

**Commission meeting with Secretary of State for Wales
11 July 2013**

The following points were made in conversation:

- The Secretary of State thanked the Commission for its work, and agreed that this meeting would be private and informal, with no note to be published. He [emphasised that the Commission should come to its own conclusions and that he did not in any way seek to direct the Commission.](#)
- [He explained that](#) HM Government had hoped to respond to the Commission's first report, but a couple of issues required further discussion, and therefore a response would come after the summer recess.
- On the capacity of the National Assembly and civil service in Wales, both currently and in the future, the Secretary of State noted that the Commission would be meeting Sir Bob Kerlake later. He felt the Members of the National Assembly could do more work, with their working weeks markedly shorter than those of Members of Parliament. He was surprised that the National Assembly had not amended its Standing Orders after it [had](#) acquired increased law-making powers. The Commission could raise this with the Assembly Commission, [but he noted given](#) that the structure of the Assembly was beyond [the Commission on Devolution's](#) terms of reference.
- On how Whitehall currently handled consideration of devolution, the Secretary of State noted that the unified civil service encouraged contact between officials of the UK Government and Scottish and Welsh Governments, and provided Wales with guaranteed a highly professional, impartial civil service. Day-to-day, it should be recalled that Whitehall was vast, and Wales relatively small. Mistakes could therefore occur, but there are many areas of very good working, such as on the Armed Forces Covenant.
- Asked whether there was a cultural or structural issue within Whitehall, [\(it being noted that with](#) the territorial extent of responsibilities [of Whitehall departments varied considerably\)ing](#), the Secretary of State felt it was more cultural, and that Wales was not being ignored deliberately. The Wales Office had a key role in encouraging Whitehall to [remember](#) Wales, and [in](#) building links between the Welsh Government and UK Government departments.
- Asked whether, given the greater economic and social links referred to by [him the Secretary of State](#) in his recent Wales Governance Centre Speech, Wales was thought of more than Scotland, the Secretary of State felt that was not the case and that that Whitehall could sometimes consider Wales's boundary as being more significant than it was in reality.
- On the role of the Secretary of State, he [strongly](#) agreed with previous Secretaries of State that it was very helpful to have a Welsh voice around the Cabinet table, and that the Wales Office was very effective at building strong inter-personal relations across Whitehall.
- On the ability to participate in the National Assembly's proceedings, the Secretary of State felt it did no harm and could do some good, as he could envisage using it in some situations, such as in debates which touch on non-devolved matters.

- On the annual Queen's Speech debate, it was felt it was useful, particularly in allowing elected representatives to make representations to him, but the continued significance was questioned at his recent appearance before the National Assembly, and it would be up to them if they should wish to end the arrangement.
- On his specific powers to intervene on devolved decisions on water, the Secretary of State recognised that water could be an emotive issue. ~~He, and~~ mentioned that English residents served by Welsh water companies did not ~~returning~~ Members to the National Assembly ~~and so had~~ have no ability to affect policy-making. ~~H, and~~ his role provided a safeguard – as his predecessors had felt. The Commission was invited to consider alternative solutions. In a further discussion on water and whether the boundary for responsibility over water should follow the border, the Secretary of State mentioned the argument of democratic deficit, and the possible complication for water suppliers if they operated under a different regime either side of the border. ~~However, he and~~ encouraged the Commission to consider this matter. The rationale for why sewerage had been 'undevolved' was not recalled, and a response would be provided on that point.
- He felt any suggestion of a single Secretary of State for the territorial offices would be seen as colonial and offensive to Wales, whose interests often did not align with Scotland's or Northern Ireland's.
- On whether there should be a more formal underpinning of the inter-governmental relationship, the Secretary of State noted there were Devolution Guidance Notes, agreed and updated as necessary, ~~and~~ that the Wales Office was copied into all inter-governmental correspondence. ~~He also, and~~ stressed the importance of personal relationships, with him and the First Minister speaking by telephone when matters arose. Problems could arise when these structures were not abided by.
- On inter-parliamentary relations, the Secretary of State agreed that the relationship between MPs and AMs could be enhanced, with personal relationships key once again. The Welsh Affairs Committee had an important role in this, particularly in providing intelligence of what is on the National Assembly's radar. The Commonwealth Parliamentary Association was also helpful.
- On the model of devolution, the Secretary of State noted that changing one model (which had been chosen by the previous UK Government and Welsh Assembly Government) for the other would not rule out Supreme Court referrals, and ~~sh~~would not be seen as a panacea. The example of the Agricultural Wages Board dispute could still arise with a reserved powers model, for example. He mentioned that it would be for the Commission to decide whether this issue would be within their Terms of Reference, and noted the current arrangements served Wales well, given the effective absorption of Wales into England following its conquest, rather than the treaties of union with Scotland.
- He suggested that the alignment of executive and legislative powers would depend on the issue, with civil contingencies an example of where executive

and legislative powers need not align, though this was an issue that he had not considered in depth.

- The Secretary of State encouraged the Commission to consider transport carefully, noting it was largely non-devolved, such as ports and rail infrastructure. There were some concerns over the two major trans-European routes in Wales, ~~neither of which were felt to be adequate~~. Improvements were required on the routes near Fishguard and Holyhead; and, while the UK Government was ~~responsible~~ ~~could be responsive~~ to the EU ~~for these routes, on them~~, it had no ~~control over~~ ~~responsibility for~~ improvements, ~~which were for the Welsh Government~~. Additionally, the Welsh Government could not improve the M4 satisfactorily under the current arrangements. Therefore the UK Government had a liability with no powers to comply, and the Welsh Government had large infrastructure it could not pay for.
- A separate issue was the A483, as an example of a major road for Wales in connecting North and South, which had stretches in England that were not of ~~a strategic~~ importance ~~from the point of view of~~ English interests.
- Resolution of these issues by the Commission would be helpful, and the solution would likely be in the form of funding, as well structures imposed on the UK's Department for Transport and Welsh Government.
- On the economy, including tourism and inward investment, the Secretary of State agreed that there was a perception that relationships were not entirely successful. He disagreed with the abolition of the Welsh Development Agency, and hoped the Welsh Government's department for Business, Enterprise, Technology and Science would work better with UK Trade and Investment and leverage their global reach to promote Wales.
- On energy, the Secretary of State restated the UK Government's evidence that developers preferred a streamlined process that included ancillary consents. He had heard concerns that the Welsh Government's approach could deter development, and that a two-stage process caused complexity and uncertainty for developers. Following a discussion around the complex allocation of responsibilities in the current arrangements, the Secretary of State noted that the UK Government's evidence had been carefully drafted in this area.
- Asked whether committees of the National Assembly ought to be able to compel witnesses to appear, the Secretary of State had not developed a view, and suggested this is something the Commission could consider.
- On a separate legal jurisdiction, the Secretary of State noted that Wales had a body of law that had been developed on an England and Wales basis for centuries, and it would take some time until a substantial body of unique Welsh law existed, necessitating a separate jurisdiction. The current ~~dis~~advantages; or problems ~~a separate jurisdiction~~ would overcome, were not apparent, and it was in Wales's interests to have access to legal practitioners in England also. A separate legal jurisdiction could encourage practitioners to choose to practice in England and leave Wales. If overseas contracts were no longer made under the law of England and Wales, the number of commercial cases able to be heard in Wales and generate activity in the legal sector would decline.

Internal Commission note – not for publication