



Empowerment and Responsibility: Legislative Powers to Strengthen Wales

Executive Summary

March 2014



**Commission on Devolution in Wales
Comisiwn ar Ddatganoli yng Nghymru**

Foreword

The Commission that I have the honour to chair has a fundamental belief that power brings responsibility, and that the only purpose of the exercise of power ought to be the benefit of the citizen. Our well-received First Report dealt with financial matters in that context. This Report is painted on a wider canvas, but is suffused with the same ideas of empowerment, responsibility and a stronger Wales.

Grounded on clear principles, we have articulated a vision of new powers for Wales so that appropriate legislative choices are exercised at the Welsh level, in the interests both of the people of Wales and of the wider United Kingdom. We have also recommended ways in which the governmental and parliamentary institutions in Cardiff and London ought to collaborate.

Necessarily this Report deals with processes. We realise that people are more interested in outcomes. Our intention has been to settle the process questions in the hope that our recommendations will excite all those who want to see what some might regard as a rather sterile debate about distribution of powers replaced by a debate about how those powers can best be exercised.

It has been a pleasure to work with my fellow Commissioners. Their experience, wisdom and open-mindedness have been crucial to our work. Equally crucial has been the input of our able and committed staff. Organisations and individuals up and down Wales and beyond have generously given us their advice. Commissioners have listened, read and discussed over many months. That process of deliberation has meant that we can again present a unanimous Report, and so assert that our recommendations will have a wide degree of support.

In the Foreword to our First Report, I said that it was a privilege and a responsibility to be commissioned by the United Kingdom Government to make recommendations that could affect the lives of every single fellow citizen of Wales. The privilege and the responsibility have become only greater in this second part of our work where we were specifically charged to make recommendations that will better serve the people of Wales. But we are confident that we have discharged our commission, and I am again proud to commend our Report to Her Majesty's Government for implementation.

Paul Silk
March 2014

Executive Summary

Introduction

The Commission on Devolution in Wales was launched on 11 October 2011, following a commitment in the UK Government's Coalition Agreement. The Commission and its remit had the support of the Welsh Government and the three opposition parties in the National Assembly for Wales.

In this summary we set out how we have gone about Part II of our work; how we have drawn upon the evidence presented to us; the principles and vision which underpin our thinking; and the recommendations we have reached as a result.

Our remit and approach (Chapter 1)

The Secretary of State for Wales appointed Paul Silk to chair the Commission. He was joined by seven other Commissioners for Part II. Four Commissioners were appointed independently of political parties. They are: Trefor Jones CBE CVO; Professor Noel Lloyd CBE; Helen Molyneux; and the Chair.

Each of the political parties in the National Assembly for Wales also nominated a member to the Commission. They are: Lord Bourne, the Welsh Conservative nominee; Jane Davidson, the Welsh Labour nominee; Dr Eurfyl ap Iwan, the Plaid Cymru nominee; and Rob Humphreys, the Welsh Liberal Democrat nominee.

The Commission's remit was divided into two parts. For Part I, we considered the National Assembly for Wales's current financial powers and how its financial accountability could be improved. On 19 November 2012, we published our first report *Empowerment and Responsibility: Financial powers to strengthen Wales*, recommending taxation and borrowing powers for the National Assembly. The UK Government has announced that it accepts, in full or in part, all but one of our recommendations to it. In December 2013 it published a draft Bill that would implement many of our proposals.

We began work on Part II of our remit, reviewing the non-financial and wider powers of the National Assembly, immediately after the publication of our first report. Our terms of reference for Part II are:

To review the powers of the National Assembly for Wales in the light of experience and to recommend modifications to the present constitutional arrangements that would enable the United Kingdom Parliament and the National Assembly for Wales to better serve the people of Wales.

Consideration of the structure of the National Assembly for Wales, including issues relating to the election of Assembly Members, is excluded from our terms of reference.

Our method of working

We approached our work with an open mind and were keen to engage as widely as possible across Wales. Our report takes into account the views presented to us and is evidence-based. Throughout our work, we have sought to be open, transparent and consensual.

We were keen to hear the views of the public: we held sixteen public meetings across Wales, meeting over four hundred people; we encouraged the public to join the debate and share their views with us through our questionnaire (over five hundred of which were completed) and online forums; and we commissioned an opinion poll to gather statistical data on public opinion on Welsh devolution.

Our call for evidence was sent to hundreds of individuals, businesses and interested organisations. We were pleased to receive over two hundred submissions. Their range and quality have been very helpful to us. We have heard oral evidence from a large number of experts and practitioners. We have consulted extensively with the Welsh and UK Governments and with Members of the National Assembly and of both Houses of Parliament.

Whilst our task was to consider devolution in Wales, we were mindful of the wider context of constitutional change within the United Kingdom. We visited Scotland and Northern Ireland to hear their devolution experiences.

We are grateful to all those who took the time to give us their views. We have drawn on their contributions, as well as our own research, to reach our recommendations.

Current devolution arrangements (Chapter 2)

Wales has been subject to more changes in its devolution settlement since 1998 than have Scotland or Northern Ireland. There have been three phases in Welsh devolution: the first two National Assemblies operated under the Government of Wales Act 1998; the 2007 National Assembly operated under the first devolution model contained in the Government of Wales Act 2006; and the National Assembly elected in May 2011 operates under the second devolution model contained in the 2006 Act.

Wales has fewer powers than Scotland and Northern Ireland and is also the only country in the Union where powers are specifically conferred (the conferred powers model). Wales's settlement is also more complex than those in Scotland or Northern Ireland.

We looked at international comparisons. While these are useful, we recognise the unique nature of the United Kingdom's system of devolution. Nevertheless, Wales appears to be internationally anomalous in three respects: it has legislative powers but not, at present, taxation or borrowing powers; it has a legislature but not its own courts system; and it is part of a Union where different models of devolution are being used.

Future constitutional developments across the United Kingdom, including the referendum on independence in Scotland, will impact on devolution in Wales. We have been mindful of these developments and have recommended changes that will allow both Wales and the United Kingdom to benefit whatever the wider constitutional future.

Principles for Welsh devolution (Chapter 3)

Our terms of reference asked us to produce recommendations which would allow the National Assembly and the UK Parliament to better serve the people of Wales. As a Commission, we were keen to produce a vision of how this could be achieved. This vision would underpin all our work.

Following discussion at our public meetings, we formulated this vision:

We believe that the people of Wales will be best served by:

- *a clear, well founded devolution settlement that allows coherent political decisions to be made in a democratic and accountable manner, and*
- *political institutions that operate effectively and efficiently and work together in the interests of the people they serve.*

Devolution of power to Wales should benefit the whole of Wales and the United Kingdom.

We were also keen to ensure that our recommendations, as in Part I, were based on a clear set of principles.

The principles we agreed were:

- *Accountability* – voters should be able to hold the responsible institutions to account for delivering policies in a transparent way;
- *Clarity* – voters should understand where decisions are made and the settlement should be straightforward and simple to operate;
- *Coherence* – the National Assembly should have freedom and autonomy to use devolved policy and legislative levers, within a coherent framework of powers;
- *Collaboration* – Governments should work constructively together;
- *Efficiency* – the arrangements should be affordable and provide value-for-money to the taxpayer, and should not place undue burdens on individuals or business;
- *Equity* – fundamental standards and rights should be enjoyed by citizens across the United Kingdom;
- *Stability* – the settlement should be well founded, sustainable and predictable in its operation, and meet the needs of current and future generations; and
- *Subsidiarity and localism* – decisions should be made as close as possible to the person they affect consistent with addressing the relevant matter effectively, thus promoting empowerment.

Devolution of power to Wales should benefit the whole of Wales and the United Kingdom. Any proposed changes to the devolution settlement should be tested according to the principles we set out.

The model of devolution (Chapter 4)

Wales currently has a conferred powers model, meaning that the National Assembly has specific powers granted to it by the UK Parliament. Scotland and Northern Ireland have a reserved powers model, meaning that powers are held by the Scottish Parliament and the Northern Ireland Assembly unless they are specifically reserved to the UK Parliament.

The model of devolution was one of the topics most frequently raised in the evidence presented to us. Almost all the views expressed were in favour of the reserved powers model, although the UK Government was supportive of the existing model. We examined and considered in detail the benefits of both models.

Our conclusion is that the reserved powers model would allow a better system of devolution in Wales. It would be clearer and allow law-makers to undertake their role more confidently. This would be in the interest of the people of Wales.

The key arguments in favour of a reserved powers model are:

- a model which sets out what is not devolved is more certain, stable and coherent than a model which sets out what is;
- it is inconsistent, illogical and inequitable for two parts of the United Kingdom to have a reserved powers model and one a conferred powers model;
- a reserved powers model is clearer and would increase accountability by empowering people in Wales to understand their settlement better; and
- the introduction of a reserved powers model would be an opportunity to simplify the settlement, producing greater certainty about the scope of the powers of the National Assembly and of Welsh Ministers and promoting subsidiarity and localism.

The choice of model does not of itself affect which powers are devolved and which are not.

We considered whether any powers currently held by the National Assembly would be better held by the UK Parliament. We received very little evidence in favour of returning powers to Westminster and therefore conclude that there should be no reduction in the powers currently devolved.

In the light of the evidence, we also conclude that the UK Parliament should continue to exercise its existing powers in the following areas:

- the constitution;
- macroeconomic policy;
- foreign affairs;
- immigration; and
- defence.

Intergovernmental relations (Chapter 5)

We considered whether there was scope to improve how devolution currently works in Wales, and especially how the Welsh and UK Governments collaborate. We heard that there were many ways in which the two Governments engaged with each other, with varying effectiveness. There are bilateral concordats, but formal meetings are generally quadrilateral, involving the two other devolved administrations.

The evidence suggests that people in Wales want the two Governments to work more closely together for the benefit of Wales. While there are many examples of good practice, there is scope for improvement. In addition, people want to know how Wales is performing compared to other parts of the United Kingdom and the scope for learning from each other what works best.

We make a number of recommendations to enhance the existing mechanisms for improving relations between the two Governments, based on mutual respect and parity of esteem. These include identifying and disseminating good practice and areas for development. We hope that the National Audit Office and the Wales Audit Office will wish to conduct a joint audit of intergovernmental relations. To strengthen the current mechanisms, a statutory Code of Practice for intergovernmental relations should be provided for in a new Government of Wales Act.

We also recommend the establishment of a formal mechanism to oversee the Welsh devolution settlement in the form of a Welsh Intergovernmental Committee, comprised of United Kingdom and Welsh Ministers. The Committee should have responsibility for simplifying the existing Welsh devolution settlement including the process of moving to a reserved powers model; considering detailed proposals to change the devolved boundary; monitoring and influencing EU impacts on Wales; dealing with cross-border issues; and resolving disputes.

The two Governments should engage in a process of arbitration conducted by a person who has held high judicial office prior to a Bill being referred to the Supreme Court.

There should be joint working between the two Governments to share best policy and delivery practice. Administrations should be open to adopting good practices and policies from one another. This should be complemented by developing more comprehensive comparative performance data across the countries and regions of the United Kingdom.

Economic powers (Chapter 6)

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.

Beyond this we propose no major change to the existing allocation of economic powers. We believe there is scope for making the existing devolution settlement work more effectively to improve the performance of the Welsh economy. The two Governments should provide a better coordinated approach to the development of economic policy in Wales, including employment and training policies, business regulation and inward investment.

The two Governments should improve the production and collection of economic data and economic modelling capacity.

Transport (Chapter 7)

Many transport powers are already devolved but we heard in evidence that there is scope to change the settlement to make the allocation of responsibilities more coherent.

We therefore recommend further devolution of powers on rail, ports, bus and taxi regulation, and speed and drink drive limits, to create simpler and more coherent arrangements and facilitate the development of a more integrated transport strategy for Wales. The functions of the Traffic Commissioner in relation to buses should also be devolved.

Whilst inter-city cross-border rail franchises should remain non-devolved, the Welsh Government should have a greater role in the appointment of a new franchise operator.

On roads, we do not recommend any changes in powers but there should be closer coordination between the two Governments to ensure a more strategic approach and good quality cross-border routes, both east-west and north-south.

Natural resources (Chapter 8)

We received a good deal of evidence suggesting that Wales should be empowered to manage its natural resources more effectively.

On energy, we recommend that all energy planning consents (non-renewable and renewable) below 350MW should be devolved. The UK Government should have a statutory duty to take account of Welsh planning policies when exercising its retained responsibilities for larger projects. The system of associated development consents should be aligned with consenting powers to avoid unnecessary complexity in the context of greater devolution of the consenting regime. Responsibility for issuing marine licences in Welsh offshore waters should be devolved. The Welsh Government should receive parity with Scotland and Northern Ireland for the proposed Contracts for Difference from 2017.

On water, we conclude that the boundary for legislative competence should be aligned with the national border, with further work to assess costs and benefits for consumers and the industry. The Secretary of State's intervention powers in relation to water should be removed in favour of a formal intergovernmental protocol. Powers over sewerage should be devolved to the National Assembly.

On the Crown Estate, we believe that a Welsh Crown Estate Commissioner should be appointed, in consultation with the Welsh Government. To maximise the potential for investment in Wales, the Commissioner should be supported by a Crown Estate office in Wales, subject to meeting value-for-money criteria.

The existing executive responsibilities of Welsh Ministers for marine conservation and licensing in the Welsh inshore area should be extended to the Welsh offshore area.

Broadcasting (Chapter 9)

Broadcasting is currently non-devolved and is of great importance to both the cultural and economic life of Wales.

Regulation of broadcasting should remain the responsibility of the UK Government.

On the BBC, we recommend the creation of a devolved governance body within the UK Trust framework. This body should provide oversight and scrutiny of BBC outputs in Wales. The appointment of a Wales representative to the overall BBC governance body should be made through agreement between the Welsh and UK Governments.

Whilst the bulk of funding for S4C should continue to be met through the licence fee, we believe that responsibility for the public expenditure element that comes direct from government should be devolved to the National Assembly.

We also make recommendations on the representation of Welsh interests on the Ofcom board and suggest ways of more effective monitoring of progress in public service broadcasting in Wales.

Policing and justice (Chapter 10)

We received a great deal of evidence on policing and justice matters. Policing and justice are currently non-devolved, with the exception of some tribunals.

Most of the evidence we received supported the devolution of policing in line with other public services in Wales. Devolution would create a better alignment between policies for tackling crime and its causes; would bring accountability for policy and funding into alignment; and would facilitate policing policies better attuned to the circumstances of Wales.

We conclude that policing should be devolved. However responsibilities in relation to the National Crime Agency should remain non-devolved, as should powers in respect of arrest, interrogation and charging of suspects, until and unless criminal law is devolved.

We believe that there is not a broad consensus in favour of wholesale devolution of the justice system at the present time. However the youth justice system should be devolved, given its close links with local government and other devolved functions. Following the devolution of policing, there should be an implementation review for devolving probation and prisons.

There is also a case for further administrative devolution in the courts system and judiciary, particularly as the volume of Welsh law develops; and the case for legislative devolution should be reviewed within ten years. We would expect a debate to develop in the future about how far a distinctive Welsh legal system might emerge over time.

We focus on the accessibility of justice in Wales. In this context, it is important that the law in Wales, from both the UK Parliament and the National Assembly, is better understood. We recommend easier reference of law reform projects to the Law Commission, and the publication and consolidation of the law in Wales, to help this understanding.

We make a number of other recommendations for improving the justice system, including the creation of a Welsh Criminal Justice Board.

Health and social security (Chapter 11)

Given that health and social security comprise the largest devolved and non-devolved public expenditure programmes respectively, we gave these two topics particular consideration.

We believe there should be no change to the devolution settlement on health, but make recommendations to improve cross-border health delivery. These include equitable cross-border access for patients, a strategic approach to joint delivery of health services, and regular reviews of the UK and Welsh Government protocol on healthcare. Individual protocols should be developed between each border Local Health Board in Wales and neighbouring NHS Trusts in England.

We believe that, given its important role in what has been described as ‘the social union’, the social security system, including the welfare state and benefits system, should remain non-devolved. Developments in this area across the United Kingdom and their possible implications for Wales should continue to be monitored.

Further matters (Chapter 12)

In the evidence presented to us, we were asked to consider whether there should be changes in powers in a number of other specific areas.

We make a number of recommendations in relation to the Welsh language, building regulations, civil contingencies, elections, equal opportunities, family welfare, Higher Education and science, teachers’ pay and the appointment of Lords Lieutenant.

Where we have been unable to take sufficient evidence on certain matters to make a decision on the case for devolution, we recommend that these matters should be given further consideration by our proposed Welsh Intergovernmental Committee. The Committee should also consider a number of technical issues in certain other areas that have been raised in evidence.

The National Assembly for Wales and UK Parliament (Chapter 13)

We received helpful evidence on how the National Assembly for Wales and the UK Parliament might operate and work together better for the benefit of Wales.

We conclude that the National Assembly should have greater control over its own proceedings. This would help it fulfil its roles of passing legislation, scrutinising the Welsh Government and representing the views of the people of Wales.

We also conclude that the National Assembly is at present too small to fulfil its role adequately. There is a real risk of the governance of Wales being impeded by insufficient capacity to scrutinise legislation and the Welsh Government. The size of the National Assembly should be increased, and we note that most analysis suggests that it should comprise at least eighty Members. The practical implications, and those for the electoral system, will need further consideration.

We also believe there should be improved arrangements for fostering closer working between the National Assembly and the UK Parliament, and we make a number of specific proposals.

Public sector capacity (Chapter 14)

Some evidence raised concerns about the capacity of the public sector in Wales, and about the extent to which the UK Government understood Welsh circumstances.

We conclude that the Welsh Government should continue to be staffed by officials of the Home Civil Service, and a wider Welsh Public Service should be nurtured. The Welsh Government's capacity, and that of the UK Government, to deal with devolution should be developed with a more structured system of staff interchange.

We believe that greater engagement of the Welsh public sector with Welsh civil society would improve the operation of devolution in Wales and benefit the Welsh Government's capacity for policy-making, delivery and reform.

Implementation (Chapter 15)

As our terms of reference required, we considered implementation issues.

We recommend a ten-year programme of reform to implement our recommendations and believe that this should take place in three phases.

Many of the recommendations in this report can be introduced without legislation. This should be done before the next United Kingdom General Election.

A Bill introducing a new reserved powers model, including the transfers of powers recommended in this report, should be enacted by 2017.

Further devolution of responsibilities in relation to justice requires a sufficient degree of consensus in Wales, and reviews by the UK and Welsh Governments. We suggest these should be carried out and their conclusions implemented by 2025.

Overall impact and looking to the future (Chapter 16)

We have considered the overall impact of our report and its relationship with other developments across the United Kingdom.

If the UK and Welsh Governments decide to implement our recommendations, as we believe they should, we would expect them to carry out more detailed impact assessments of their specific proposals in accordance with their normal practice. We refer to estimates of cost throughout the report, and are satisfied that our recommendations are affordable and may offer scope for savings.

We have carefully considered the views of all, including those who have expressed scepticism about the benefits of devolution, and we have addressed the concerns that people have expressed.

It is clear that, while devolution has in many ways been a success and is now an accepted part of the Welsh landscape, the current arrangements are not sustainable. They do not meet the aspirations of a majority in Wales. The structure of the devolution settlement in Wales lacks clarity and consistency. It is too complex for people to understand or to find easily where power lies: what is devolved; what is retained; and where there are joint powers.

Our recommendations as a whole provide for a stable long-term settlement, promoting a more confident, outward looking and self-reliant country, and bringing to an end a period in which constitutional issues have overly dominated the debate in Wales.

Our view is that the presumption should be in favour of devolving powers to ensure decisions are made as close to the Welsh people as possible, while also ensuring that powers continue to be held at the United Kingdom level where it is most effective to do so.

Our recommendations will create a stronger Welsh democracy that is more in line with international norms:

- the implementation of our first report will bring to an end the anomaly of a country with legislative but no tax and borrowing powers;
- the implementation of our second report will bring to an end the anomaly of a country that does not have a reserved powers model in a reserved powers Union, and the anomaly of devolved legislation but no devolved law enforcement or justice powers.

We are satisfied that our recommendations will strengthen accountability and responsibility:

- we have reviewed the existing powers of the UK and Welsh Governments. We have not proposed changes in a majority of the existing powers, where devolution is working well, but have suggested modifications elsewhere;
- we have suggested recasting the devolution settlement as a reserved powers model by defining the powers of the National Assembly and Welsh Government in a clear and coherent way;
- we have suggested other ways of improving the effectiveness of devolution, including better data and inter-governmental relations; and
- we have proposed a realistic phased timetable over ten years.

Our recommendations will benefit Wales and the whole of the United Kingdom by providing additional levers to strengthen the Welsh economy and management of natural resources; they will promote equity and fairness, for example by improving access to justice; and they will promote a stable and lasting devolution settlement based on the principles of agreement and mutual consent.

We have produced a report which we have all agreed and that we consider will command wide support. We are satisfied that our proposals meet our vision and remit.

We commend our report for implementation according to the timetable we propose.

Recommendations

We set out below the recommendations in the order in which they appear in the report.

Chapter 4 – The model of devolution

- R.1 The existing conferred powers model should be replaced by a reserved powers model. The two Governments should agree a process and timetable for developing and agreeing the new legislation setting out the powers reserved to Westminster.
- R.2 There should be a general transfer of pre-devolution Minister of the Crown powers to Welsh Ministers, subject to any necessary exceptions. In the meantime, consideration of potential Minister of the Crown powers in National Assembly Bills should be done promptly by the UK Government and with a presumption of consent.

Chapter 5 – Intergovernmental relations

- R.3 The two Governments should identify and circulate guidance on good practice on intergovernmental relations and areas for development by drawing on examples provided to us. They should also review existing guidance notes and adherence to them regularly.
- R.4 A statutory Code of Practice on intergovernmental relations should be provided for in a new Government of Wales Act.
- R.5 It would be helpful for the National Audit Office and the Wales Audit Office jointly to audit intergovernmental relations. This audit could be reported to the Welsh Affairs Committee and the corresponding National Assembly committee which could then, from time to time, jointly review intergovernmental communication and engagement.
- R.6 The Welsh and UK Governments should establish a Welsh Intergovernmental Committee, supported by separate sub-committees if needed. It should oversee the operation of the Welsh devolution settlement by:
 - a. seeking to simplify the existing devolution model, and taking forward the process of moving to a reserved powers model;
 - b. considering detailed proposals for changes to devolved responsibilities raised in the future;
 - c. resolving disagreements without invoking the full dispute resolution process;
 - d. monitoring EU developments impacting on Wales; and
 - e. resolving cross-border issues.
- R.7 There should be an arbitration mechanism for resolving disagreements between the Welsh and UK Governments in relation to legislative competence of Bills passed by the National Assembly before a referral to the Supreme Court is contemplated.
- R.8 To improve evidence-based outcomes, the two Governments should:
 - a. collaborate with the Scottish Government and the Northern Ireland Executive to publish more comprehensive and consistent comparative data and analysis on public service and economic outcomes across the countries and regions of the United Kingdom. This should be built on existing data sources as far as possible; and

- b. identify and learn from each other what works well in policy and delivery to improve public services and the economy, especially building on the work of the Wales Audit Office and National Audit Office.

Chapter 6 – Economic powers

- R.9** The UK and Welsh Governments 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.
- R.10** Given that the border is administrative and not economic, and given their shared ambition for economic growth, the UK and Welsh Governments should take account of each other's policies in a coherent way when developing their economic strategies for Wales. This would include a better-coordinated approach to business regulation and inward investment.
- R.11** The two Governments should improve the collection of Welsh economic data and economic modelling capacity.

Chapter 7 - Transport

- R.12** On transport, the following should be devolved:
- a. port development, including harbour orders and oversight of Trust ports;
 - b. the Wales and Border rail franchise;
 - c. funding of Network Rail in relation to the Wales network;
 - d. speed limits and drink drive limits;
 - e. bus regulation, including the relevant functions of the Traffic Commissioner; and
 - f. taxi regulation.
- R.13** 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.14** There should be close coordination between the two Governments to ensure good quality cross-border routes. Matters to be considered should include:
- a. improvements to the Trans-European Network along the M4 and the A55 corridors;
 - b. the future of the Severn Crossings tolls; and
 - c. roads that straddle the border, including a formal process for decisions on proposed route improvements on either side of the border that takes full account of the strategic importance of the route for Wales.

Chapter 8 – Natural resources

- R.15** To encourage the development of energy projects in Wales, we recommend:
- a. the responsibility for all energy planning development consents for projects up to 350MW onshore and in Welsh territorial waters should be devolved to the Welsh Government;

- b. there should be a statutory obligation for the UK Government to consult the Welsh Government and take account of Welsh planning policies when granting consents for projects over 350MW;
- c. associated development consents should be aligned with responsibility for the main project;
- d. responsibility for issuing marine licences in Welsh offshore waters should be devolved; and
- e. Wales should have parity with Scotland and Northern Ireland for the proposed Contracts for Difference (CfD) that will replace Renewables Obligation Certificates from 2017 as part of the wider Electricity Market Reform.

R.16 On water, we recommend:

- a. powers over sewerage should be devolved to the National Assembly for Wales;
- b. the boundary for legislative competence for water should be aligned with the national border. We recognise the need for further consideration of the practical implications of alignment, with particular regard for the interests of consumers, and involving the regulator, consumer representatives, water companies and both Governments;
- c. a formal intergovernmental protocol should be established in relation to cross-border issues; and
- d. the Secretary of State's existing legislative and executive powers of intervention in relation to water should be removed in favour of mechanisms under the inter-governmental protocol.

R.17 On the Crown Estate, we recommend:

- a. there should be a Welsh Crown Estate Commissioner appointed in consultation with the Welsh Government;
- b. a Crown Estate office should be established in Wales, subject to normal value-for-money criteria, to promote the development of the Crown Estate for the benefit of Wales;
- c. the existing memorandum between the Crown Estate and Welsh Government should be published and regularly updated; and
- d. emphasis should be given by the Crown Estate to the Welsh supply chain, especially in developing offshore energy in Wales.

R.18 The existing executive responsibilities of Welsh Ministers for marine conservation and licensing in the Welsh inshore area should be extended to the Welsh offshore area.

Chapter 9 – Broadcasting

R.19 The regulation of broadcasting should remain the responsibility of the UK Government.

R.20 On the BBC, we recommend:

- a. the creation of a devolved governance body within the UK Trust framework with powers to provide oversight and scrutiny of BBC outputs in Wales; and
- b. 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.21** On S4C, we recommend:
- a. within the 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
 - b. in the meantime the appointment of the S4C Authority members by the UK Government should require Welsh Government agreement.
- R.22** The interests of Wales should be represented on the Ofcom board through a board member with specific responsibility for representing Wales.
- R.23** 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.

Chapter 10 – Policing and Justice

- R.24** On policing, we recommend:
- a. policing and related areas of community safety and crime prevention should be devolved;
 - b. existing levels of cross-border police cooperation should be maintained;
 - c. powers in respect of arrest, interrogation and charging of suspects, and the general powers of constables, should not be devolved unless and until criminal law is devolved;
 - d. the National Crime Agency should not be devolved;
 - e. police pay should be devolved, but police pensions should not be devolved; and
 - f. the two Governments should agree charging systems and terms of service provision for the Police College, Independent Police Complaints Commission, HM Inspectorate of Constabulary and common services such as the Police National Computer system.
- R.25** The treatment and rehabilitation of youth offenders should be devolved.
- R.26** On probation and prison services:
- a. there is a persuasive case for the devolution of the prison service, as well as the probation service, though we also recognise the difficulties of implementation in this area. The two Governments should jointly carry out and publish a study of the feasibility of implementation; and
 - b. in the meantime, we propose that a formal mechanism be established for Welsh Ministers to contribute to policy development on adult offender management.
- R.27** There should be further administrative devolution in the court system, including by the following means:
- a. the various divisions of the High Court should sit in Wales on a regular basis to hear cases that arise in Wales, other than highly specialist cases;
 - b. a High Court office should be established in Wales to coordinate High Court sittings in Wales;
 - c. the divisions of the Appeal Court should continue to sit in Wales on a regular basis to hear cases that arise in Wales; and

d. High Court and Appeal Court judges should be allocated to sit in Wales only if they satisfy the Lord Chief Justice that they understand the distinct requirements of Wales.

- R.28** There should be a review within ten years of the case for devolving legislative responsibility for the court service, sentencing, legal aid, the CPS and the judiciary to the National Assembly.
- R.29** There should be at least one judge on the United Kingdom Supreme Court with particular knowledge and understanding of the distinct requirements of Wales.
- R.30** Welsh Ministers should continue to have competence on tribunals in devolved areas of policy; there should be clarity and coherence in the relationship between devolved and non-devolved tribunals; the process of appointment, training and terms and conditions of employment should be consistent; and tribunals should be seen to be independent of government.
- R.31** Until and unless legal aid is devolved, 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.
- R.32** Welsh Ministers should be able to propose law reform projects to the Law Commission on a similar basis to UK Government Ministers.
- R.33** There should be improved access to all legislation in areas of devolved powers through publication of a consolidated body of Welsh primary and secondary legislation.
- R.34** There should be a periodic report by the UK Government in consultation with the Welsh Government to the UK Parliament and to the National Assembly on how access to justice is improving in Wales; and there should be regular dialogue between the Lord Chief Justice of England and Wales and Welsh Ministers on the administration of justice in Wales.
- R.35** A Welsh Criminal Justice Board, bringing together both Governments and their relevant agencies, should be created.

Chapter 11 – Health and social security

- R.36** There should be no change to the devolution settlement in relation to health.
- R.37** There should be equitable cross-border access for patients and a strategic approach to joint delivery of health services. This should be delivered through:
- a. regular and frequent review by the Welsh Intergovernmental Committee of the UK Government and Welsh Government protocol on cross-border healthcare;
 - b. individual protocols developed between each border Local Health Board in Wales and neighbouring NHS Trusts in England; and
 - c. a cooperative and coherent approach to joint delivery of health services, particularly highly specialist facilities, and joint efficiency savings.
- R.38** The social security system in Wales should remain non-devolved.

Chapter 12 – Further matters

- R.39** The UK Government and Welsh Government should systematically assess and keep under review the way in which the Welsh language is used across government, in particular with a view to amending any United Kingdom legislation that does not give equal status to the Welsh language in Wales.
- R.40** Welsh Ministers should be able to make building regulations in respect of all buildings in Wales.
- R.41** The two Governments should ensure that there is a clear understanding of their respective roles in relation to civil contingencies and emergencies. There should be an agreed transfer of executive powers if that is necessary to ensure resilience.
- R.42** The administration and conduct of local government elections should be devolved.
- R.43** On equal opportunities, we recommend that legislative competence should be devolved:
- a. in respect of specific equality duties for the Welsh devolved public sector; and
 - b. to provide for accountability for the Equality and Human Rights Commission in devolved areas.
- R.44** The two Governments should work together to reduce the complexity of the present family welfare system. This should be based on the principle that the National Assembly should be able to legislate in relation to the powers and responsibilities of public authorities in connection with vulnerable adults and children.
- R.45** On Higher Education and research, there should be a formal intergovernmental committee to ensure a coherent approach to policy and to assess the impact of decisions taken at a United Kingdom level on Higher Education Institutions in Wales.
- R.46** The Research Councils and Technology Strategy Board should ensure that they are aware of Welsh needs, especially in relation to economic development, and designate a Council member with relevant expertise to represent the interests of Wales and be a conduit for the exchange of information.
- R.47** Teachers' pay and conditions should be devolved. Responsibility for pensions should remain with the UK Government.
- R.48** The First Minister should be able to make a recommendation for a Lord Lieutenantcy directly to the Prime Minister.

Chapter 13 – The National Assembly for Wales and UK Parliament

- R.49** A range of options should be considered in the short term for increasing the capacity within the existing National Assembly, including greater flexibility on the number and size of committees, increased numbers of research staff and better use of Assembly Members' time.
- R.50** The size of the National Assembly should be increased so that it can perform its scrutiny role better. The practical implications, and those for the electoral system, will need further consideration.

- R.51** On the National Assembly's relationship with the UK Government, we recommend:
- a. the National Assembly and Secretary of State should agree appropriate engagement on the UK Government's legislative programme, rather than one based on the legislative requirement for the Secretary of State's appearance before the National Assembly;
 - b. the unused right for the Secretary of State to participate in the proceedings of the National Assembly should be removed;
 - c. the Secretary of State's powers to prevent Assembly Bills proceeding for Royal Assent should be aligned with those in Scotland; and
 - d. the annual financial statement to the National Assembly should be presented by the Welsh Government rather than the UK Government, and the National Assembly should be able to regulate its own financial procedures.
- R.52** Obligations and restrictions on the National Assembly in the Government of Wales Act 2006 should be reviewed and amended or repealed where no longer appropriate. This should be done on the basis of the detailed memorandum provided to us by the Presiding Officer. In particular, there should be a presumption in favour of adopting changes that bring the National Assembly in line with the Scottish Parliament.
- R.53** If the National Assembly wishes to change its name to the Welsh Parliament, this should be respected.
- R.54** On the relationship between the National Assembly and UK Parliament, we recommend:
- a. there should be improved inter-parliamentary cooperation to increase mutual understanding of the work of the National Assembly and both Houses of Parliament, especially in terms of committee-to-committee cooperation (including attendance by Ministers from each administration at Committees of the other legislature); information-sharing should be improved; Assembly Members should be given parliamentary passes; and the Legislative Consent Motion procedure should be formalised and apply as widely as the same procedure does in Scotland;
 - b. there should be a detailed statement published with every UK Government-proposed Parliamentary Bill on its implications for Wales; and there should be a similar practice in respect of Assembly Bills in relation to any implications for the wider United Kingdom; and
 - c. Members of Parliament representing constituencies bordering Wales who raise cross-border issues that affect their constituents should be accorded the same courtesies by Welsh Ministers as Assembly Members receive. This should apply equally to Assembly Members raising issues in England that affect their constituents.
- R.55** The House of Lords should ensure adequate consideration of Welsh matters, and future appointments to the House should fairly represent Welsh-domiciled people. Any reformed second Chamber should represent Wales fairly.
- R.56** It should be recognised that the National Assembly is permanent, so long as that is the will of the majority of the people of Wales.

Chapter 14 – Public sector capacity

- R.57** The Welsh Government should continue to be supported by civil servants who are members of the Home Civil Service; secondments should be encouraged and facilitated; and there should be increased flexibility for the Welsh Government to manage staff.
- R.58** The two Governments should seek to develop the capacity of the Welsh public sector (both devolved and non-devolved) to deliver more efficient and better-integrated public services and economic growth.
- R.59** The capacity of Whitehall Departments for dealing with Welsh matters should be strengthened, and Departments should be clearer about the extent of their responsibilities for the different parts of the United Kingdom; and devolution coordinators' and champions' roles and contact details should be publicly available.

Chapter 15 – Implementation

- R.60** On implementation, we recommend a ten year programme of reform with three phases:
- a. implementation of administrative recommendations before the next United Kingdom general election;
 - b. subject to endorsement through election manifestos, introduction through a Wales Bill of a reserved powers model including the transfers of powers recommended in this report; and
 - c. completion and implementation of the review of legislative devolution of other aspects of the justice system by 2025.

Chapter 16 – Overall impact and looking to the future

- R.61** On costs, we recommend:
- a. transfers of powers should be accompanied by (and be conditional on) transfers of funding being fully agreed between the two Governments in each case, and by agreed changes to the Barnett formula comparability factors;
 - b. any additional costs to the Welsh Government, for example arising from diseconomies of scale or transitional costs, should be kept to a minimum and to levels which are absorbable within the Welsh Government's budget; where costs are particularly problematic to identify there should be further work by the two Governments before devolution is agreed;
 - c. the Welsh Government should maximise any opportunities to increase the efficiency which devolution of further powers might bring, for example through a more holistic approach to transport planning or reducing crime;
 - d. there should be a stronger and more imaginative focus by the two Governments on reducing spending by more effective and efficient public service delivery. This might be done through shared use of facilities by the two Governments, by buying in appropriate expertise, or by joint efficiency savings; and
 - e. the effect on third parties including business should be subject to careful impact assessments in the normal way to ensure our proposals are implemented in a way that will maximise benefits and minimise costs.