotland.• Whilst responsibility for inter city cross border rail franchises (Great Western, CrossCountry and Virgin Trains) should remain non-devolved, there is evidence to suggest that the Welsh Government should have a greater role in the consultation process for appointing a new franchise operator for these routes.• There should be close cross border coordination between the two Governments for ensuring good quality cross border road networks including the trans European network with an agreed approach to upgrading the M4 at Newport and the future of Severn bridge tolls. Network improvements on either side of the border should be carefully coordinated.• These proposals should facilitate the development of a coordinated transport strategy across Wales and at sub regional level.• The Commissioners agreed for further consideration to be given to the devolution of drink drive limits based on additional information,		
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	and clarification of the proposal on speed limits.		
Policing 20 th Meeting – 14 th June	<ul style="list-style-type: none"> • On balance there is a case for devolution of policing, subject to further information on costs; • If policing were devolved, there would need to be an agreed transfer of existing provision and an appropriate adjustment to the Barnett formula comparability factor for the introduction of separate policing bodies and associated costs; • In addition existing levels of cross border cooperation should be maintained; • There should not be devolution of bodies which tackle UK wide national crime such as the National Crime Agency; • The two Governments should consider further whether matters such as police pay and pensions, police college, independent complaints and regulation bodies should be devolved as in Scotland; and • In the meantime, the existing levels of cooperation appear to be good but there may be scope for further strengthening such as an annual report by the Home Secretary to the Assembly and greater transparency about funding arrangements. 	1. Costing information (provided at 21 st meeting)	
Water 21 st Meeting – 4 th and 5 th July	<ul style="list-style-type: none"> • 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 • The powers over sewerage should be devolved to the National Assembly for Wales to ensure consistency and coherence in the devolution settlement; • Given the complexities surrounding water boundaries in England and Wales and the impact of policy decisions across the border it is worth exploring the possibility of establishing a formalised inter- 	1. Further information on Water (to be provided in note for 24 th meeting)	

	<p>governmental committee and protocol on water;</p> <ul style="list-style-type: none"> • The water boundary should be agreed between the two Governments [on the basis of the revised Water Bill – subject to the further clarification noted below.] • The Secretary of State’s legislative and executive powers of intervention in relation to water should be removed and placed on a formal inter-governmental committee/protocol • The benefits which Wales derives from its water resources should be more transparent and the scope for exploiting these benefits more in the future should be considered, in line with the Holtham report. • The Commission asked to revisit the case for amending the boundaries of the National Assembly’s competence to reflect the geographical boundaries of Wales following further consideration of the content of the draft Water Bill. 		
<p>Economy 21st Meeting – 4th and 5th July</p>	<ul style="list-style-type: none"> • there should be consideration by the two Governments on the devolution of DWP employment programmes , including in relation to whether the Welsh Government could have a bigger role in the administration of these policies; • a more coherent exception to employment law should be investigated. This is a matter which could be taken forward in the context of a reserved powers model; • consumer protection 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. This is an area which is not very transparent; the two Governments and interested bodies should 		

	<p>examine the scope for simplifying the existing system drawing on experience in Scotland;</p> <ul style="list-style-type: none">• there is opportunity and ambition to develop a co-ordinated and coherent approaches to regulation and to encourage more inward investment, while recognising the distinctive policies of the two Governments in devolved and non devolved areas . These are areas where a strengthened joint approach by the UK and Welsh Governments would be welcome to create a more competitive Welsh economy;• the MDA and North Wales Economic Ambition Board are excellent examples of bottom up inter agency cooperation. There is scope for developing a Wales economic strategy drawing together devolved and non devolved policies and institutions with a focus on rebalancing the economy and reducing the GVA gap;• Data and modelling capacity should be improved , where Scottish experience is more advanced; and• 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.		
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<p>Social Security 21st Meeting – 4th and 5th July</p>	<ul style="list-style-type: none"> • 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 further then; • If there were to be any consideration of the regionalisation of policy or administration of benefits in GB, any positive or negative impacts on Wales should be carefully considered; • Individual benefits have already been devolved. There may be a case for going further where there is a good fit with devolved policies such as housing benefit and attendance allowance, but the complications may outweigh any benefits; and • There should be close and early consultation between the two Governments and key stakeholders to ensure successful reform in Wales, for example in relation to universal credits and care for the elderly. Where the decision of one Government impacts financially on another, the first Government should bear the cost as set out in the Statement of Funding Policy. 		
<p>Energy and Crown Estates 21st Meeting – 4th and 5th July</p>	<ul style="list-style-type: none"> • The Commission requested additional information on the powers devolved to Scotland and Northern Ireland in terms of energy and planning; and further information on Crown Estates. • The Commission asked to revisit the energy recommendations (below) at a later date following further evidence and clarity of a number of issues including marine licensing and the role of the Marine Management Organisation in Wales. • Overall energy policy and regulation should remain non-devolved as in the rest of GB. 	<p>1. Further information on energy and Crown Estates, including annual report(to be provided for 24th meeting)</p>	

	<ul style="list-style-type: none"> • Devolution of responsibility for development consents for energy projects greater than 50MW (onshore) and offshore (above 1MW). • Devolution of responsibility for issuing marine licenses in Welsh offshore waters should be considered by the two Governments. • Associated Development consents to be considered 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. • UK Government to ensure that the Welsh Government receives 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. • There should be a Welsh Crown Estate Commissioner appointed in consultation with the Welsh Government. 		
<p>Model of Devolution 23rd Meeting – 25th and 26th July</p>	<ul style="list-style-type: none"> • The reserved powers model is preferable to the conferred powers model, in that it would give greater clarity to law-makers and a more stable settlement. • The argument that a reserved powers model requires a separate jurisdiction does not appear fully convincing, but it would require a longer set of reservations than in Scotland assuming a more limited settlement is preferred for Wales • It would not be a panacea, and we should be careful not to oversell the benefits; and a new Act would require careful drafting to ensure one unclear settlement is not being substituted by another. • The two Governments would need to work together constructively to operate any settlement effectively, particularly when considering residual powers in a reserved powers model. • The way in which reservations are articulated, and Minister of the 		<p>1. Discussion of whether a 'excepted/ reserved/ transferred' model is appropriate</p>

	<p>Crown functions require further examination by the two Governments.</p> <ul style="list-style-type: none"> • The choice between the Scotland and Northern Ireland models can be considered further on the basis of the evidence we have received, once the Commission has a more rounded view of the settlement it recommends. 		
<p>Separate Legal Jurisdiction 23rd Meeting – 25th and 26th July</p>	<ul style="list-style-type: none"> • Generally there is no agreement on whether or not now is the right time to establish a separate legal jurisdiction but there is agreement that its establishment is likely at an unidentified point in the future. In keeping with the Commission’s principles of clarity and coherence it is therefore recommended that Wales should eventually have its own court system and judiciary and be established as a separate legal jurisdiction in law with a statutory power that would enable legislation to extend to England, under specific circumstances, in line with section 108(5) of the Government of Wales Act 2006; • Recommendations relating to the separate jurisdiction for Wales should be considered directly with issues relating to the devolution of the criminal justice system; however, establishing a separate jurisdiction should not be dependent on the devolution of the entire criminal justice system, although it would require the devolution of some of the courts and some of the judiciary; • An incremental approach to the development of the legal infrastructure in Wales should be adopted in line with the National Assembly for Wales’s Constitutional and Legislative Affairs Committee report on an Inquiry into a Separate Welsh Jurisdiction and the Welsh Government’s evidence; • There should be a Welsh judge on the Supreme Court bench; • While there is some argument to support the need for a separate jurisdiction as a result of a move to the reserved powers model, there is no conclusive evidence and as such a Welsh jurisdiction is not 		

	inextricably linked with the model of devolution it operates within.		
Administration of Justice 23 rd Meeting – 25 th and 26 th July	<ul style="list-style-type: none"> the arguments for and against devolution of prisons, probation and youth justice are quite finely balanced, but on balance there is a case for devolution in the medium term, although the short term priority should be to devolve policing and consideration of executive competence relating to the youth justice system as suggested by the Welsh Government; if these were devolved, there would need to be an agreed transfer of existing provision and an appropriate adjustment to the Barnett formula comparability factor; in addition existing levels of cooperation should be maintained and a pragmatic approach to cross border funding should be adopted; in the case of devolving the courts, judiciary, sentencing guidelines and Crown Prosecution Service, this would represent a more fundamental step. There is an argument in favour of devolution in terms of improving access to justice and addressing the constitutional anomaly of having a devolved system of laws but no devolved courts to hear such cases – this would be based on a shared tradition of common law and below the UK Supreme Court. However at the present time this does not appear to represent a majority view in Wales, although in the longer term the lower courts at least might be devolved as the body of Welsh law increases. In the meantime the two Governments should agree to continue to develop a more distinctive Welsh judicial system through administrative changes within the current non devolved status; in the absence of devolution of the courts, legal aid should not be devolved, 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; we do not recommend devolution of commercial law or other 		1.Sentencing policy 2. Devolution of criminal law

	<p>aspects of law which would adversely impact on the single economic market between England and Wales. However it is a more open question whether, for example, more of the criminal laws should be devolved. In the absence of a consensus there does not appear to be a strong case at the present time. But a wider debate on this issue should be encouraged which could lead to an emerging consensus over time.</p>		
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