



Llywodraeth Cymru  
Welsh Government

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# The Welsh Government's response to the final report of The Independent Commission on the Constitutional Future of Wales

Welsh Government response to the commission's final report and its recommendations.

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# Introduction

A quarter of a century ago Wales was preparing to elect its first National Assembly, ensuring that decisions affecting Wales are made and scrutinised in Wales by representatives accountable to Welsh voters. Twenty-five years on, devolution has become an established constitutional reality, underpinned by strong support from people across Wales. Yet as events of recent years have shown, the responsibilities of the Senedd and the broader fabric of devolution – and, indeed, the constitution of the UK – are vulnerable to the actions of a UK government. Moreover, the future of the UK as whole and its constituent parts remains uncertain.

This is the context that makes the final report from the Independent Commission on the Constitutional Future of Wales so relevant, significant and welcome. It is crucial that the people of Wales, and their democratic representatives and institutions, can proactively shape the constitutional future of Wales and contribute to the wider UK constitutional debate.

As part of the Co-operation Agreement, the Welsh Government and Plaid Cymru agreed to support the work of the Independent Commission on the Constitutional Future of Wales, but as the Agreement states both parties were free to interact with the commission independently according to their respective policy positions. The commission concluded unanimously that the constitutional status quo is unsustainable and set out 3 viable options for Wales' constitutional future.

We are profoundly grateful to the Co-chairs, Professor Laura McAllister and Dr Rowan Williams, and members of the commission, and also to the members of its expert panel and all those who contributed to the commission's work. Intensive work for over 2 years has enabled the commission to produce a report with unanimous, cross-party conclusions, and clear recommendations. It is an authoritative report; insightful, strongly evidenced and grounded powerfully in the views of people across Wales through extensive engagement with individuals,

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groups and communities.

When the final report was published, we said that it demanded serious attention. We have therefore carefully considered the report and its recommendations. We believe that through its thoughtful analysis and compelling conclusions the report provides strong foundations for the next stage of Wales' constitutional journey. In particular, we believe that the ten recommendations in the commission's report provide a crucial set of urgent actions necessary to strengthen democracy in Wales and to protect and enhance the devolution settlement. As such, we accept the commission's conclusions and recommendations both as a package and individually. Commentary on the specific recommendations and how in broad terms we intend to take them forward is outlined in the table later in this document. Further details of the overall programme of work will be published later this year.

Some of the recommendations, notably those relating intergovernmental relations, the Sewel Convention and financial constraints, will require engagement with the UK government, the Scottish Government and the Northern Ireland Executive. We will seek initial, exploratory discussions with our partner governments accordingly. These recommendations, as well as those relating to further devolution, will also require legislation and action from a willing UK government. Recognising the timings of the UK electoral cycle, delivery of the recommendations requiring UK legislation is only feasible after the next UK election. This shapes overall implementation timelines as well as the nature of potential preliminary intergovernmental discussions at this point.

As the commission's report makes clear, devolution of new responsibilities must be accompanied by a transfer of full funding on the basis of need as opposed to historic underspending, and including funding for the administration of the functions.

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# Recommendation 1: Democratic innovation

“ The Welsh Government should strengthen the capacity for democratic innovation and inclusive community engagement in Wales. This should draw on an expert advisory panel, and should be designed in partnership with the Senedd, local government and other partners. New strategies for civic education should be a priority for this work, which should be subject to regular review by the Senedd. ”

## Welsh Government response

We will take forward this recommendation, seeking to continue our partnership working, including with the Electoral Commission, Senedd Commission, local government, the prospective Democracy and Boundary Commission Cymru, the Broadcasting and Communications Advisory body that we are establishing, the third sector and others, in line with the commission’s recommendation. We have agreed with Plaid Cymru an allocation in the Final Budget to be provided to support constitutional reform, for purposes that include a programme on work and accompanying structure to follow on from the Constitutional Commission. A key focus will be the work that can be done immediately to improve democratic engagement and innovation in line with this recommendation.

Building on the learning from extending the franchise to 16-17 year olds and qualifying foreign nationals, we will continue to work in partnership to promote engagement in innovative ways, including through our Democratic Engagement Grant. We will seek to capitalise on this strong and successful collaboration as well as the foundations provided by the Well-being of Future Generations (Wales) Act 2015, which requires government and local government to take into account the importance of involving people in achieving the well-being goals, in ways that reflects the diversity of the population. There is also a duty on councils

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in the Local Government and Elections (Wales) Act 2021 to encourage people to participate in decision making. Measures in the Elections and Elected Bodies Bill support improving access to our democracy, including automatic voter registration, an elections information platform, and a duty on ministers to support improved diversity in councils and the Senedd. The commission highlights the importance of civic education and we will therefore continue our work with partners to make the most of the new Curriculum for Wales, which puts learning and teaching about politics and citizenship at its heart. This is already reflected in statutory guidance with an expectation that learners up to 16 “Develop an understanding of how systems of government in Wales operate and affect people’s lives, and how they compare with other systems” and understand how government and decision-making works.

## Recommendation 2: Constitutional principles

“ Drawing on this expertise, the Welsh Government should lead a project to engage citizens in drafting a statement of constitutional and governance principles for Wales. ”

### Welsh Government response

In tandem with work with partners to take forward recommendation 1, we will explore options for engaging citizens to develop a statement of constitutional and governance principles for Wales. In doing so we will build on our experience of running a national conversation on The Wales We Want which led directly to a set of integrated well-being goals, and ways of working for government and public bodies through the Well-being of Future Generations (Wales) Act 2015. This approach recognised government’s key role in promoting an inclusive and empowered society, now and for decades to come.

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## Recommendation 3: Senedd reform

“ We recommend that the planned review of the Senedd reforms should be resourced to ensure a robust and evidence-based analysis of the impact of the changes, including from the perspective of the voter and of democratic accountability. ”

## Welsh Government response

As the changes provided for by the Senedd Cymru (Members and Elections) Bill are wide-ranging we agree that it is important there is opportunity for a future Senedd Committee to review the effect of this legislation and consider if any further reforms of the Senedd are needed. The Bill includes a mechanism to enable a Senedd Committee of the 7th Senedd to review the operation and effect of the reforms, and the extent to which the elements of a healthy democracy are present in Wales. Resourcing of the committee’s work would be a matter for the Seventh Senedd, however, the committee would be expected to be provided with sufficient support and resource to undertake its review function effectively, and the committee would also be able to consider other analysis available at the time, such as the Electoral Commission’s report on the administration of the Senedd election that would be published soon after the election.

## Recommendation 4: Intergovernmental relations

“ The Welsh Government should propose to the governments of the UK, Scotland and Northern Ireland that the Westminster Parliament should legislate for intergovernmental mechanisms so as to secure a duty of co-

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operation and parity of esteem between the governments of the UK. ”

## Welsh Government response

We agree that statutory underpinning for intergovernmental relations would be an important step in addressing the fragility and variability of current arrangements. For example, we note that the Prime Minister has not convened a Heads of Government Council meeting since November 2022. Securing a duty of co-operation and parity of esteem between the governments fits intrinsically alongside this. We will seek to progress this recommendation in discussion with the Scottish Government, Northern Ireland Executive and the UK government.

## Recommendation 5: Sewel convention

“ The Welsh Government should press the UK government to present legislation to the Westminster Parliament to specify that the consent of the devolved institutions is required for any change to the devolved powers, except when required for reasons to be agreed between them, such as: international obligations, defence, national security, or macroeconomic policy. ”

## Welsh Government response

The principle of legislative consent lies at the heart of the current devolution settlements and we have long argued that the Sewel Convention is in need of strengthening. The arguments for reform have been reinforced by the UK government’s repeated breaches of the convention in recent years, with 7

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breaches in the last session of Parliament alone. Statutory underpinning and protection as recommended by the commission would provide important safeguards for devolution and we agree that a legal requirement to seek consent should be structured so that it cannot be easily repealed or amended. We will seek to discuss options to achieve this with the Scottish Government, the Northern Ireland Executive and the UK government.

## Recommendation 6: Financial management

“ The UK government should remove constraints on Welsh Government budget management, except where there are macroeconomic implications. ”

### Welsh Government response

Whereas this recommendation is for the UK government to take forward, we welcome the commission's recommendation. We have, for some time, been pressing for additional budget flexibility alongside making the case for a review of the process for devolving new tax powers. The removal of constraints is essential to enable greater predictability of our funding and support effective budget management for both us and partner organisations including local authorities. As such, we believe this recommendation will also be supported by a wide range of partners and stakeholders.

We will seek to pursue this recommendation with the UK government, and also discuss it with the Scottish Government and the Northern Ireland Executive.

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## Recommendation 7: Broadcasting

“ The Welsh and UK governments should agree mechanisms for a stronger voice for Wales on broadcasting policy, scrutiny and accountability, and robust work should continue on potential routes to devolution. ”

### Welsh Government response

We agree with the commission’s recommendation to look at potential routes for devolution of broadcasting and communications powers to Wales. Our position is that broadcasting and communication powers should be devolved to Wales and we are committed to pursuing these powers.

## Recommendation 8: Energy

“ The Welsh and UK governments should establish an expert group to advise urgently on how the devolution settlement and inter-governmental engagement in relation to energy could be reformed to prepare for rapid technical innovation in energy generation and distribution, to ensure that Wales can maximise its contribution to net zero and to the local generation of renewable energy. The remit of the group should include advising on the options for the devolution of the Crown Estate, which should become the responsibility of the devolved government of Wales, as it is in Scotland. ”

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## Welsh Government response

Our longstanding position is that the Crown Estate should be devolved to Wales in line with the position in Scotland. We have been clear that the current devolution settlement for energy limits our ability to deliver policy in Wales in a way that reflects our policy priorities and the needs of future generations. We welcome the recommendation for an expert group to advise on how the devolution settlement could be reformed to support our ambitions. We also welcome the broader emphasis on improving intergovernmental relations given the interactions between UK government policy and devolved policy with respect to energy and climate change.

## Recommendation 9: Justice and policing

“ The UK government should agree to the legislative and executive devolution of responsibility for justice and policing to the Senedd and Welsh Government, on a timescale for achieving the devolution of all parts of the justice system to be agreed by the 2 governments, starting with policing, probation and youth justice, with necessary funding secured, and provision for shared governance where needed for effective operations. ”

## Welsh Government response

We welcome this recommendation, which builds on the earlier recommendations of the commission on Justice in Wales. We note in particular that the commission made efforts to find evidence in support of the current boundaries of devolution for policing and justice, but the responses were few and far outweighed by the evidence for change.

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We also note that the commission's report endorses the approach that we have been taking in pursuing a phased approach to devolution, and preparing in particular for the early devolution of areas closest to existing devolved responsibilities. The sub-group found that with careful planning, devolution is achievable with minimal disruption to services. Particular services identified by the commission as being well suited to early devolution are the same ones that the Welsh Government has previously identified, namely youth justice, probation and policing.

Given the chronic current underfunding of the justice system it will be vital that, as the commission recommends, devolution is accompanied by full funding calculated on the basis of need, as opposed to historic (under)spending, including necessary resources for staffing and the administration of additional functions.

## Recommendation 10: Rail services

“ The UK government should agree to the full devolution of responsibility for rail services and infrastructure to Wales, with fair funding and shared governance on cross border services. ”

## Welsh Government response

We welcome the report's recommendations and analysis which highlight the complexities and difficulties of the current devolution settlement. We accept this recommendation which reflects the Welsh Ministers' position that there is a strong case for greater control over rail infrastructure decisions and management in Wales as well as a formal, codified, role in the operation of services delivered by cross boarder franchises.

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In accepting this greater responsibility it is our publicly stated position that full devolution of the powers necessary to manage and let the Wales and Borders franchise is an essential first step, along with the removal of the prohibition on Public Service Operators bidding for the franchise.

However, as the commission notes, rail infrastructure is an area of very significant fiscal liabilities and risks. As such, a fair funding settlement that is sustainable and reflects the current state of the Wales Route Infrastructure is a necessary prerequisite for change. The network in Wales has been severely underfunded for decades and will require significantly higher levels of investment to rectify this than other parts of the UK network.

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