

Hello, I would like to add my opinions to your consultation on a single legal jurisdiction for Wales. As well as historical and sentimental reasons for the repatriation of legal powers to Wales, I can see potential benefits.

As a High School teacher I would like to raise some potential advantages that I can envisage for our young people.

I regularly hear from many of my students that they are thinking of pursuing a career in law.

However I also see the loss of great talent to England as many leave Wales to seek higher pay, or to study law at an English university, where they often settle. This is contributing to the 'brain drain', which is a large problem for my own county of Conwy. I strongly believe that a single legal jurisdiction will give the following messages for young potential lawyers and those thinking about taking up other careers in the legal profession:

- 1) Interest in the Laws of Wales will be stimulated and may instil a sense of civic duty, which may encourage many to remain and work in Wales
- 2) Welsh Universities may become more popular among Welsh students who wish to study law and become part of Wales' legal establishment
- 3) A positive impact upon our schools' curricula may be created as lessons, schemes of work and career paths will refer to Welsh laws and promote civic participation
- 4) A message that Welsh laws are *their laws* may give young people a sense of collective responsibility towards the nation and their local community
- 5) Government, the courts and the law will not seem as distant as it currently does, which may encourage more interest from young people
- 6) Lobbying of local AMs concerning Welsh laws can foster a more progressive means of voicing an opinion than the current model, which seems (and often is) distant from the local communities
- 7) I think that a Welsh jurisdiction would encourage young people to consider setting up legal practices as the law (especially if we also have a Welsh 'statute book') is simplified and looks more 'Welsh' (As opposed to some laws for England, some for Wales and some for 'England and Wales').
- 8) It will also make it clearer for young people (indeed all people) which areas are actually devolved and which are reserved to Westminster, possibly stimulating further interest in the government and politics of Wales.

I believe that my arguments are quite compelling and that as well as the historical and sentimental reasons for recreating our distinct legal jurisdiction, they add some very good reasons for pursuing this policy.

Thank you for reading my comments and I hope they are useful in your wider consultation.

Diofch yn fawr

Mr Timothy Williams

Bae Colwyn

## Response 2 – Eirian J Williams

My experience involves having been a practising solicitor in West Wales for over 32 years and prior to that a practitioner in the Province of Alberta, Canada. I am a member of the Law Society and a non-active member of the Law Society of Alberta.

Welsh laws have existed for centuries under the old historic laws of Hywel Dda, so laws emanating from Wales are not a new phenomena. As new Welsh laws evolve where the Welsh Government will not only be in a position to secure secondary but also primary legislation, it follows naturally that there should be a Welsh Court jurisdiction to deal *prima facie* with Welsh laws. This is a must. I note that the Welsh Secretary has indicated that there is no need for a distinct Welsh legal jurisdiction and some have indicated that Wales would be isolated. I fundamentally disagree. A Welsh Legislation affecting Wales and the residents of Wales needs a distinct court to interpret the statutory provisions, provide judicial guidance and establish a precedent as the existing legal system has existed over several centuries. A legislative body without a court is like a “cart without a horse” or a “busy airport without a control tower”!

A Welsh court is required to restrict other citizens of the UK taking advantage of Welsh laws under the Human Rights Act and reciprocally Welsh residents taking advantage of other laws in the UK.

From the Canadian perspective Canada is a federal system with a decentralized legal system. The criminal court for example, has been codified and the responsibility of the federal government in Ottawa is to pass legislation affecting all the peoples of Canada although it is the responsibility of the Provincial Governments to administer the law in the Courts and to enforce the law. The criminal division has been substantially devolved as well as other areas including the Youth Division, the Civil Division, and the Family Division. The uppermost courts consist of the Court of the Queen’s Bench, the Appeal Court, but the highest court is the Supreme Court of Canada for all the Provinces. See: [http://justice.alberta.ca/program\\_services/courts/Pages/chart\\_cour...](http://justice.alberta.ca/program_services/courts/Pages/chart_cour...)

The Canadian system could be a “roadmap” for Wales to follow with the Civil Courts and the criminal system devolved, although the legislation involving this would need to be compatible with other areas of the UK and legislated from Westminster but administered from Cardiff Bay. The civil statutes could be either UK- based or emanating from The Welsh Chamber. Geographically Wales and Canada or for that matter Australia are not on the same scale. The population of Alberta is for example 3.2million according to the 2006 census and served by its own jurisdiction in several areas. There are certain structural features and aspects of the Canadian (as well as the Australian model) federal system which the Welsh jurisdiction could extrapolate and apply to Welsh needs and laws

As a practitioner in Alberta I was always aware, when acting for a client who, for example, wished to incorporate a company whether the business would take place within the Province or outside of the province. If within, the Alberta Companies Act would apply for incorporation but the federal act would apply if the business spanned across Canada.

## Response 2 – Eirian J Williams

The same principle would apply to other areas of law.

The federal system is not without its problems and difficulties. I refer to one sensitive issue in the late 1970's in Quebec. At a federal level, French and English are both official languages and all federal issues must be bilingual, even the Courts, the civil services, any publications and all issues of a federal nature. The Quebec legislature passed a law in the 1970's stating that French was the only official language of that province and in practical terms all signage would be in French. Since 1970 languages other than French have only been permitted if French was given prominence. A further complex issue at the time was when the Quebec Government insisted that French should be the language in air space over Quebec. This was contested in the courts and eventually overruled by the Supreme Court of Canada.

The establishment of a Welsh court is a must for any future laws passed by the Welsh Government. There are, of course, complex areas to address and analyse and also issues not having yet surfaced, but certainly the principle of such a distinct system is inevitable and the sooner the better in order to engage with and to address emerging disputes and contentious aspects as laws are passed

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## Consultation Document

# A Separate Legal Jurisdiction for Wales

Date of issue: 27 March 2012

Action required: Responses by 19 June 2012



## Overview

The purpose of this consultation is to seek views on:

- what is meant by the term “separate legal jurisdiction”;
- whether there are any essential features for the existence of a separate legal Jurisdiction and, if so, what they might be;
- what the consequences of having a separate Welsh legal jurisdiction might be; and
- what the potential advantages and disadvantages of a separate Welsh legal jurisdiction would be.

## How to respond

Please respond to this consultation by answering all or any of the questions highlighted in bold throughout the document and listed at the end of the document. You are also welcome to submit a general view or opinion on the question of a separate legal jurisdiction for Wales.

When answering the questions in this consultation paper, please provide reasons for your answers, with particular reference to what you think might be the consequences, advantages and disadvantages of a separate Welsh legal jurisdiction.

## Further information and related documents

Large print, Braille and alternate language versions of this document are available on request.

## Contact Details

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## Data Protection

How the views and information you give us will be used.

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

## **Foreword from the First Minister and Counsel General**

The constitutional landscape in the United Kingdom has changed significantly since devolution of powers to Wales, Scotland and Northern Ireland happened in 1999.

In Wales, the major changes have happened in clear stages: devolution of executive powers to the National Assembly for Wales in 1999, legal separation of the Welsh Government from the Assembly together with powers to pass Measures in 2007, and powers for the Assembly to pass primary legislation in all devolved areas following the Yes vote in the referendum in 2011.

These changes gave our new democratic institutions – our Welsh Government and Assembly – the powers they needed to develop, implement and scrutinise policy in devolved areas. But there is, inevitably, a wider potential impact – on civil society in Wales, on those lobbying for social or economic change, on members of the public, and, most importantly in the present context,, on the laws and legal system in Wales.

The UK Government has now appointed a Commission on Devolution in Wales, chaired by Paul Silk, a former Clerk to the National Assembly. As part of its work, the Commission will consider the powers of the devolved institutions, in particular issues relating to the boundaries of the devolution settlement in Wales. The Welsh Government will submit written evidence to the Commission in due course. That evidence will in part be informed by the outcome of this consultation.

Currently, all law passed for Wales, whether by the Assembly, Welsh Ministers, Westminster Parliament or UK Government Ministers, becomes part of the law of England and Wales. This is because England and Wales share a single legal jurisdiction; and a single system of courts, judges and legal professions has grown up as a distinctive feature of that jurisdiction.

The devolution of powers to the Welsh Government and Assembly will inevitably mean more distinct Welsh law applying in Wales in future – and the opportunities are now even greater following the Yes vote in last year's referendum. In this context, the time is now right to consider whether or not there should be a separate legal jurisdiction for Wales.

This is a genuine consultation, and the arguments by no means lead to only one possible conclusion. We want all the arguments for and against to be aired and subject to thorough scrutiny, so that the potential benefits and disadvantages are clearly understood. We are clear that separate jurisdictions can exist within a United Kingdom – Scotland and Northern Ireland have their own jurisdictions separate from that of England and Wales. Beyond that, while we have a lot of information about the characteristics of legal jurisdictions, we are open-minded as to whether a move towards a separate jurisdiction for Wales would be the right way forward. .

It is for that reason, therefore, that we are launching this consultation. We are aware that the debate on a possible separate jurisdiction for Wales is already under way in legal circles, and also that the Assembly's Constitutional and Legislative Affairs Committee is already part way through its inquiry into the issue. We welcome the

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work that is already being done, and we now want to build upon it through this consultation.

We look forward to receiving your views on the issues raised in the consultation paper. If necessary, we will undertake a further consultation exercise later to explore particular issues arising from the responses in more detail.



**RT HON CARWYN JONES AM**  
First Minister of Wales



**THEODORE HUCKLE QC**  
Counsel General

## Purpose

The people of Wales voted "yes" in the referendum on the powers of the National Assembly for Wales held in March 2011.

As a consequence of that, in May of last year, the provisions of the Government of Wales Act 2006 that enable the Assembly to pass primary legislation (called Assembly Acts) in relation to all devolved subjects were brought into effect.

Amongst other things this means that it is no longer necessary for the consent of the UK Parliament to first be obtained before the Assembly can legislate in relation to those devolved subjects.

The Assembly now has the power to pass Assembly Acts which become law upon Her Majesty giving Royal Assent. Within its powers the Assembly may, by Act, do anything that an Act of the UK Parliament could do.

The UK Parliament is sovereign and retains power to legislate on any matter in Wales. There is, however, a convention that the UK Parliament will not normally legislate in relation to a devolved matter in Wales without the consent of the Assembly<sup>1</sup>.

Because England and Wales is a single legal jurisdiction the laws made by the Assembly or by the UK Parliament still form part of the law of England and Wales, even if they are only intended to apply in Wales. The position, in this respect, is different in Scotland and Northern Ireland because each of them is a *separate* legal jurisdiction. Therefore, for example, Acts of the Scottish Parliament only extend to Scotland and do not form part of the law of any other territory within the UK.

Since devolution in 1997, and particularly as a consequence of the referendum in Wales on the Assembly's law-making powers, there has been much discussion about whether or not Wales should also be a separate legal jurisdiction.

On 7 October 2011 the First Minister for Wales made a written statement to the Assembly setting out the Welsh Government's intention to launch a public debate on this issue.

The purpose of this consultation is to seek views on:

- what is meant by the term "separate legal jurisdiction";
- whether there are any essential features for the existence of a separate legal jurisdiction and, if so, what they might be;
- what the consequences of having a separate Welsh legal jurisdiction might be; and

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<sup>1</sup> Memorandum of Understanding and Supplementary Agreements Between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee – June 2011.



- what the potential advantages and disadvantages of a separate Welsh legal jurisdiction would be.

When answering the questions in this consultation paper, please provide reasons for your answers, with particular reference to what you think might be the consequences, advantages and disadvantages of a separate Welsh legal jurisdiction.

## **History**

Prior to the conquest of Wales by Edward I of England in 1282-3, Wales and England were separate countries with different laws and legal traditions. In 1284 the Statute of Rhuddlan introduced the English common law system to Wales, although some differences remained in civil law, including the Welsh practice of settling debts by arbitration, and the rules on inheritance whereby a man's land would be divided equally amongst his sons after his death, rather than passing to the eldest.

The legal jurisdictions of England and Wales were merged by the Laws in Wales Acts 1536 and 1542, which created a common legal jurisdiction across Wales that applied English law exclusively. The surviving Welsh laws were abolished. The Acts provided for Welsh representation in Parliament, and established a new system of courts in Wales, known as the Courts of Great Sessions.

The Great Sessions were administratively distinct from the English courts, and dealt with both criminal and civil cases. They sat twice a year in every Welsh county (except Monmouthshire, which was part of the English system). However the Courts of Great Sessions applied English law and proceedings were conducted solely in English (although interpreters were often used). Few of the judges were Welsh, and all the lawyers and judges also practised in England.

## **Today**

The Courts of Great Sessions were abolished by the Law Terms Act 1830, and Wales was incorporated into the English system as the Wales and Chester circuit. Wales became a separate administrative area of Her Majesty's Courts Service (now Her Majesty's Courts and Tribunals Service (HMCTS)) in its own right in 2007, with Chester joining the North West region.

Wales today forms part of the legal jurisdiction of England and Wales, one of the three jurisdictions that make up the UK. Scotland retained a separate jurisdiction under the terms of the treaty that unified it with England and Wales and created the new state of Great Britain. Northern Ireland has also had a separate jurisdiction since its formation as a distinctive division of the UK in 1921.

There has been a trend towards decentralisation in the courts system over recent years to the point where nearly all the courts, up to and including the Court of Appeal, sit in Wales at least some of the time.

Responsibility for the courts, like the majority of administration of justice functions, is not devolved in Wales. However, there are some devolved functions in the field of

the administration of justice. The Assembly has power to create new tribunals<sup>2</sup>, and the Welsh Ministers exercise functions (e.g. to appoint judges and other members) in relation to certain tribunals that sit in Wales<sup>3</sup>. The Welsh Ministers also have responsibility for the Children and Family Court Advisory and Support Service in Wales (CAFCASS Cymru).

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<sup>2</sup> For example the Welsh Language Tribunal under the Welsh Language (Wales) Measure 2011

<sup>3</sup> See the report of the Welsh Committee of the Administrative Justice and Tribunals Council: "Review of Tribunals Operating in Wales"

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## What is meant by the term “legal jurisdiction”?

Jurisdiction is a term that can mean different things in different contexts. The term can be used to describe authority, particularly legal authority, over an area, subject-matter or person. In the context of courts, for example, it can be used to describe the types of cases that a court has power to decide or whether the court has power to hear appeals (appellate jurisdiction).

In this consultation paper, however, the term ‘legal jurisdiction’ is used to refer to the concept of a national legal jurisdiction in the sense that, currently, Scotland and Northern Ireland are legal jurisdictions separate from each other and separate from the legal jurisdiction of England and Wales.

In this paper we seek views on what a legal jurisdiction (in this sense) means, whether there are essential features that must exist before a separate legal jurisdiction can be recognised and what the consequences of having such a jurisdiction might be.

### Key features of a Separate Legal Jurisdiction

It may be helpful to consider whether a separate legal jurisdiction tends to exhibit certain key features.

Where attempts have been made to outline the essential features of a separate legal jurisdiction, three key components are commonly cited<sup>4</sup>:

- a. a defined territory; with
- b. a distinct body of law; and
- c. a separate legal system - such things as a legislature, courts, judiciary and legal professions.

### Applying those key features to Wales

a. *A defined territory*

There are two principal definitions of “Wales” which suggests that there is already a reasonably ascertainable defined territory for Wales.

These definitions can be found in Schedule 1 to the Interpretation Act 1978 (which is based, principally, on the land area of Wales) and section 158 of the Government of Wales Act 2006 (which also includes the territorial waters around the Welsh coast).

1. Do you agree that a defined geographical territory would be an essential feature for a separate Welsh legal jurisdiction?

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<sup>4</sup> For example Sir Roderick Evans and Professor Iwan Davies in their evidence to the Richard Commission; Professor Keith Patchett, ‘Welsh Law’, IWA Agenda article Winter 2007-8; the Report of the All Wales Convention paragraph 3.9.15; Jones and Williams, ‘Wales as a Jurisdiction’, Public Law Journal 2004

1.1 What, for the purposes of a separate Welsh legal jurisdiction, might that territory be – “Wales” as defined in the Interpretation Act 1978 or as defined in the Government of Wales Act 2006?

*b. A distinct body of law*

“Distinct” in this context can mean two things.

Firstly, a body of law may be distinct because it is different in substance.

Secondly, a body of law may be distinct because of the territory over which it applies, irrespective of whether the law is different in substance.

There is already a body of legislation applying in Wales that is different from England – e.g. the Rights of Children and Young Persons (Wales) Measure 2011 or the Welsh Language Act 1993 – and it is highly likely that this divergence will continue to increase.

This divergent legislation derives from a number of sources – e.g. the Assembly, the UK Parliament, Welsh Ministers and UK Government Ministers.

There are currently three legal jurisdictions within the UK; Scotland and Northern Ireland are two, and England and Wales is the third. These are the three territories to which legislation can extend. Legislation passed by Parliament can extend to just one or to all three territories, or any combination of them. An Act of Parliament may be for the whole UK, or for England and Wales only, or for England and Wales plus Northern Ireland but excluding Scotland, and so on.

The Scottish Parliament and Northern Ireland Assembly can legislate only for their own particular territory. The National Assembly for Wales is different. Wales and England currently form a single territory for this purpose, so its legislation becomes part of the law of the England and Wales jurisdiction, even if it only applies in Wales.

This difference between the extent and the application of legislation can be a difficult concept to understand. A way to explain this is that the legislation becomes part of the body of law of England and Wales even if it only has effect in Wales.

The following example may help.

The National Assembly for Wales passes an Act of the Assembly dealing with repairing the footpaths on Mount Snowdon. Clearly, the Act will only have a practical effect within Wales, and this can be referred to as its application.

However, like all Welsh devolved legislation the Act will become part of the body of law of England and Wales, and it will extend to the whole jurisdiction. As a result, if a walker from Norwich was injured whilst using one of Snowdon's footpaths and wanted to bring a claim against the authority responsible for maintaining them, he or she could use a local solicitor to bring the claim in Norwich county court and rely on the Assembly Act as it forms part of the laws of England and Wales and will, therefore, be recognised as such by the courts of England and Wales. The Assembly Act would not have any practical application in Norwich, but it would extend there because of the shared England and Wales jurisdiction.

By contrast, if he or she had an accident in similar circumstances whilst walking up Ben Nevis, and wanted to bring a claim under an Act of the Scottish Parliament, he or she may be required to do so in a court in Scotland. This is because Scotland is a separate legal jurisdiction and Scottish law under an Act of the Scottish Parliament would apply, whilst the defendant would be a Scottish public body, so an English court may not be the appropriate forum.<sup>5</sup>

The fact that there is currently no such thing as 'the law of Wales' (or, of course, 'the law of England'), only the law of England and Wales, means neither Wales nor England can be described as a jurisdiction in its own right. As a result, a court in England could hear a case brought under Assembly legislation, just as a court in Wales could hear a case brought under an Act of Parliament that applied only in England.

2. To what extent (if any) is a distinct body of law an essential feature for a separate legal jurisdiction?

2.1 When is a body of law distinct enough in this regard?

2.2 Does it matter whether the law in question is statute law or common law?

2.3 Does it matter what the nature of the subject-matter of the law is – e.g. criminal, civil, family?

c. *A separate legal system*

Wales already has a devolved legislature and government.

There is a unified court system, judiciary and legal profession throughout England and Wales. Responsibility for the courts, the judiciary and most administration of justice functions is not devolved in Wales and remains with the Ministry of Justice.

<sup>5</sup> See the section 'Enforcement of the law of one jurisdiction in the courts of another jurisdiction', pages 9-10

Experience shows that where there is a separate legal jurisdiction there may also be a separate courts system which deals with cases of all kinds and this may be so even if some areas of the law that those courts deal with are not within the competence of that jurisdiction's government and legislature.

In Canada, for example, the criminal courts are run by the provincial authorities, but the creation of criminal offences and defences is reserved to the federal government. Similarly, consumer protection is generally speaking a reserved matter throughout the whole UK, but is dealt with by the separate court systems of England and Wales, Scotland, and Northern Ireland. The same employment law is also applied across the UK, even though the separate tribunals systems in England and Wales, Scotland and Northern Ireland may have different procedural rules.

Within the UK, all three of the UK's jurisdictions have their own courts up to their individual courts of appeal. However, the Supreme Court, the final UK appeal court in most matters<sup>6</sup>, operates across all three jurisdictions, deciding cases in accordance with the laws applicable in that jurisdiction. As the final appeal court, the Supreme Court sets precedents which must be followed by lower courts within that jurisdiction. While it is usual for courts to operate in just one jurisdiction, the Supreme Court demonstrates that it is possible for a court to be cross-jurisdictional.

Therefore, it may be possible that a unified court system of England and Wales could still operate even if England and Wales were to become separate jurisdictions. Likewise it may be possible for the existing unified court system to be retained at different levels, e.g. to include the High Court, Court of Appeal, and Supreme Court as currently constituted; or alternatively Court of Appeal and Supreme Court; or simply the Supreme Court. Thus in the last two examples, Wales would have to have its own separate High Court or equivalent, or High Court plus Court of Appeal.

3. To what extent (if any) is the separation of responsibilities (i.e. Wales from England) for the administration of justice an essential feature of a separate legal jurisdiction?

- 3.1 To what extent (if any) is a separate Welsh legal jurisdiction compatible with a unified England and Wales court system?
- 3.2 To what extent (if any) is a separate Welsh legal jurisdiction compatible with a unified England and Wales judiciary?
- 3.3 If there were a separate Welsh courts system, which courts would be affected?
- 3.4 Would there need to be a separate High Court and/or Court of Appeal for Wales?
- 3.5 Should Wales continue to share some courts with England, and if so, which ones?
- 3.6 If Wales and England continued to share some courts, what (if any) changes might be needed in the organisation of those courts?

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<sup>6</sup> Scottish criminal cases do not go to the Supreme Court, unless they raise a human rights or other devolution issue.

4. To what extent (if at all) would it be necessary for the devolved legislature to have general legislative competence over the criminal law as a separate devolved subject if responsibility for the administration of justice was devolved?

4.1 Are there any other subjects of legislative competence that should be devolved in such a case?

5. How might a unified England and Wales court system work if:

5.1 There were a separate Welsh legal jurisdiction and the Assembly's legislative competence:

- a. remained, as now, with the ability to expand incrementally, or
- b. extended over all matters except for those expressly reserved to the UK Parliament?

5.2 The current unified legal jurisdiction of England and Wales continued and the Assembly's legislative competence:

- a. remained, as now, with the ability to expand incrementally, or
- b. extended over all matters except for those expressly reserved to the UK Parliament?

There appears to be no single method or process for the creation or emergence of a separate legal jurisdiction.

A separate legal jurisdiction cannot, however, be created unilaterally by the devolved institutions in Wales and such a jurisdiction could not exist until it is recognised by institutions such as Parliament and the courts, for example in a UK Parliament Act that recognises Wales as a separate legal jurisdiction in its extent provisions, in the same way as it does now does for Scotland and Northern Ireland.

There is an argument that all that would be required in order for a separate legal jurisdiction to exist in Wales is to recognise Wales, for legislative purposes, as a separate and distinct unit of the UK. In such a case the UK Parliament, if it intended to make law for Wales, would provide that the law extends to Wales (just as is done now in respect of Scotland and Northern Ireland). The power of the Assembly to legislate by Assembly Act may also need to be modified (see question 19 below) so that its legislation extends only to Wales.

6. When reference is made to a 'legal jurisdiction' in the sense of England and Wales being a legal jurisdiction separate from, for example, Scotland what, in its simplest form, does that mean?

6.1 In this context does legal jurisdiction just mean the territory over which the legislature (or executive) has power to legislate?

7. Are there any other *essential* features of a separate legal jurisdiction?

Is the current single legal jurisdiction of England and Wales sustainable within the existing devolution settlement?

History suggests that the conditions for recognition of a separate legal jurisdiction depend on the particular circumstances of the territory concerned. Sometimes the conditions are practical and in other cases there are political or other conditions.

Practical conditions include, for example, when a region has acquired a degree of autonomy and its laws and/or legal institutions gradually diverge from that of the parent jurisdiction.

If this divergence becomes sufficiently great, it may become impractical for lawyers and judges trained only in the law of the parent jurisdiction to deal with the law of the autonomous or semi-autonomous region without additional training. Canada and other former colonies provide examples of this process. The gradual devolution to Canada of executive and legislative powers caused its law to develop differently to the point where full legal separation became a practical necessity.

In the absence of practical necessity the existence of political or other conditions may support the recognition of a separate legal jurisdiction. Northern Ireland is perhaps the best example; its legal system, intended to have jurisdiction over its territory, came into being when Northern Ireland itself was recognised as a distinct region of the UK and the whole arrangement was designed to prevent further civil unrest in Ireland. At this time, Northern Ireland did not have a distinctive body of law of its own, and indeed its law remains very similar to that of England and Wales.

8. Is the single legal jurisdiction of England and Wales sustainable in the long term given the potentially increasing divergence of the laws applicable in Wales compared with those applicable in England and the rest of the UK?

9. If you consider that the current legal jurisdiction is sustainable then are there any short-term or long-term changes that should be made to any of the following?

- a. The administration of the courts and/or tribunals systems
- b. The judiciary (including the magistracy)
- c. The legal professions (including their regulation)
- d. Education and training in law
- e. Accessibility of legislation

10. If you consider that the current legal jurisdiction is sustainable then are there any other short-term or long-term changes that should be made?



## **Enforcement of the law of one jurisdiction in the courts of another jurisdiction**

Where a court is faced with a case that involves 'foreign' law, there are bodies of rules used by the courts to determine which jurisdiction's law should be used to decide the case. These rules are referred to as "conflict of laws" or "private international law" and apply unless legislation makes express provision for resolving the issue. The rules apply as between different countries, and between different legal jurisdictions within the same country, including the three existing legal jurisdictions of the UK. If the applicable law is found to be that of another jurisdiction, the court may decline to hear the case if it could be dealt with more conveniently in the other jurisdiction. In some circumstances, the court might decide to deal with the case itself, but decide it using the other jurisdiction's law. If the law of another jurisdiction is to be used, an expert on the relevant law must give evidence about its content. The court will always use its own procedures and its own remedies.

For example, if a court in Wales were presented with a dispute between a local company, and a company based in another legal jurisdiction, such as Scotland, it would first have to decide whether it had jurisdiction to hear the case at all, and if it did, whose law should apply. If it found that the matter should be governed by Scottish law, it would then have to decide whether to decline to hear the case, on the basis that it ought to be dealt with in Scotland, or to deal with it but apply Scottish law<sup>7</sup>.

## **Enforcement of judgments across the existing UK jurisdictions**

To enable a judgment of a Scottish or Northern Irish court to be enforced in England and Wales, the court in Scotland or Northern Ireland issues a certificate certifying the details of the judgment<sup>8</sup>. The certificate then has to be registered within six months in the High Court in London before a warrant of execution can be issued. Once the 'foreign' judgment has been registered the High Court can issue a warrant of execution and normal enforcement procedures, such as the use of bailiffs, can begin. A similar process applies for registering and enforcing judgments of the courts of England and Wales in Scotland, again based on registration of a certificate from the court that made the judgment. The procedure is essentially administrative and there is no need to start a new claim in the jurisdiction where enforcement is sought.

At present, the judgments and orders made by courts sitting in Wales can be enforced in England, even if made under devolved legislation, without any additional formalities, because the jurisdiction and legal system are the same.

## **Criminal proceedings across the existing UK jurisdictions**

A significant proportion of criminal law is different between the jurisdictions of England and Wales, on the one hand, and Scotland on the other, but there is a statutory framework for the enforcement of warrants and the arrest of suspects across the jurisdictions. A warrant issued in England and Wales (or Northern Ireland)

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<sup>7</sup> See section 16 of and Schedule 4 to the Civil Jurisdiction and Judgments Act 1982

<sup>8</sup> Section 18 of and Schedules 6 and 7 to the Civil Jurisdiction and Judgments Act 1982

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can be executed in Scotland either by a Scottish police officer, or by an officer from the issuing jurisdiction. Similarly a Scottish warrant can be executed in England and Wales by either a Scottish or a local officer<sup>9</sup>. Officers from England and Wales also have the power to arrest suspects in Scotland without a warrant for crimes committed in England and Wales (and vice versa for Scottish officers) if it appears to them the arrest would have been lawful if the suspect were still in their home jurisdiction<sup>10</sup>.

Therefore, although the law on arresting suspects is not identical across the jurisdictions, the legality of a cross-border arrest can be easily and predictably determined by reference to statute.

*When answering the following questions (11 to 15 (inclusive)) it would be helpful if you could provide your answers firstly on the basis of a unified England and Wales court system and secondly on the basis of a separate Welsh court system.*

11. Would statute law that only extends to a separate Welsh legal jurisdiction be recognised as a law in other jurisdictions within the UK?
12. Would such statute law be judicially noticed in those other jurisdictions?
13. Would such statute law be capable of being the subject of civil proceedings in those other jurisdictions – e.g. for enforcement or through judicial review?
14. Would such statute law be capable of being the subject of criminal proceedings in those other jurisdictions – e.g. arrest, charge, prosecution, conviction and sentencing?
15. What are the potential implications of a separate Welsh legal jurisdiction in terms of private international law (or “conflict of laws”) between Wales and the rest of the UK?

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<sup>9</sup> Criminal Justice and Public Order Act 1994, s.136

<sup>10</sup> Criminal Justice and Public Order Act 1994, s.137

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## Impact of possible separate legal jurisdiction on powers of the Assembly

Devolution works differently in Wales and Scotland. The Scottish Parliament has general legislative competence, which means it can pass laws in relation to any subject, provided the subject is not specifically reserved to the UK Parliament. The Assembly has defined legislative competence, which means it can pass laws only in relation to subjects that have been specifically devolved to it.

At the time of the passage of the Government of Wales Act 2006, it was suggested that the defined powers model was the most appropriate form of devolution for Wales, because the shared England and Wales legal jurisdiction made a wider ranging settlement like Scotland's unworkable. It is sometimes said that because of this a separate Welsh jurisdiction would be a necessary part of any new, wider devolution settlement.

However, others have argued that it would have been possible to create a form of devolution similar to the Scottish system that was compatible with the shared England and Wales legal jurisdiction. Certain areas of law would have had to be reserved to maintain consistency across the jurisdiction where necessary.

16. In the event that Wales moved towards a 'reserved powers' form of devolution, like Scotland's, do you think a separate Welsh legal jurisdiction would be:

- a. essential;
- b. desirable;
- c. undesirable; or
- d. irrelevant?

17. Would the shared England and Wales jurisdiction be sustainable if Welsh devolution were widened?

18. If it would be sustainable, which areas of law would need to be reserved to the UK Parliament?

Under section 108(5) of the Government of Wales Act 2006, the Assembly can in certain circumstances make provisions in Assembly Acts that apply in England as well as in Wales. Such provision can be made, for example, if it is needed to make the provisions of an Assembly Act effective or to allow the Assembly Act to be enforced.

### Example

If the Assembly passed an Act aimed at preventing children from playing truant from Welsh schools, it could confer a power on local authority education officers to take truant children and return them to school. However, the Act would clearly be less effective if children in border areas could evade the officers by going into England. Therefore, the Assembly could also use section 108(5) to confer the same powers on the education officers of English local authorities. This would be permitted because its aim would be to make an Assembly Act applying to Wales effective and to ensure that it could be enforced.

This is possible at present because England and Wales form a single legal jurisdiction and Assembly Acts are part of the law of that jurisdiction, so laws made in Wales can be recognised by courts in both Wales and England. By contrast, the Scottish Parliament's legislation can only take effect in Scotland, because it is a separate legal jurisdiction.

19. Would the emergence of a separate Welsh legal jurisdiction require the removal of the Assembly's power that enables it in certain circumstances to make laws applying in England?

19.1 Would there be any legal, constitutional or practical difficulty in the Assembly retaining such a power:

- a. upon the basis that any provision made in relation to England would extend to and form part of the law of England?
- b. otherwise, and if so how?

19.2 If you think that there would be such difficulties:

- a. what are they?
- b. would those difficulties be any different to the current situation where the Assembly already has the power to make provision applicable in England?

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## Impact of possible separate legal jurisdiction on the legal professions

The requirements imposed on legal professionals who want to practise in a different jurisdiction vary, depending on how much the law of the jurisdiction in which they wish to practise differs from that of their home jurisdiction.

The law of Scotland is different from that of the rest of the UK in a number of important respects, and Scotland has very different legal procedural rules in many instances, so Scottish lawyers who want to practise in England and Wales or Northern Ireland are required to undertake additional training, as are English and Welsh or Northern Irish lawyers before they can practise in Scotland.

The law and legal practises of Northern Ireland are not so substantially distinct from that of England and Wales, so lawyers moving between those jurisdictions generally do not have to retrain at all.

The question therefore arises *whether*, and to what extent, a separate legal jurisdiction would require separate legal professions.

20. To what extent (if any) is the concept of a separate Welsh legal jurisdiction compatible with the unified England and Wales legal professions?

20.1 What are the potential effects (if any) of a separate Welsh legal jurisdiction on the following aspects of the legal professions?

- a. education and training;
- b. qualification;
- c. regulation.

## Impact of possible separate Welsh legal jurisdiction on the common law

England and Wales is a common law jurisdiction. In common law jurisdictions, the law comes both from legislation, made by legislatures and governments, and from decisions of the courts. Decisions of the highest courts have to be followed by judges in lower courts when dealing with cases where the facts are similar – i.e. the higher courts set legal precedents for the lower courts to follow.

The decisions of courts of other legal jurisdictions (including Scotland and Northern Ireland) are not binding in England and Wales. However in some cases they may be taken into account and may be persuasive in the sense that a court in one jurisdiction may adopt the legal reasoning of the court from the other jurisdiction.

The common law will continue to develop as it has always done.

However, devolved powers are statutory in nature and an Assembly Act may replace a common law rule with a statutory rule, provided that it is within the Assembly's competence.

There is an argument that a separate legal jurisdiction in Wales (whether or not this is coupled with a separate court system) would not directly affect the development of the common law. Wales would remain a common law jurisdiction with the UK Supreme Court as the final court of appeal, as in the case of those Commonwealth countries, such as Jamaica at present, which still look to the Judicial Committee of the Privy Council in this way.

21. Would the common law that has evolved as part of the unified jurisdiction of England and Wales be affected by the creation of a separate Welsh legal jurisdiction?
22. Would your answer be different if there was a separate court system in Wales?
23. Would your answer be different if the Assembly had legislative competence generally over all (or most of) the:
  - a criminal law;
  - b civil law; or
  - c any other area of law that you do not consider falls within (a) or (b)?
24. Could there be express reservations excluding the common (judge-made) law from the legislative competence of the Assembly?
  - 24.1 Why would that be desirable, and how would it work in practice?
  - 24.2 How difficult would that be?

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## Operation of and other possible impacts of a separate Welsh legal jurisdiction

25. Are there any wider economic (including resources), legal, political, linguistic or social ramifications of a move to a separate Welsh legal jurisdiction?
26. Given the numerous sources from which law applicable in Wales can originate, what systems would need to be in place in order to ensure that the law of a separate Welsh legal jurisdiction was readily accessible to the people of Wales and other interested parties?
27. In a specifically Welsh context, are there any additional features that would be appropriate for a separate legal jurisdiction to operate effectively?
28. Would your answers to any of the questions in this consultation paper be different if the approach to the Assembly's legislative competence was the same as that of the Scottish Parliament – i.e. if the Assembly had competence over all matters except those expressly reserved to the UK Parliament?

## Complete List of Consultation Questions

1. Do you agree that a defined geographical territory would be an essential feature for a separate Welsh legal jurisdiction?
- 1.1 What, for the purposes of a separate Welsh legal jurisdiction, might that territory be – “Wales” as defined in the Interpretation Act 1978 or as defined in the Government of Wales Act 2006? The territory should be that in the 2006 Act.
2. To what extent (if any) is a distinct body of law an essential feature for a separate legal jurisdiction?
- 2.1 When is a body of law distinct enough in this regard? This cannot be specified in advance.
- 2.2 Does it matter whether the law in question is statute law or common law? No.
- 2.3 Does it matter what the nature of the subject-matter of the law is – e.g. criminal, civil, family? No.
3. To what extent (if any) is the separation of responsibilities (i.e. Wales from England) for the administration of justice an essential feature of a separate legal jurisdiction?
- 3.1 To what extent (if any) is a separate Welsh legal jurisdiction compatible with a unified England and Wales court system? It is not.
- 3.2 To what extent (if any) is a separate Welsh legal jurisdiction compatible with a unified England and Wales judiciary? Ditto.
- 3.3 If there were a separate Welsh courts system, which courts would be affected? The lowest ones - to be defined.

3.4 Would there need to be a separate High Court and/or Court of Appeal for Wales? Yes.

3.5 Should Wales continue to share some courts with England, and if so, which ones? At the topmost tiers only.

3.6 If Wales and England continued to share some courts, what (if any) changes might be needed in the organisation of those courts? Clarity on whether territorial restrictions applied.

4. To what extent (if at all) would it be necessary for the devolved legislature to have general legislative competence over the criminal law as a separate devolved subject if responsibility for the administration of justice was devolved? The full extent.

4.1 Are there any other subjects of legislative competence that should be devolved in such a case? Unknown at present.

5. How might a unified England and Wales court system work if:

5.1 There were a separate Welsh legal jurisdiction and the Assembly's legislative competence:

- a. remained, as now, with the ability to expand incrementally, or
- b. extended over all matters except for those expressly reserved to the UK Parliament? Option b. would be easier to administer.

5.2 The current unified legal jurisdiction of England and Wales continued and the Assembly's legislative competence:

- a remained, as now, with the ability to expand incrementally, or
- b extended over all matters except for those expressly reserved to the UK Parliament? Either would be much more complex and expensive than the above.

6. When reference is made to a 'legal jurisdiction' in the sense of England and Wales being a legal jurisdiction separate from, for example, Scotland what, in its simplest form, does that mean?

6.1 In this context does legal jurisdiction just mean the territory over which the legislature (or executive) has power to legislate? Yes.

7. Are there any other *essential* features of a separate legal jurisdiction? No.

8. Is the single legal jurisdiction of England and Wales sustainable in the long term given the potentially increasing divergence of the laws applicable in Wales compared with those applicable in England and the rest of the UK? No.

9. If you consider that the current legal jurisdiction is sustainable then are there any short-term or long-term changes that should be made to any of the following?



- a. The administration of the courts and/or tribunals systems
  - b. The judiciary (including the magistracy)
  - c. The legal professions (including their regulation)
  - d. Education and training in law
  - e. Accessibility of legislation            I do not consider it sustainable.
10. If you consider that the current legal jurisdiction is sustainable then are there any other short-term or long-term changes that should be made?    See above.
11. Would statute law that only extends to a separate Welsh legal jurisdiction be recognised as a law in other jurisdictions within the UK?    Yes.
12. Would such statute law be judicially noticed in those other jurisdictions?    Yes.
13. Would such statute law be capable of being the subject of civil proceedings in those other jurisdictions – e.g. for enforcement or through judicial review?    Yes.
14. Would such statute law be capable of being the subject of criminal proceedings in those other jurisdictions – e.g. arrest, charge, prosecution, conviction and sentencing?            Yes - otherwise an asylum system would develop.
15. What are the potential implications of a separate Welsh legal jurisdiction in terms of private international law (or "conflict of laws") between Wales and the rest of the UK?            There must be a top most body to settle disputes - Supreme Court or EU.
16. In the event that Wales moved towards a 'reserved powers' form of devolution, like Scotland's, do you think a separate Welsh legal jurisdiction would be:
- a. essential;
  - b. desirable;
  - c. undesirable; or
  - d. irrelevant?            Essential.
17. Would the shared England and Wales jurisdiction be sustainable if Welsh devolution were widened?
18. If it would be sustainable, which areas of law would need to be reserved to the UK Parliament?    Those that affect the UK as a legal unit.
19. Would the emergence of a separate Welsh legal jurisdiction require the removal of the Assembly's power that enables it in certain circumstances to make laws applying in England?            Yes.

19.1 Would there be any legal, constitutional or practical difficulty in the Assembly retaining such a power?<sup>11</sup> It seems obvious that there would be.

- a. upon the basis that any provision made in relation to England would extend to and from part of the law of England?
- b. Otherwise, and if so how?

19.2 If you think that there would be such difficulties:

- a. what are they?
- b. would those difficulties be any different to the current situation where the Assembly already has the power to make provision applicable in England? Such powers are incompatible with a separate jurisdiction.

20. To what extent (if any) is the concept of a separate Welsh legal jurisdiction compatible with the unified England and Wales legal professions? To the extent that both would be based on English Common Law the position would be similar to N.I.

20.1 What are the potential effects (if any) of a separate Welsh legal jurisdiction on the following aspects of the legal professions?

- a. education and training;
- b. qualification;
- c. regulation. Little effect initially; moderate after some decades.

21. Would the common law that has evolved as part of the unified jurisdiction of England and Wales be affected by the creation of a separate Welsh legal jurisdiction? Inevitably over a sufficiently long period.

22. Would your answer be different if there was a separate court system in Wales? No.

23. Would your answer be different if the Assembly had legislative competence generally over:

- a. criminal law;
- b. civil law; or
- c. any other area of law? No.

24. Could there need to be express reservations excluding the common (judge-made) law from the legislative competence of the Assembly?

- 24.1 Why would that be desirable, and how would it work in practice? it would not.
- 24.2 How difficult would that be? Very.

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<sup>11</sup> If such a power was retained it would be on the basis that any provision made in relation to England would extend to and form part of the law of England.

25. Are there any wider economic (including resources), legal, political, linguistic or social ramifications of a move to a separate Welsh legal jurisdiction? No doubt resources would be affected in that separate jurisdiction.
26. Given the numerous sources from which law applicable in Wales can originate, what systems would need to be in place in order to ensure that the law of a separate Welsh legal jurisdiction was readily accessible to the people of Wales and other interested parties? This would develop gradually as need increased. Law schools would evolve.
27. In a specifically Welsh context, are there any additional features that would be appropriate for a separate legal jurisdiction to operate effectively? Parity of Welsh and English languages.
28. Would your answers to any of the questions in this consultation paper be different if the approach to the Assembly's legislative competence was the same as that of the Scottish Parliament – i.e. if the Assembly had competence over all matters except those expressly reserved to the UK Parliament? No - merely more urgent.
29. We have asked a number of specific questions. If you have any related issues which we have not specifically addressed please tell us about them.

Bore da

Yes I think there should be a separate legal system for Wales for several reasons:

more and more laws are passed in Wales

what may be suitable for a country like England with its huge population may not be suitable for Wales e.g the new police commissioners

there is a Welsh way of doing things which is more consensual than confrontational, more egalitarian than divisive, more international in outlook than parochial

perhaps some of the laws of Hywel Dda could be incorporated



In addition I think the whole police, prison and justice system should be devolved and other responsibilities which the Home Office now has jurisdiction over, should be devolved.

If Scotland and especially N. Ireland with its history of prejudice and trouble involving the old Ulster Constabulary, can be treated differently why should Wales still be tied to a huge country like England?

Regards,

D. I. Roberts

Llanelwy/St Asaph

  
Bridgend  


The Constitutional Policy Team  
Welsh Government  
4<sup>th</sup> Floor  
Cathays Park 2  
Cardiff  
CF10 3NQ

2<sup>nd</sup> May 2012

Dear Sir,

**Re: Consultation on a Separate Legal Jurisdiction for Wales**

I write to set out my observations in respect of the consultation process.

With respect to the questions that have been posed England and Wales has a legal system that is reasonably effective and works. To suggest that Wales should create a separate legal system, which the First Minister estimates will cost 600 million pounds (after dinner speech 27<sup>th</sup> April 2012), is unwarranted, unnecessary, and a complete waste of public resources in an era when unnecessary expenditure should be avoided. Indeed, in the current climate, for this debate to be even raised, let alone seriously considered, reveals a remarkable lack of judgement.

Wales is too small a country to require a separate legal system. Creation of a separate legal system is likely to make Wales even more insular and parochial; these failings need to be avoided. Much of the best legal talent may in future move to England.

A separate legal system is unlikely to serve as an incentive to business or commerce. Indeed it may serve as a barrier or disincentive to investment in Wales. Why deviate from investing in England, if procedures have to be put in place to address a totally separate system in Wales? This may be so in health and safety legislation to mention just one illustration. In a commercial context, the courts to litigate in are the courts in London. That is not going to change for major industry and business. It will cause potential problems in the commercial sphere if different laws relate to the two countries, even in respect of a simple commercial agreement between parties located in each of the two countries. In the current economic climate one might anticipate greater harmony rather than divergence being the objective.

It is absurd to think that the laws in respect of the vast majority of matters in Wales should be different to the laws in England, let alone a separate legal jurisdiction. The links built over so many centuries between the two countries are so great that a separate legal system is unwarranted. The mention in the consultation document that it is even contemplated that Wales should have a separate legal system for criminal to law to England is truly perverse. Such a suggestion can only be to satisfy the views of the extremists within the Assembly.

People travel daily between the two countries, thus to think that one side of the Severn Bridge there may be a different law to the other is incredulous. The population of England and Wales move effortlessly, freely and frequently between the two country's. People often relocate. To think that with such easy relocation, people must adapt to a new legal system a new set of rules within Wales is truly remarkable. It is uncalled for and unjustifiable.

It is also troubling to think the quality of the legislation that will emerge from the Assembly. One only has to consider the background to many of the lawyers that now occupy places within the Assembly's legal process.

Furthermore, one only has to consider the quality of debate within the Assembly chamber. Bluntly, the debate in the chamber is poor. The effect is that there is a real risk that sub-standard legislation will be drafted, it will not be exposed to careful and rigorous scrutiny within the chamber and that will be detrimental to the public.

No good reason is advanced in the consultation document for why Wales needs a separate legal system. The historical argument dating back hundreds of years is with respect, interesting but meaningless, because the same system has operated between the two countries for a number of hundred years. Wales in terms of identity has largely been annexed to and operated in harmony within England (thus what may be considered appropriate for Northern Ireland or Scotland is not necessarily right or in the best interests of Wales). This fact needs to be realised and accepted. It is difficult to envisage why extremists want to have a continued debate about government by England and independence from England. It has to be accepted that historical differences have to be put aside, grievances ended and life move on.

Importantly who is to pay for the 600 million pounds that, it is suggested by the First Minister, it will cost? The reality is that it is paid for by those who try and work hard. It would be nice if, for once, politicians did not squander the money of those that pay taxes. 600 million pounds if used properly could do a lot for our local areas.

Importantly, Wales in general and particularly much of South Wales is a deprived area. Consequently, many people are struggling to afford to pay for lawyers, most people are ineligible for public funding (there is in any event little public funding available) and an increasing number of claims are conducted by litigants in person. Many areas where there were once solicitors no longer have solicitors, leaving deprived areas without representation. Many small courts that served the local communities, with distinction, have been

closed e.g. Bargoed, Barry, Chepstow, Monmouth, Pontllyon, Pontypool and Talbot Green.

Some suggestions for the Assembly on how to create a better legal system (which is far more important than a separate legal system) in Wales are to consider the following questions:

- 1) Why not use the money for the benefit of the public and invest it in the provision of legal services in Wales?
- 2) Why not create a legal aid type system to fund claims?
- 3) Why not raise the threshold of eligibility for public funding in Wales?
- 4) Why not actually pay lawyers reasonable remuneration to represent clients on public funding?
- 5) Why not lower the court fees in Wales thereby assisting many people who are struggling?
- 6) Why not reopen some of the smaller courts that serve the local communities and thereby assist the swift and local dispensation of justice?

Favourable answers and actions to the above questions, would be likely to assist the local community, and Wales in general, to a far greater extent than the provision of a separate legal system for Wales. Little is to be gained by spending money to create a separate legal system, let alone the sums mentioned, if the public cannot afford to use that system! Wasting money to replicate the tiers of the court and appeal system used in England is not a reasonable nor proportionate use of money.

It is disappointing that the consultation paper has failed to address the above points, because these are the real issues requiring attention in the legal system. To be even considering a separate legal system, when there are so many difficulties within the funding and operation of the current system, reveal that



those mooted and advocating a separate system, have absolutely no comprehension of the practical difficulties faced by litigants.

The illustrations in the paper about Snowdon and Ben Nevis are of no practical significance, whereas the above questions are of relevance and directly relate to the current problems. It is not a case of keeping up with the Scots; such arguments do not serve the best interest of the public. Likewise why would a claimant from England suing for injuries sustained in Wales need to rely on Assembly Act? – we already have the common law, Acts of Parliament and Regulations to bring proceedings (duplication or further courses of action are unwarranted). In recent years there has been a tendency towards too much regulation and this is yet another illustration of it. Furthermore it would lead to yet more redrafting of the current Civil Procedure Rules.

Section 9 of the paper is troubling, because it rather suggests yet more regulation and control. By way of example, it defies belief to think that barristers who appear in court in England and Wales could be subject to regulation both in London and Wales.

We have had a tendency in England and Wales in general to have change for change sake. Those changes seldom make great improvements to our society. This appears to be yet another illustration of where it is change for change sake without really having a positive or improved effect.

If I can be of any further assistance please do not hesitate to contact me.

Yours faithfully,

Julian Reed

Name: Councillor Arfon Jones.  
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Email: [REDACTED]  
Telephone: [REDACTED]  
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Q1: Yes.

Q1.1: Territory as defined by the Government of Wales Act 2006

Q2.1: A body of law is distinct when a different legislature passes laws i.e Family law in Wales is distinct from that in England and is becoming even more so.

Q2.2: No, High Court/Appeal Court judges in separate Welsh jurisdiction would create common law which would be separate and distinct.

Q2.3: No, we shouldn't seek to separate different type of laws but the separate jurisdictions could hear UK wide laws like consumer and employment law.

Q3.1: A separate Welsh Legal Jurisdiction should go hand in hand with a separate Wales Court system, one cannot expect the judiciary and other participants across England and Wales to have expertise in two bodies of law, that would lead to mistakes and miscarriage of justice.

Q3.2: A separate Welsh legal jurisdiction is not compatible with an unified England and Wales judiciary for the reasons outlined as at 3.1 above.

Q3.3: All courts up to Supreme Court which would remain for the time being the court of last resort within the UK.

Q3.4: Yes, there would be a need for a separate High Court/Court of Appeal but devolving of the Courts would be an opportunity to reform the Higher Courts and to simplify.

Q3.5: Only the Supreme Court.

Q3.6: Not supportive of continuing to share courts.

Q 4 and 4.1: Supportive of general legislative competence over criminal law as a separate devolved issue.

Q5.1b: Supportive of all matters to be devolved other than those expressly reserved for the UK Parliament.

Q5.2: Not supportive.

Q6.1: Yes.

Q7: Divergence of laws argument as at Q3.1 above applies.

Q8: Not it is not sustainable because of the divergence in laws, danger of mistakes and miscarriage of justice if we carry on with a single E&W jurisdiction.

Q9: I don't consider that the current legal jurisdiction is sustainable.

Q10: As above.

Q11: If a foreign country decided it had jurisdiction over private international law then Welsh laws could be applied in other UK jurisdictions, it is a matter for the courts in those jurisdictions.

Q12: As per 11 above, a matter for the Higher Courts in the other jurisdictions.

Q13: The same legislation and procedure should apply that currently applies between E&W and Scotland or the North of Ireland

Q14: As at 13.

Q15: Would the implications for private international law between Wales and the rest of the UK be any different to the current situation that exists in terms of private international law between E&W and Scotland and the North of Ireland? I think not.

Q16: Separate Welsh Legal jurisdiction would be essential if Wales were granted 'reserved powers' form of devolution.

Q17: No.

Q18: Not sustainable.

Q19: Why should Wales want to legislate laws applicable in England? Really don't follow the rationale of this question.

Q20: No view as I have no expertise in this area.

Q21: Common law developed within E&W unified jurisdiction would be applicable in Wales until further common law developed by the judiciary in Wales applied.

Q22: No.

Q23: No

Q24: Not sure whether I follow the rationale here, common law is created by courts, legislatures can make common law statutory, the same should apply in the case of the Assembly.

Q25: There will be resource implications if a separate Welsh Legal Jurisdiction is created but the resources will have to be devolved, there are already political, linguistic and social ramifications of devolution and the ability to legislate the only other ramifications a Welsh Legal Jurisdiction would have would be to challenge unsound legislation through the Higher Courts.

Q26: Welsh legislation would need to be published as is Parliamentary legislation but the Welsh media would also have a role similar to the Times Law Reports.

Q27: No

Q28: No.

Q29: N/A.

## A Separate Legal Jurisdiction for Wales - A Response to the Consultation Document

### The Question

The question presently being asked is whether Wales should have a should have a separate legal jurisdiction. It must be remembered that this question is being asked in the context of the initial democratic decision in favour of devolution in 1997 and the process of devolution that has since taken place. When the history of the annexation of Wales by England is scrutinised, it may be concluded that Wales was the first colony of what eventually was to become the British Empire. When Wales was conquered by England in 1282-3, Wales already had its own separate jurisdiction. Now, some 700 years or so later, to quote Dafydd Iwan, “Er gwaetha pawb a phopeth, ry’ni yma o hyd” (“Despite everyone and everything, we are still here”).

Therefore, the better question that could be asked at this juncture is why should Wales not have a separate legal jurisdiction?

### The Principle

Since the vote for devolution in 1997, there has been a devolution of executive powers to the National Assembly for Wales in 1999, legal separation of the Welsh government from the Assembly, together with powers to pass Welsh Measures in 2007 and more recently a further democratic vote by the people of Wales to increase the powers of the Assembly so that primary legislation may now be passed in all devolved areas since the referendum in 2011. In terms of the most fundamental responsibilities of a government for its people, there can be few higher priorities than health, education, and law. Wales already has responsibility for health and education and so under the devolutionary process it is probably no less important for the people of Wales to have their own legal jurisdiction. Both Scotland (population 5.5 million) and Northern Ireland (population 1.79 million) each already have their own legal jurisdictions which are operated separately from the present jurisdiction of England and Wales. In that context, therefore, there can be little if any reasonable objection to Wales similarly benefitting from its own legal jurisdiction which could operate separately from the present jurisdiction of England and Wales, just as the jurisdictions of Northern Ireland and Scotland successfully function on a daily basis.

### Reasons Against

During many informal discussions with brother/sister judges, the reasons against a separate jurisdiction (so far as I have been able to ascertain) may be categorised as:

- (i) A fear that Wales will become increasingly isolated in terms of the law, and
- (ii) cost.

The first of those reasons I consider to be a relatively irrational fear when considered in the context of the separate jurisdictions which operate in each of Scotland and Northern Ireland. There is little evidence or complaint from either of those jurisdictions that they are in any way isolated.

Second, the spectre of “cost”, especially in these straightened times, can be used to prevent the development of the most beneficial and worthwhile of schemes. If the cost of the future National Health Service had been accurately projected before its inception in 1947 then it probably would never have come into existence. Yet, despite the cost of the NHS, there must be very few people indeed in this country who would prefer to be without it. The essential question therefore should be whether in principle it is desirable for Wales to have a separate jurisdiction. If the answer to that question is in the affirmative then the jurisdiction should be operated as cost-efficiently as is reasonable in all the circumstances. At this stage, looking to the future as we should, there is no reason why a separate jurisdiction for Wales could not be designed for the needs and requirements of Wales alone and therefore operate more cost-efficiently than the present system that operates throughout England and Wales. For example, would a system more similar to that which is administered in Scotland be more suitable for the requirements of those who live in Wales than the present system? Just as there was in the 1970s a reorganisation of the courts system in England and Wales, a reassessment and reorganisation for Wales alone may prove to be a most advantageous opportunity.

#### Question 1: A Defined Territory

As a function of the law must be to provide clarity wherever possible, so it follows that a defined territory for any separate legal jurisdiction is at least desirable. As we must consider the question of a separate legal jurisdiction in the wider context of devolution being a process and therefore with a view to the future, it must be sensible for any defined territory to include the territorial waters around our coast.

However, that will be only one aspect of a separate legal jurisdiction as in practice, many areas of law relating to Tribunals, e.g. immigration and asylum law, will apply when someone enters the United Kingdom rather than one of its member countries.

**Question 2: A Distinct Body of Law**

Presently the National Assembly for Wales is able to create legislation within the jurisdiction of England and Wales but the legislation passed by the National Assembly for Wales has effect only in Wales and does not apply to that part of England and Wales which is not Wales.

If Wales were to have her own jurisdiction separate from England and Wales, then the National Assembly for Wales should be able to pass legislation for its own particular territory, just as the Scottish Parliament and the Northern Ireland Assembly does at present.

Welsh law under an Act of the National Assembly for Wales (and in a separate jurisdiction need not be called an “Act” but it may be given a more modern, relevant title) should operate in the courts of Wales under a separate legal jurisdiction so that an English court would not be an appropriate venue for any court case pursuant to a law passed/made in Wales. To proceed with any diluted form of separate jurisdiction would in effect mean that the jurisdiction would not be separate. That would make the whole project self-defeating which in turn would amount to an unconscionable waste of money and to what would in practice be a mere tinkering with the present system.

A body of law is distinct enough to form a separate jurisdiction when the people of Wales considers that it is distinct enough. Wales presently already has a body of legislation that applies in Wales to the exclusion of England. As the National Assembly has law making powers then it must be likely that the body of legislation applying in that part of England and Wales which is not England (i.e. Wales) is certain to increase. The development/formalisation of a separate jurisdiction for Wales would therefore be a prudent step to take as early as possible in the context of that increasing body of Welsh legislation/law.

**Question 3: A Separate Legal System**

It must follow, as night follows day, that if Wales is to have a separate legal jurisdiction then there should also be a separate system of courts. Separate courts systems already exist in Scotland and Northern Ireland. Despite the different courts systems, the same immigration and asylum law, employment law, etc. applies throughout the United Kingdom and is administered by a Tribunals system which operates in each of the four home countries and in each of the three home jurisdictions.

At present the Supreme Court operates across all three jurisdictions in the UK. Scotland has its own Court of Appeal and High Court, as does Northern Ireland. If Wales is to have its own separate jurisdiction then it would be logical for Wales too to have its own courts system up to and including a

Court of Appeal so that the Supreme Court level could continue to operate across all four home jurisdictions. Thus far, I have heard and read no justification in terms of the creation of a separate legal jurisdiction, for Wales to be treated any differently from Scotland and Northern Ireland. To that extent, a UK Act of Parliament could simply recognise Wales as a separate legal jurisdiction to the extent that Wales is entitled to make laws and pass Acts (or whatever they may be called) that apply within and throughout the territory of the Wales jurisdiction.

Even though at the outset of any separate legal jurisdiction for Wales, the laws applicable in Wales will be similar to those in England, as time goes by there is likely to be an increasing divergence of jurisdictions which may, in the fullness of time, make it necessary in terms of professional competence for lawyers and judges to be trained in the laws of Wales.

### Conflict of Laws

Many practical difficulties arise on a day-to-day basis in relation to criminal proceedings extending across existing UK jurisdictions or the enforcement of civil judgments across existing UK jurisdictions. There is no reason why in practice a new jurisdiction applying in Wales should be treated any differently from the jurisdictions which currently exist within the UK. Reciprocal arrangements can be made whereby a Northern Irish warrant may be executed in Wales and vice versa. Police officers in Wales could be given the power to arrest suspects who have fled to the north of Scotland and vice versa. The legality of cross-border arrests can be facilitated by statute. Near any border/boundary, perceived anomalies will arise just as they now exist in relation to prescription charges in border towns/areas, but that is an inevitable consequence of such an exercise. Similar peculiarities presently exist in border areas of England and Scotland and probably also in Belgium and France, etc. Local difficulties may arise but they should not be allowed to cloud the clear vision of the bigger picture.

### Questions 8, 9 and 10 - Sustainability or Not of the Single Jurisdiction of England and Wales

In the context of the continuing process of devolution, it is difficult to see how the single legal jurisdiction of England and Wales is sustainable in the long-term. It seems inevitable that there will be an increasing body of Welsh law and an increasing divergence of the laws applicable in Wales compared with those applicable in England and the rest of the UK.

If it is accepted that there should be created a new jurisdiction for Wales, then it is at least desirable that the administration of the courts/Tribunals systems, the judiciary (including the magistracy), the legal professions (and particularly their qualification and regulation), education and training, and



the accessibility of our laws, must all be carefully considered and planned at the earliest possible stage. Careful assessment and planning for the needs of the people of Wales from the outset will be important. It may be time- and cost-efficient to effect a root and branch assessment and reconstruction of our present systems in all these areas. For example, upon careful scrutiny it may be decided that the ancient office of Justice of the Peace/Magistrate should be entirely terminated and that the functions of the present magistracy in Wales should be fulfilled by a combination of salaried judges and qualified legal officers (such as perhaps, the professionally-qualified solicitors and barristers who have been employed in the courts service and who it may be concluded could act in a considerably more cost-efficient manner than they present system). It may for example be considered more time- and cost-effective to implement a system which has operated in Scotland in preference to the system which presently operates within Wales by reason of the present jurisdiction being that of England and Wales.

Wales is presently in a fortunate position in that within Europe in the last twenty years or so there have been significant developments arising out of the fragmentation of the former Yugoslavia into several distinct countries and the division of the former Czechoslovakia into the two separate countries which now exist in the form of the Czech Republic and the Republic of Slovakia. Lessons could be learned from e.g. the judiciary and administrators of Slovenia which was the first country to separate from Yugoslavia and which has operated its own legal systems ever since for a country with a population of 2 million people which is smaller but not dissimilar to that of Wales. Similarly, discussions could be held with appropriate personnel in the Czech Republic and the Republic of Slovakia as to how they mutually arranged their separate legal systems when they chose to separate in 1994, having already secured their independence as Czechoslovakia from the Soviet Bloc five years earlier in 1989. I am sure, having myself spoken with judges in each of the Czech Republic and Slovenia that interesting lessons could be learned in terms of the creation of a new jurisdiction for Wales and in terms of making sure that any new jurisdiction could be made to operate as efficiently as possible for the people of Wales, both in terms of time and cost and justice.

#### Questions 11-15 inclusive

Statute law that only extends to a separate Welsh legal jurisdiction must as a matter of necessity be recognised as a law in other jurisdictions within the UK.

#### Question 12

Such statute law should be judicially noticed in the other jurisdictions of the UK.

Question 13

Such statute law should be capable of being the subject of civil proceedings in those other jurisdictions.

Question 14

Such statute law should also be capable of being the subject of criminal proceedings in the other jurisdictions of the UK.

Question 15

Areas of conflict of laws exists now between jurisdictions both within the UK and outside the UK. Arrangements will have to be made which may themselves become the subject of statute but, as I have said elsewhere in this response, no jurisdiction within the United Kingdom should be more or less powerful than any other jurisdiction within the United Kingdom.

Question 16

In the event that Wales moves towards a “reserved powers” form of devolution such as that which applies in Scotland, then a separate Welsh legal jurisdiction from that of England and Wales will be at least desirable and will probably in the fullness of time prove itself to be essential.

Question 17

The shared England and Wales jurisdiction would probably not be sustainable if Welsh devolution continues its process and is widened in its powers.

Question 18

If the shared England and Wales jurisdiction is sustainable and in fact even if a new separate Welsh legal jurisdiction is created, at present it would seem to be necessary to reserve to the UK Parliament areas of law such as social security; asylum, immigration and deportation, taxation.

Question 19

The emergence/creation of a separate Welsh legal jurisdiction need not require the removal of the Assembly’s power that enables it in certain circumstances to make laws applying in England, provided there is agreement to the Assembly retaining such a power. If the UK government considers it desirable that the National Assembly has certain powers in order to be as effective as possible then theoretically and in principle, there should be no reason why agreement could not be reached to those powers continuing

in the future. Any aspect of the law that works in practice now should be capable of being made to work in the future.

### Impact on the Legal Professions

#### Question 20

Any Scottish lawyer who wishes to practise in England and Wales or Northern Ireland is required to undertake additional training in a similar way to English, Welsh, and Northern Irish lawyers who wish to practise in Scotland. No such restrictions apply to those who practise in Northern Ireland as there are no substantially distinct areas of law from those that apply in England and Wales. At this stage, it is probably the case that the law and legal practices of Wales will not be substantially distinct from England for some considerable while. That being the case, the present system for legal education and training, qualification and regulation, should be maintained. If the position gradually changes then those changes will become apparent and appropriate action can promptly be taken in the future as and when the need arises.

### Impact upon the Common Law

#### Question 21

The common law that has evolved as part of the unified jurisdiction of England and Wales will be affected by the creation of a separate Welsh legal jurisdiction. Under a separate jurisdiction, it must be the case that Wales will have the capacity to change the common law by statute wherever Wales considers it appropriate and desirable.

#### Question 22

The system of courts in a new jurisdiction for Wales should have the power and flexibility to develop the common law in Wales. Decisions of courts in Wales may be used to assist courts in England just as in some instances, our present courts refer to cases decided in, e.g. Canada and Australia.

#### Question 23

That will be the case even if the Assembly has legislative competence generally over all or most of the criminal law, civil law, or any other of law outside those two areas. However, just as the common law of the jurisdiction of England and Wales has evolved, so the common law of any new jurisdiction of Wales would itself evolve and develop separate from any other jurisdiction, albeit for the foreseeable future under the umbrella of the Supreme Court and the European courts. [See Question 21 above – if under a new jurisdiction Wales wishes to change the common law by statute then that

should be allowed to occur: that should be seen a natural effect of the devolutionary process].

#### Question 24

Due to the increasing body of Welsh law applicable only in Wales, the common law that evolves in Wales will increasingly apply only to Wales. The common law in England and Wales has been allowed to develop over centuries. If it was considered appropriate to have a system of common law within the new jurisdiction of Wales then it should be allowed to develop unfettered by any reservation as to do anything other would be to undermine the competence of the very jurisdiction that is being set up. What possible reason could there be to undermine a system that was seen to be appropriate and to be a positive development? There can be no realistic or objective doubt that Wales will have an appropriately talented, mature, and capable judiciary as can be seen by the number of Welsh judges who presently occupy positions in the High Court and the Court of Appeal in the present jurisdiction of England and Wales. Those members of the judiciary who occupy those positions must be encouraged to fulfil important roles in any new jurisdiction for Wales.

There should be no express reservations excluding common (judge-made) law from the legislative competence of the Assembly.

Any new jurisdiction within Wales should be unfettered but if within Wales, it is decided to veer away from a common law system then that must be allowed to be a matter for the people of Wales, to be determined within Wales as a matter of democracy.

#### Operation of and Other Possible Impacts of a Separate Welsh Legal Jurisdiction

#### Question 25-28

There can be no doubt that the creation of a separate Welsh legal jurisdiction will be costly. The cost implications of the creation of an entirely separate Welsh legal jurisdiction will need to be carefully considered. Eventually the costs will include not only a separate courts and Tribunals system but also legal professions (and it may be that a complete overhaul and restructuring of the legal professions is considered appropriate by the National Assembly) and the selection and training of judiciary. In all matters there is no reason why Wales should not start "with a clean sheet of paper". The important matter is to first decide where we want to be. Second, we will have to decide the best route to take to that destination. Third, having made those first two decisions it will be necessary to decide how best to embark upon and continue on that journey to where we want to be, i.e. our chosen destination.

Considerable thought and careful planning will be essential. At times, bravery may prove to be a useful quality. At all times sensible and careful decisions have to be made for the people of Wales who will be the users and the beneficiaries of the new jurisdiction. We must do all that we can to ensure that any new system that is created is better than that which has evolved and which now exists. Any jurisdiction that exists in Wales should have powers that are the equal of the present Scottish system and also the equal of what will become the new jurisdiction of England. There can be no intellectual justification for any constituent nation of the UK having a jurisdiction which is more or less powerful than any of the other member nations. Each aspect of the present jurisdiction of England and Wales should be scrutinised and wherever possible, improved upon. There is no reason why Wales should not select and train her own judges. It may well be that after appropriate examination Wales considers that whilst safeguarding the people of Wales, judges can be selected and trained far more cost-efficiently than they are at present. The same goes for the education and training of the legal profession/s and the whole system of law reporting and the development of legal resources. A great opportunity should be seized by the people of and the legal personnel of Wales to take responsibility for, create, and develop our own jurisdiction and to ensure that it serves well the needs of the people of Wales.

After more than 700 years, it appears that the opportunity has fallen to our generation to recreate a separate legal jurisdiction for Wales. We have a corresponding responsibility to ensure that our vision and ideals remain clear and that our commitment remains absolute until there is effected a jurisdiction that Wales deserves.

Nigel Osborne



JUDICIARY OF  
ENGLAND AND WALES

## **NATIONAL BENCH CHAIRMEN'S FORUM**

**A Separate Legal Jurisdiction for Wales**

**Date: May 2012**

National Bench Chairmen's Forum  
Her Majesty's Court and Tribunal Service, 3<sup>rd</sup> Floor, Temple Court,  
35 Bull Street, Birmingham B4 6EQ  
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## NATIONAL BENCH CHAIRMEN'S FORUM

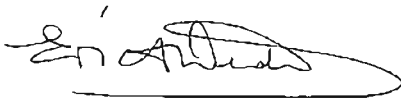
### A Separate Legal Jurisdiction for Wales

#### The National Bench Chairmen's Forum

The National Bench Chairmen's Forum is made up of an elected representative from each of seven Regional Forums in England and Wales to which all Bench Chairmen have access and where they can discuss issues of mutual concern, share good practice and develop networks. The National Bench Chairmen's Forum provides a framework to support the 160 Chairmen of Magistrates Benches in England and Wales and a voice at national level so that their views can be effectively taken into account.

Representatives of the National Bench Chairmen's Forum participate in regular liaison meetings with the Senior Presiding Judge, Chief Executive of HMCTS, HMCTS Senior Management Team, Justices Clerks Society and the Magistrates Association, and other key members of the judiciary and administration. The National Bench Chairmen's Forum is consulted by governmental departments and other bodies in respect of issues that affect the business of the magistrates' courts.

We are grateful for the opportunity to respond to this consultation, however on this occasion we will not be submitting a formal response.



Eric Windsor  
Chairman NBCF  
28<sup>th</sup> May 2012

National Bench Chairmen's Forum  
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CARMARTHENSHIRE COUNTY COUNCIL'S CONSULTATION RESPONSE

CONSULTATION ON A SEPARATE LEGAL JURISDICTION FOR WALES

1. Do you agree that a defined geographical territory would be an essential feature for a separate Welsh legal jurisdiction? **YES**
  - 1.1 What, for the purposes of a separate Welsh legal jurisdiction might that territory be – “Wales” as defined in the Interpretation Act 1978 or as defined in the Government of Wales Act 2006? **As defined in the 2006 Act.**
  
2. To what extent (if any) is a distinct body of law an essential feature for a separate legal jurisdiction? **It is considered that this is totally essential.**
  - 2.1 When is a body of law distinct enough in this regard? **It is considered to be distinct enough when there is clear divergence between laws across a variety of subjects which affect daily life. Such a divergence already exists between the laws of England and Wales and is rapidly increasing.**
  - 2.2 Does it matter whether the law in question is statute or common law? **In our view it does not.**
  - 2.3 Does it matter what the nature of the subject –matter of the law is – e.g. criminal, civil and family? **In our view it does not.**
  
3. To what extent (if any) is the separation of responsibilities (i.e. Wales from England) for the administration of justice an essential feature of a separate legal jurisdiction? **In our view this is very much essential to the meaningful and successful creation of a separate jurisdiction.**
  - 3.1 To what extent (if any) is a separate Welsh legal jurisdiction compatible with a unified England and Wales court system? **In our view it is not.**
  - 3.2 To what extent (if any) is a separate Welsh legal jurisdiction compatible with a unified England and Wales judiciary? **In our view it is not.**
  - 3.3 If there were a separate Welsh courts system, which courts would be affected? **All courts and tribunals up to and including the Court of Appeal. The Supreme Court should retain jurisdiction in relation to human rights issues in the same way as it does in relation to Scotland.**
  - 3.4 Would there need to be a separate High Court and/or Court of Appeal for Wales? **Yes**
  - 3.5 Should Wales continue to share some courts with England, and if so, which ones? **As indicated in the response to question 3.3, the Supreme Court should retain a limited jurisdiction on human rights issues.**
  - 3.6 If Wales and England continued to share some courts, what (if any) changes might be needed in the organisation of those courts? **Membership of the court would need to be**



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changed to reflect the existence of a separate Welsh jurisdiction, in the same way that it currently reflects the separate Scottish and Northern Ireland jurisdictions.

4. To what extent (if at all) would it be necessary for the devolved legislature to have general legislative competence over the criminal law as a separate devolved subject if responsibility for the administration of justice was devolved? It is considered that this is essential.

4.1 Are there any other subjects of legislative competence that should be devolved in such a case? This authority has no firm views on this point, but would suggest that the greater the degree of legislative competence that is devolved, the less risk there is of jurisdictional disputes between the courts of the two systems.

5. How might a unified England and Wales court system work if:

5.1 There were a separate Welsh legal jurisdiction and the Assembly's legislative competence:

- a. Remained, as now, with the ability to expand incrementally, or
- b. Extend over all matters except for those expressly reserved to the UK Parliament? It is this authority's view that (a) would result in considerable tension between the two legal jurisdictions and that (b) would be preferable. In the event that (a) took place, we would envisage the separate Welsh jurisdiction being limited to the Assembly's legislative competence, and gradually increasing with it. We consider this would cause unnecessary and costly duplication as well as confusion to the public. In the event that (b) occurred, we would foresee no particular difficulties, with the Welsh court system operating along similar lines to those in Scotland and Northern Ireland.

5.2 The current unified legal jurisdiction of England and Wales continued and the Assembly's legislative competence:

- a. Remained, as now, with the ability to expand incrementally, or
- b. Extended over all matters except for those expressly reserved to the UK Parliament? It is this authority's view that in the event of (a) occurring the court system would continue to work as at present. However, as the Assembly's legislative competence increased, we would envisage the need for greater regionalisation of the court system in order to cope with the growing divergence between English and Welsh law. There would also be a need for the higher appellate courts to include, within their judicial ranks, experts in Welsh law. In the event that (b) occurs, the steps outlined above would need to be put in place immediately.

6. When reference is made to a 'legal jurisdiction' in the sense of England and Wales being a legal jurisdiction separate from, for example, Scotland what, in its simplest form does that mean? In the view of this authority, it means a separate body of law relating to a defined geographical territory, created by a separate legislature with responsibility for that territory, and enforced through a separate court system within that territory.

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6.1 In this context does legal jurisdiction just mean the territory over which the legislature (or executive) has power to legislate? **Yes**

7. Are there any other essential features of a separate legal jurisdiction? **Yes. It is this authority's view that a separate legal profession would be an essential feature of a separate legal jurisdiction.**
8. Is the single legal jurisdiction of England and Wales sustainable in the long term given the potentially increasing divergence of the laws applicable in Wales compared with those applicable in England and the rest of the UK? **It is the view of this authority that it is not sustainable.**
9. If you consider that the current legal jurisdiction is sustainable then are there any short-term or long-term changes that should be made to any of the following (*I have not repeated the list in light of the response to q.8 above*) **Not applicable**
10. If you consider that the current legal jurisdiction is sustainable then are there any other short-term or long-term changes that should be made? **Not applicable**
11. Would statute law that only extends to a separate Welsh legal jurisdiction be recognised as a law in other jurisdictions within the UK? **It is the view of this authority that it should not.**
12. Would such statute law be judicially noticed in those other jurisdictions? **It is the view of this authority that it could be.**
13. Would such statute law be capable of being the subject of civil proceedings in those other jurisdictions – e.g. for enforcement or through judicial review? **It is the view of this authority that it should not, as this could lead to inconsistency in interpretation, particularly where Welsh language issues arise.**
14. Would such statute law be capable of criminal proceedings in those other jurisdictions? **It is the view of this authority that they should not, as this could lead to inconsistency in interpretation, particularly where Welsh language issues arise.**
15. What are the potential implications of a separate Welsh legal jurisdiction in terms of private international law between Wales and the rest of the UK? **We would not anticipate any implications which have not already been encountered, and overcome, in both Scotland and Northern Ireland.**
16. In the event that Wales moved towards a 'reserved powers' form of devolution, like Scotland, do you think a separate Welsh legal jurisdiction would be: (a) essential; (b) desirable; (c) undesirable; or (d) irrelevant. **This authority considers it would be essential.**

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17. Would the shared England and Wales jurisdiction be sustainable if Welsh devolution were widened? **This authority considers that it would not be sustainable.**
18. If it would be sustainable, which areas of law would need to be reserved to the UK Parliament? **Not applicable**
19. Would the emergence of a separate Welsh legal jurisdiction require the removal of the Assembly's power that enables it in certain circumstances to make laws applying in England? **This authority believes that this power would need to be removed.**
- 19.1 Would there be any legal, constitutional or practical difficulty in the Assembly retaining such a power?
- a. Upon the basis that any provision made in relation to England would extend to and form part of the law of England? **This authority would anticipate that there would be difficulties.**
- b. Otherwise, and if so how? **This authority cannot envisage a viable alternative to the above approach if such laws were to apply to England.**
- 19.2 If you think that there would be such difficulties:
- a. What are they? **This authority could envisage potential interpretational problems arising where, as has already happened, the Welsh and English versions of legislation convey different meanings. It would be difficult for the English courts to deal with these differences, particularly as the Welsh language would presumably have no legal status in those courts. This could lead to the same legislation being interpreted and applied differently in the two jurisdictions.**
- b. Would those difficulties be any different to the current situation where the Assembly already has the power to make provision applicable in England? **Yes, as any court precedents regarding the interpretation of such legislation is binding throughout England and Wales, whereas in the event of separate jurisdictions, they would not be.**
20. To what extent (if any) is the concept of a separate Welsh legal jurisdiction compatible with the unified England and Wales professions? **This authority believes that a separate jurisdiction would not be compatible with the unified professions.**
- 20.1 What are the potential effects (if any) of a separate Welsh legal jurisdiction on the following aspects of the legal professions (a) Education and training, (b) qualification, (c) regulation? **This authority believes that whilst there would be some impact upon education and training, particularly in relation to the need to ensure that this is specific to the Welsh jurisdiction, these issues can be overcome due to the existing high standard of legal education currently offered in Wales. Indeed, as Welsh and English laws diverge, there will be an increasing need for legal education and training to recognise that divergence, something which most law degree and training courses currently fail to do. In relation to qualification and registration, there would need to be a transfer of the relevant administrative functions, from England to Wales.**

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However existing processes could simply be utilised within a purely Welsh context, minimising any disruption.

21. Would the common law that has evolved as part of the unified jurisdiction of England and Wales be affected by the creation of a separate Welsh legal jurisdiction? **Yes**
22. Would your answer be different if there was a separate court system in Wales? **No**
23. Would your answer be different if the Assembly had legislative competence generally over:  
(a) criminal law, (b) civil law, or (c) any other area of law? **No**
24. Could there need to be express reservations excluding the common (judge-made) law from the legislative competence of the Assembly? **We do not believe so. Indeed we are of the view that such exceptions would be a cause of considerable friction between the courts and the elected government of Wales and would undermine democracy.**
  - 24.1 Why would that be desirable, and how would it work in practice? **Not applicable.**
  - 24.2 How difficult would that be? **Not applicable.**
25. Are there any wider economic (including resources), legal, political, linguistic or social ramifications of a move to a separate Welsh legal jurisdiction? **We believe that such a move will further the political and legal divergence that already exists between England and Wales since Devolution. Such divergence is an inevitable part of the devolution process. We also believe that the creation of a separate legal jurisdiction will have an economic (including resources) impact, but whether that impact will be positive or negative will largely depend upon the decisions made by law makers following the creation of that separate jurisdiction. As with the creation of the Assembly itself, there will inevitably be a financial cost associated with the creation of a separate jurisdiction. However having accepted the principle that the costs associated with devolved government are worthwhile when set against the democratic, social and economic benefits of devolution, it seems to this authority that any costs associated with the creation of a separate legal jurisdiction are a necessary, and worthwhile, price to pay for the evolution of that system of devolved government in accordance with the wishes of the Welsh people.**
26. Given the numerous sources from which law applicable in Wales can originate, what systems would need to be in place in order to ensure that the law of a separate Welsh legal jurisdiction was readily accessible to the people of Wales and other interested parties? **It is of the utmost importance that a single, publically accessible, repository of Welsh legislation is created. The absence of such a repository at present is an acute embarrassment, and a serious practical hindrance to the day to day implementation of Welsh legislation. As regards case law, there is currently no single repository of judicial precedent within England and Wales, reliance instead being placed upon the publication of law reports by law publishers and institutes. Whilst it is possible this arrangement could continue under a separate Welsh legal jurisdiction, there is a danger that such organisations will attach insufficient importance, or resources, to the recording of Welsh judicial decisions. It is our view therefore that, in the event of the creation of a separate Welsh legal jurisdiction, the opportunity should also be taken to create a single public repository of Welsh judicial precedent.**
27. In a specifically Welsh context, are there any additional features that would be appropriate for a separate legal jurisdiction to operate effectively? **No.**

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28. Would your answers to any of the questions in this consultation paper be different if the approach to the Assembly's legislative competence was the same as that of the Scottish Parliament – i.e. if the Assembly had competence over all matters except those expressly reserved to the UK Parliament? **No.**

29. We have asked a number of specific questions. If you have any related issues which we have not specifically addressed please tell us about them. **Not applicable**

**WEST WALES LAW SOCIETY**  
**MINUTES OF A SUB-COMMITTEE MEETING**  
**HELD ON THE 25<sup>th</sup> OF APRIL 2012**  
**AT 9 QUAY STREET, CARMARTHEN at 5 p.m.**

**PRESENT**

MAIR HICKMAN  
ANGHARAD JONES  
R. T. HITCHCOCK

PRESIDENT  
SENIOR VICE PRESIDENT  
HON. SECRETARY

The sub-committee met to consider the Welsh Government Consultation Paper entitled “A Separate Legal Jurisdiction for Wales”.

The Consultation Paper having been circulated to all members of the sub-committee it was concluded that the views of the sub-committee were only relevant with regard to practical matters insofar as a separate legal jurisdiction for Wales would affect the day to day practice of Solicitors within the principality and now consideration was given as to the desirability of practicability or otherwise of a separate legal jurisdiction for the principality.

Since the devolution of powers to Wales in 1999 the National Assembly for Wales acquired powers to pass measures and powers for the Assembly to pass primary legislation in all devolved areas following the Yes vote in the referendum in 2011.

The commission of devolution in Wales will consider the powers of the Welsh Assembly.

Currently, all law passed for Wales, whether by the Assembly, Welsh Ministers, Westminster Parliament or the United Kingdom Ministers becomes part of the law of England and Wales. This is because England and Wales share a single legal jurisdiction under a single system of courts, judges and legal professions has grown up as a distinctive feature of that jurisdiction and covers both England and Wales.

Devolution of powers to the Government and Assembly may mean a more distinctive Welsh law applying for Wales in future but it is hard to anticipate any effective change in the criminal family property inheritance and commercial laws as now obtained in both Countries.

If there were to be a separate Welsh jurisdiction such jurisdiction must incorporate the vast majority at, present United Kingdom, legislation.

It was felt that if there were a separate jurisdiction the Supreme Court of England would be the final Court of Appeal for all legislation and that the present Court system under the Supreme Court could and should continue.

If the Assembly had legislative competence over the Criminal Law and exercised it there would need to be Welsh Supreme Court and an entirely separate system of Courts both civil and criminal.

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The Solicitors profession would find a separate jurisdiction devastating.

There would need to be a separate regulatory authority and this would in all probability be prohibitably expensive.

If Solicitors were required to practice in both jurisdictions there must be separate training for the exclusive Welsh element and few Solicitors would find it economic merely to qualify in "Welsh Law".

Not enough Solicitors could be found to deal exclusively in Welsh Law and access to justice would be rendered more difficult because of the dearth of legal practitioners in some parts of Wales.

Wales has by referendum indicated a need for some Welsh import into legislation and so far such import has not been oppressive nor unpopular. People within the principality become used to being charged 5p for a plastic bag and have been interested in the particularly Welsh question on organ donation and footpaths and planning law, and Welsh residents enjoy free prescriptions.

However, Wales being a small Country and not legislatively or legally or socially or morally very different from England a separate legal jurisdiction would not be desirable.

Constitutionally the Welsh Assembly should continue to ride pillion on the English legal system.

#### SUMMARY

1. There could practically be no separation of jurisdictions – England and Wales to be embedded together.
2. A different Supreme High Criminal and Civil Courts training and regulation of the profession would be needed.
3. Such difference and separation would be prohibitively expensive and not proportional.
4. Separation would spell the end of small legal practices – could not afford their proportion of the above expense.

The Law Building

Museum Avenue

Cardiff University

CF10 3AX

1<sup>st</sup> June 2012

The Constitutional Policy Team

Welsh Government

4th Floor

Cathays Park 2

Cardiff

CF10 3NQ

Dear Sirs

#### Consultation on a Welsh Jurisdiction

I write further to my letter of 25<sup>th</sup> January 2012 sent to the earlier Inquiry.

In my opinion, for the successful creation of a new jurisdiction in Wales, you will need to satisfy the following criteria.

1. A point is reached when:
  - (a) the creation of locally applicable law is an established feature;
  - (b) there is a sufficient accumulation of the amount of locally applicable law to be recognisable as a body of municipal law in its own right.
  
2. Either:
  - (a) the existing intellectual tradition of English and Welsh law is adopted and then adapted over time to give the new body of municipal law a robust intellectual underpinning;

Or

  - (b) a local intellectual tradition is developed over time to give the new body of municipal law a robust intellectual underpinning and the best possible chance of success.



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3. Either:

(a) the new and old jurisdictions are as closely aligned as feasible, for the purposes of economy and efficiency;

Or

(b) the new system is more user-friendly than its predecessor so attracting work into the new jurisdiction thus off-setting additional cost.

4. The political and practical benefits of creating a new jurisdiction outweigh the costs and disruption caused by its creation.

5. Sufficient time is given is given to enable people to prepare for a new jurisdiction and think through the implications of the act of creation. In my view 5 years is not an unreasonable period.

6. Sufficient money is found to pay for:

(a) the one-off costs of creating the new jurisdiction;

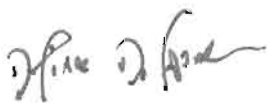
(b) the ongoing day to day costs of running the courts in the new jurisdiction;

(c) the extra work that will be created – for example by having a different set of court rules in the new jurisdiction.

In my view, if Jersey's jurisdiction can function there is no reason why a Welsh jurisdiction should not work. I am not convinced, however, that we have yet reached the point where a new jurisdiction could be successfully created.

Best wishes

Yours sincerely



Dominic De Saulles

(Solicitor- Advocate)

Response of the Council of Circuit Judges to the Welsh Government's Consultation Document on 'A Separate Legal Jurisdiction for Wales'

The Council of Her Majesty's Circuit Judges, 'The Council', is the representative body for the Circuit Judges and Senior Circuit Judges of England and Wales. There are some 680 Circuit and Senior Circuit Judges, who sit mainly in the Crown and County Courts. The Crown Court is the court of trial for all serious crime; the County Courts are the main courts of trial of civil and family proceedings.

In addition some circuit judges sit as Judges of the Court of Appeal, Criminal Division, as Deputy Judges of the High Court in all divisions, as Judicial Members of the Parole Board [determining applications for parole by prisoners subject to life or indeterminate sentences], Judicial Members of the Restricted Patients Panel [determining applications for release by persons detained under sections 37 and 41 of the Mental Health Act 1983], on appeal from district judges, from magistrates and family proceedings courts, from first tier tribunal judges and on certain statutory appeals, for example from homelessness decisions of housing authorities.

Some circuit judges are Resident judges, Designated Civil Judges or Designated Family Judges, with responsibility for Criminal, Civil or Family litigation in groups of courts country wide.

The circuit bench is the largest group of the salaried judiciary, with unique breadth and depth of experience of the justice system.

We note that the Judges' Council's Committee for Wales has already responded in some detail to the Constitutional and Legislative Affairs Committee of the National Assembly's call for evidence. We agree with all that is contained in that excellent document.

The relationships between the Judiciary, the Executive and the Legislature have in England and Wales been defined over many years and are now, with only occasional exceptions, recognised and respected by all, including the civil servants who act as invaluable links between the three branches of government. Indeed, as a result of the Constitutional Reform Act 2005, the distinctions between the three branches have been made clearer and the Judiciary's independence has been strengthened. The development of a separate Welsh jurisdiction should, if it is considered to be politically desirable or necessary, be founded on the same principles as are currently accepted in the England and Wales jurisdiction. Selection, appointment, discipline and dismissal of judiciary (of whatever level) should be entirely independent of the Executive branch of the constitutional settlement, as should be, as far as possible, the terms and conditions under which judges serve.

The desirability or otherwise of a separate Welsh jurisdiction is essentially a political issue. Therefore, we do not consider it appropriate for us to answer all of the questions posed in the consultation paper. Our main concern is that any change to the administration of justice in Wales is properly funded and resourced within a constitutional framework which maintains the independence of the judiciary. There would undoubtedly be some significant resource implications if new and separate institutions were to be established in Wales to support a separate jurisdiction.

Our responses to specific questions are as follows:

### **Questions 1 and 2 [The nature of a separate legal jurisdiction]**

We note that there has been a substantial academic response to the Constitutional and Legislative Affairs Committee's call for evidence in which the various potential meanings of a "separate legal jurisdiction" is discussed. However, many of the questions posed in the consultation document and the introduction to the document appear to assume that a separate legal jurisdiction is defined by whether new legislation forms part of the law applicable within the borders of a state, whether or not the new legislation is intended only to apply to a specific area within a state.

It can strongly be argued that a "separate legal jurisdiction" has a much broader meaning and can encompass a spectrum of different meanings including a Wales which had an increased number of legal institutions which are specifically responsible either solely or jointly with UK wide institutions for aspects of legal administration and law within Wales but which nevertheless applied law which only applied in Wales as well as law which applied in all parts of the UK.

### **Question 3.**

**To what extent (if any) is the separation of responsibilities (i.e. Wales from England) for the administration of justice an essential feature of a separate legal jurisdiction?**

**3.1 To what extent (if any) is a separate Welsh legal jurisdiction compatible with a unified England and Wales court system?**

**3.2 To what extent (if any) is a separate Welsh legal jurisdiction compatible with a unified England and Wales judiciary?**

If a broader interpretation of the term "legal jurisdiction" as described above is adopted then the answers to 3.1 and 3.2 would be that a separate legal jurisdiction would clearly be compatible. However, it would be a matter of degree and the extent of the devolved powers. The more devolved areas in which the Assembly has competence and the longer the period it makes laws which, though part of UK law, are applicable only in Wales, the less compatible a Welsh jurisdiction would be with a unified England and Wales court system and judiciary.

### **Question 3.6**

**If Wales and England continued to share some courts, what (if any) changes might be needed in the organisation of those courts?**

If Wales and England continued to share some courts it would be essential for there to be a Welsh version of Her Majesty's Courts and Tribunals Service (HMCTS) which was funded not by the Ministry of Justice but by the Welsh Assembly Government together with a joint Welsh HMCTS and HMCTS board for shared areas. It would be

desirable that the funding was ring fenced and administered by an independently appointed Board directing the Civil Service employed by the Welsh HMCTS to ensure judicial independence from WAG.

**Question 9.**

**If you consider that the current legal jurisdiction is sustainable then are there any short-term or long-term changes that should be made to any of the following?**

**a. The administration of the courts and/or tribunals systems**

The devolution of powers to the Welsh Assembly Government is an ongoing process and the implications for the courts and judges in Wales, will mount, regardless of whether the jurisdiction is separated or not. That needs to be reflected in the allocation of resources, training and in the appointment and deployment of judges in Wales. Institutions both inside and outside Wales need to be attuned to the differences which are emerging between the legislation passed in Parliament for the whole of England and Wales and that which applies only to Wales e.g. the Judicial College Board recently decided to have a sub-committee for Wales.

**b. The judiciary (including the magistracy)**

The question of whether there should be a separate judiciary, Judicial College and judicial appointments system may well depend on what decision is taken by the politicians on the issue of a separate jurisdiction. However, our overriding concern is the need to maintain (and reinforce) our judicial independence. It would be a great disservice to the people of Wales if the judges in Wales became less independent, less well trained and became, in any way, inferior to those sitting in England.

**d. Education and training in law**

Resources and funding will no doubt play an important part in the debate and have some influence on the final decision. However, apart from the obvious financial advantages, continuation of (core) joint training for judges in England and Wales would bring important benefits in the sharing of experience and skills. That would not prevent the provision of additional and separate training on issues relating to devolved legislation or the Welsh language.

**Question 20.1**

**What are the potential effects (if any) of a separate Welsh legal jurisdiction on the following aspects of the legal professions?**

- a. education and training;**
- b. qualification;**
- c. regulation.**

It would be most regrettable if there were any unnecessary obstacles to barristers and solicitors practising, developing their careers or seeking judicial office in either England and Wales. Many judges in Wales spent at least part of their earlier career outside Wales and have found that enriched their experience and practice. Others, having practised in Wales, progress to the High Court and the courts above. The traffic of lawyers between the two countries is long established. The Court of Appeal and Administrative Court now sit in Wales – a development which has been welcomed by the legal establishment in Wales.

**Question 26**

**Given the numerous sources from which law applicable in Wales can originate, what systems would need to be in place in order to ensure that the law of a separate Welsh legal jurisdiction was readily accessible to the people of Wales and other interested parties?**

WAG would need to develop a means of publishing its laws and a ready means of identifying “what is in force” either through a website or by subsidising a publisher to do so on its behalf. It will become increasingly important that the public, legal practitioners and the courts can freely access an authoritative guide to what law applies in Wales, how it differs from that across the border and whether yet in force.

Ymateb Cyngor y Barnwyr Cylchdaith i Ddogfen Ymgynghori Llywodraeth Cymru ar 'Awdurdodaeth Gyfreithiol ar wahân i Gymru'.

Cyngor Barnwyr Cylchdaith Ei Mawrhydi, 'Y Cyngor', yw corff cynrychiadol Barnwyr Cylchdaith ac Uwch Farnwyr Cylchdaith Cymru a Lloegr. Ceir oddeutu 680 o Farnwyr Cylchdaith ac Uwch Farnwyr Cylchdaith, sy'n eistedd yn bennaf yn Llys y Goron a'r Llysoedd Sirol. Llys y Goron yw'r llys treial ar gyfer troseddau difrifol; y Llysoedd Sirol yw'r prif lysoedd ar gyfer achosion sifil a theulu.

Hefyd, mae rhai barnwyr cylchdaith yn eistedd fel Barnwyr yn Adran Droseddol y Llys Apêl, fel Dirprwy Farnwyr yr Uchel Lys ymhob adran, fel Aelodau Barnwrol y Bwrdd Parôl [yn gwneud penderfyniadau ar geisiadau am parôl gan garcharorion sy'n bwrw dedfryd oes neu benagored], Aelodau Barnwrol o'r Panel Cleifion dan Gyfyngiad [yn gwneud penderfyniadau ar geisiadau gan bobl sydd wedi'u cadw'n gaeth dan adrannau 37 a 41 o Ddeddf Iechyd Meddwl 1983 i gael eu rhyddhau], ar apêl oddi wrth farnwyr rhanbarth, oddi wrth lysoedd achosion teulu a llysoedd ynadon, oddi wrth farnwyr tribiwnlysoedd haen gyntaf ac ar rai apeliadau statudol, er enghraifft yng nghyswllt penderfyniadau digartrefedd awdurdodau tai.

Mae rhai barnwyr cylchdaith yn Farnwyr Preswyl, yn Farnwyr Sifil Dynodedig neu'n Farnwyr Teulu Dynodedig, gyda chyfrifoldeb dros ymgyfreitha Troseddol, Sifil neu ymgyfreitha Teulu mewn grwpiau o lysoedd ar hyd a lled y wlad.

Mainc y gylchdaith yw'r grŵp mwyaf o'r farnwriaeth gyflogedig, ac mae ganddynt brofiad manwl ac eang unigryw o'r system gyfiawnder.

Sylwn fod Pwyllgor Cyngor y Barnwyr ar gyfer Cymru wedi ymateb eisoes mewn cryn fanylder i alwad Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol y Cynulliad Cenedlaethol am dystiolaeth. Rydym yn cytuno â phopeth sydd yn y ddogfen ardderchog honno.

Mae'r berthynas rhwng y Farnwriaeth, y Weithrediaeth a'r Ddeddfwriaeth yng Nghymru a Lloegr wedi cael ei diffinio dros lawer o flynyddoedd a heddiw, gyda dim ond rhai eithriadau achlysurol, mae'r berthynas honno'n cael ei chydabod a'i pharchu gan bawb, gan gynnwys y gweision sifil sy'n gysylltiad hollbwysig rhwng y tair cangen hyn o lywodraeth. Yn wir, o ganlyniad i Ddeddf Diwygio Cyfansoddiadol 2005, mae'r gwahaniaethau rhwng y tair cangen wedi cael eu gwneud yn gliriach ac mae annibyniaeth y Farnwriaeth wedi cael ei chryfhau. Dylai datblygu awdurdodaeth ar wahân ar gyfer Cymru, os bydd yn cael ei ystyried yn ddymunol neu'n ofynnol yn wleidyddol, fod yn seiliedig ar yr un egwyddorion â'r rhai sy'n cael eu derbyn ar hyn o bryd yn awdurdodaeth Cymru a Lloegr. Dylai dewis, penodi, disgyblu a diswyddo aelodau'r farnwriaeth (ar ba lefel bynnag) fod yn gwbl annibynnol ar gangen Weithredol y setliad cyfansoddiadol, ac felly hefyd, hyd y bo modd, y telerau a'r amodau y mae barnwyr yn gwasanaethu oddi tanynt.

Mater gwleidyddol yn y bôn yw pa mor fanteisiol neu ddim fydd cael awdurdodaeth ar wahân ar gyfer Cymru. Felly, nid ydym yn teimlo ei bod yn briodol inni ateb yr holl gwestiynau sy'n cael eu gofyn yn y papur ymgynghori. Ein prif gonsyrn yw bod unrhyw newid i'r broses o weinyddu cyfiawnder yng Nghymru yn cael yr arian a'r adnoddau priodol o fewn fframwaith cyfansoddiadol sy'n cynnal annibyniaeth y

farnwriaeth. Yn sicr byddai rhai goblygiadau sylweddol o ran adnoddau petai sefydliadau newydd ac ar wahân yn cael eu sefydlu yng Nghymru i gefnogi awdurdodaeth ar wahân.

Mae ein hymatebion i gwestiynau penodol fel a ganlyn:

### **Cwestiynau 1 a 2 [Natur awdurdodaeth gyfreithiol ar wahân]**

Sylwn fod ymateb academiaidd sylweddol wedi'i dderbyn i alwad y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol am dystiolaeth lle mae'r ystyron amrywiol posibl i "awdurdodaeth gyfreithiol ar wahân" yn cael eu hystyried. Ond mae llawer o'r cwestiynau sy'n cael eu gofyn yn y ddogfen ymgynghori a'r cyflwyniad i'r ddogfen fel petaent yn tybio bod awdurdodaeth gyfreithiol ar wahân yn cael ei diffinio yn ôl a yw deddfwriaeth newydd yn ffurfio rhan o'r gyfraith sy'n gymwys o fewn ffiniau gwlad, pa un a fwriedir i'r deddfwriaeth newydd fod yn berthnasol dim ond i ardal benodol o fewn gwlad neu beidio.

Gellir dadlau'n gryf fod ystyr llawer ehangach i "awdurdodaeth gyfreithiol ar wahân" a gall gwmpasu sbectwm o ystyron gwahanol gan gynnwys Cymru â nifer cynyddol o sefydliadau cyfreithiol sy'n benodol gyfrifol, un ai ar eu pen eu hunain neu ar y cyd â sefydliadau ledled y DU, am agweddau ar weinyddiaeth gyfreithiol a'r gyfraith yng Nghymru, ond a oedd serch hynny yn cymhwyso cyfreithiau a oedd yn gymwys yng Nghymru yn unig yn ogystal â chyfreithiau a oedd yn gymwys ymhob rhan o'r DU.

### **Cwestiwn 3.**

**Ydy gwahanu cyfrifoldebau ym maes gweinyddu cyfiawnder (h.y. gwahanu cyfrifoldebau Cymru oddi wrth rai Lloegr) yn nodwedd hanfodol ar gyfer awdurdodaeth gyfreithiol ar wahân ac, os felly, i ba raddau?**

**3.1 Ydy awdurdodaeth gyfreithiol ar wahân ar gyfer Cymru yn gydnaws â system lysoedd unedig ar gyfer Cymru a Lloegr ac, os felly, i ba raddau?**

**3.2 Ydy awdurdodaeth gyfreithiol ar wahân ar gyfer Cymru yn gydnaws â barnwriaeth unedig ar gyfer Cymru a Lloegr ac, os felly, i ba raddau?**

Os bydd dehongliad ehangach o'r term "awdurdodaeth gyfreithiol" fel y disgrifir uchod yn cael ei fabwysiadu, yna'r atebion i 3.1 a 3.2 fyddai bod awdurdodaeth gyfreithiol ar wahân yn sicr yn gydnaws. Ond, mater fyddai o raddfa a maint y pwerau datganoledig. Po fwyaf o feysydd datganoledig y mae gan y Cynulliad gymhwysedd ynddynt a pho hiraf y cyfnod y bydd yn gwneud cyfreithiau, sydd, er eu bod yn rhan o gyfraith y DU, yn gymwys yng Nghymru yn unig, lleiaf cydnaws fyddai awdurdodaeth ar gyfer Cymru â barnwriaeth a system llysoedd unedig ar gyfer Cymru a Lloegr.

### **Cwestiwn 3.6**

**Pe bai Cymru a Lloegr yn dal i rannu rhai llysoedd, a ellid bod angen gwneud newidiadau i drefniadaeth y llysoedd hynny ac, os felly, pa newidiadau?**

Pe bai Cymru a Lloegr yn dal i rannu rhai llysoedd, byddai'n hollbwysig cael fersiwn Gymreig o Wasanaeth Llysoedd a Thriwlysoedd Ei Mawrhydi (GLITEM) a fyddai'n cael ei ariannu nid gan y Weinyddiaeth Cyfiawnder ond gan Lywodraeth Cynulliad Cymru ynghyd â bwrdd ar y cyd ar gyfer GLITEM Cymru a GLITEM ar gyfer meysydd a rennir. Byddai'n ddymunol gweld yr arian yn cael ei neilltuo a'i weinyddu gan Fwrdd wedi'i benodi'n annibynnol i gyfarwyddo'r Gwasanaeth Sifil a fyddai'n cael ei gyflogi gan GLITEM Cymru i sicrhau bod y famwriaeth yn annibynnol ar Lywodraeth Cynulliad Cymru.

#### **Cwestiwn 9.**

**Os ydych o'r farn bod yr awdurdodaeth gyfreithiol gyfredol yn gynaliadwy, a oes newidiadau tymor byr neu rai hirdymor y dylid eu gwneud i un neu fwy o'r elfennau isod?**

##### **a. Trefniadau gweinyddu systemau'r llysoedd a/neu'r triwlysoedd**

Mae datganoli pwerau i Lywodraeth Cynulliad Cymru yn broses barhaus a bydd y goblygiadau i'r llysoedd a barnwyr yng Nghymru yn cynyddu, ni waeth a fydd yr awdurdodaeth yn cael ei gwahanu ai peidio. Rhaid i hynny gael ei adlewyrchu wrth ddyrannu adnoddau, hyfforddiant ac wrth benodi a lleoli barnwyr yng Nghymru. Mae angen i sefydliadau yng Nghymru a thu allan i Gymru fod yn ymwybodol o'r gwahaniaethau sy'n ymddangos rhwng y ddeddfwriaeth sy'n cael ei phasio yn y Senedd ar gyfer Cymru a Lloegr i gyd a'r ddeddfwriaeth sy'n gymwys yng Nghymru yn unig e.e. penderfynodd Bwrdd y Coleg Barnwrol yn ddiweddar gael is-bwyllgor ar gyfer Cymru.

##### **b. Y farnwriaeth (gan gynnwys yr ynadaeth)**

Mae'n bosibl y bydd y cwestiwn ynghylch a ddylid cael system penodiadau barnwrol, Coleg Barnwrol a barnwriaeth ar wahân yn dibynnu ar y penderfyniad a gymerir gan wleidyddion ar fater awdurdodaeth ar wahân. Ond, ein prif ystyriaeth yw'r angen i gynnal (ac atgyfnerthu) ein hannibyniaeth farnwrol. Byddai'n gam mawr â phobl Cymru petai barnwyr yng Nghymru yn dod yn llai annibynnol, yn cael llai o hyfforddiant a bod mewn unrhyw ffordd yn israddol i'r rheini sy'n eistedd yn Lloegr.

##### **d. Addysg a hyfforddiant yn y gyfraith**

Yn sicr bydd adnoddau ac arian yn rhan bwysig o'r ddadl ac yn dylanwadu ar y penderfyniad terfynol. Ond, ar wahân i'r manteision ariannol amlwg, byddai parhau â'r hyfforddiant ar y cyd (craidd) ar gyfer barnwyr yng Nghymru a Lloegr yn dod â manteision pwysig wrth rannu sgiliau a phrofiad. Ni fyddai hynny'n rhwystro darparu hyfforddiant ychwanegol ac ar wahân ar faterion yn ymwneud â deddfwriaeth ddatganoledig neu'r iaith Gymraeg.

#### **Cwestiwn 20.1**



**A fyddai awdurdodaeth gyfreithiol ar wahân ar gyfer Cymru yn effeithio ar yr agweddau isod ar y proffesiynau cyfreithiol ac, os felly, beth fyddai'r effeithiau posibl?**

- a. addysg a hyfforddiant;**
- b. cymwysterau;**
- c. rheoleiddio.**

Byddai'n drueni mawr petai rhwystrau diangen yn atal bargyfreithwyr a chyfreithwyr sy'n ymarfer rhag datblygu eu gyrfaoedd neu geisio swydd farnwrol yng Nghymru neu yn Lloegr. Mae llawer o famwyr yng Nghymru wedi treulio rhan o leiaf o'u gyrfa gynnar y tu allan i Gymru ac wedi gweld bod hynny wedi cyfoethogi eu profiad a'u hymarfer. Mae eraill, ar ôl gweithio yng Nghymru, wedi symud i'r Uchel Lys a'r llysoedd uwch. Mae symudiad cyfreithwyr rhwng y ddwy wlad wedi digwydd ers amser hir. Mae'r Llys Apêl a'r Llys Gweinyddol yn eistedd yng Nghymru bellach - datblygiad sydd wedi'i groesawu gan y sefydliad cyfreithiol yng Nghymru.

#### **Cwestiwn 26**

**Gan y gall y gyfraith sy'n gymwys yng Nghymru ddeillio o nifer o wahanol ffynonellau, pa systemau fyddai'n angenrheidiol er mwyn sicrhau bod cyfraith awdurdodaeth gyfreithiol ar wahân ar gyfer Cymru ar gael yn hwylus i bobl Cymru ac eraill sydd â diddordeb yn y mater?**

Byddai angen i Lywodraeth Cynulliad Cymru ddatblygu ffordd o gyhoeddi ei chyfreithiau a ffordd hwylus o nodi "beth sydd mewn grym" un ai drwy wefan neu drwy dalu i gyhoeddwyr wneud hynny ar ei rhan. Bydd yn dod yn fwyfwy pwysig fod y cyhoedd, ymarferwyr cyfreithiol a'r llysoedd yn gallu cael gafael yn rhad ac am ddim mewn canllaw awdurdodol a fydd yn dweud pa gyfraith sy'n gymwys yng Nghymru, sut mae'n wahanol i'r hyn a geir ar draws y ffin ac a yw mewn grym.

No thank you. Please remain with UK Government.

Norman Richards  
Ruth Richards

### **Response to Consultation on a Separate Legal Jurisdiction for Wales**

As a citizen of Wales I strongly believe that the Welsh government need to make devolution work so as to deliver their commitments to the people of Wales.

The development of a legal system fit for a healthy and prosperous Wales is vital for this to work. Devolving powers to Cardiff has meant more distinct laws that only apply to Wales, and this looks to continue - this has meant an increasing divergence between the law in England and Wales since devolution in 1999.

A Welsh legal jurisdiction would help extend the effectiveness of devolved legislation (even if no further substantive policy areas were devolved). It would not solve a number of other problems, which remain rooted in how the UK Government operates and safeguards already put in place for its interests. Of course there would need to be a good deal of legislative coordination, however it is clear that separate jurisdictions can exist in Britain - Scotland has its own jurisdictions separate from that of England and Wales.

It would give Wales, its people confidence that is long overdue and deserved so that we can go forward to fully promote the interests of Wales.

From, Arwel Hughes of [REDACTED], Ynys Môn [REDACTED]

Please may I express my opinion regarding the Consultation on a Separate Legal Jurisdiction for Wales.

My opinion is that Wales must become a separate legal jurisdiction.

Laws made in Wales, for Wales, should be decided by the people of Wales, and ultimately by the National Assembly for Wales and the Welsh Government. Laws made in Wales, for Wales, should be part of the law of Wales only, and not remain part of the law of Wales and England.

Scotland and Northern Ireland have separate legal jurisdictions, and Wales should also have a separate legal jurisdiction, and should not continue to be part of a law that also belongs to England.

These are modern times, and there should be changes to reflect these modern times. A separate legal jurisdiction for Wales is a change that is both important and necessary.

Thank You for reading, and hopefully, considering, my opinion(s).

I hope that what I have said reflects the broader public opinion, and I hope that the Consultation produces a successful, positive outcome, resulting in a Separate Legal Jurisdiction for Wales.

My family has lost our home, farm, and caravan park - corruption within the welsh assembly government and the Brecon beacons national parks saw a planning consent - which we invested £1000000 on infra- structure - was removed without compensation after we had relayed upon the consent for 4 years.

The incestuous nature of the business / political/ legal worlds of " Cardiff" ensure that a loaded dice is thrown - and that a preferred result is obtained

I believe whole- heartedly that if the welsh judiciary is allowed to be formed - this will be extreml bad or fair play and true justice

Mrs chris Thomas

[REDACTED]

**Welsh Government Consultation Document –  
“A Separate Legal Jurisdiction for Wales”**

1. This response to the consultation on a separate legal jurisdiction for Wales (“the consultation document”) has been prepared by an ad-hoc group of Court and Tribunal Judges who have an interest in the field of charity law. We are:

Judge Alison McKenna, Principal Judge for the First-tier Tribunal (Charity) and a Judge of the Upper Tribunal (Tax and Chancery Chamber);

Mr Justice Warren, a High Court Judge of the Chancery Division and the President of the Tax and Chancery Chamber of the Upper Tribunal;

Lord Justice Lloyd, a Lord Justice of the Court of Appeal.

We have prepared this paper to highlight the implications for charity law of the possible establishment of a separate legal jurisdiction for Wales. We have not concerned ourselves with any issues other than charity law. We have copied this response to the Judicial Office (Eleanor Rees) for the attention of the Judges Council Committee which is considering a response on the wider issues.

2. We note that the purpose of the consultation is said to be to seek views on:
  - what is meant by a separate legal jurisdiction
  - whether there are any essential features for the existence of a separate legal jurisdiction and, if so, what they might be
  - what the consequences of having a separate Welsh legal jurisdiction might be; and
  - what the potential advantages and disadvantages of a separate Welsh legal jurisdiction would be

We attempt to answer these questions, in the context of charity law only, below.

Background – Charity law in England and Wales

3. Charity law and regulation is not, at present, devolved to the Welsh Assembly. We assume therefore in making this response that charities will continue to be registered and regulated by the Charity Commission for England and Wales and subject to the Charities Act 2011 and other

applicable legislation<sup>1</sup>. Our concern in responding to this consultation is not with the statutory registration and regulatory framework for charities but rather with the jurisdiction of the High Court of England and Wales (and the Court of Appeal) in relation to charities and with how this jurisdiction might be affected if a separate legal jurisdiction were created for Wales.

4. The consultation document describes how the separate legal jurisdictions of England and Wales were merged by the Laws in Wales Acts 1536 and 1542. It is clear that a legal concept of charity existed before the creation of the common legal jurisdiction<sup>2</sup> but we are unaware of any surviving distinctive Welsh features of it. The current system of recognising charitable purposes in England and Wales is largely derived from the Statute of Charitable Uses 1601 (and, in particular, its Preamble) and it has developed over the subsequent four centuries primarily through judicial decision making in the High Court and above. There is no comprehensive statutory definition of charity - Judges still refer back to the Preamble to the 1601 Act in order to recognise new charitable purposes, taking account of four hundred years' of judicial interpretation. The Charities Act 2006 (now consolidated into the Charities Act 2011) specifically envisaged that this process of "analogy" with the existing case law would continue<sup>3</sup>. One academic commentator has noted that the "*merit of the present common law definition is that it is based upon a rich legal heritage of case law developed by the courts in England, Australia and other common law jurisdictions*" and that it has "*produced a corpus of interpretation of the common law definition that is sufficiently flexible to allow an adaptation of the law to meet changing social circumstances, independently of the executive.*"<sup>4</sup>
5. In addition to the recognition of new charitable purposes, the field of charity law also includes the exercise of powers derived from the inherent jurisdiction<sup>5</sup> of the High Court in relation to charities. The ancient jurisdiction of the High Court with regard to trusts for charitable purposes is now vested in the Chancery Division of the High Court.<sup>6</sup> The High Court exercises its jurisdiction in relation to the validity of dispositions to charity (for example, construing a disputed gift to charity in a will), in matters arising in relation to the administration of charities in charity proceedings (for example, appointing and removing trustees, enforcing the performance of trusts, dealing with breaches of trust and

<sup>1</sup> Section 69 of the Charities Act 2011 provides for the Charity Commission to exercise certain powers of the High Court in a concurrent jurisdiction. This provision would presumably need to be amended to include the powers of a separate Welsh High Court.

<sup>2</sup> See Gareth Jones, *History of the Law of Charity 1532 – 182* page 7. Hubert Picarda *The Law and Practice Relating to Charities* Fourth Edition cites the inclusion of charity cases in the Calendar of Proceedings in Chancery from 1422 onwards.

<sup>3</sup> See s. 3 (1) (m) (iii) of the Charities Act 2011.

<sup>4</sup> Quotes from Picarda 4<sup>th</sup> Edition page 17, citing Blake Bromley *Answering the Broadbent Question: The case for a Common Law Definition of Charity* (1999) 6 CL & PL 45

<sup>5</sup> The pre-existing jurisdiction is preserved by s. 19 (2)(b) of the Senior Courts Act 1981

<sup>6</sup> See sections 19, 61 and Schedule 1 to the Senior Courts Act 1981.

*Beddoe* applications). It also exercises its inherent jurisdiction (amplified by statute) to make schemes for the administration of charities (including schemes made to give effect to the doctrine of *cy-près*). The High Court in the past also exercised an appellate jurisdiction in relation to certain decisions of the Charity Commission. However, such appeals are now heard by the First-tier Tribunal (Charity) and the Upper Tribunal (Tax and Chancery Chamber) following the enactment of the Charities Act 2006.

6. The Crown as *parens patriae* enjoys a general supervisory jurisdiction over trusts for charitable purposes. The Crown is represented in this regard by the Attorney General, who is the constitutional protector of charity. The Attorney General represents the Crown in charity proceedings in the courts and also appears in the Charity Tribunal, where he has a statutorily defined standing. He also exercises the Royal Sign Manual jurisdiction on behalf of the Crown, to direct charitable bequests to an appropriate charity where the machinery of the will has failed.

What is meant by a separate legal jurisdiction?

7. The consultation document (and question 2) refers to the essential elements of a distinct legal jurisdiction as being “*a defined territory, a distinct body of law, and a separate legal system e.g. courts and judiciary*”. It asks whether the second essential element (“*a distinct body of law*”) is a body of law which is necessarily different in substance or one that is distinct only because of the territory over which it applies, irrespective of whether it is different in substance. If the separate legal jurisdiction were to involve the creation of a distinct body of law in relation to charities in Wales, then we consider that this could have unfortunate consequences for charity law, which are discussed at paragraphs 11 and 12 below.
8. We note that the examples given in the consultation document of existing areas of law in Wales which are of distinct substance are statutory only. The consultation does not, in this aspect of its considerations, look at non-statutory areas of law, of which charity law is of course a key example. We can see no merit in creating a distinct body of charity law in Wales and thereby cutting it off from its historical roots in the combined jurisdiction. Indeed, to do so might create significant problems.
9. The consultation document (and question 3) raises the issue of whether a unified court system for England and Wales could still operate even if Wales became a separate legal jurisdiction or whether Wales might have its own High Court and/or Court of Appeal. We consider that, in the context of charity law, a unified court system is essential if one is to maintain the common approach to charity law that has been developed by the judiciary over centuries. Whilst it might be possible to establish a separate Welsh High Court, for example, and to



provide that the case law of England and Wales in relation to charities would continue to have some precedential value, it seems to us that it would be difficult to replicate the powers of the High Court in relation to charities in a new Welsh High Court jurisdiction. In particular, it is not clear what the role of the Attorney General might be in relation to a separate legal jurisdiction in Wales and, as can be seen from our brief description above, the Attorney General plays a key role in relation to charity law.

Whether there are any other essential features for the existence of a separate legal jurisdiction and, if so, what they might be

10. As noted above, in the context of charity law we consider that other essential features of a separate legal jurisdiction would have to include:

For the administration of charities:

- the creation of an inherent jurisdiction in relation to charities;
- a constitutional protector of charity such as the Attorney General;
- a person to exercise the supervisory power of the Crown in relation to charities (the Royal Sign Manual);

For the recognition of charitable purposes:

- the creation of a coherent system for developing the concept of charity which operates independently of the executive (if existing precedent is not to apply).

What the consequences of having a separate Welsh legal jurisdiction might be

11. For the historic system of charity law, our principal concern is that the creation of a separate legal jurisdiction for Wales could result in a divergence of Welsh law from the existing body of case law in relation to charities. The consultation document asks whether the existing body of case law should provide binding or merely persuasive precedent value in a separate Welsh jurisdiction. We take the view that the separation of the jurisdiction could, in either scenario, result in a lack of coherence in the common law system for charities and result in uncertainty for the charitable sector currently operating across England and Wales. Charity law is a living body of law which evolves in relation to changing social circumstances. It seems to us that there would need to be pressing policy reasons to disrupt the balance of the present system.

12. The consultation document (and question 21) refers to an argument that a separate legal jurisdiction in Wales would not directly affect the development of the common law. We disagree with this proposition. As noted above, the development of charity law is derived from multiple

layers of judicial decision making, the continuity of which would inevitably be affected by the creation of a separate jurisdiction. We consider that this would be the case even if the existing body of precedent were retained, in view of the uncertainty as to the creation of the essential features which we refer to at paragraph 10 above. It seems to us that there would need to be pressing policy reasons for disturbing the present arrangements in relation to charity law.

What the potential advantages and disadvantages of a separate Welsh legal jurisdiction would be

13. In the context of charity law, we see no particular advantages to the creation of a separate Welsh jurisdiction for the reasons set out above.
14. Question 25 asks for comments on any other ramifications. We do not propose to comment on the practical difficulties for charities of enforcing foreign law judgements as they do not differ significantly from those faced by a private individual. However we would comment that the creation of separate legal jurisdictions might present an undesirable element of complexity and cost for those charities which currently operate on both sides of the English/Welsh border and so would have to consider leases/employment contracts/funding contracts/contracts for the delivery of services which each had different proper law. This might act as a serious disincentive for charities to operate in both jurisdictions simultaneously.

Judge Alison McKenna  
Mr Justice Warren  
Lord Justice Lloyd

13 June 2012



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|-----------------------|---|
| Date/number           | June 2012 12/34   |
| Committee             | Judicial Policy Committee   |
| Document title        | A separate legal jurisdiction for Wales (response)  |
| Contact               |   |
| Deadline for comments | 19 June 2012  |
| Link to consultation  | <a href="http://wales.gov.uk/docs/caecd/consultation/120326separatelegaljurisdiction.pdf">http://wales.gov.uk/docs/caecd/consultation/120326separatelegaljurisdiction.pdf</a> |

Thank you for the opportunity to give our views on a separate legal jurisdiction for Wales. This response is from the Magistrates' Association for England and Wales and is based on our previous submission to the Constitutional and Legislative Affairs Committee of the Welsh Assembly (MA 12/09).

Clearly the National Assembly has powers to make laws for Wales, but this does not automatically require a separate legal jurisdiction. There are degrees of separation — total devolution, greater autonomy within a common jurisdiction and others in between. Along the way there will be many fundamental issues to be debated, implemented and tested and it is essential that the process be one of evolution. We have not yet arrived at a point where a separate legal jurisdiction is required or desired.

The formation of the various courts already provides an acknowledgement of the changed constitutional position of Wales following devolution. What further benefit will a separate jurisdiction bring? When the All Wales Convention posed this question, following wide consultation in 2010, it concluded that a separate legislation was not required at that time. The Convention also concluded that *'a separate Welsh jurisdiction is not a precondition for the development of increased legislative competence, even if the Assembly were to acquire the substantial powers of the Scottish model'*. The further conclusion that *'the courts of England and Wales are fully competent to decide cases involving the laws of England and Wales, the laws of Wales only and European Union law'* remains true.

The magistracy of England and Wales has made great efforts to achieve greater consistency and commonality in sentencing — and this has been achieved partly through nationally devised training and guidelines. A separate jurisdiction would become responsible for training and sentencing guidelines which would require a Judicial College for Wales and a Sentencing Council (Wales). This would have implications for consistency of approach and outcome.

In summary — the view of our members in Wales is that there is no need or desire for a separate legal jurisdiction at this time — and this is endorsed by the national Association.



14 June 2012

Our ref: ICAEW Rep 83/12

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Dear Sir

#### **A Separate Legal Jurisdiction for Wales**

ICAEW welcomes the opportunity to comment on the consultation paper *A Separate Legal Jurisdiction for Wales* published by the Welsh Government on 27 April 2012.

ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter, working in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 138,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.

Our members provide financial knowledge and guidance based on the highest technical and ethical standards. They are trained to challenge people and organisations to think and act differently, to provide clarity and rigour, and so help create and sustain prosperity. ICAEW ensures that these skills are constantly developed, recognised and valued.

ICAEW is an active member of Business Wales and the Council for Economic Renewal, and most of our 3,000 members in Wales either advise or run small or medium sized businesses; in fact, evidence suggests that over 80% of businesses in Wales use the services of a chartered accountant. By drawing on their collective experience, ICAEW Wales is well placed to act as a barometer for the views of the private sector.

Given this engagement at the 'sharp end' of Welsh business life, we would wish to comment on the general principle of a separate legal jurisdiction, while not being in a position to respond to the more detailed questions posed within the Consultation.

ICAEW Wales believes that it is critically important to make the operating environment for businesses in Wales simpler, rather than more complex. Businesses seeking to operate in more than local markets need fewer, not more, barriers to streamlining their operations and it is essential that they are not deterred from investing in Wales by the opportunity costs of meeting a different set of legislative requirements than in England.

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We appreciate that, of itself, moving to establish a separate legal jurisdiction in Wales does not necessarily entail increased divergence between the legislative frameworks in England and in Wales. But in our view, such a move would signal a belief that such divergence was inevitable and acceptable.

We are therefore *not* convinced that Wales requires a separate legal jurisdiction and believe more generally that the default position of the Welsh Government should be that legislative and regulatory frameworks which impact on businesses in Wales should only diverge from those in England where there is a clear and demonstrable benefit. Legislation should always be the last, not the first resort.

We hope this is useful. I can confirm that we are happy for this to be published alongside other responses.

Yours faithfully

David Leron  
Director for Wales

At this time of constrained spending no additional costs should be added to the already burgeoning burden upon the tax payers - we currently spend far too much on governance & I am not in favour of additional expenditure, neither am I convinced of any need for separate legal jurisdiction in Wales having worked as a Court Advisor for 8 years.