

JUSTICE SYSTEM

- a. The justice system is a shorthand term for something very complex
- b. Criminal justice can be distinguished from civil justice
- c. In criminal justice, there are a number of stages: the determination by the legislature of what is a crime; the deterrence and prevention of crime; the detection of offences; the prosecution of offenders; the determination of guilt; the imposition of penalties (ranging from on-the-spot fines to life imprisonment); the treatment of offenders; the system of appeals
- d. Civil justice is the way by which disputes between persons are determined. It is dependent partly on statute, but also on principles such as tort
- e. There is also administrative law, governing the way in which public bodies work
- f. On criminal justice, we believe that the NAW should have responsibility in the areas that are closest to the community
- g. So we have argued for the devolution of policing, while ensuring that there remains co-operation in dealing with serious crime
- h. We also believe the treatment and rehabilitation of youth offenders should be executive devolved to Welsh Ministers;
- i. In due course, the treatment and rehabilitation of adult offenders, including probation and prisons, should also be devolved to the National Assembly for Wales, with the recognition that there will need to be cross border cooperation on prisons, and that serious offenders may need to be dealt with on a Wales and England basis;
- j. Prosecution of offenders is not just a matter for the CPS, but once policing has been devolved, the case for devolving other aspects of the prosecution of offenders should be considered, including the CPS;
- k. So far as the criminal courts are concerned, below the High Court, justice is already administered in Wales by Welsh courts with Welsh judges and magistrates
- l. High court judges should only be appointed to sit in Wales in criminal cases if they satisfy the Lord Chief Justice that they understand the distinctness of Wales
- m. Judges who understand the distinctness of Wales should also be involved in criminal cases that are heard in the Court of Appeal
- n. Welsh-domiciled defendants or appellants who wish to use the Welsh language should be able to do so, wherever the case is heard
- o. Some Wales only laws already carry criminal penalties, and our proposals will allow the creation of others. The criminal law has been devolved in Scotland and Northern Ireland. However, we do not recommend the devolution of the criminal law of England and Wales generally so that the law of theft or of offences against the person will remain the same in England and Wales. But we expect that a wider debate on these issues will emerge over time

- p. It will be important to ensure that the reserved powers model does not inadvertently remove criminal law powers from the NAW
- q. The NAW already has wide legislative powers in the civil law area, but it will be important to protect the single economic market by ensuring that fundamental principles of civil law remain the same in Wales as in England – this includes contract and tort.
- r. Other areas of civil and administrative law and procedure should remain the same as in England, including matrimonial, inheritance and property law
- s. Again, it will be important to ensure that the reserved powers model does not inadvertently remove powers from the NAW
- t. Our recommendations l, m and n *mutatis mutandis* should also apply to civil cases
- u. There should be a Welsh judge on the UK Supreme Court
- v. Welsh Ministers should continue to have executive competence on tribunals in devolved areas of policy; and there should be great clarity in the relationship between devolved and non devolved tribunals
- w. Legal aid should not be devolved at the present time, although the UK Government should fully consult the Welsh Government and other key stakeholders to ensure that the operation of the legal aid system reflects Welsh circumstances
- x. Welsh Ministers should be able to propose law reform projects to the Law Commission on a similar basis to UK Government Ministers
- y. There should be improved access to all legislation in areas of devolved powers through publication of a consolidated body of legislation
- z. There should be a periodic report by the Lord Chancellor to the Assembly on how access to justice is improving in Wales.
- aa. On the question of a separate jurisdiction, the courts will increasingly need to deal with laws made in Wales and applying only in Wales. In due course, a separate Welsh jurisdiction in terms of separate courts and judiciary may develop, but for the time being we are recommending that distinctive Welsh provision in the court system should be strengthened.