

Chapter 5: Economic and social powers

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; social security; and other social issues raised in the evidence to us.
- 5.1.2 In our Part I report we made a number of recommendations for strengthening the Welsh economy through devolution of certain tax and borrowing powers and other changes, with a view to incentivising economic growth. This chapter considers whether there is scope for changes in other economic powers.

5.2 ECONOMIC POWERS

Current position

- 5.2.1 The National Assembly for Wales's legislative competence includes economic regeneration and development, the social development of communities and the promotion of competitiveness. ~~There are also a~~ [number of executive functions](#) ~~are also~~ devolved to Welsh Ministers, including grant-awarding powers. These are used principally to set up business and employment support schemes and to invest in infrastructure. Welsh Ministers also have power under section 60 of the Government of Wales Act (GoWA) to do anything they consider appropriate to achieve the promotion or improvement of the economic, environmental and social well-being of Wales.
- 5.2.2 ~~Certain aspects of economic policy are not devolved~~ [In order](#) to ensure that a United Kingdom-wide, Great Britain-wide or England and Wales single market is retained, [certain aspects of economic policy are not devolved](#). These include macro-economic policy, anti-competitive practices, insolvency, product standards, consumer protection and trade, and ~~some non-devolved~~ aspects of business regulation.
- 5.2.3 ~~In relation to~~ employment and welfare benefits, ~~these~~ are non-devolved policy areas and are the responsibility of the UK Government. However, responsibility for policy in relation to training and skills in Wales is devolved to the Welsh Government.
- 5.2.4 Both Governments have powers in relation to export development and inward investment. The UK Government retains powers ~~that which~~ enable UK Trade and Investment ([UKTI](#)) to promote the United Kingdom as a whole overseas, and provide a coordinated approach to Foreign Direct Investment.

Box 5.1: Evidence on the economy

The UK Government [told us that](#) highlighted 'two areas where the devolution boundary is not clear cut are responsibility for consumer law enforcement and representation of consumer interests in Wales. The whole question may be of interest to the Silk Commission, in terms of the balance between local authority prioritisation of funding and wider consumer protection'. In relation to regulation, it proposed 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'. On the issue of inward investment, the UK Government stated that 'the Welsh Government, through its trade and investment team provides its own support and programmes (and also access to UKTI national support) to meet the needs of exporters in Wales and for promoting Wales to foreign investors.'

The Welsh Government proposed in its evidence 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. The Exception should also permit the Assembly to legislate on the Community Infrastructure Levy (CIL). On consumer protection, it stated that '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'.

The Bevan Foundation stated that 'there is scope to devolve powers over employment programmes e.g. the Work Programme as argued as long ago as 2007 in our report *Setting the Agenda*, so that they can be more closely aligned to local labour market conditions, local economic development initiatives and education and training provision.'

In its evidence, Unite Wales considered 'that any decisions on changes to the devolution settlement or extension of devolved powers must be in the economic as well as constitutional interest of Wales and the people of Wales.'

The Federation of Small Businesses Wales stated that 'in conclusion FSB Wales believes the status quo is in many instances providing sub-optimal outcomes for businesses in Wales. As an organisation, FSB Wales prioritises building a business environment that's conducive to growth. Clearly the present devolution settlement makes this objective difficult to achieve.'

Dr Andrew Crawley and Professor Max Munday argued that 'for Wales there is a paucity of economic modelling. The issue is three fold, there needs to be a greater dissemination of data from government and Office for National Statistics there needs to be detailed regional models constructed to use this data, and finally there needs to be a greater degree of work between those in government and those in academia to develop the best intelligence possible.'

In his evidence, Professor James Foreman-Peck maintained *'that there should be no further extension of powers to the Welsh government at least until performance has improved markedly.'*

Box 5.2: Key facts on the economy

- Wales contributed almost 4 per cent of the UK's gross value added (GVA) in 2010. Wales has ~~a lower~~~~the lowest~~ GVA per head than Scotland, Northern Ireland or any of the UK countries and English regions. Labour productivity (gross value added per hour worked) was 16.1 per cent below the UK average.
- Gross disposable household income (GDHI) of the residents of Wales at £13,800 per head in 2010 was the fourth lowest ~~among~~~~of~~ Scotland, Northern Ireland, the UK countries and English regions and Wales 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 and x in England.
- In terms of public spending, HM Treasury figures show that spending per head in Wales on economic development was 242 on a scale in which the overall UK spend per head is 100; on this scale, expenditure on employment policies [was](#) 114.

Assessment

- 5.2.5 Improving the performance of the economy is a high priority for both the Welsh and UK Governments. There have been no calls for fundamental changes to the allocation of economic powers between the UK and Welsh Governments.
- 5.2.6 Based on the evidence we have received and taking into account the crucial importance of the fiscal and economic union for Wales and the UK single economic market, our view is that for the most part the allocation of powers should not be changed, with key macroeconomic and microeconomic powers being retained by the UK Government.
- 5.2.7 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, and we address these issues below.

Employment programme

- 5.2.8 The biggest suggested change in powers in the evidence to us was the argument for the devolution of Department for Work and Pensions employment programmes. Spending in Wales on employment policies is around £90 million a year. [The One](#) argument we have heard is that

devolution would enable the Welsh Government to create a more unified approach to employment and training. We have also heard opposing views stating that devolution would tend to weaken the Great Britain-wide approach to a single Great Britain labour market and associated tax credits and benefits. ~~We have also heard opposing views stating that devolution would enable the Welsh Government to create a more unified approach to employment and training.~~

- 5.2.9 We note that devolution of the employment programmes would go beyond the current devolution arrangements in Scotland. 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, it is unlikely that there would be a significant impact either way.
- 5.2.10 The evidence has also highlighted the current split in relation to powers associated with employment programmes. This has led to both Governments creating a number of different employment programmes ~~and~~ schemes designed to provide access to work. This may lead to a perception of a lack of cooperation between the two governments and ultimately cause confusion to both jobseekers and employers in Wales.
- 5.2.11 We note that this concern is raised by the Welsh Affairs Committee in its report on The Work Programme in Wales.¹ The report highlights a number of issues in relation to the incompatibility between separate UK Government and Welsh Government employment programmes and the confusion for employers and jobseekers caused by different schemes operated by the two governments.
- 5.2.12 We believe that there needs to be better coordination between the two Governments on employment programmes to ensure that the Welsh jobseekers and employers are not misinformed or hindered. The two Governments should consider how this coordination could be achieved, and in doing so they should consider~~This should include~~ whether the Welsh Government could have a bigger role in the administration of these policies in the interests of jobseekers and employers in Wales.

Consumer protection

- 5.2.13 We believe that Welsh consumers should continue to benefit from comprehensive and specialist consumer advice provided by United Kingdom or Great Britain-wide bodies. ~~M~~We acknowledge that much of the legislative framework on consumer protection is determined by European legislation.

¹ Welsh Affairs Committee (2013) - *Third Report - The Work Programme in Wales*. The Committee concluded: "we are concerned that the proportion of jobseekers who secure sustained employment through the Work Programme in Wales is the lowest in Great Britain. The situation in Wales is particularly confusing for employers due to the myriad of different UK Government and Welsh Government welfare-to-work and employment schemes available to them. We call for the UK Government and the Welsh Government to develop a more co-ordinated provision of information for employers in Wales about the different employment schemes available, for the benefit of businesses and jobseekers in Wales."

5.2.14 We have not received evidence arguing for the existing competence of the National Assembly for Wales in relation to consumer protection to be transferred back to the UK Government. This is also the case in respect of Welsh Ministers' executive functions in respect of Consumer Focus (Wales) and the consumer councils for water and public transport.

5.2.15 However, we ~~believe~~~~suggest~~ that this is an area which is not very transparent and would benefit from the two Governments and interested bodies examining the scope for simplifying the existing division of responsibilities system.

Regulation and inward investment

5.2.16 We have heard the view that through the Better Regulation Delivery Office-coordinated Welsh Regulators Forum, which comprises national and local regulators in Wales, ~~that~~ there is opportunity and ambition to develop a co-ordinated and consistent approach to regulation. Both Governments have regulatory responsibilities which impact on Welsh business. This is an area where there should be a strengthened joint approach by the UK and Welsh Governments.

5.2.17 We have heard some concerns about the decline in foreign inward investment. Responsibility is split between UKTI and the Welsh Government and should be carefully coordinated. While it is potentially beneficial for Wales that it is promoted abroad by both the UK Government and the Welsh Government, there is scope for better coordination to ensure that inward investment and export opportunities are maximised.

Policy analysis

5.2.18 We have also heard concerns about lack of economic and public finance data and modelling capacity, an area in which ~~where~~ Scottish experience is more advanced. There is scope for the two Governments to work with the Office for National Statistics and the academic and business communities to develop better quality and more timely data and ~~;~~ better quality models of how the Welsh economy works. This should lead to ~~;~~ ~~and~~ better informed policy decisions on what interventions in the economy are likely to be most effective.

Taxation powers

5.2.19 Following our first report and the UK Government's response to it, the taxation reservation in the current devolution settlement should be made subject to an Eexception, to enable the Assembly to legislate on devolved taxes (including in relation to their collection and management) ~~with~~ a straightforward mechanism, such as the current an-Order in Council procedure to amend Schedule 7 of the Government of Wales Act 2006~~in~~ Westminster, 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 also be implications for the process of registering land and property sales in Wales that follow from the proposal to devolve stamp duty.

5.2.20 The ~~above~~ changes we recommend in economic areas would meet our principles including coherence and effectiveness, while maintaining a strong UK wide focus on managing and improving the economy. They would represent a pragmatic package that is likely to command wide support.

Box 5.3: A cross-border approach to economic strategy

We heard evidence about the importance of Wales and England working together to improve their economies, especially including at an oral evidence session in Wrexham when cross-border representatives were present.

Improving the Welsh economy requires a cross-border approach. At the governmental level, the two Governments both have key economic powers, which they need to employ in a coordinated way for maximum effect including through increased inter- agency cooperation.

At the sub-regional level, it is important to build on the fact that the two economies are heavily integrated. For example, the Mersey Dee Alliance (MDA) is a partnership that supports strategic economic activity spanning the North Wales/North West England border. Its geographical area of focus is North East Wales, West Cheshire and Wirral, one of the most important centres for manufacturing in the United Kingdom. In addition, the North Wales Economic Ambition Board is working to improve inward investment and accelerate economic growth in North Wales.

The Great Western Partnership includes an alliance of business groups, local authorities and transport experts along the Great Western Line. The Partnership has successfully lobbied for the electrification of the Great Western Main Line to Swansea and has set out a case for further upgrades to deliver journey times between Cardiff and London/Heathrow of 80 minutes or less.

Recommendations

R.4 The National Assembly for Wales should be able to legislate on devolved taxes (including council tax, business rates, stamp duty and landfill tax) in light of the Commission's First Report on fiscal powers for the National Assembly for Wales and the UK Government's response to it, 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).

R.5 The UK Government and Welsh Government should provide a clearer and better coordinated approach to employment and training policies. This should include consideration of the role of the Welsh Government in the administration of Department for Work and Pensions employment programmes. In the longer term consideration should be given to the devolution of those programmes to align

with devolved training programmes;

R.6; Consumer protection should remain non-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 eConsumer eCouncils for water and public transport. The two Governments and interested bodies should look to simplify the existing system;

R.7 The two Governments should take account of each other's policies in a coherent way when developing their economic strategies for Wales to deliver their joint objective of increasing economic growth. The two Governments should develop a better coordinated approach to business regulation and inward investment, while recognising the distinctive policies of the two Governments, to create a more competitive Welsh economy;

R.8 The two Governments should improve Welsh economic data and modelling capacity.

5.3 TRANSPORT

Current position

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;
- most aspects of rail
- shipping;
- 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.

Rail

5.3.3 Rail is not devolved apart from financial assistance in specific circumstances.² However, in terms of executive competence, the Secretary of State for Transport and the Welsh Ministers are joint signatories to the Wales and Borders rail franchise, currently operated by Arriva Trains Wales (ATW). The division of responsibilities between the two Governments is governed by the Joint Parties Agreement.

5.3.4 Capital investment in the railways in Wales is provided by Network Rail and specified and funded by the Department for Transport through the High Level Output Specification process. The rail network in Wales, defined as the Wales Route,³ covers Wales, and parts of England including Hereford, Ludlow and Shrewsbury. The Welsh Government also has powers to purchase additional services for Wales via franchises let by the Department for Transport, and to invest in infrastructure in Wales or England for 'Welsh purposes'.

Ports

5.3.5 Ports policy is non-devolved in Wales, except for small fishing and leisure harbours. Ports in Wales are included in the scope of the UK Government's National Policy Statement for Ports, which is applicable both to nationally significant port infrastructure projects and to smaller applications that are dealt with by the Marine Management Organisation.

5.3.6 There are 32 port locations in Wales with a mixture of trust, municipal and privatised ports. Trust ports in Wales include Milford Haven, Neath, Newport (River Usk), Caernarfon and smaller trusts such as Saundersfoot. Privatised ports, including Barry, Cardiff, Newport, Port Talbot and Swansea (Associated British Ports); Holyhead and Fishguard (Stena Line) and the port of Mostyn (independent). Municipal ports are run by local authorities and come under the influence of the Department for Communities and Local Government.

5.3.7 Cardiff and Newport are designated as "core" ports under the European Commission's proposals for a revised Trans-European Transport Network, because each handles more than 1% of the total volume of traffic that passes through all EU maritime ports. The European Commission has also agreed to include Milford Haven following joint [proposals](#) working by the UK Government and Welsh Government. The ports of Swansea, Fishguard and Holyhead are part of the broader "comprehensive" TEN-T network, because each handles more than 0.1% of the total EU maritime ports traffic.

Traffic

5.3.8 The following matters in relation to vehicle standards and traffic management are non-devolved, ~~including ensuring compliance with EU law:~~

- provisions on car tax, car standards and safety
- ~~and~~ regulation of motorways and roads standards;
- driver, learner driver and driving instructor licensing
- ~~;~~ insurance and licensing of public service vehicles and heavy goods vehicles drivers; ~~and~~

² As well as transport security and railway heritage

³ Network Rail – Network Specifications 2012 Wales

- safety issues; and
- road traffic offences.

5.3.9 The overall speed limit framework, including the setting of national limits for different road types is [also](#) non-devolved. The Welsh Government is responsible for determining local speed limits on the motorway and trunk road network in Wales. Local highway authorities are responsible for determining speed limits on the local road network in Wales but must have regard for the guidance for setting local speed limits, which is issued by the Welsh Government.

Roads

5.3.10 The Welsh Government is responsible for the provision and maintenance of roads in Wales, and the Highways Agency fulfils the equivalent functions in England for the strategic road network. The Highways Agency has an agreement with the Welsh Government to provide services to the whole of the Severn Crossing, including that part [that is that lies](#) in Wales.

5.3.11 Funding of the road network is a devolved matter, and there is no history of providing cross-border subsidies for transport purposes. Only where a scheme has physically [straddled crossed](#) the border have funds been directly transferred from one national authority to another.

Bus Transport

5.3.12 The Transport Act 1985 introduced the current system, which is deregulated and mostly privatised, for bus operators in Great Britain. The system allows bus operators to provide bus services as they choose, subject to meeting certain safety and competency standards. The regulation of bus services that does exist is either not devolved or only partially devolved.

5.3.13 Both the issuing of Public Service Vehicle Operator licenses and the registration of bus services are not devolved. Operator licenses are issued by the Traffic Commissioners and enforcement activity is undertaken with support from the Vehicle & Operator Services Agency. An operator must register proposed services (routes and timings), give notice of changes and meet punctuality standards set by the Traffic Commissioners. The Traffic Commissioner responsible for Wales can investigate bus companies who are not meeting their licensing obligations or not running services in accordance with their registration, and impose sanctions.

5.3.14 Quality Contract Schemes (QCS) and Quality Partnership Schemes (QPS) were introduced in the Transport Act 2000 and apply to both Wales and England. The QCS allow a local authority to suspend the deregulated local bus market and instead allow only services provided under contract. The QPS allow local authorities to restrict the use of 'facilities' (bus stops, bus lanes etc) to bus operators that provide services of a prescribed quality – as long as those facilities are improved commensurately. Responsibility for approving QCS and QPS in Wales resides with Welsh Ministers.

Taxi and Private Hire Vehicles

5.3.15 The power to legislate on the regulation of taxi and private hire vehicles is non-devolved. The responsibility for administering the regulation of taxi and private hire vehicles resides with the local authorities in Wales using best practice guidance issued by the Department for Transport.

Traffic Commissioners

5.3.16 The Traffic Commissioner for Wales and West Midlands is appointed by the Secretary of State for ~~the~~ Transport. Commissioners are ~~statut~~statutorily ~~eor~~eory independent in their licensing functions. The Traffic Commissioner has responsibility for:

- the licensing of the operators of Heavy Goods Vehicles and of buses and coaches (Public Service Vehicles);
- the registration of local bus services; and
- granting vocational licences and taking action against drivers of Heavy Goods Vehicles and Public Service Vehicles in certain circumstances.

5.3.17 Under the Concordat between the Department for Transport and the Welsh Government, the Welsh Government has a formal role in the appointment of the Traffic Commissioner for Wales and the West Midlands. The Traffic Commissioner for Wales and the West Midlands also has to liaise regularly with the Welsh Government.

Aviation

5.3.18 The responsibility for aviation, air transport, airports and aerodromes is non-devolved. There are some specific exceptions that are devolved relating to the provision of financial assistance to providers or proposed providers of air transport services or airport facilities or services; the publication of strategies about the provision of air services; and the regulation of the use of aircraft carrying animals.

5.3.19 The Welsh Government also has executive powers to provide financial assistance in relation to air transport services (~~i.e. services for the carriage by air of~~ passengers or cargo) under section 11 of the Transport (Wales) Act 2006, where it does not believe the service/facilities would be delivered without that assistance.

5.3.20 The Welsh Government has recently acquired Cardiff airport.

Severn Crossings

5.3.21 The Severn Crossings are currently run by a private concessionaire, Severn River Crossings plc. The current concession with Severn River Crossings is expected to end in 2018. After the end of the current concession, the UK Government will need to continue to toll in order to recover its finance and operating costs which are £112million (as of 31 March 2012)

Box 5.4: Evidence on Transport

Our opinion poll found that 88 per cent supported the (continued) devolution of

roads. In our questionnaires, only 5 per cent wanted bus transport in Wales to be controlled by the UK Government and only 22 per cent wanted rail transport to be controlled by the UK Government.

The UK Government said: *'The Commission may wish to examine the devolution boundary in respect of ports, noting that the UK Government should remain responsible for supranational matters. The Government would welcome the Commission's consideration of the current devolution boundary for railways, and the potential for changes to those arrangements. Two routes through Wales form part of the trans-European road network: the M4 and feeder roads (A48 and A40) to Fishguard in the south, which form part of the route from Felixstowe to Ireland, and the A55 in the north, which forms part of the route from Holyhead to Immingham. The Commission may wish to consider whether current arrangements for the maintenance and upgrade of these routes in Wales could be improved, particularly in the context of responsibilities for large-scale projects to upgrade and improve these routes. The Commission may wish to investigate the devolution, or further devolution, of the regulation of local bus services and operators in Wales.'*

The Welsh Government said: *'The Welsh Government is seeking further powers for the Assembly in order to promote road safety, and to improve public transport services, in Wales. The Assembly's existing powers, set out in Schedule 7, should be extended (if necessary by appropriate Exceptions to Reservations) in order to give the Assembly competence in relation to speed limits, bus regulation, taxi regulation and ports. We also see scope for change in relation to rail.'*

The Wales in a Changing Union project said: *'New responsibilities that would facilitate an integrated transport policy would include: public transport policy; rail and bus industry regulation; rail investment (with the operational and financial interface between the Welsh Government and Network Rail set out in statute and mirroring the current DfT - Network Rail position); contractual arrangements for the operations in Wales of train operating companies; powers currently held by the Traffic Commissioners; ports; airport development and air passenger duty.'*

Professor Stuart Cole, Emeritus Professor of Transport, Wales Transport Research Centre, University of [South Wales Glamorgan](#), said: *'The order of priority for Wales is as follows: an efficient and effective transport network to make us internationally competitive; urban congestion solutions; easy and affordable access to jobs and services by car, bus and rail services particularly from low-income communities and rural areas. Achieving this requires a revolutionary change in public transport provision.'*

[According to Bristol Airport](#) ~~said~~: *'Aviation policy should remain reserved to the UK Parliament. However in practice most, if not all, decisions relating to Welsh airports and air services are taken within currently devolved powers relating to the planning system, surface access and the provision of air services.'*

[In the view of](#) Sustrans and the Bevan Foundation ~~said~~: *'The Welsh Government should gain powers to decide bus subsidy/contract payment levels; decide bus routes and frequency for both commercially and publicly-run routes; and have devolved bus user groups.'*

The Welsh Ports Group said: *'The key, and overriding, observation is that there is no clear and consistently built up documentation setting out what might be the Welsh Government policy on ports, should responsibility for ports be devolved. Equally there are modes of devolution that could be highly beneficial, particularly if operators, customers, users and stakeholders can see that their chosen port has the rights of self determination and funding necessary to be able to deliver on the promises they make; that the port is well and constructively supported by the political establishment; that the value of ports is recognised and that (Welsh) Government strategies are focussed on supporting port activities through improved road and rail connections; that necessary consents can be delivered rapidly and with high levels of certainty, as well being as viewed in the wider economic context.'*

Taith ~~told us~~*said: 'The Welsh Government in its evidence to the Commission, indicated that it is seeking further powers for the Assembly in order to promote road safety, improve public transport services, Ports and taxi regulation. These aspirations are broadly supported by Taith.'*

Passenger Focus said: *'The latest figures from the Office of Rail Regulation (ORR) highlight the importance of cross-border journeys to Welsh rail users with just under one third (31.5%) of the 27 million annual journeys that start and/or finish in Wales crossing the Wales-England border.'*

Sewta said: *'In its evidence to the Commission, the Welsh Government has indicated that it is seeking further powers for the Assembly in order to promote road safety and to improve public transport services. These aspirations are broadly supported by Sewta'*

~~According to t~~*The Public Transport Users Committee (PTUC)-said: 'It does not matter how ambitious or well developed the transport policies of Welsh Government are this eclectic mixture of responsibilities for public transport delivery within Wales does not facilitate effective public transport integration.'*

Box 5.5: Key facts on transport

- Wales has only one major airport, Cardiff airport, recently acquired by the Welsh Government.
- Major rail spending, including on electrification, is planned by Network Rail.
- 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 in 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. This ~~presumably to some extent~~ reflects the low sparse population density of much of Wales.

Assessment

Unchanged powers

5.3.22 We have assessed each part of the transport system [in terms of its potential for devolution](#).

Unchanged powers

5.3.23 The Welsh Government, the UK Government and most other evidence submitted to us have argued that shipping and maritime safety, road and vehicle standards, and driver licensing to remain at a United Kingdom level. We agree.

5.3.24 Both the Welsh Government and the UK Government and most other evidence have recommended that aviation policy should remain at a United Kingdom level (while recognising the devolved airport development powers exercised, for example, when the Welsh Government decided to purchase Cardiff Airport) and have indicated that the management and direction of the policy will benefit from a continued close working relationship between them. Responsibility for Air Passenger Duty in Wales was considered as part of the Commission's Part I remit and we wrote to the UK Commission on airport capacity noting the importance of Wales in that context.

5.3.25 Maintaining the above functions at UK level would meet our principles in relation to [a coherent](#) and [effective](#) settlement.

Rail

5.3.26 The majority of evidence received has argued for the Welsh Government to take on responsibility for the rail network in Wales. This includes the High Level Output Specification process with Network Rail for rail infrastructure. The rail network in Scotland is devolved. While the Welsh network is more integrated with [that of](#) England than is the [case for Scottish](#) network, we think devolving the rail network in Wales would be possible and desirable, although it would require close cross boundary cooperation.

5.3.27 In addition, the case ~~has been made~~ for transferring the UK Government's residual rail responsibilities in respect ~~of~~ the Wales and Border franchise [is persuasive](#); ~~This which~~ would still mean that cooperation would be required for any decisions affecting Wales and Borders services in England. [We have also concluded](#) ~~that in addition, it is important that~~ the Welsh Government [should be](#) fully consulted on non-devolved rail franchises which come into Wales, including [not just](#) the First Great Western services in Wales, but also important links such as the Virgin Trains services in North Wales and the Crosscountry Trains services from the Midlands to Cardiff. Some redrawing of the franchise boundary may be appropriate if the Wales and Border franchise is fully devolved.

5.3.28 Although the Welsh rail network is closely linked to England, there is a strong case for a more closely integrated Welsh transport system. In addition, devolution would improve the lines of accountability and responsibility both

in financial and policy terms, which are currently complex and unclear. There would be some transfer of risk to the Welsh Government, for example if the franchise failed. ~~This, which~~ would need to be carefully managed, but ~~it this~~ is an inevitable consequence of devolution.

Ports

5.3.29 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. We believe that devolution would improve the coherence between local transport, planning and port development.

Roads

5.3.30 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 responsibility for the Severn Crossings.

5.3.31 We are aware that discussions are ongoing between the UK Government and the Welsh Government in relation to the concession arrangements for the Severn Crossings post-2018. We feel, therefore, that this decision should remain for resolution by the two Governments.

5.3.32 In relation to the Trans-European Transport Network, coordination between the Welsh Government and the Department for Transport appears to be working well, as highlighted in the additional evidence provided by the Welsh Government. We see no reason to change devolved responsibility in this area.

5.3.33 Improving north - south and east - west routes that cross the border tend to be a more important issue for Wales than England. In particular, we heard from Department for Transport officials that due to relatively low traffic volumes any proposed improvements to the A483 would not achieve the required cost benefits that other route improvement schemes across the United Kingdom would provide. The Department for Transport indicated that it is considering a new route based analysis for proposed improvement schemes. This approach would take into account the strategic economic value of a route as opposed to conventional cost benefit analysis. We welcome this approach, but believe that the Department of Transport must consider the strategic economic value of cross-border routes to Wales and not just to England.

Bus and taxi regulation

5.3.34 We have received a number of calls for the devolution of bus and taxi regulation. We also note that the Law Commission for England and Wales in its consultation document in relation to its review of the law relating to the

regulation of taxis and private hire vehicles proposed that powers for any system of regulation should be devolved to Welsh Ministers.

5.3.35 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. These changes would bring benefits to bus users in Wales [as a result of from more locally regulated services the regulation of services closer to the point of use.](#)

5.3.36 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 would be a logical consequence of the devolution of bus regulation, bringing benefit to transport users in Wales.](#)

Drink drive and speed limits

5.3.37 A number of respondents, including the Welsh Government, have called for the responsibility for speed limits and drink drive limits to be devolved. This would bring Wales in line with Scotland and Northern Ireland. [The UK Government's arguments in favour of devolving limits in Scotland to align with devolved health and road safety responsibilities apply equally to Wales, and we see no good reason why this area should not be devolved to Wales.](#) Given the more densely populated border it would be essential for there to be effective awareness campaigns to ensure people crossing the border were aware of any differences in limits. [The UK Government's arguments in favour of devolving limits in Scotland to align with devolved health and road safety responsibilities apply equally to Wales.](#)

Integrated transport planning

5.3.38 Giving Wales more powers as [we recommend above](#) would [better](#) enable the Welsh Government to develop a fully integrated transport policy and would fit our principles well, [in particular for example](#), simplicity, coherence and accountability. As a comparison, transport in Scotland is more highly integrated.⁴

5.3.39 We believe that the proposals outlined above would benefit the people of Wales by providing the opportunity to develop a more strategic and effective approach to transport in Wales.

Costs

Rail

5.3.40 The Welsh Government states that for 2013/2014 the cost of the Wales and Border franchise for Welsh services will be in the region of £178million. This is

⁴ Transport Scotland's remit incorporates: rail and trunk road networks; major public transport projects; national concessionary travel schemes; impartial travel services; coordinating the National Transport Strategy for Scotland; liaising with regional transport partnerships, including monitoring of funding; sustainable transport, road safety and accessibility; local roads policy; aviation, bus, freight and taxi policy; ferries, ports and harbours; the Blue Badge Scheme.

devolved and includes the necessary service enhancements that have been required during [the](#) current franchise period. By 2018/2019, the Welsh Government expects the cost of the franchise, allowing for inflation, to increase to £206.8million. It [believes](#) that if Welsh Ministers assume responsibility as the Franchising Authority in respect of the Wales and the Borders franchise area, ~~and depending on when the changes take effect,~~ then the current franchise cost provides a reasonable sense of the order of magnitude of funding that [it](#) would anticipate being required. The Welsh Government also expects [that some](#) additional expertise and capacity would be required to discharge the additional functions appropriately.

5.3.41 In relation to rail infrastructure, the Welsh Government [told us that it had not quantified the costs of taking responsibility for](#) oversight of the Wales Route, including responsibility for specifying and funding network outputs via the Office of Rail Regulation. ~~The Welsh Government believes, could be part of a devolved settlement to Welsh Ministers. In its evidence, the Welsh Government notes that costs associated with this function have not been quantified. It states~~ that a detailed assessment of the quantum of funding required would need to be undertaken prior to a final and formal agreement being reached.

5.3.42 ~~According to t~~The UK Government, ~~indicates that~~ it would be very difficult to provide detailed cost estimates of any transfer of rail responsibilities without a detailed proposal from the Welsh Government. It states that the need for additional funding transfer in the event of further devolution in relation to the Wales and Border franchise would depend on the scope of the franchise in the future and the role of the UK Government in it. The UK Government also notes that there would be the need for a significant increase in staff resource during the competition to re-let the franchise, including external resource requirements such as legal and commercial assistance.

Bus and taxi regulation

5.3.43 The Welsh Government anticipates that the key funding implications would be in terms of staff resources and capacity and could be of the order of at least £100,000. It expects that the cost of bus registrations would be met from registration fees but further work is required to establish the detailed costs of a separate regulatory regime and Traffic Commissioner in Wales.

5.3.44 The UK Government states that the income received from the Welsh element of bus registrations in 2012 – 13 was £46,500. It estimates that the proportion of expenditure to maintain the bus registration scheme relating to Wales would be £71,000.

5.3.45 In relation to taxi licensing, the Welsh Government estimates a requirement of around £60,000 for dedicated staff resources based on the arrangements in Scotland.

Ports

5.3.46 The Welsh Government anticipates that the key funding implications would be in terms of staff resources and capacity. It estimates a minimum requirement of around £500,000 to support a ports policy function in Wales.

5.3.47 To conclude on transport costs, there would need to be a fair transfer of existing resources from the Department of Transport. Inevitably there would also be some transfer of risk, but no insuperable problems appear likely.

Recommendations

R.9 The following should be devolved:

- port development including harbour orders and oversight of Trust ports;
- Wales and Border rail franchise;
- funding of Network Rail in relation to the Wales route;
- speed limits and drink drive limits;
- bus regulation, including establishing a traffic commissioner for Wales; and
- taxi regulation

R.10 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.

R.11 There should be close coordination between the two Governments to ensure good quality cross border routes, including improvements to the Trans-European network such as the M4 and the A55, ~~and~~ the future of the Severn Crossings tolls [and roads that straddle the border](#). A formal [process template](#) should be developed for decisions on proposed route improvements on either side of the border ~~that~~[which](#) considers the strategic importance of the route for Wales.

3.4 BROADCASTING

Current position

5.4.1 Broadcasting is not devolved to the National Assembly for Wales and Welsh Ministers do not have any executive powers in the area of broadcasting. The Welsh Government does however use its economic development powers to fund local radio. Funding and oversight of the BBC and the funding of S4C are all non-devolved subjects. There is no requirement for broadcasters to report on performance to the Welsh Government or National Assembly for Wales.

BBC

5.4.2 The BBC is funded through the UK-wide licence fee and governed by the BBC Trust. The Trust is responsible for setting the BBC's strategy, reviewing its performance, protecting the BBC's independence and monitoring its spending of the licence fee. It is made up of 12 Trustees, including four National

Trustees who represent England, Scotland, Wales and Northern Ireland. All Trustees are appointed by the Queen on advice from UK Government Ministers.

- 5.4.3 The BBC in Wales is accountable to its audiences through the Audience Council for Wales. The Council's ~~task is to undertake a range of activities to~~ gauge the views of the Welsh public on the BBC, and ~~it~~ reports to the BBC Trust on the concerns and opinions of audiences in Wales ~~on~~ regarding the BBC's services. There are thirteen members of Council, including the BBC's National Trustee for Wales who is appointed chair.

S4C

- 5.4.4 S4C (Sianel Pedwar Cymru - Channel Four Wales) is a [Welsh-language public-service television](#) channel ~~based in Cardiff and which~~ broadcasts throughout [Wales](#). It is controlled by an independent body, the [S4C Authority](#). The Secretary of State for Culture, Media and Sport is responsible for appointing S4C Authority members, in consultation with Welsh Government Ministers.
- 5.4.5 S4C is financed from its advertising revenue and until recently a fixed annual grant from the [Department for Culture, Media and Sport \(DCMS\)](#). In October 2010, the Secretary of State for Culture, Olympics, Media and Sport announced a proposal to remove the statutory provisions that increase S4C's funding annually, in line with inflation. The Secretary of State and the BBC Trust also agreed a revised licence fee settlement for the BBC for the period until March 2017. As part of the revised settlement, the BBC Trust agreed to provide the majority of S4C's public funding from April 2013 and to do so [through via](#) a new partnership with the S4C Authority. [Under section 31 of the Public Bodies Act 2011, the UK Government has a responsibility to "secure that" S4C receives sufficient funding for its public service obligation. That can be done either by direct funding or through arrangements with another party \(the BBC at present\).](#)

Ofcom

- 5.4.6 Ofcom is an independent body responsible for the regulation of communications across the United Kingdom, including the TV and radio sectors [as well as telecommunications](#). It operates under the Communications Act 2003 and is accountable to the UK Parliament. Ofcom is funded by fees from the communications industry, and a grant-in-aid from the UK Government.
- 5.4.7 Ofcom has an office in each nation of the United Kingdom, headed by a Director, who is a member of Ofcom's Senior Management Group. [The Each offices are](#) ~~is~~ responsible for managing communications with the public and stakeholders, dealing with aspects of Ofcom's remit and providing input and advice on national issues to Ofcom policy and project teams.
- 5.4.8 As well as a national office, Wales also has representation on Ofcom's Content Board and [has](#) its own Advisory Committee. The Committee advises Ofcom about the interests and opinions of Welsh citizens in relation to communications matters.

Box 5.6: Evidence on Broadcasting

In our opinion poll 58 per cent said that broadcasting and media regulation should be devolved. In our questionnaires, 60 per cent thought broadcasting should be devolved.

In its evidence, the UK Government stated that *'there are good reasons why broadcasting was not devolved in the devolution settlements and there is no evidence to suggest that devolution of broadcasting policy or a different approach to funding the BBC would benefit licence fee payer'*. It noted that *'the Public Bodies Act 2011 makes clear that the Secretary of State must ensure S4C has sufficient funding to carry out its public remit. The UK Government considers therefore that S4C's interests are appropriately safeguarded.'* On the issue of press regulation it stated that *'press regulation is non-devolved in Wales. The body proposed to recognise a press self-regulator, in light of the Leveson Inquiry, would cover England and Wales (whether or not that body operates also in Scotland and Northern Ireland). This would include both English and Welsh language press'*.

The Welsh Government stated that it *'does not agree with those who argue that, within this field, Broadcasting should now be devolved'*. However, it argued that *'the appointment of the Welsh member of the BBC Trust, and also the Chair and members of the S4C Authority, should be made only with the agreement of the Welsh Ministers. In relation to Ofcom, the Welsh Government recognised 'the important role to be played by Ofcom in the regulation of broadcasting, we also believe that it is essential that the Ofcom Board should feature one member specifically charged with representing the views of Welsh citizens, and that this member should also be appointed with the agreement of Welsh Ministers'*. On the issue of devolution of broadcasting, it noted that *'a number of complex issues would need to be considered and addressed were the policy area to be devolved from a pan-UK basis. The assurance and guarantee of sufficient funding, operational and editorial independence, and a strong foundation from which to be able to operate competitively, ought therefore to be central questions in the consideration of where and by whom broadcasting in Wales is regulated.'*

Elan Closs Stephens (Trustee for Wales, BBC Trust) noted *'that it is essential that we keep members of Parliament's and Assemblies in the UK well informed about the Trust's work and will continue to meet Assembly Members regularly to do so. The BBC has a strong relationship with the Assembly, the Government of Wales and individual Members. In July 2008 the Trust approved a supply strategy for network television outside London, which included specific references to the devolved nations, in order to ensure: Cultural representation of the whole UK; Appropriate economic investment in the Nations and Regions of the UK; Sustainability of supply across the whole of the UK. It is important to mention that the Trust monitors the implementation of the strategy regularly and it publishes figures on progress each year in the BBC Annual Report.'*

The Wales in a Changing Union project argued that *'full responsibility for S4C should be transferred to the National Assembly for Wales and the Welsh Government, with the relevant Welsh minister responsible for appointing the Chair and members of the*

S4C Authority; the Welsh member of the BBC Trust should be a joint appointment by the Welsh minister and DCMS; National Broadcasting Trusts should replace the BBC's Audience Councils in the devolved nations and should have responsibility for policy, content and allocation of resources for all services delivered solely for audiences in their respective countries; Welsh ministers should appoint representatives to the main board of Ofcom; and responsibility for local and community radio policy and licensing should be handed to a renamed Ofcom Advisory Committee for Wales.'

The Wales in a Changing Union Our Future submission states that 'we would recommend that the Commission explores the practicality of a devolved S4C having a separate royal charter (along the BBC's lines).'

Cymdiethas yr Iaith Gymraeg's view was that 'There should be full devolution of broadcasting and telecommunications to the National Assembly for Wales to endure that the expertise and ability to make the right decisions over the future of broadcasting in Wales. It also calls for' the federalisation of the BBC' and stated that 'the BBC Wales trust should be appointed by the National Assembly for Wales'. Cymdiethas yr Iaith Gymraeg also supports 'the transfer of the right to licence radio and television services to the National Assembly for Wales which would include local radio and television and a new licence on a Welsh level to the third commercial radio station'. It also states that 'the National Assembly for Wales should be given power to impose Welsh language conditions upon local radio and television licences and that the powers of the National Assembly for Wales should be broadened to impose a duty to provide Welsh language service on all media'. Cymdiethas yr Iaith Gymraeg also argues for 'the devolution of the S4C budget to the National Assembly for Wales along with the legislative powers that would allow a funding formula to be established'. Additionally it wishes to see' the National Assembly with the power to broaden the remit of S4C to include provisions of Welsh language services to all media.'

Lord Morris of Aberavon ~~told us~~ stated that ~~he did~~ 'not see how the Assembly can carry out its existing legislative competence for the Welsh language properly without a significant involvement in broadcasting'

The Writers Guild of Great Britain argued that 'the devolved administration in Wales should not be prevented from exercising responsibility for broadcasting and the media. The DCMS should relinquish responsibility for S4C to the Welsh Government along with the £7 million budget, ring-fenced into the future.'

The Broadcasting Entertainment Cinematograph and Theatre Union believed 'that S4C should be an autonomous, Welsh-run, organisation, accountable to audiences and institutions within Wales.'

In his evidence, Professor Thomas O'Malley stated that 'to strengthen the media in Wales it is necessary to bolster the powers and role of public authorities in this area. They should be held democratically accountable to the electorate and have no remit to interfere in programming, but they should have powers to intervene in the market in the interests of sustaining a plural and diverse communications environment in Wales.'

Box 5.7: 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 to follow]

Assessment

- 5.4.9 Both the Welsh Government and UK Government agree that neither wants to see broadcasting as a whole devolved. They cite the importance of broadcasting to a common cultural citizenship across the United Kingdom.
- 5.4.10 However, most of our evidence suggests that the National Assembly for Wales and the Welsh Government should take an enhanced role in broadcasting. In this, the evidence is broadly in accord ~~corresponds~~ with the analysis of the Richard and Calman Commissions. ~~The clear interest that they have in broadcasting could be reflected by broadcasters delivering Wales-specific material regularly reporting to the National Assembly for Wales on performance. However, broadcasters should not be accountable on matters of content or editorial decisions.~~
- 5.4.11 ~~We also note the role of commercial television and radio broadcasters, including the ITV Wales franchise.~~
- 5.4.12 In the light of the evidence we have received, our view is that public service 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. However, editorial independence must not be endangered in any way, and broadcasters should not be accountable on matters of content.
- 5.4.13 In addition to public service broadcasting, we also note the role of commercial television and radio broadcasters, including the ITV Wales franchise.
- 5.4.14
- 5.4.15
- 5.4.16 In terms of our devolution principles, we do not believe that there there appears to be no good is a 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. Some evidence advocated the federalisation of Ofcom. ~~We note that some evidence advocated a federalisation of the BBC and Ofcom. While this does not appear to be the majority view in Wales, the Welsh element of BBC governance should be strengthened.~~

- 5.4.17 We acknowledge that Ofcom through its office in Wales and the Advisory Committee for Wales does take account of~~consider~~ the views and comments of the Welsh public and stakeholders in the development of Ofcom policies at a United Kingdom level. Some evidence advocated the federalisation of Ofcom. However, we believe that Welsh views could be strengthened further by ensuring that Wales is represented on the Ofcom board. This should be through either a specific Board member for Wales or by designating responsibility for Wales to an existing Board member's portfolio.
- 5.4.18 ~~Some evidence advocated a federalisation of the BBC. While this does not appear to be the majority view in Wales, the Welsh element of BBC governance should be strengthened.~~
- 5.4.19
- 5.4.20 ~~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. There is also an argument by some that the Welsh Government should have more of a role to play in appointments to the S4C Authority.~~
- 5.4.21 ~~A number of respondents drew the link between the powers the National Assembly for Wales has over Welsh language and issues surrounding broadcasting, such as the granting of regional commercial radio licences in Wales and concerns that Welsh language content is being marginalised.~~
- 5.4.22 There has been an on-going issue since the Richard Commission 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 National Assembly for Wales. In the case of public service broadcasters, we believe that this can best be addressed by improving governance and intergovernmental cooperation.
- 5.4.23 Some evidence advocated a federalisation of the BBC. While this does not appear to be the majority view in Wales, the Welsh element of BBC governance should be strengthened. The Welsh Government, amongst others, argued 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.
- 5.4.24 Given the unique importance of the BBC outputs in Wales, we also believe that the UK Government should also make provision for~~introduce~~ a devolved Trust (replacing the Wales Audience Council) within the UK Trust framework, with responsibility for oversight and scrutiny of the policy, content and allocation of resources in Wales. A similar arrangement should be made if the BBC Trust is replaced in the future by a different governance arrangement.
- 5.4.25 ~~More generally on broadcasting in Wales, in the light of the evidence we have received our view is that public service 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. There is also an argument by some that the Welsh Government should have more of a role to play in appointments to the S4C Authority. We believe that the appointments to the Authority should only be made with Welsh Government agreement.

5.4.26

5.4.27 ~~Finally it is anomalous if~~ In terms of our devolution principles, it is anomalous - that the power to fund S4C public service broadcasting lies with the UK Government rather than the Welsh Government. We do not believe that 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 the Department for Culture, Media and Sport to the BBC. However, it is not clear what will happen to funding 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 Department for Culture, Media and Sport budget and associated administration costs with little financial risk to the Welsh Government. We recognise that it would be important to retain the current regulatory arrangements including the arms length independence of S4C : editorial independence must not be imperilled.

5.4.28 We also believe that public service broadcasters of specific content to Wales should be accountable to the National Assembly for Wales in the same way as they are at a UK level to Parliament. For example, they should provide an annual report on performance to the National Assembly for Wales, including more transparent data on trends in Welsh broadcasting output. However, editorial independence must not be endangered in any way, and broadcasters should not be accountable on matters of content.

5.4.29 In addition to public service broadcasting, we also note the role of commercial television and radio broadcasters, including the ITV Wales franchise. A number of respondents drew the link between the powers the National Assembly for Wales has over Welsh language and issues surrounding broadcasting, such as the granting of regional commercial radio licences in Wales and concerns that Welsh language content is being marginalised.

Costs

5.4.30 In its evidence, the Welsh Government states that if devolution ~~were~~ to be proposed then a detailed analysis would need to be undertaken of every element of the Department for Culture, Media and Sport's role in relation to S4C. This includes the likely administrative costs for appointing Members to the S4C Authority as well as receiving S4C's Annual Report and the obligations involved with this. The Welsh Government also refers to the statutory duty of the Secretary of State for Culture, Media and Sport under the Broadcasting Act 1990 (as amended by the Public Bodies Act 2011) to ensure that S4C receives a "sufficient" amount to enable it to fulfil its remit and provide its public services. This duty would need to be taken into account if any transfer of grant were to be proposed in future.

5.4.31 The UK Government ~~told us~~ states that the Department for Culture, Media and Sport will maintain S4C's £6.787million funding into 2015/16. It notes that there are currently no plans or estimates in place for what will happen to S4C's exchequer funding should the decision be taken to devolve this responsibility to the Welsh Government.

5.4.32 To conclude on costs, while we recognise the need for further work on the details, we do not think that our recommendations involve material additional costs, provided there is a fair transfer of the public expenditure element of S4C funding (with clarity on the future non- public expenditure funding framework) and associated DCMS administration costs.

Recommendations

- R.12 The regulation of broadcasting ~~or press regulation~~ should remain the responsibility of the UK Government.
- R.13 In relation to the BBC, ~~we recommend:~~
- ~~t~~The creation of a devolved governance body (replacing the Wales Audience Council) within the UK Trust framework with powers to provide oversight and scrutiny of BBC outputs in Wales; and
 - ~~that the~~ appointment of the representative of Wales to the overall BBC governance body (currently the BBC Trust) should be by formal agreement between the Welsh and UK Governments;
- R.16 In relation to S4C, ~~we recommend:~~
- ~~that, w~~Within ~~thea~~ framework that the bulk of funding should continue to be met from the licence fee, responsibility for funding the public expenditure element of S4C should be devolved to the National Assembly for Wales; and
 - in the meantime the appointment of the S4C Authority members by the UK Government should require Welsh Government agreement;
- R.17 The interests of Wales should be represented on the Ofcom board either through a specific board member for Wales or by designating responsibility for Wales to an existing Board member's portfolio; and
- R.18 Public service 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

Current position

5.5.1 Education and training are devolved in Wales. ~~So as such,~~ the Welsh Government is responsible for setting the initial teacher training intake targets, ~~teaching~~ standards and appraisal arrangements for teachers in Wales and ~~for~~ the provision of funding. ~~for local authorities.~~

5.5.2 ~~P~~The statutory pay and conditions for teachers ~~are~~ not ~~in~~ devolved. Under the Education Act 2002, pay and conditions for teachers in England and Wales ~~are~~ a matter ~~s~~ for the ~~UK Government's~~ Secretary of State for Education.

5.5.3 Changes to teachers' pay and conditions in maintained schools are made through a referral by the Secretary of State to the independent School Teachers' Review Body (SRTB). The Secretary of State's evidence to that body applies to both England and Wales. The Welsh Government can however submit its own evidence to the SRTB on the potential consequences for Wales, as it did in 2012.

Box 5.8: Evidence on Teachers' Pay

In its evidence the UK Government stated that *'the school systems in the two countries are diverging at a growing rate, and it could be argued that devolving the pay and conditions of teachers in Wales is a logical consequence of deregulating teachers' pay and conditions in England and should be explored'*.

'The Secretary of State is responsible for a single pension scheme covering teachers and lecturers in England and Wales. The UK Government has set out the proposed scheme design for the TPS, which will be implemented in April 2015. As part of these reforms, the Government has expressed its belief that no further reform to public service pensions should be necessary for the next 25 years, hopefully longer.'

The Wales Trade Union Congress highlighted that *'in our evidence to the Welsh Government Green Paper consultation on Working Together for Wales: The Public Sector Workforce in July 2012, we reiterated the commitment made by the Labour Party in their manifesto for the 2011 elections when they stated that 'In valuing the stability and equity that comes from national pay bargaining we will do whatever we can to try and protect the link between teachers' pay and conditions in Wales and those of their colleagues elsewhere in the UK'. This is particularly pertinent in view of the current policies being pursued to undermine teacher's pay and conditions by the UK Government.'*

Assessment

5.5.4 In general under devolution where the policy area of responsibility is devolved, pay of public sector workers in that area is also devolved. However, in the case of health, the Welsh Government has voluntarily agreed to be part of a United Kingdom-wide approach, even though pay is devolved. Pensions for health workers are not devolved.

5.5.5 Teachers' pay and pensions are devolved in Scotland and Northern Ireland, so it is rather anomalous that teachers' pay is not devolved in Wales. Therefore, we believe suggest that it should be devolved.

5.5.6 There are arguments for and against aligning public and private sector pay in Wales, but if teachers' pay were devolved this would be a policy choice for the Welsh Government, which at the moment must fund pay decisions taken by the UK Government.

5.5.7 There is a much stronger case for maintaining England and Wales arrangements for pensions; as public sector pensions have recently undergone long-term reform, and it is important not in order to discourage continued cross border movement of teachers because of pension concerns.

We do not therefore believe that teachers' pensions should be devolved at the present time.

Recommendation

- Teachers' pay and conditions should be devolved. Responsibility for pensions should remain with the UK Government.

5.6 BUILDING REGULATIONS

Current position

5.6.1 At present, under the Building Act 1984, most executive functions including the power to make building regulations, are devolved to Welsh Ministers. Functions related to excepted energy buildings or exercisable by the Secretary of State as a Crown authority under the Building Act are not devolved. Legislative competence in respect of provisions in the Building Act is also not devolved.

Box 5.9: Evidence on building regulations

The UK Government stated that *'in respect of excepted energy buildings and the transposition of EU Directives, the boundary of the settlement is complex and difficult to work in practice. The current boundary means that excepted energy buildings in Wales must comply with the building regulations which apply to England. This means that building control bodies (local authorities and approved inspectors) in Wales need to use the building regulations applying in England in relation to excepted energy buildings (which is likely to impact on a small amount of their work).'*

'At present Welsh Ministers are not designated to use the European Communities Act (ECA) 1972 to transpose Directives concerning matters that relate to building regulations. The European Communities (Designation) Order 2008 (S.I. 2008/301) designated the Secretary of State (and any Northern Ireland department) with powers to legislate in relation to measures relating to the environment, which covers energy performance of building matters. The designation does not extend to Welsh Ministers. This means that for environment or energy performance matters where we rely on the ECA 1972, the Secretary of State legislates for Wales. For example, when recently transposing the Energy Performance of Buildings Directive (recast) 2010/31/EU, the UK Government had to include within the building regulations applying in England provisions which would also apply to the buildings of statutory undertakers and Crown buildings in Wales, as Welsh Ministers do not have powers to legislate for these. This is confusing for the Crown and statutory undertakers and also for building control bodies operating in Wales.'

'The Commission may wish to consider whether there is a need for categories of buildings to be excepted from the competence of Welsh Ministers, and whether Welsh Ministers should be able to make building regulations in respect of all buildings in Wales.'

Assessment

- 5.6.2 We have heard that the current position is complex and operationally difficult in practice.
- 5.6.3 There appears to be no principled reason for the current exception and there would be simplification benefits from removing the exception. We therefore believe that the exception should be removed and Welsh Ministers should be able to make building regulations on all buildings in Wales.

Recommendation

- Welsh Ministers should be able to make building regulations in respect of all buildings in Wales. The exception to the devolution of building regulation relating to energy regulations should be removed

5.7 HIGHER EDUCATION AND RESEARCH INCLUDING SCIENCE

Current position

- 5.7.1 Higher Education is a devolved responsibility, but Science policy and funding is only partly devolved. Consequently [Higher Education Institutions \(HEIs\)](#) are funded partly through the [Higher Education Funding Council for Wales \(HEFCW\)](#), partly by UK wide bodies and, to a [significant large extent](#), through student fees. Thus the position is [quite](#) -complicated, [with](#) [Higher Education being](#) [an](#) [leading](#) example of a sector whose funding is from several different sources, some devolved and others not.
- 5.7.2 [Higher Education](#) funding policy, especially funding for teaching, has developed along significantly different lines in the countries of the [United Kingdom](#). A number of sector-wide bodies ([for example, e.g.](#) the [Quality Assessment Authority](#)); operate across the [United Kingdom and need to](#) [but](#) respond as appropriate [to the circumstances and policies of](#) the different countries [and their governments](#).

Box 5.12: Evidence on Higher Education and Science

The UK Government said: 'Higher Education (HE) is devolved and Higher Education institutions operate as independent entities in Wales, overseen by the Higher Education Funding Council for Wales (HEFCW). Science and research policy is complex, with key elements non-devolved but some aspects devolved. Specifically Research Councils are non-devolved and operate throughout the UK. University research (where part of HEI policy) is devolved. Welsh Ministers are able to fund and carry out any type of medical research by virtue of paragraph 13 of Schedule 1 to the NHS (Wales) Act 2006.'

The Welsh Government said: 'Education and the Welsh Language should continue to be matters for the Assembly's legislative competence, although the two Exceptions to the existing legislative competence in Schedule 7 relating to the Research Councils, and the use of the Welsh language in the courts should become matters Reserved to Westminster.'

Higher Education Wales said there should be: 'a more structured approach to intergovernmental relations, with regular meetings between ministers responsible for HE from the UK Government and devolved governments - to ensure all relevant parties are aware of developments under discussion, and the potential impact of these; a greater clarity at the UK Government level about the interaction between devolved and non-devolved policy areas and the impact on universities.'

Professor John Harries said: 'My experience as CSA for Wales has been that devolution is beneficial to Wales. However, where communications and interactions between the DAs and the UKG are needed to make the devolution settlement work, then there is some evidence, - reported by several bodies (eg UUK, and Higher Education Wales, HEW), that these links need more care and attention, and better mechanisms should be set up. For science it is reasonable to expect that the CSAs in Whitehall, Edinburgh and Cardiff would take a central role in making these interactions work'

Assessment

- 5.7.3 The Higher Education systems in England and Wales in particular are closely intertwined and our recommendations ~~take account of~~ ~~should acknowledge~~ this.
- 5.7.4 Science is funded partly through the national ~~f~~Funding ~~e~~Councils and partly by a wide range of UK wide bodies, including UK Government departments. These include the six research councils (with ~~the~~ umbrella body ~~Research Councils UK (RCUK)~~. ~~T~~ ~~but~~ ~~also~~ ~~the~~ ~~Technology Strategy Board (TSB)~~, ~~the~~ ~~M~~inistry of Defence ~~M~~oD, ~~the~~ ~~Department of Environment, Farming and Rural Affairs~~ ~~Defra~~ and other UK Government ~~departments~~ ~~bodies~~. ~~European research funding and structural funds are also significant for research.~~
- 5.7.5 ~~In~~ recent years Research Council funding has been linked more strongly than has previously been the case to broad policy objectives ~~relating to in the area of~~ economic development. In addition, the Research Excellence Framework, which is the assessment of the quality of research, conducted periodically on a UK-wide basis and which determines the distribution of funding for research by the Funding Councils, includes an assessment of the 'impact' of research. This has led to a significant inter-relationship between devolved and non-devolved policy- implementation. ~~European research funding is also significant, and in Wales funding through WEF0.~~

5.7.6 ~~We have received little or no evidence in favour of changes to current powers in relation to HE and Science, and we do not recommend any.~~ In the light of the at times complex and interwoven relationships which we have noted and the possibility of policy changes in England, ~~for example,~~ impinging strongly on Wales, we propose that there should be a formal intergovernmental forum committee to ensure mutual understanding of Higher Education and Science policy issues, to provide early information on proposed changes and to promote international competitiveness.

5.7.7 In relation to Science also, we have received little evidence in favour of changes to current arrangements. However, we have received evidence emphasising that Science plays an important part in the development of the Welsh economy (which is of course a devolved responsibility). We recommend that this be taken into account by the UK wide funders of research when establishing their priorities.

5.7.8 We have also heard of the need to ensure that the requirements of Wales, particularly in relation to the economic impact of Science, are better understood by UK government departments. We propose that the major funders of science should establish effective means of communication with the Welsh Government and that this should be a mechanism for a mutual understanding of the needs of Wales in this policy area, while taking account of and in the wider context of the United Kingdom as a whole. The Research Councils should continue to allocate funding on the basis of competitive excellence and it is important that Wales is represented on bodies determining research funding.

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~~We have received evidence emphasising that Science plays an important part in the development of the Welsh economy (which is of course a devolved responsibility) and we recommend that this is taken into account by the UK wide funders of research when establishing their priorities. We recommend that the RC should continue to allocate funding on the basis of competitive excellence. In addition it is important that Wales is represented on research funding bodies.~~

Recommendations

- we recommend that there should be a formal intergovernmental committee to ensure a coherent approach to education and science issues, to promote Welsh international competitiveness.
- ~~The~~ allocation of non-devolved research funding should better reflect Welsh needs ~~the priority given to rebalancing the UK economy~~

5.8 HEALTH

5.8.1 Health is the largest devolved function so we gave it close consideration ~~to~~ this issue.

Current position

5.8.2 Legislative competence has been devolved to the National Assembly for Wales for large aspects of health. This includes the promotion of health, the prevention, treatment and alleviation of disease, illness, injury, disability and mental disorder and the control of disease, family planning, provision of health services (including medical, dental, ophthalmic, pharmaceutical and ancillary services and facilities), clinical governance and standards of health care, and the organisation and funding of National Health Service.

5.8.3 The UK Government retains responsibility in a number of areas, including abortion, human genetics, human fertilisation, human embryology, and surrogacy arrangements, regulation of health professionals, human medicines and medicinal products, including authorisations for use and regulation of prices, standards for, and testing of, biological substances, and welfare foods.

5.8.4 Welsh Ministers also have the power to exercise certain specific functions in non-devolved areas, such as abortion, medicines and mental capacity.

5.8.5 A protocol between the Welsh Government and the Department of Health for cross-border healthcare commissioning was established in 2005. This has been renewed annually or biennially. An updated protocol has recently been published.

Box 5.14: Evidence on Health

In our opinion poll 70 per cent said health should be controlled by the National Assembly for Wales, with 27 per cent in favour of returning responsibility to Westminster, the highest of all devolved areas. In our questionnaires, 64 per cent favoured control by the National Assembly for Wales.

The UK Government stated that 'health is, essentially, a devolved subject, with certain aspects being non devolved where it has made sense to take an UK-wide or GB-wide approach. For historical reasons, the Welsh devolution boundary in regard to health differs from those that apply in relation to Scotland (where some aspects of health professional regulation are devolved) and Northern Ireland (where different legislation applies, for example on abortion).

'The UK Government wants strong co-operation between the NHS in England and the NHS in Wales. A Protocol for Cross-Border Healthcare has been in place for several years. It clarifies arrangements for a patient who lives on one side of the border and is registered with a GP on the other or who receives elective treatment in a hospital.

In its evidence the Welsh Government proposed that 'Health and Health Services should continue to be matters for the Assembly's legislative competence, save that the Exceptions listed under the Health field in Schedule 7 to GoWA 2006 (for example,

Abortion, Human Genetics and related matters, and Xenotransplantation) should generally become matters Reserved to the UK Parliament.'

Professor Malcolm Prowle argued 'that the evidence suggests that the WG has not performed well with regard to the two key public services of schools education and health and a similar situation may exist in relation to other public services. It would be best to concentrate on improving core public services and return to the issue of further devolution of responsibilities towards the end of this decade provided the situation has improved.'

True Wales believed that 'the very best medical expertise and equitable movement of medical staff between England and Wales must be ensured; to achieve this, a means should be found by which all hospital treatment is overseen at a UK level. What is currently a collection of disparate regional services should be restored as a truly National Health Service overseen as a whole by the United Kingdom Parliament.'

Gofal noted that 'The Mental Health (Wales) Measure, the Welsh Government's new mental health and wellbeing strategy Together for Mental Health, and the decision to ring-fence Supporting People funding are all examples of Welsh-specific legislation and policies that benefit the people we support. As a result, we strongly believe that health and social care should remain the responsibility of the National Assembly for Wales.'

The Royal College of Surgeons stated that 'The devolution of healthcare has enabled the Welsh Government to provide a substantially different policy direction in the development of the NHS compared to England. This has presented a number of challenges to healthcare provision given the demographics of Wales, which need to be addressed to improve standards. . A number of powers related to health also currently retained by the UK Government including to medical regulation, medical education, abortion, human genetics, fertility, and xenotransplantation. We believe that these areas should remain the responsibility of the UK Government, who are best placed to address these issues.'

Key facts – to follow

Assessment

- 5.8.6 The evidence we have received suggests that the majority do not favour changes to the current devolved boundaries on health. We note that a number of concerns have been raised about the performance of the Welsh Government on health matters. It is not our function to assess the performance of the Welsh Government in this or any other field. As explained/discussed earlier in the report, we are considering where the power should be held rather than the policy decisions of a particular government.
- 5.8.7 Elsewhere in our report we recommend that there should be improved comparative data across the United Kingdom. This should include, including in the area of health data.

- 5.8.8 ~~W~~~~h~~~~a~~~~n~~~~d~~~~i~~~~t~~~~i~~~~o~~~~n~~~~,~~~~w~~~~e~~ have received evidence on where the responsibility should lie for the regulation of health professionals. We believe that the regulation of health professionals should be maintained at a United Kingdom-wide level to ensure that regulation is applied consistently across the four nations.
- 5.8.9 ~~O~~~~u~~~~r~~~~p~~~~r~~~~i~~~~n~~~~c~~~~i~~~~p~~~~a~~~~l~~~~c~~~~o~~~~n~~~~c~~~~e~~~~r~~~~n~~~~i~~~~n~~~~t~~~~h~~~~e~~~~a~~~~r~~~~e~~~~a~~~~o~~~~f~~~~h~~~~e~~~~a~~~~l~~~~t~~~~h~~~~i~~~~s~~~~h~~~~o~~~~w~~~~e~~~~v~~~~e~~~~r~~~~,~~~~w~~~~e~~~~a~~~~r~~~~e~~~~c~~~~o~~~~n~~~~c~~~~e~~~~r~~~~n~~~~e~~~~d~~~~t~~~~h~~~~a~~~~t~~~~t~~~~h~~~~e~~~~r~~~~e~~~~a~~~~r~~~~e~~~~o~~~~n~~~~g~~~~o~~~~i~~~~n~~~~g~~~~i~~~~s~~~~s~~~~u~~~~e~~~~s~~~~i~~~~n~~~~r~~~~e~~~~l~~~~a~~~~t~~~~i~~~~o~~~~n~~~~t~~~~o~~ access to treatment for patients near the border between Wales and England. We believe in principle that patients should be entitled to treatment where it is most convenient to them, and that the administrative boundary should never result in inferior treatment for patients.
- 5.8.10 We welcome the overarching protocol that has been established by the two governments on cross border healthcare. However, we believe that the current arrangements should be strengthened by developing individual protocols between each border Local Health Board in Wales and its neighbouring equivalent NHS Trust in England.
- 5.8.11 We have also heard evidence that there is scope for the Welsh and English health services to work more closely together to develop a better joint strategies including for supplying specialist services and maximising joint efficiency savings. This is something clearly in the interest of patients.

Recommendations

R.xx There should be no change to the devolution boundary on health including non devolved areas such as UK wide regulation of health professionals;

R.xx There should be equitable cross border access for patients. This should be delivered through:

- a. ~~r~~Regular review of the UK Government and Welsh Government protocol on cross-border healthcare;
- b. ~~i~~ndividual protocols ~~should be developed~~ between each border Local Health Board in Wales and neighbouring and NHS Trusts ~~in Wales and in~~ England;
- c. ~~there should be~~ a cooperative and coherent approach to joint delivery of health services, particularly highly specialist facilities, and joint efficiency savings.

5.9 SOCIAL SECURITY

5.9.1 Social security, including the welfare state and benefits system, is the largest non-devolved function. ~~so w~~~~e~~ therefore ~~co~~similarly ~~con~~sidered this area carefully.

Current position

5.9.2 Legislative competence for social welfare is devolved to the National Assembly. This includes the protection and well-being of children and young people; care of children, young adults, vulnerable and older persons; and badges for display on motor vehicles used by disabled persons. Some benefits have already been devolved to the National Assembly such as council tax benefit and the social fund.

5.9.3

5.9.4 The more [wide-ranging substantive](#) subjects relating to social welfare are not devolved. These include employment law and relations, social security, child support and occupational and state pensions. [Functions relating to these subjects are exercised by the UK Government on a Great Britain-wide basis, and the UK Parliament exercises legislative competence at the Great Britain-level.](#)

5.9.5

~~Functions relating to these subjects are exercised by the UK Government on a Great Britain-wide basis, and the UK Parliament exercises legislative competence at the Great Britain-level.~~

5.9.6 The social security system is not devolved in Scotland. Whilst the social security system is devolved in Northern Ireland, in practice [Northern Ireland](#) they operates in parallel [with Great Britain](#) under the *parity principle*. The parity principle argues that as people across the [United Kingdom](#) pay consistent rates of National Insurance (NI) and non-devolved taxation, they should be entitled to consistent rights and benefits.

Box 5.15: Evidence on Social Security

Our opinion poll found that 51 per cent thought that the National Assembly for Wales should control the welfare and benefit system.

The UK Government argued that *'there are also good practical and administrative reasons why welfare benefits are, and should continue to be, broadly aligned throughout the UK, and are best operated on a common basis throughout GB:*

- *Entitlement to many benefits is transferable throughout the UK. For all practical purposes, actions, evidence and decisions made in one part of the UK are accepted in another part of the UK;*
- *The UK Government has negotiated a series of reciprocal arrangements with other countries which allows each other's citizens to have access to the host state's benefit systems based on entitlement earned in the other state. In addition, certain benefits can be "exported" within the European Union under EC Regulation 1408/71. This would be greatly complicated without parity; and*
- *services are delivered more efficiently and effectively at the national level, and there are economies of scale in sharing the IT infrastructure used to calculate and pay NI benefits.*

For these reasons, we believe that responsibility for State Pensions and most welfare benefits should continue to be non-devolved.'

The Welsh Government stated that *'while it would in theory be possible to devolve responsibility for Social Security (including Child Support and Pensions) to the Assembly and Welsh Government (as is the case in Northern Ireland), the Welsh Government would not support such a proposition, for two reasons. First, any such move could expose the Welsh Government to unmanageable budgetary risks, and as we said earlier, our approach to the issues requires that we do not lightly enter into new commitments having such potentially damaging financial consequences. Secondly, we believe that the pooling of risks and responsibilities across the countries of the United Kingdom, so securing a common level of social protection for all our citizens, is fundamental to that continuation of the UK to which we are committed. The Welsh Government is clear, therefore, that Social Security is a matter that should be Reserved to Westminster.'*

The Bevan Foundation highlighted the risks of devolving social security, stating *'financial constraints and the current process of reform of social security benefits make devolution of almost all aspects of the benefit system virtually impossible in the short to medium term'*

SNAP Cymru raised concerns over changes to welfare currently being implemented by the Department of Work and Pensions.

Community Housing Cymru also raised similar issues about current welfare reform and believes that the Welsh Government should be given the same powers over welfare as are currently held by the Northern Ireland executive. It stated that *'the Welfare Reform Act 2012, which introduces huge changes to the welfare system, will have a disproportionate effect on people in Wales, and in Northern Ireland we have seen a divergence in policy, which will serve the people of Northern Ireland more effectively than the proposals as set out in the Act.'* Highlighting that housing policy is devolved and welfare policy is non-devolved, they believe *'welfare policy and a reform agenda are placing huge strains on housing associations, local authorities, and their tenants'*.

The Church in Wales called for greater devolved control, with resources accompanying. It argued that *'it is an ongoing problem that benefit levels are set by UK, but services are provided locally. Tackling poverty etc is thus made more difficult. Local Authorities are under strain due to central government policies – for example, having the duty to house people made homeless by government policies (such as how Housing Benefit/rent is paid). The Assembly finds it difficult to plan spending, house building, etc because Westminster is in charge. WG must administer UK policies it has no influence over.'*

The UK Changing Union Partnership drew attention to the recent transfer to the Welsh Government of certain social welfare functions which they felt showed the danger of devolving functions without consultation or accompanying resources. They supported non devolution of social security.

The Parliament for Wales Campaign called for the devolution of the social security system at least on the basis of subsidiarity with flexibility and innovation for minor payments including dental and optical policy and payments, winter fuel payments, furniture and other minor allowances. It recommends that Job creation policy and funding, including grants for disabled employment be devolved as are other functions of education and training as schemes in Wales. It proposed that employment transfer could mitigate austerity effects if social security to clients in Wales were made in Wales.

The Wales Council for Voluntary Action noted that *'the way in which the devolution of both council tax benefit and the social fund has been approached recently has led to serious concerns from many organisations about inter-governmental relations and the decisions about how and when policy areas are devolved. These decisions seem to have been made on very short timescales, with limited dialogue between governments and without full consideration of the impact on vulnerable people. Whilst we are not making a comment on the devolution of the policy areas themselves, we strongly feel that more consideration should have been given to the financing, timing and implementation of any new systems in Wales. The absence of timely communication and, possibly, respect between governments in this area has the potential to have a detrimental effect on some of Wales' most vulnerable people.'*

Key facts – to follow

Assessment

- 5.9.7 The social security system plays a very important highly important role in Wales so who controls it is vitaly important significant. Whilst the Welsh Government points to the financial risks involved in the devolution of social security, the fact that it is devolved in Northern Ireland shows it is possible to devolve without undue risks. Nevertheless, it was apparent from the discussions we had when we visited Northern Ireland that the parity principle meant there was little benefit in practice to Northern Ireland from devolution.
- 5.9.8 The Calman Commission emphasishighlighted that the social security system and the pooling of risk and redistribution which goes with it forms a vital part of the social union, which underpins and complements the United Kingdom's economic and monetary union. Further details about the Social Union can be found in box 5.16 below.

Box 5.16: The Social Union

Wales forms part of a social as well as economic union with the rest of the United Kingdom.

As the Calman Commission stated 'there are many social ties that bind the UK together: family, professional, cultural. But there are also some common expectations about social welfare. Social security payments are available and are paid on the same basis to people across the country, according to their needs. This principle of fairness should not be undermined, though some benefits may be

administered locally where they intersect with devolved policies like housing'.⁵

5.9.9 We ~~therefore~~ do not recommend devolution of the social security system. It is an important part of the United Kingdom's social and economic union and it ~~which~~ brings substantial advantages to the people of Wales.

5.9.10 We heard when we visited Scotland that there is a growing debate, such as that conducted by Reform Scotland, around devolving part of the social security system to achieve a more joined up approach to tackling poverty. We believe that 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.

5.9.11 Some individual benefits have already been devolved: in particular, ~~such a~~ ~~cs~~ Council tax benefit and the social fund. While there could potentially be a case for going further at some point in the future where there is a good fit with devolved policies, ~~such as housing benefit and attendance allowance;~~ the complications may outweigh any benefits.

5.9.12 If major reforms such as universal credit (non devolved) and care for the elderly (part devolved) are to be successful in Wales, there should be close and early consultation between the two Governments and key stakeholders to ensure Welsh interests are taken into account.

Recommendation

- Given the importance of the social union for Wales:
 - a. the social security system should remain non-devolved in Wales;
 - b. developments in other parts of the United Kingdom, including Northern Ireland and Scotland, should continue to be monitored. If parts of the social security system were to be devolved in Scotland at a future date, any implications for Wales should be considered at that time.

5.14 FAMILY WELFARE ISSUES

Current position

5.14.1 Social welfare and the safeguarding of children requires cross-agency working and are made more complex because of the boundary between what is devolved and what is not. At present, the National Assembly has competence in the field of Social Welfare, including the protection and well-being of children and young people. Cafcass Cymru, which provides expert independent advice to Courts on the interests of children involved in family proceedings, is accountable to Welsh Ministers.

5.14.2 However, family justice, including the family courts system, is non-devolved, with the UK Government responsible for the criminal justice system in Wales.

⁵ The Calman report developed the concept of a social union.

Box 5.17: Evidence on Welfare Issues

The UK Government stated that *'both the private and public family justice system in Wales works well, with good cooperation between devolved and non-devolved partners, for example Cafcass Cymru and HMCTS Wales. The Family Justice Network, established by the Welsh Government, brings together the key players within the family justice system in Wales to improve services and outcomes for children and families in Wales. The Network has the same remit as the Family Justice Board and compliments the work of the Board by ensuring that it takes full account of Welsh perspectives on non-devolved family justice issues. Four Local Family Justice Boards in Wales bring together the key players at a local level to improve the delivery of family justice. Current arrangements already allow integration between the activities of public bodies engaged in the protection of children to take place.'*

'We propose that we maintain the current system, that is, the vast majority of family law policy is not devolved. Her Majesty's Courts and Tribunal Service (HMCTS) and the judiciary act across England and Wales as a single jurisdiction. If policy on children's family law was devolved then, over time, HMCTS would find themselves needing to operate different laws in England and Wales. The elements of family law which are devolved relate to local authority practice and Cafcass. In England, Cafcass is an NDPB, whereas Cafcass Cymru is part of the Welsh Government. In practice, the two organisations operate in a similar manner because of the requirements of the courts.'

In its evidence the Welsh Government noted that *'the Assembly already has significant legislative competence in the field of Social Welfare, and these powers should be built upon under a Reserved powers model. The Welsh Government wishes to ensure that the Assembly will 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). We do not seek powers for predominantly private law aspects of family relationships. One way of expressing this might be to Reserve to Westminster legislative responsibility for the formation and dissolution of marriages and civil partnerships, allocation of legal parentage and consequential matters, including distribution of property and post-separation parenting arrangements; and wills and intestacy. Remaining family matters could be within the Assembly's legislative competence.'*

The views of the Children's Commissioner and Older People's Commissioner were *'whilst much provision is already devolved, some additional transfer is needed especially in the areas of safeguarding, adoption, fostering, and managing the process of entering and leaving care.'*

Assessment

5.14.3 This is a complex area of the Welsh devolution settlement. The approach set out by the Welsh Government has merit in terms of our principles, including coherence, whilst recognising key UK Government interests.

5.14.4 There may also be scope to learn from Scotland. For example, the Care Inspectorate (formally known as Social Care and Social Work Improvement Scotland) was set up in April 2011 by the [Scottish Government](#) as a single regulatory body for [social work and social care services](#), including child protection and the integration of children's services.

5.14.5 We suggest that the two Governments should work together to reduce the complexity of the present system. They should draw on the experience in Scotland. Co-operation between [the two both](#) Governments in this area should be based broadly on the principle proposed by the Welsh Government that the National Assembly for Wales 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.

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 National Assembly for Wales should ~~continue to~~ be able to legislate in relation to the powers and responsibilities of public authorities in connection with vulnerable adults and children.

5.15 CONCLUSIONS

5.15.1 On economic powers, no major changes are proposed but there is scope for making the existing devolution settlement work more effectively to improve the performance of the Welsh economy.

5.15.2 On transport we recommend devolving powers on rail, ports, bus and taxi regulation, speed and drink drive limits to create a simpler more coherent settlement.

5.15.3 On broadcasting, we recommend devolving powers over S4C and improvements to the governance of the BBC.

5.15.4 We also recommend a range of other changes in respect of teachers' pay, building regulations, higher education and science, health, social security and welfare issues, although none involves fundamental changes to the existing devolution settlement.

5.15.5 In the next chapter, we discuss what changes within the settlement should be made in the area of natural resources.