

Independent Commission on the Constitutional Future of Wales: report of the energy sub-group

Summary

The UK Government's energy strategy is of crucial importance to the economy and society of Wales, affecting progress on net zero and, through energy prices, the health and wellbeing of its people. In this context an influential voice for the Senedd and Welsh Government is vitally important.

The energy sub-group did not have the benefit of a substantial recent inquiry to inform its work. In the time available, it was able to take only a broad overview, but from the evidence it identified four key issues:

- Inter-governmental engagement
- Regulation
- Local energy generation
- The Crown Estate.

Ofgem's proposals to move to a regional planning system should increase alignment with devolved policies, provided the Welsh Government and local authorities are fully involved, as they intend.

The Welsh settlement includes some reservations (eg of local heating systems and energy efficiency) which can obstruct progress and should be reviewed.

The main drivers of new investment in renewable energy are financial. Devolving the relevant powers would enable better alignment with policy in Wales, but would generate significant fiscal and capacity pressures, as experienced in Northern Ireland.

The Crown Estate in Wales works closely with the Welsh Government. Whether devolution would generate additional resources for the Welsh budget would depend on negotiations with HM Treasury.

Membership

Members of the sub-group:

Commissioners: Anwen Elias (chair), Leanne Wood, Lauren McEvatt, Albert Owen.

Expert panel: Gareth Williams and Auriol Miller.

Evidence

The group met on 21st September to agree its approach and consider a presentation from Joe Rossiter of the Institute of Welsh Affairs. On 16 November the group met to consider written evidence from the Crown Estate, Community Energy Wales and

from the Minister for Climate Change, Welsh Government. (These papers are available on the Commission's website.)

In the time available, the group agreed to take a broad overview of the devolution settlement in relation to energy, and to focus on constitutional aspects and inter-governmental relations.

The Minister's evidence responds to questions from the sub-group in relation to energy and water. On water, time prevented us looking into this area and as there appeared to be no obvious immediate constitutional issues to address we decided to focus on energy.

Context

The energy market is going through a major transformation towards a net zero energy system, with UK-electricity supplies increasingly generated from renewable sources. Though overall energy use may fall due to decarbonisation, electricity demand is forecast to increase markedly with electrification of vehicles and heating in homes and businesses.

The UK Government is responsible for the UK energy system with Ofgem responsible for the regulation of providers across Great Britain. The supply and regulation of electricity are reserved matters in the Welsh and Scottish settlements. This is based on the premise that these are Great Britain wide (and international) markets, which should be regulated by the UK Government. Northern Ireland is treated separately and has a single utility regulator.

Although the settlement reserves legislative powers to Westminster, the 2017 Wales Act transferred executive powers to the Welsh Government in relation to:

- consenting of onshore energy projects up to 350 megawatts (this cut off point was set on the basis that larger projects are of UK-wide significance and should continue to be reserved)
- consenting of offshore wind projects with no size limit.

Inter-governmental relations

The evidence received from the Welsh Government's Minister for Climate Change highlights the lack of engagement between the UK Government's Department for Energy Security and Net Zero and the devolved governments on UK energy policy. This has been at a particularly low point during the past year, with the Welsh Government awaiting critical information on UK Government announcements which impact on its net zero pathway, and no meaningful engagement in advance of these announcements.

The Minister notes that it is not so much the devolution settlement that impedes delivery of the Welsh Government's energy policies, rather it is the constitutional position that enables the UK Government to decide not to engage in areas with a direct impact on the responsibilities of Welsh Government. For example, the Minister cites the Energy Act 2023 where the Welsh Government invested very significant staff resources in supporting the Bill's development but was kept largely in

the dark on its content until the date of publication - this impeded proper consideration of the implications for devolution.

From the Welsh Government's perspective, in 2017 net zero was a broadly shared agenda but this has been undermined in recent years. There are fundamental differences of views between governments of the UK on energy policy but this should not be a barrier to engaging constructively where policies of one part of the UK impact on others. The UK Government favours a more market-led approach whereas the Welsh Government is generally more in favour of a planned approach to address market failure. That does not mean common ground cannot be found, and the Welsh Government supports a number of the UK Government's proposals such as the moves towards a more planned grid which anticipates investment.

The Commission's timetable did not allow us to seek evidence from the Department for Energy Security and Net Zero, but it seems clear that current arrangements do not adequately reflect the interaction between reserved energy policy and the devolved responsibilities. We believe that further work is needed to address this, looking ahead to the impact of rapid technological change, as set out in our conclusions below.

The inter-ministerial group on net zero could form part of a new approach if developed to its full potential with agreed outputs and co-ordinated action, including early involvement with devolved government officials at the operational/team level (see discussion of the reformed inter-governmental relations structures in chapter 4).

Regulation

Through its control of energy pricing, and by setting the remit for the energy regulator, Ofgem, the UK Government sets the terms of the energy market and thus largely determines the viability of energy projects in Wales.

Ofgem provides oversight of the energy market in Wales, England and Scotland, and is responsible for the approval of infrastructure investments across Great Britain. The Welsh Government has a positive relationship with Ofgem and its board, but there is no formal governance in relation to Ofgem decisions and alignment to Welsh Government or local government policy.

Ofgem is developing a new structure of Regional Energy Strategic Planning regions (RESPs), with a single RESP for Wales. These will produce regional plans to inform a multi-year strategic plan, bringing together all those involved in planning the energy system at a local level (including electricity, gas, hydrogen, heat networks etc.). The RESPs will be responsible for enabling effective participation and oversight.

The Welsh Government welcomes the RESP proposals; it has worked with Ofgem to contribute its experience of local area energy planning in Wales and has offered to pilot elements of the new system. The Welsh Government believes that evidence-based and locally supported network plans could be very helpful in bringing forward investment in the grid.

Local energy generation

Evidence from Community Energy Wales highlighted the barriers to developing community energy projects, including energy markets, access to finance, staffing and technical expertise, planning and procurement issues. CEW would like to see a two-tier market with more favourable tariffs for locally generated energy, and policies for planning, public sector land allocation and procurement that prioritise energy from community schemes. Most of the issues highlighted by CEW do not arise from the devolution settlement, but from wider cultural, market and resource constraints. Its proposal for a two-tier market has far-reaching implications which the sub-group was not in a position to evaluate.

The Minister's evidence cites recent work on Future Energy Grids for Wales which identified opportunities for smart local energy systems to reduce the requirement for large scale generation and transmission infrastructure. It recognises the importance of community organisations in giving communities a stake in the changes needed to decarbonise energy systems and notes the Welsh Government's support for community energy since 2010, including funding Community Energy Wales and the Welsh Government Energy Service which provides information, technical advice, access to early stage grants, development loans and construction loans.

Community projects tend to be small (<5 MW) and without a support mechanism struggle to be commercially viable. The Welsh Government provides grants to fund environmental and social outcomes, and to employ people to work full time in projects but notes that it is too early to judge the impacts. In its view the community energy sector will benefit from greater public sector energy generation, and greater cooperation between public bodies and community groups.

Energy incentives

The Minister's evidence notes that devolution of powers to offer energy incentives would enable key market incentives to be better aligned to policy in Wales but would generate significant resource pressures and would require substantial new expertise in the Welsh Government on energy finance and incentive schemes. Northern Ireland has these powers, and the impact of trying to run such schemes with very limited resources created significant problems for the NI Executive. This power is not currently devolved to the Scottish Government.

Crown Estate

The sub-group received written evidence from the Crown Estate, outlining its contribution to developing green energy in Wales, the technical expertise it offers on an England and Wales basis, and its alignment with Welsh Government policies. It explains that the Estate manages a diverse portfolio of assets including the seabed and much of the foreshore, rural land, and urban assets, which include commercial and housing related activities.

The evidence notes that the Crown Estate meets regularly with Welsh Ministers and has regular dialogue with Welsh Government officials, to ensure there is shared understanding of needs and opportunities and to align joint work where appropriate. The Estate appointed a Director for Wales in 2022 to provide a point of contact for Welsh Ministers, the Welsh Government and stakeholders, and to enable opportunities for closer working to deliver on shared ambitions. The Welsh Government's evidence confirms this positive engagement, for example in

developing the evidence base on the operation of renewable energy infrastructure in the marine environment.

When the management of the Crown Estate in Scotland was devolved to the Scottish Government following the Smith Commission report in 2015, this involved transferring responsibility to the Scottish Government for the staff resource and expertise previously employed by the Crown Estate in Scotland. In 2022, Crown Estate Scotland employed 64 staff (Annual Report and Accounts March 2022).

At the time of devolution, the Treasury made a reduction to the Scottish budget to offset the expected benefit from Crown Estate revenues. It is understood that this led to a net benefit for Scottish Government, but it is uncertain whether this would be replicated for Wales.

The Welsh Government calls for parity with Scotland in relation to the management of the Crown Estate in Wales. It notes that the Estate is set to benefit very significantly from leasing the seabed in Wales in ways not foreseen when the current devolution settlement was determined and believes that this aspect of the settlement lacks legitimacy amongst the public in Wales.

The objective set for the Crown Estate is to maximise revenues for the UK Exchequer which, in the Welsh Government's view, fails to capture the full economic benefits of the energy transition for local communities. Crown Estate Scotland has managed the process for seabed leasing very differently to provide greater certainty to industry and to gain greater benefits in the supply chain.

The Minister notes that the Welsh Government would need additional resources to manage the Crown Estate in Wales and would want to ensure income from the Estate is retained in Wales, with a fair mechanism to adjust the block grant on an agreed basis.

Conclusions

UK energy policy and strategy has a huge impact on devolved matters, including economic development, housing, poverty health and wellbeing. However, the UK Government's engagement with the Welsh Government in the passage of the Energy Act 2023 was late and inadequate. In the view of the sub-group, the two governments' overlapping responsibilities on energy would work much better with stronger consultation and co-operation, with the Welsh Government as an equal partner.

Energy generation and distribution is an area where the binary devolved or reserved nature of the devolution settlement does not sit easily with the practical realities of delivery. Rapid technological change will change the role of the (reserved) National Grid and its current monopoly on distribution, and hence the role and powers of government in relation to its operations.

Some of the current reservations in this area seem outdated and lacking strategic rationale, such as local heating systems and energy efficiency. The UK Government should be open to reviewing and amending these by agreement between the two governments.

The role of the regulator in relation to energy development is crucial, but the Welsh Government has no formal role in its governance. Ofgem's proposal for Regional Energy System Plans has been welcomed by the Welsh Government as a means of ensuring a holistic approach to infrastructure planning.

The main barriers to local trading are regulation and the way the energy markets work, over which the Senedd and Welsh Government have no powers or influence. Some obstacles, such as access to the National Grid, will be reduced by technological change. Funding is a further constraint: for example devolution of energy incentives would require access to more funding than is currently available to the Welsh Government.

The sub-group was not able to consider the implications of devolving the management of the Crown Estate in Wales in detail. In principle, it sees no reason why it should not be devolved, as it is in Scotland. The UK Government's Silk Commission which reported in 2014 did not recommend devolution of the Crown Estate¹, but the Smith Commission's² 2014 recommendation on devolution of the Crown Estate to Scotland has created a new precedent.

The sub-group recommends an urgent review of the devolution settlement and inter-governmental relations in relation to energy policy, Ofgem and the Crown Estate, by an expert group capable of taking a forward-looking view of the settlement.

¹ Silk, P. chair (2014) *Empowerment and Responsibility: Legislative Powers to Strengthen Wales*, the Silk Commission Report No. 2, The National Archives, Kew

² Lord Smith of Kelvin, Chair (2014) [Report of the Smith Commission for further devolution of powers to the Scottish Parliament](#), The Smith Commission, The National Archives, Kew