Evidence submitted to the Commission on Devolution in Wales

*Welsh Conservative Group in the National Assembly for Wales*

St David’s Day, 2013
The Welsh Conservative Group in the National Assembly for Wales (‘The Group’) warmly welcomes the opportunity to contribute to Part II of the Commission on Devolution in Wales.

We hope a wide variety of stakeholders take the opportunity to contribute to this important review, including all four political groupings in the National Assembly for Wales.

The Context

Devolution has changed the constitutional make-up of the UK both remarkably and permanently. Since the establishment of the National Assembly for Wales in 1999, the devolution settlement itself has changed remarkably too.

The Group very much welcomed recommendations made by the Commission following its first stage of deliberations. It is essential, given the maturing political landscape in Wales, to ensure the National Assembly for Wales, and subsequently the Welsh Government, have a significant element of financial accountability in the work they undertake. We deem the current arrangements to be largely devoid of accountability, which is unhealthy both for Welsh democracy and political debate.

Part I recommendations have significantly informed and advanced debate concerning the future fiscal levers at the Assembly’s disposal. We now look forward to seeing these recommendations being implemented through the appropriate channels.

Further to our support for the Part I recommendations, if the Commission is minded to suggest the devolving of further responsibilities to the National Assembly for Wales, the Group urges the Commission to strongly consider and emphasise the importance of the Assembly also holding fiscal accountability to complement this, which we regard as hugely important to the future maturity of a devolved Wales.

The governance of Wales has been the subject of intense political debate in recent years. Since 1997, the people of Wales have voted in two referendums concerning the National Assembly for Wales; whilst Lord Richard, Gerald Holtham and Sir Emyr Jones Parry have all led major pieces of work related to the Assembly and the constitutional position of Wales. Given the plethora of challenges facing Wales and the UK in the coming years, we are sure that the Commission will consider the importance of future arrangements offering stability, certainty and consistency across the UK.
We were also pleased to recently contribute evidence to the Green Paper into future electoral arrangements for the National Assembly for Wales, and would refer the Commission to our response to that consultation concerning the issue of future electoral arrangements to the National Assembly for Wales.

**Public Opinion & Grassroots Understanding**

The Group believes passionately in a strong Wales acting as an integral component part of a strong United Kingdom. Further to this, we note the distinct lack of support which exists across Wales for independence. A recent poll for BBC Wales found only nine per cent of the Welsh population in favour of independence (*BBC News*, 27 February 2013). It is the Group’s belief, shared by the firm majority of people across Wales, that the nation’s best interests are served as an active participant at the heart of the UK; and that the four constituent nations all benefit enormously from the Union.

Furthermore, we remain passionate about localism as an instrument of real devolution and believe that the empowerment of Wales’ local communities should be a central tenet of the devolved process.

However, electoral turnouts suggest there remains a deep-rooted lack of passion amongst the Welsh public to participate and fully embrace the devolved process.

In 2011, the turnout for the Assembly election – despite a referendum on the Parliamentary voting system taking place on the same day – was 42.2 per cent; which was considerably lower than the turnout for the 2010 UK General Election, which across the Welsh constituencies was 64.9 per cent - higher than at both at the General Elections of 2001 and 2005. Given this, the Group believes that the Commission should consider how devolved competencies in Wales can be best communicated to the people of Wales to enhance grassroots understanding of devolution and where key decisions which affect people’s day-to-day lives are made.

The Group is committed to transparency at all levels of our political system. We feel clearing up inconsistencies contained in the present system will play a pivotal role in enhancing grassroots understanding about devolution in Wales, ensuring the people of Wales understand where decisions which impact upon their day-to-day lives are made. We note with concern the significant level of misunderstanding which exists in Wales in clearly distinguishing between the legislature and executive; and urge the Commission to consider solutions to this to aid a grassroots understanding in Wales of the devolved process.
Certainly, after 14 years of Welsh devolution, there are some very real concerns about its success to date – notably, widening educational attainment gaps, worrying outcomes in health and key economic indicators placing Wales behind neighbouring UK nations. We were deeply concerned, for example, to note comments from a teaching union NASUWT, which stated that education has been “in recession since devolution” (Wales Online, June 4 2012).

However, whilst reflections on the performance of devolution to date should form an important component in analysing and reviewing the powers of the National Assembly for Wales, the Group is keen to emphasise that much of this performance is based primarily on policy decisions rather that constitutional or institutional arrangements. We therefore do not feel any review into the Assembly’s existing powers should be prejudiced by the failings of successive Welsh administrations or of any political party to correctly utilise the tools at its disposal to deliver improvements for the people of Wales.

Transfer of Responsibilities

Whilst Welsh devolution is still a relatively recent development, the Group is of the belief that a series of further powers should be devolved to complement the existing system and ensure Wales reaps maximum possible benefits. Elements of the present settlement are untidy and we believe the devolution of certain further powers would yield a more efficient and effective system; whilst enhancing the Assembly’s scope for improving the lives of the people of Wales.

The Group does not believe any of the existing powers devolved to the National Assembly for Wales should be returned to Westminster. However, we believe, as outlined below, that there are a number of powers which should be devolved to Wales to build upon the existing system; and to complement the powers which already lie within the National Assembly for Wales’ competencies.

Energy

It has long been the position of the Group to support devolving competency for energy projects of up to 100 Mega Watts in size. We note that all four political groups in the Assembly have called for enhanced energy devolution, which would ensure many key decisions in relation to energy policy are made in Wales, meaning decisions are made closer to the people they affect. However, the Group recognises that, historically, it has not been previous UK Government policy to devolve energy further.
Further to this, it is the Group’s belief that local determination is crucial in the decision-making process. The Group feels serious consideration should be given to further devolving some energy responsibilities to local authorities.

Whilst our recommendation at this stage is to progressively increase the level of energy projects which are devolved to 100MW, we also believe the evidence base, concerning larger-scale projects, needs to be developed and would welcome such deliberations to be undertaken by the Silk Commission.

We also believe there is a strong case for Wales having control over Renewables Obligation Certificates (ROCs). We would urge the Commission to look closely at the feasibility of such a proposal. These certificates are key in ensuring that suppliers source an appropriate proportion of electricity provided to consumers from renewable sources and their devolution to Wales would give the Assembly parity with both Scotland and Northern Ireland on this important matter.

**Broadcasting**

Key political decisions in relation to broadcasting in Wales continue to be made at a UK level by the Department for Culture, Media and Sport (DCMS). However, public service broadcasters have an obligation to meet certain requirements in relation to output, much of which relates to competencies which are already devolved (such as the Welsh language, education and the economy). The Group feels this provides an anomaly which the Commission might address as part of this Review.

It is the Group’s belief that broadcasters should be accountable to the Assembly for their work in these devolved areas. To this end, we are supportive of a mechanism for joint accountability to both the Assembly and the UK Parliament. The principle of joint responsibility is in existence already in relation to cross-border issues, so the Group deem this a practical approach.

The Group is mindful of the strength of arguments which exist against devolving broadcasting. We feel our suggestion addresses an anomaly regarding accountability, whilst building a body of evidence, based on practical experience, which can inform the debate on whether further devolution of broadcasting is valuable.
Public Holidays

The Group has long endorsed the designation of St David’s Day as a national public holiday in Wales. We feel this would carry huge symbolic importance, and could yield a host of economic and cultural benefits for the nation. It is a matter of disappointment that the power to do this – and to alter other Bank Holiday dates in Wales – does not lie with the National Assembly for Wales. This is an issue we feel that must be addressed by the Commission.

In Scotland, St Andrew’s Day has been designated as a voluntary Bank Holiday under the St Andrew’s Day Bank Holiday (Scotland) Act 2007. In Northern Ireland, St Patrick’s Day is marked a Bank Holiday. It is the Group’s belief that the National Assembly for Wales should have the powers to make similar arrangements and to move any other public holidays that the institution may see fit. We believe the devolution of such powers complements present arrangements in relation to the Assembly’s competence over heritage and economic development.

Policing and Criminal Justice

The Group acknowledges that the devolution of policing and criminal justice is a considerable talking point in Welsh public life – and would welcome further exploration of this as part of the Commission’s deliberations.

However, following the introduction of Police & Crime Commissioners (PCCs), which will significantly enhance local involvement in the Police’s decision-making and marked significant reform of the system, we believe that further wholesale reforms to the Police Service in the near future is undesirable. The introduction of PCCs marked an act of real devolution, with local communities in South Wales, Gwent, Dyfed Powys and North Wales empowered to have their say on policing priorities and to hold an elected representative to account.

We welcome the fall in crime in both Wales and the UK in recent years and, given that progress, combined with the reform which PCCs are already bringing to the system, we would not wish to destabilise this performance in any way.

We are also keen to highlight the importance of cross-border working between police regions and note concerns of some policing professionals that the devolution of policing could compromise performance in this regard.
Legal Jurisdiction

We also note discussions concerning the establishment of a separate legal jurisdiction for Wales, acknowledging the complexities which may arise from the establishment of any system which may constitute any such separate jurisdiction.

The Group refers the Commission to the inquiry into the establishment of a separate Welsh jurisdiction, which was recently undertaken by the Assembly’s Constitutional and Legislative Affairs Committee, which highlights the importance of recognising "an emerging Welsh legal identity" (Constitutional and Legislative Affairs Committee, December 2012, p3).

With a probable divergence in the content of law affecting England and Wales, we acknowledge that arrangements would have to change to accommodate that. However, we note there is no immediate problem with capacity in the current system and feel any decision concerning devolution in the near future would be political rather than practical. Our view, therefore, is that devolution of a legal jurisdiction is not a priority and the implications of divergent law will not be felt for some time.

Healthcare for Military Personnel

Presently, where service personnel are based in Wales, their healthcare is delivered by the Ministry of Defence. The Group would recommend that the Commission explores the feasibility of this healthcare being provided, either wholly or in part, by the Welsh NHS.

Equality of Opportunities

The Group urges the Commission to explore inconsistencies it may deem to exist in relation to devolved matters in the field of equality of opportunity. A lack of clarity concerning some devolved competencies may prove a hindrance not only in the carrying out of the Assembly’s functions, but in the execution of equality-focussed work by key representatives in Welsh public life, such as the Children’s Commissioner and Older People’s Commissioner.

We note, for example, a current inconsistency which gives the Welsh Government the power to implement Specific Equality Duties for Wales, but that these duties would no longer be enforceable should the UK Government repeal the relevant legislation at a Westminster level. The Group has consistently highlighted the importance of Welsh Ministers utilising these specific duties to tackle the distinct equality challenges faced in Wales. It is our belief that
current arrangements fail to offer appropriate clarity with regards to the work being undertaken in Wales.

**Transport**

Given that many elements of transport policy are already devolved to Wales, the Group invites the Commission to explore whether the current arrangements in this field are satisfactory. In particular, we would urge the Commission to study the possibility of the devolution of the railway network to Wales.

Many transport policy areas either carry an element of shared responsibility or remain matters reserved to Westminster.

The Group believes that the Commission should explore any existing anomalies in the present system in relation to transport. For example, during the Third Assembly, the Welsh Government spoke of its investment into the accessibility of railway stations, whilst also highlighting statutory responsibility for railway accessibility as a reserved matter. This could be regarded as an inconsistency. Furthermore, we note the recent debate in relation to the possible future devolution of the Severn Bridge. It is the Group’s belief that the Severn Bridge, acting as a gateway to Wales, is a hugely important issue and that the tolls have a significant impact on our nation’s economy and tourist trade. Given the on-going debate concerning the Bridge’s future ownership, the Group feels the Commission should give its view on future options for the Bridge following its return to public hands, which could happen in 2018.

We also note that responsibility for roads such as the A483 - which acts as a strategic route between north and south Wales and straddles the territorial border, is not wholly devolved and would encourage the Commission to examine the arrangements regarding responsibility for this road.

**Assembly’s Scrutiny Functions**

Given the enhanced legislative powers which the Assembly adopted following the March 2011 referendum, and the possibility of the powers at the institution being extended following the Commission’s deliberations, there is a clear need to consider the effectiveness of the legislature’s scrutiny functions. The absence of a revising chamber in Wales means that this issue is increasingly pertinent.
Conclusion

The Group is committed to the future of a strong, devolved Wales at the heart of the United Kingdom. We believe that the current devolution arrangements across the UK are unbalanced and that elements of the current devolution settlement in Wales are untidy. These matters should be addressed to ensure that the National Assembly for Wales, and subsequently the Welsh Government, are both well-placed to improve quality of life for the people of Wales. We also feel many areas are worthy of further consideration and that the Silk Commission has a key role to play in broadening the evidence base.

We have approached this review with the key motivation that changes to the existing settlement should not be ‘devolution for devolution’s sake’; but that any changes should ensure that the settlement works more effectively to deliver maximum benefits for Wales and its citizens.

The Group wishes to highlight, once again, that whilst there have been issues to date concerning the performance of devolution; these are primarily based on policy decisions rather than the process itself.

We now very much look forward to the Commission’s recommendations, which we expect to play a central and pivotal role in the on-going constitutional debate in Wales.

Andrew RT Davies
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National Assembly for Wales