Plaid Cymru: Submission to Part II of the Commission on Devolution in Wales

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1 Summary

1.1 Plaid Cymru's approach to the issues considered by Part II of the Silk Commission has five core principles:

i. **Responsibility:** Further legislative and executive devolution is part of an evolving process in which the nation’s capacity to take responsibility for the decisions that affect it is continually strengthened. We want to see a stronger Wales which is more democratically and economically self-sufficient.

ii. **Accountability:** Greater devolution would bring decision-making closer to the people of Wales, enhancing democratic accountability. They would be empowered to ensure that choices on law and policy better reflects Welsh circumstances.

iii. **Transparency:** The current division of responsibilities between the National Assembly for Wales and Westminster is often unclear. There is a need to create greater clarity, so as to enable more detailed and effective scrutiny.

iv. **Robustness:** The revised devolution settlement should be designed so as to operate in an efficient and effective manner, whilst the National Assembly for Wales must have the ability to enforce all of its powers.

v. **Fairness:** The division of powers between the National Assembly for Wales and Westminster should be no less favourable than those as applied to other devolved
territories within the United Kingdom. Fairness should also be applied in the way that the UK Government interprets and exercises its powers in Wales.

1.2 The current devolution settlement is confused, complex and unsatisfactory. The division of responsibility between the National Assembly for Wales and Westminster often lacks clarity. This can result in differing interpretations and overlapping responsibilities, leading to inefficiencies and disputes.

1.3 Devolution should move to a reserved powers model, as is the case in Scotland and Northern Ireland. Legislative responsibilities reserved to Westminster should be defined and minimised, with all other powers automatically allocated to the National Assembly for Wales.

1.4 A legal jurisdiction and court structure for Wales should be established. These should be complemented by the transfer of powers over justice as a whole. Such transfers should include the police forces and those services responsible for prosecution, probation, prisons and youth justice.

1.5 Further responsibilities should be transferred to the Welsh Government, in addition to those associated with reserved powers and the creation of a Welsh jurisdiction. These include those over natural resources and energy, the Crown Estate, transport, Jobcentre Plus, broadcasting, public employees, electoral arrangements, the Food Standards Agency and the Maritime Coastguard Agency.

1.6 Further devolution should be accompanied with sufficient funding. This should cover all costs associated with the delivery of transferred responsibilities, including those relating to their central administration. Financial issues need not prevent the devolution of justice. Expenditure incurred by the UK Government on justice functions in Wales should be transferred to the Welsh Government. The devolved justice system in Scotland costs less per head than either Wales or England, demonstrating that such devolution need not lead to an increase in overall costs.

1.7 Our proposals should be implemented without undue delay. The Silk Commission should suggest a timetable for implementation as part of its Part II report, due in spring 2014. The transfer of further responsibilities as detailed in our submission can generally be achieved through amendments to the Government of Wales Act 2006. Such transfers should commence shortly after the Silk Commission publishes its Part II report. However, the move to reserved powers would require Westminster to pass a new Government of Wales Act. The parliamentary process for this should also commence as soon as possible after spring 2014.
2 Introduction

2.1 The UK is moving from a highly centralised, unitary state to one with a system of asymmetric devolution. However, this process has led to a number of inconsistencies and anomalies. Wales appears to be unique in that it has a legislature without its own legal jurisdiction. The limited responsibilities devolved to the National Assembly for Wales, and its restricted legislative ability, is in marked contrast to other devolution settlements (see Annex A).

2.2 Further devolution will ensure that the Welsh Government is more able to respond to the democratic will of the people of Wales. Plaid Cymru’s approach to the issues considered by Part II of the Silk Commission has five core principles:

i. Responsibility: Devolution is part of an evolving process in which the nation’s capacity to take responsibility for the decisions that affect it is continually strengthened. This incorporates the transfer of further legislative and fiscal powers, the creation of a legal jurisdiction for Wales and the broadening of responsibilities held by the National Assembly for Wales. We want to see a stronger Wales which is more democratically and economically self-sufficient. We remain committed to an independent Wales as a full member of the European Union, subject to the approval of the people of Wales.

ii. Accountability: Greater devolution would bring decision-making closer to the people of Wales. This would enhance democratic accountability by:

- Empowering the people of Wales to ensure that the development and implementation of law and policy better reflects Welsh circumstances; and
- Ensuring that such circumstances can be reflected in areas that are not currently devolved. These include justice, broadcasting and natural resources.

iii. Transparency: The workings of government should be transparent. However, the current division of responsibilities between the National Assembly for Wales and Westminster is often unclear. Further devolution would create greater clarity in terms of responsibility, allowing for more detailed and effective scrutiny. This would enhance good governance, and is in the interest of the Welsh and UK Governments.

iv. Robustness: The revised devolution settlement should be designed so as to operate in an efficient and effective manner, whilst the National Assembly for Wales must have the ability to enforce all of its powers.

v. Fairness: The division of powers between the National Assembly for Wales and Westminster should be no less favourable than those as applied to other devolved
territories within the United Kingdom. It is difficult to justify the current division of responsibilities between the National Assembly for Wales and Westminster, or the way in which it differs from other UK settlements. Fairness should also be applied in the way that the UK Government exercises and interprets its powers in Wales.

2.3: The application of these principles will enable governance in Wales to become more effective, efficient and democratic, thus enabling the continuation of public support.

3 Reserved powers

3.1 The Government of Wales Act (GOWA) 2006 sets out the current devolution settlement. The Act's Schedule 7 lists areas where the National Assembly for Wales has legislative responsibility. Schedules to the Act also list 'exceptions' and 'general restrictions' to these responsibilities. Areas not specified as devolved are reserved to Westminster. However, this approach is problematic in terms of:

i. Governance: The schedules are extensive, complex and incompatible with good governance. The division of responsibilities in many areas is unclear (see Annex B). The current devolution settlement is characterised by such jagged edges, meaning that clear lines of responsibility and accountability cannot be established.

ii. Efficiency: The opaque division of responsibilities has led to unnecessary, time-consuming and expensive disputes, such as that over the Local Government Byelaws Bill. As time passes, the schedules grow in breadth and complexity. This leads to a gradual increase in inefficiencies and the potential for further disputes.

3.2 The alternative reserved powers approach lists responsibilities reserved to the central legislature, with all other areas being devolved. Those reserved are limited, typically including defence, foreign affairs and social protection. This model is commonly applied in the UK and elsewhere. Annex A sets out such examples, including those in Scotland, Northern Ireland and further afield.

3.3 Within the terms of reference set by Part II of the Silk Commission, Plaid Cymru believes that devolution should move to a reserved powers model, as was recommended in 2004 by the Richard Commission. Our preference is the Scottish model. The extent of responsibilities reserved to the UK Government should be minimised. The adoption of a reserved powers model would:

i. Empower the people of Wales to make democratic choices as to the making of law and policy that better reflect their circumstances;
ii. Clarify the powers held by the National Assembly for Wales and Westminster respectively, making it clearer to the people of Wales which institution has which responsibilities. This would enhance democratic accountability;

iii. Create a more transparent and efficient system of governance, and ensure consistency with Scotland and Northern Ireland; and

iv. Enable greater consistency and predictability in the making and application of the law.

3.4 Whilst Schedule 7 of GOWA 2006 could be amended to transfer responsibilities to the National Assembly for Wales, a new act is needed to establish reserved powers. This should be enacted as a priority, incorporating the proposals contained in this submission.

3.5 Plaid Cymru’s submission to Part I of the Silk Commission included the establishment of a joint commission by the Welsh and UK Governments to oversee funding issues. This should be complemented by formal inter-governmental structures that allow all issues to be discussed and decided on a basis of fairness and transparency.

4 A legal jurisdiction for Wales

4.1 Some steps have been taken towards a legal jurisdiction for Wales. Firstly, Wales is a defined territory. Secondly, a body of law is developing which is distinct from that of England. Thirdly, a Welsh legal structure is being constructed. This has included HM Court and Tribunal Services’ creation of a Wales administrative region, as well as the establishment of the Wales Probation Trust and the Administrative Court for Wales. Finally, the National Assembly for Wales can sponsor and create tribunals in some areas. However, responsibility for the administration of the justice system remains with Westminster, with Wales remaining part of the England and Wales legal jurisdiction.

4.2 The need for the developing body of Welsh law to be supported by its own administrative and institutional structures is increasingly apparent; as

i. Growing divergence between Welsh and English law means that the legal system operating in Wales must be tailored to the national context. An independent judiciary, firmly grounded in Welsh law, is necessary to ensure that individuals can hold the executive and legislature to account and obtain remedies where necessary.

ii. The National Assembly for Wales is the only devolved legislature in the UK that has no control over the justice system operating in its territory. Outside the UK, legislatures in the crown dependencies of the Isle of Man, Jersey and Guernsey have such responsibilities, as also happens in the British overseas territory of Gibraltar (see Annex A). Wales should conform to the standard practice of a legislature having responsibility for the administration of the law, as is the case in Scotland and Northern Ireland.
Transfer would enable the development of justice structures that are managed locally, operate efficiently, respond to the needs of Wales and are grounded in Welsh law.

iii. The economic benefits that accrue from the existence of a legal system in Wales would become more apparent. These could include the generation of additional legal work in Wales, as well as greater employment in professions involved with the administration of justice.

4.3 A legal jurisdiction for Wales should be established. This would require the establishment of a Welsh court and tribunal structure. This should be complemented by the transfer of powers over the justice system as a whole, including the police forces and those services responsible for prosecution, probation, prisons and youth justice. These steps would create a coherent and workable system of devolved justice, enabling the adoption of an integrated approach that is tailored to Wales. Components of a Welsh justice system are set out in Annex C, as are implications of such a system for the legal profession in Wales.

4.4 Financial issues need not prevent such devolution. HM Treasury's Public Expenditure Statistical Analyses (PESA) provide data on identifiable public expenditure in Wales. These include those on public order and safety, defined as including police and fire services, law courts and prisons. Such expenditure in Wales during 2010-11 totalled £1,494 million. £592 million of this was incurred by the UK Government, with local government responsible for almost all of the remainder. If responsibility were devolved, then the UK Government’s identifiable expenditure in Wales should be transferred to the Welsh Government. This would initially be a one-off transfer of funds. Subsequent changes in spending on law and order in England would then impact on the Welsh Block Grant. PESA data also demonstrate that devolution of justice need not lead to an increase in overall costs. In 2010-11, identifiable public expenditure on public order and safety in Scotland was £491 per head. This was less than the equivalent figures of £497 in Wales, and £504 in England.

5 Further transfers of responsibility

5.1 Plaid Cymru believes that the benefits of devolution can only be fully realised through the transfer of further powers, as part of an overall approach aimed at enhancing effectiveness and accountability. Such powers would be in addition to those associated with reserved powers and the creation of a Welsh jurisdiction, and would:

i. Empower the people of Wales to make democratic choices over more of the decisions that affect them, in a way that better reflects Welsh circumstances;

ii. Clarify and simplify the current arrangements, leading to greater levels of scrutiny, accountability and efficiency; and
iii. Give the Welsh Government policy levers that can be used to deliver a more successful and sustainable society.

Transfers should commence shortly after the Silk Commission publishes its Part II report. Areas where powers should be transferred are set out below.

5.2 **Natural resources and energy:** Wales has substantial natural and mineral resources. These include those focused on energy and energy generation, such as on-shore and off-shore wind, tidal power, coal, coal-bed methane and shale gas. Many large schemes are under consideration to exploit renewable resources, including the Severn Barrage and a number of wind farms. Other energy projects have included the construction of a large gas fired power station at Pembroke, a pipeline to transport Liquid Natural Gas (LNG) across South Wales, whilst a nuclear development has been proposed at Wylfa. Wales is already a net exporter of water and electricity. Further electricity generation schemes will significantly increase the level of energy exports.

Wales should be able sustainably to exploit its natural and mineral resources for the greatest environmental, social and economic gain. However, the National Assembly for Wales has limited powers over natural resources and energy generation. The people of Wales are thus unable to fully benefit financially from the exploitation, extraction or transfer of natural resources. Such financial benefits could be used to create a stronger Wales which is more economically self-sufficient. Responsibilities for the planning, licensing and oversight of all resource extraction, exploitation and transfer in Wales should thus be transferred. Such powers should include those over water as well as those projects using imported energy sources, such as LNG. The Welsh Government should be able to decide the extent to which electricity should be generated for export, taking into account issues such as the environment and the potential for financial benefit.

In relation to planning, the UK Government has such powers over projects aiming to generate more than 50 megawatts of electricity, as well as responsibilities exercised through the Marine Management Organisation. Such planning powers are generally devolved in Scotland and Northern Ireland. The Gwynt Y Mor wind farm will use 160 turbines that each have a capacity of some 3.6 megawatts. In locations where the Welsh Government has planning powers, it is responsible for developments of up to only 13 turbines of this capacity. Planning powers should be devolved to Wales, as in Scotland and Northern Ireland. The Welsh Government should have such powers over all energy projects throughout Wales and its associated marine areas.

5.3 **The Crown Estate:** This has a diverse range of holdings in Wales. As well as agricultural land and mineral rights, these include the seabed out to a 12 nautical mile limit, within which it
is responsible for issuing leases for wind farms. However, the Crown Estate is not accountable to the people of Wales, whilst all profits from its holdings (including from onshore and offshore wind farms) are passed to the UK Government. These are likely to grow substantially, mainly due to the demand for renewable energy. Ownership and control over the Crown Estate in Wales should be transferred to the Welsh Government.

5.4 **Transport:** This has yet to be fully devolved, despite its importance to economic development. For example, ports, airports, speed limits and the regulation of buses and taxis are generally reserved to Westminster, whilst responsibilities over rail are divided. Whilst railways are fully devolved in Scotland and Northern Ireland, the infrastructure in Wales is managed by Network Rail under the responsibility of the UK Government, with the specification and tendering process of the Wales and Borders rail franchise being jointly controlled by the Welsh and UK Governments. Rail infrastructure in Wales has been historically underfunded, as demonstrated by the time it has taken to secure investment for electrification. Unlike Scotland and Northern Ireland, Wales does not receive full Barnett consequentials relating to Network Rail’s expenditure. Whilst the Welsh Government received a consequential linked to Crossrail, the UK Government has yet to decide if this will also occur in respect of HS2. This approach to budgetary allocation is arbitrary, opaque and inconsistent. It undermines the ability of the Welsh Government to develop an integrated transport system.

Responsibility for railway infrastructure, as overseen by Network Rail’s recently created Wales Route, should be transferred. The Welsh Government should be able to decide how the train network in Wales is operated, following the expiry of the current franchise in 2018. It should have the power to decide the way in which it wishes to negotiate with train operating companies to provide their services, whether within the franchise system or outside it. If the franchise system is retained, then the Welsh Government should be the lead decision maker for the Wales and Borders franchise. These changes would enable the Welsh Government to develop an integrated transport system that better serves the people of Wales and is accountable to them, as well as helping to ensure a fairer share of funding. Responsibility for other aspects of transport, currently retained at Westminster, should also be devolved.

5.5 **Jobcentre Plus:** Responsibilities over education, training and some aspects of economic development have been devolved. For example, the Welsh Government operates large-scale social inclusion programmes whose aims include the improvement of employability. However, Jobcentre Plus services remain reserved to the UK Government. These should be devolved, as is the case in Northern Ireland. This would unite the provision of employment support
services and create a more integrated, effective and accountable service, potentially leading to better outcomes for both jobseekers and employers.

5.6 **Broadcasting:** This is of crucial economic and cultural importance. However, responsibility is centralised at Westminster. This has created a democratic deficit between the National Assembly for Wales and the Welsh media. We believe that this deficit can best be remedied by the full devolution of broadcasting to the National Assembly for Wales. The following transfers should thus take place:

- **BBC Wales:** A BBC Trust for Wales should be established in the context of the federalisation of the BBC within the UK. The trustees should be appointed by the Welsh Government. The appointment process should include public hearings held by the National Assembly for Wales;
- **S4C:** Following the recent changes to the funding and governance of S4C, responsibility for the channel would then also transfer to the National Assembly for Wales. The Welsh Government should appoint the board members of the S4C Authority, whilst the appointment process of the Authority's Chair should include public hearings held by the National Assembly for Wales. The UK Government has announced changes to the way S4C is funded, including its provision of some funds until 2014-2015. These should be transferred to the Welsh Government, which would then be responsible for their disbursement; and
- **Regulation:** Ofcom's office in Wales should have greater powers, including the authority to take licensing decisions. A separate ITV Wales license should be created. Responsibility for its allocation should be transferred to Ofcom's office in Wales, as should such responsibility for local radio. The members of Ofcom's Advisory Committee for Wales should be appointed by the Welsh Government. This would be best achieved by the federalisation of the work of Ofcom in a UK context.

These transfers would allow for proper scrutiny of the industry and its expenditure, much of which is public money. They should be accompanied by the proper allocation of resources taking current allocations as the minimum baseline.

5.7 **National Public Service:** Devolution of responsibility for public employees in Wales would enable the Welsh Government to drive closer co-operation between public sector organisations and spread best practice. A National Public Service for Wales should be created. It would be accountable to the National Assembly for Wales, and include the civil service, local government and the NHS.
5.8 **Electoral arrangements**: These are reserved to Westminster. Such responsibilities include the boundaries and number of constituencies represented in the National Assembly for Wales, as well as term length and some aspects relating to local government. Powers should be transferred, so as to enable such issues to be decided in Wales.

5.9 **Food Standards Agency**: The functions of this arms-length agency relate to food safety, which is a devolved area. However, it is constituted on a UK basis, although it has offices in Wales. The Agency’s functions should be devolved.

5.10 **Maritime Coastguard Agency**: Responsibilities for the coastguard should be transferred. This would enable decisions on its structure and operations to be taken with full reference to Welsh circumstances.

5.11 Any further devolution of responsibilities would need to be accompanied with sufficient funding. This should cover all costs associated with transfers, including those relating to the central administration of newly devolved functions.

6 **Conclusion**

6.1 The current devolution arrangements are confused and unsatisfactory. The results of the recent referendum demonstrate that a clear majority of the people of Wales wish to see decisions affecting them to be taken by the National Assembly. Our proposals are designed to empower the people of Wales, so enabling the creation of a better Wales.
Annex A: Approaches to devolution

Reserved powers

Devolution models are varied and complex, but territories where the reserved powers approach has been successfully used include:

i. **UK**: The Scotland and Northern Ireland Acts list the powers reserved to the UK Parliament. All matters not explicitly reserved to Westminster fall within the legislative competencies of the Scottish Parliament and Northern Ireland Assembly. As a result of this clear division, the Scottish Parliament has passed 169 acts, only three of which have been challenged in the Supreme Court by any applicant. This contrasts with the situation in Wales. The Welsh Government’s first bill under primary legislative powers was challenged by the UK Government in the Supreme Court, and a second bill may also be subjected to a similar process.

ii. **Australia**: The constitution gave specific powers to the Commonwealth (federal) Government, but left all other areas to the states. Powers reserved to the federal government are known as exclusive powers, whilst those exercised by the states are residual. Concurrent matters also exist, whilst High Court decisions have had important implications for the balance of powers between the federal and state governments.

iii. **Germany**: The constitution lists powers reserved to the national parliament as well as those to be shared between the national and sub-national levels (länder). A residual clause operates in favour of the länder, granting them legislative authority in all other areas. Concurrent matters also exist. These are divided into categories reflecting how responsibilities are shared.

iv. **Italy**: The constitution lists the reserved powers of the Italian national parliament. A residual clause operates in favour of the regions, granting them legislative authority in all other areas. A list of concurrent matters also exists. The national and sub-national parliaments both have a degree of legislative authority over such matters.
Devolved legal systems

The following statements have been made in relation to devolved legal systems:

i. In March 2011, the First Minister stated that ‘I am not aware of any part of the world where two primary law-making institutions exist in the same jurisdiction, passing laws in the same area of responsibility.’

ii. In 2008, the devolution of criminal justice responsibilities to the Northern Ireland Assembly was under consideration. In September of that year, the then Prime Minister stated that:

There is something more vital at stake for your entire society that only the completion of devolution can deliver. How can you, as an Assembly, address common criminality, low level crime and youth disorder when you are responsible for only some of the levers for change; when you have responsibility for education and health and social development, but have to rely on Westminster for policing and justice? [...] full devolution is the way to deliver better services, tailored to the needs of all communities, regardless of the politics. It is the best way for you to serve them.

The anomalous position of Wales when compared with other devolved territories of the UK (Scotland and Northern Ireland), crown dependencies (Isle of Man, Jersey and Guernsey) and the British overseas territory of Gibraltar is highlighted in Table 1.

Table 1: Legal jurisdictions in UK (or linked) territories

<table>
<thead>
<tr>
<th>Territory</th>
<th>Population</th>
<th>Devolved arrangements?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wales</td>
<td>3,000,000</td>
<td>No</td>
</tr>
<tr>
<td>Scotland</td>
<td>5,300,000</td>
<td>Yes</td>
</tr>
<tr>
<td>Northern Ireland</td>
<td>1,800,000</td>
<td>Yes</td>
</tr>
<tr>
<td>Isle of Man</td>
<td>83,000</td>
<td>Yes</td>
</tr>
<tr>
<td>Jersey</td>
<td>98,000</td>
<td>Yes</td>
</tr>
<tr>
<td>Guernsey</td>
<td>66,000</td>
<td>Yes</td>
</tr>
<tr>
<td>Gibraltar</td>
<td>29,000</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Notes:

2 Northern Ireland Assembly, Address by the Prime Minister, 18 September 2008.
Responsibilities

Table 2 highlights the anomalous nature of the current settlement in relation to some of the responsibilities proposed for transfer.

Table 2: Responsibilities in devolved territories of the UK (a - b)

<table>
<thead>
<tr>
<th>Territory</th>
<th>Planning (powers over &gt; 50 mw projects)</th>
<th>Transport (Network Rail) (a)</th>
<th>Jobcentre Plus</th>
<th>Public service (b)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wales</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Scotland</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Northern Ireland</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Part</td>
</tr>
</tbody>
</table>

Notes

a. Network Rail does not operate in Northern Ireland. An integrated, publicly-owned, rail system exists and is a devolved responsibility.

b. Responsibility for the Northern Ireland Civil Service is generally devolved.
Annex B: Unclear divisions of responsibilities

The complexity of the current devolution settlement means that the division of responsibilities between Westminster and the National Assembly for Wales is often unclear. A full list of powers retained by UK Government Ministers does not exist. Areas where a lack of clarity is apparent include:

i. **Seatbelts on buses:** The Welsh Government wanted to pass a law requiring seat belts to be fitted to school buses. Whilst highways and transport is a devolved area, agreement was required from the UK Government to pass such a law, as power over seatbelts remained reserved to UK Ministers.

ii. **Smacking:** The Welsh Government wished to legislate against the smacking of children. A legal sanction against smacking would have been imposed, under the National Assembly for Wales’ powers to create limited criminal sanctions. However, the power to legislate in this area was claimed by the UK Government as a matter for Westminster.

iii. **20 mph zones:** Responsibilities for the introduction of such zones have been devolved to the National Assembly for Wales, but speed limit regulations are reserved to the UK Government.

iv. **Agricultural wages:** The UK Government decided to abolish the Agricultural Wages Board, a body that sets the pay and conditions of agricultural workers. Despite agriculture being a devolved matter, the UK Government has claimed responsibility over the Board in Wales as wages control is not devolved. This contrasts with Scotland and Northern Ireland, where the Board's work is to be retained.

v. **Housing:** Housing is devolved to the National Assembly for Wales. However, important elements of the laws governing housing are currently reserved to Westminster. For example, the provisions of the Housing Act 1996 and the Homelessness Act 2002 mean that the Welsh Government and local authorities are unable to properly plan and provide housing for the people of Wales.
Annex C: Components of a Welsh justice system

The establishment of a legal jurisdiction for Wales would involve the creation of a Welsh court structure, to be complemented by the devolution of responsibilities covering the justice system as a whole.

The components of a Welsh court structure should include:

i. A High Court and Courts of Appeal for Wales, as well as a Lord Chief Justice and other key appointments;

ii. An independent Welsh Judicial Appointments Commission to select the judiciary, magistrates and members of tribunals operating in Wales;

iii. A Welsh Judicial College;

iv. Responsibility for court administration being assumed by the Welsh Government. Law Officers should be appointed to independently discharge such responsibility;

v. A Welsh Law Commission to keep the law under review, as well as a Charity Commission for Wales.

vi. A Welsh Parole Board; and

vii. The consideration of the establishment of a legal aid system to be administered on a Wales-only basis by a devolved Legal Services Commission.

A member of the Welsh judiciary should sit on the UK Supreme Court. This would end the anomaly where Wales is the only devolved UK nation or territory not represented.

A database and commentary covering all Welsh laws should be compiled as a central reference source. This should be a public service, as is the case in Northern Ireland.

The following transfers should take place to complete the establishment of a Welsh justice system:

i. Police services: The Welsh police forces are unique within the UK in that they are non-devolved bodies operating within a largely devolved public service landscape. They are thus required to follow the agendas of two governments. Responsibility for the police should be transferred. This would:

- Give the people of Wales a democratic choice, through their government, as to how the police are to be governed and held accountable;
- Lead to greater clarity and efficiency by uniting devolved responsibilities, such as community services, drugs prevention and safety partnerships, with those currently held by the UK Government; and
- Enable greater co-ordination between chief constables, local government and the Welsh Government.

Relationships between the Welsh forces and UK services such as the Police National Computer and the Serious Organised Crime Agency/ National Crime Agency would continue as present, as is the case in Scotland. Separate arrangements for complaints and inspections may be required, as also happens in Scotland.

ii. Prosecution service: An independent crown office should be established, based on the recently created Crown Prosecution Service Wales Area. Arrangements for reciprocal enforcements of warrants and judgements would need to be developed, potentially similar to those between the various UK jurisdictions.

i. Probation service, prison service and the Youth Justice Board: Responsibility for the Wales Probation Trust and prison services in Wales, both currently part of the NOMS executive agency under the UK Government, should be transferred. The Youth Justice Board’s activities in Wales should also be devolved. Such transfers would enable the Welsh Government to develop a more integrated approach to justice that takes greater account of Welsh circumstances.

A legal jurisdiction for Wales would have implications for the legal profession:

i. A mutual recognition system should be created, so as to allow the continued movement of legal professionals between England and Wales. It should seek to ensure that such transfers are straightforward, and take into account the workings of the systems that currently enable movement between jurisdictions in the UK and Ireland. A separate legal profession for Wales would not be necessary in the short-term, but this will change as Welsh law increasingly diverges from that of England.

iii. The legal profession is well established in Wales and can service a Welsh jurisdiction. This has been demonstrated by the success of the steps towards a Welsh legal structure. Also, a relatively small population does not preclude a separate jurisdiction. Table 1 in Annex A showed how territories in, or linked to, the UK have such jurisdictions despite their small populations.