

Independent Commission on the Constitutional Future of Wales: final report

Written evidence

Adult Learning Wales p4
AntiCapitalist Resistance p9
ASLEF p16
Auditor General for Wales p22
Bevan Foundation p27
Catholic Bishops' Conference of England and Wales p32
Centre for Welsh Politics and Society Aberystwyth
University p35
Children's Commissioner for Wales p38
Climate Cymru p41
Community Energy Wales p44
Co-operatives and Mutuals Wales p48
Cymdeithas yr Iaith p52
Cyngor Cyfathrebu Cenedlaethol p55
Cytûn p94
Electoral Reform Society p99
Federation of Small Businesses p104
Gwlad p106
Institute of Welsh Affairs p109
Institute of Directors p117
Labour for an Independent Wales p119
Left Unity Wales p129
Make UK p136
Melin Drafod p139
Plaid Cymru Mynwy Monmouth p154
National Pensioners Convention Wales p166
Neath Port Talbot Council for Voluntary Service p171
Network Rail p176
North & Mid Wales Association of Local Councils p180
Older People's Commissioner for Wales p185
Plaid Cymru p190
Police and Crime Commissioners p199
Presbyterian Church of Wales p203
RMT p208
Royal College of Psychiatrists Wales p212
Solicitors Regulation Authority p220
The Crown Estate p228
The Law Society p243
The Learned Society of Wales p254
The Sovereign Party p258
UNISON p266
Wales Council for Voluntary Action p278
Wales Green Party p284

Welsh Language Commissioner p291
Welsh Liberal Democrats p313
Women's Equality Network Wales p322
Welsh Justice Union Groups p330
Welsh Government: Welsh Laws passed since 1999 p333
Welsh Government: Legal constraints on the settlement and the case for change p338
Welsh Government: Policies made possible by devolution p378
Welsh Government: HMT financial management constraints and WG proposals for change p386
Welsh Government: Partnership working with UKG p395
Welsh Government: Devolution as a distinctive form of governance p417
Welsh Government: Aspirations for Further Devolution p443
Welsh Government: The process for achieving constitutional change p448
Welsh Government: Welsh Government's position on Intergovernmental Relations p452
Welsh Government: Note on SPF and Levelling Up p459



Response by Adult Learning Wales

1. What matters to you about the way Wales is run?

Comments from those attending our Regional Forum meetings were as follows:

- Wales must be run in a fair, open and transparent way, with accountability in relation to those in leadership positions.
- People must understand the way Wales is run- many citizens of Wales do not understand the current system and how it operates, or know who they need to speak to in order to raise issues.
- The leadership must be diverse and representative.
- Wales should be run in a way which respects culture and tradition where appropriate.

2. What do you think the priorities for the commission should be?

Comments from those attending our Regional Forum meetings were as follows:

- Reviewing arrangements for political education and awareness to improve understanding. Political education should be provided in more detail schools.
- Ensuring diversity and appropriate representation in leadership.
- Ensuring arrangements are fair and just- reviewing terms of counsellors, transparency and accountability.
- Economic development
- The environment

3. Thinking about how Wales is governed, by the Welsh Government and the UK government, what are the strengths of the current system, what aspects do you most value and wish to protect? Can you provide examples?

The majority of those attending our Regional Forum meetings valued the opportunity for Wales to make its own decisions. For example, there were differences in the way Wales



responded to the Covid pandemic, and those present felt it was important that the Welsh Government could take its own stance.

In general, those present felt it was important to have a devolved Welsh Government. Ideally, WG will become more devolved in the future, but it was felt that the time might not be right for this at present.

4. Are there any problems with the current system, and if so, how could they be addressed? Again, please provide examples.

The following views were expressed by meeting attendees:

There is confusion over how people are elected, who you need to approach to raise issues and in general how the system operates.

The Citizens Curriculum is limited in its concept at the moment. We are engaging more young people in civic affairs but this needs to extend to adults who missed out on education previously. We are not developing critical thinking skills sufficiently.

Funding arrangements for Wales are a concern. There seem to be major developments in areas such as transport in other areas of the UK, but Wales doesn't seem to get its share. We need a fairer way of allocating funding.

5. Thinking about the UK government, the Welsh Government and Welsh local government (your local council), what do you think about the balance of power and responsibility between these 3 types of government – is it about right or should it change and if so, how? For example, who should have more power, or less?

Comments from those attending our Regional Forum meetings were as follows:

The relationship between WG and local government is generally good, although sometimes further guidance from Welsh Government on new initiatives and reporting requirements would be beneficial.



Some attendees at our Regional Forum meetings felt that there have been occasions whereby the UK government has bypassed the Senedd and provided funding directly to local government/organisations, involving itself in energy strategy etc. which is massively complicating the picture.

We need further devolution in the area of crime and justice. The inability to control our own police force and deal with issues in and for Wales is problematic if you are involved in community safety in a local area.

Balance isn't right between UK and Welsh Government at present.

It was recognised that certain matters need to be controlled by the UK government, i.e. defence and tax.

6. As a distinct country and political unit, how should Wales be governed in the future?
Should we:

- broadly keep the current arrangements where Wales is governed as part of the UK, and the Westminster Parliament delegates some responsibilities to the Senedd and Welsh Government, with those responsibilities adjusted as in Q5, OR
- move towards Wales having more autonomy to decide for itself within a more federal UK, with most matters decided by the Senedd and Welsh Government, and the Westminster Parliament decides UK-wide matters on behalf of Wales (and other parts of the UK) OR
- move towards Wales having full control to govern itself and be independent from the UK OR
- pursue any other governance model you would like to suggest
- alongside any of these options, should more responsibilities be given to local councils bringing decision making closer to people across Wales and if so, please provide examples.

As mentioned above, those present felt it was important to have a devolved Welsh Government. Ideally, WG will become more devolved in the future, but it was felt that the time might not be right for this at present.



It was felt that Wales needs to be part of the UK, but we need to be able to run our own education, social and welfare systems, and to have more control of finances.

One participant suggested a devolution by exception model- instead of saying certain areas can be devolved only, say that all areas will be devolved, with specific exceptions.

As mentioned above, it was recognised that certain matters need to be controlled by the UK government, i.e. defence and tax.

7. Overall, what is most important to you in about the way in which Wales should be governed in the future? Is there anything else you want to tell us?

See answers to question 1.

In responding to these questions, we would welcome views on how the current forms of governance, and any proposals to change governance in the future, might impact on the Welsh language.

Responses to consultations may be made public. To keep your response anonymous (including email addresses) tick the box.

Submit your comments by 31 July 2022

email to: ConstitutionCommission@gov.wales

or post to:

The Independent Commission on the Constitutional Future of Wales

Cathays Park



**Y Comisiwn Annibynnol ar
Ddyfodol Cyfansoddiadol Cymru**

**The Independent Commission on
the Constitutional Future of Wales**

Cardiff

CF10 3NQ

Have your say: AntiCapitalist Resistance

Q1. 1. What matters to you about the way Wales is run?

1. What matters to you about the way Wales is run?

We believe, as ecosocialists, that Cymru (indeed all countries and states) should be run in the interests of the many not the few. Priority must be given to the needs of ordinary working people and not to the ability of capitalists to make a profit. We strongly support the right of the people of Cymru to independence but agree with the view expressed by the great Irish Socialist James Connolly:

'If you remove the English army tomorrow and hoist the green flag over Dublin Castle, unless you set about the organization of the Socialist Republic your efforts will be in vain. England will still rule you. She would rule you through her capitalists, through her landlords, through her financiers, through the whole array of commercial and individualist institutions she has planted in the country and watered with the tears of our mothers and the blood of our martyrs'.

However, while we strongly support the creation of an independent Welsh Socialist Republic, we recognise this is not on the immediate agenda and is only possible when the people of Cymru decide they no longer want to live under the domination of the British state and capitalism. However we don't believe nothing can be done in the meantime to benefit the lives of the people of Cymru. This means taking measures to eliminate poverty and inequality; end the gig economy of zero hours contracts in favour of permanent socially useful and environmentally beneficial jobs; end all measures which, either by omission or commission, disable people with physical and/or mental health impairments from playing a full role in society. Above all we need to ensure there is still a planet for us to inhabit.

We welcome the decision by the current Welsh government to declare Cymru 'a nation of safety' and its active support of refugees. We are very much in agreement with the belief expressed in the Constitution of YesCymru that:

'YesCymru believes in an inclusive citizenship, which embraces the fact that all those who choose to make Wales their home – regardless of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation – are full citizens of Wales'.

Such a view rejects 'blood and soil' concepts of nationalism – which ultimately discriminate against those deemed to be outside 'the nation' in favour of equal rights for all those who choose to live in Cymru.

The views of the Welsh government and Plaid Cymru are in stark contrast to the Nationality and Borders Act of the Westminster government and their plans to deport people fleeing terror to Rwanda. We hope that the government of Cymru will refuse to cooperate in this appalling policy and that Cardiff airport (owned by the Welsh government) will not allow deportation flights to Rwanda.

We also welcome the decision of the Welsh government to take environmental concerns seriously though we would question the aim of 'Net Zero' since it allows capitalism to continue to pollute the planet, produce vast amounts of totally unnecessary and useless goods which use up more and more of the planet's resources and do nothing to reduce global warming. In fact, we have already seen several examples of capitalist enterprises based in England buying up farms in Cymru and planting trees to 'offset' their carbon emissions. This not only takes land out of food production – at a time when the availability of food is under threat globally – but often the trees planted are inadequate for the tasks of soaking up carbon.

In any case trees are only adequate for soaking up carbon in the long term. In Cymru far more emissions savings could come from reducing sheep and cattle farming and the chicken industry as well as preventing pollution of rivers by run off from chicken farms, as is happening today along the Wye Valley. Of course, this would be a difficult political challenge, persuading farmers to convert to arable farming and convincing people that we need to reduce consumption of meat and dairy. But if we are to continue to live on planet earth it is a challenge that can no longer be ignored.

We support a moratorium on new road building (except for access to new socially responsible housing developments with triple glazing, high levels of insulation and solar panels – like in Germany) and welcome proposals to introduce electric buses in a number of towns and cities throughout Cymru though much still needs to be done to increase the provision of public transport in many rural areas. Attention needs to be given to developing transport links on a north-south axis which would benefit the people of Cymru and allow them to travel more easily within their country rather than the predominant east-west axis which largely serves the interests of exporters from England. However, we totally reject the idea of a North-South motorway put forward by Tory MS Janet Finch-Saunders as environmentally damaging. We need fewer private cars and more public vehicles on the road and especially on rail.

Something like 11% of the UK's rail network is in Cymru yet receives only 3% of the funding. Cymru is paying toward HS2 since it is supposed to be a project benefitting England and Wales yet not a single foot of track comes into our country. The nearest stations will be Birmingham and, if it ever gets that far north, Crewe. Plans to create rail links between Swansea and Bangor via Carmarthen and Aberystwyth are welcome though whether or not the finance will be available to develop them is by no means certain – especially since the Westminster government determines what monies Cymru receives.

Q1. 1. What matters to you about the way Wales is run?

We also welcome the planned introduction of a default 20 miles per hour speed limit in built up areas with the aim of getting more people to walk or cycle. – This will have beneficial effects on health and consequently less demand on the NHS; it will also increase road safety, especially for children and people with limited mobility, and reduce the effects of pollution on our planet. However we believe such a measure could be implemented with considerably less opposition if local citizens were involved in the decision making process rather than allowing those opposed to the measure to be able to portray it as something imposed upon them, an attack on their democratic rights by a government in Cardiff that wishes to impose its ideas (and rule) on 'ordinary' people.

Free public transport has been introduced for limited periods in a number of places. We very much support this but would like to see it extended permanently, particularly now when so many working people are being hit by wage cuts, loss of jobs and inflation. The creation of a national transport network using electric vehicles would not only help to significantly reduce carbon emissions but would also provide well paid jobs (both for those building and those operating the vehicles). It would also make it easier for people with physical or mental impairments to interact with others. The current lack of public transport in many areas means particularly means that those with impairments who do not have access to a car are disabled from participating in many of the activities of daily living. The Welsh government needs to do far more to ensure that all transport is accessible.

The ability of the Welsh government to develop a coherent strategy to combat global warming is severely limited by the ability of Westminster to reject environmental schemes in Cymru (as with the Abertawe/Swansea tidal scheme) or insist on environmentally damaging projects such as the Aberpergwm coal mine near Glynneath. The control of much of the coast by the Crown Estate (see below) means that any revenue from offshore windfarms and tidal energy will go to the Crown and the UK government and not to the government of Cymru. There is a clear need for a huge expansion of Ynni Cymru and other community energy projects which could allow Cymru to meet all its energy demands entirely from renewables by 2035. But only if Cymru is able to control its own policies and finances.

We welcome the belated decision by the Welsh government in their agreement with Plaid Cymru to provide free school meals to all pupils in state schools in Cymru. However, the current roll out is far too slow and needs to be speeded up. This has been made even more urgent by the cost-of-living crisis which is unlikely to disappear soon. Parents are being forced to reduce expenditure on food meaning that children are likely to be eating unhealthy, overprocessed food, possibly containing unnecessary additives.

The NHS in Wales is in desperate need of cash and skilled staff. There are serious problems in the ambulance service and Accident and Emergency units. District Nursing Services are overstretched, in some areas only able to deliver palliative care. NHS staff have not had chance yet to recover from the Covid pandemic and are constantly overworked. Much of what the NHS offers is good, and staff makes every effort to meet patients' needs; free prescriptions in Cymru (as in Scotland but unlike England) are welcome, particularly at a time of rising costs of living. And it is generally agreed that on the whole the Welsh government handled the Coronavirus pandemic better than the Westminster government.

Unfortunately, the current pay offer, in reality a pay cut, to NHS staff is unlikely to solve the problem. Land ownership is a major issue in Cymru, which relates also to both farming and housing. Land is relatively cheap in Cymru compared to the rest of the UK which means that it is bought up by multi-national firms or investment funds who then use it to 'offset' their carbon emissions or, given the difficulties faced by small scale farmers, their land is bought and consolidated into large scale farms. The creation of Unnos – Land and Housing Wales, answerable to the Welsh government and accountable to the Senedd is a welcome step forward. But greater strides can be taken if Unnos and Ynys Cymru are run as cooperatives along the lines of Suma Wholefoods Cooperative and the previous Tower colliery cooperative with democratically elected and active participation from trade unions, local resident groups and consumers rather than the top-down public ownership models of Cardiff airport and Dwr Cymru.

In addition, there is the issue of Crown Property, brought to attention by the recent Banners on Beaches protests organised by YesCymru. The Crown Estate 'owns' 65% of shoreline and riverbeds, more than 50,000 acres of land and the first 12 nautical miles of seabed from the shore. In Scotland control of Crown Estates is devolved to the Scottish Parliament and last year contributed £700 million into the Scottish government's purse. In Cymru, by contrast all revenues are divided between the Crown and the UK government with the Welsh Government receiving nothing. In fact, instead of benefitting from Crown Estate property people in Wales have had to pay the Crown Estate for work that only benefits the Crown. The East Rhyl Coastal Defence Scheme for example, built on Crown Estate land received no financial contribution from the Crown Estates but was paid for by Denbighshire County Council and the Welsh Government.

The Crown Estates exist independently of the actual monarch, belonging to 'The Crown' rather than Elizabeth II or her successors. Nevertheless, there is also the question of the role of the monarchy in Cymru in the future. Recent disclosures reveal that Elizabeth Windsor, as a private individual, enjoys immunity from more than 160 laws that apply to the rest of us. These laws guarantee immunity to her private property portfolio and grant her unique protections as the owner of large, landed estates. They

Q1. 1. What matters to you about the way Wales is run?

also exempt her from laws ranging from animal welfare to workers' rights, health and safety and pensions as well as the Equality Act 2010. While these exemptions relate to the Queen as a private individual it is inconceivable that they are not granted because of her positions as head of state. And they will be extended to her successor.

We therefore support the proposed re-introduction of a bill to devolve the Crown Estates in Cymru and agree with Plaid Cymru leader at Westminster when she urged all Labour MPs to support the bill.

Housing is also a major issue in many parts of Cymru. Cymru is not alone in that; Cornwall, the Lake District, parts of Yorkshire and Northumberland and areas of Scotland all have problems with second home or holiday lets, as in a slightly different way, do some of the wealthiest areas of London. Whitby in North Yorkshire recently held a referendum on limiting the purchase of new houses to those intending to use the housing as their sole residence.

However, in Cymru there is an important issue that is largely lacking elsewhere (except Gaelic speaking parts of Scotland) language. Whole villages throughout Cymru have seen the population change from predominantly Cymraeg speaking to English speaking, while in some areas the majority of houses are now either second homes or holiday lets as young people from the area can't afford the prices relatively wealthy outsiders are willing to pay. As a result young people move away, village shops have to close as the village is frequently deserted for much of the year when the second home owners are in their other residence(s), schools close for lack of pupils, public transport becomes even less frequent and the whole culture of the place becomes Anglified, with even longstanding names of houses changed because their original 'Welsh' name was 'too difficult'.

Bizarrely the Daily Telegraph, while encouraging its readers not to holiday in Cymru (or Cornwall) because place names are 'too difficult' is nevertheless still encouraging them to buy second homes in Cymru. However while the Daily Telegraph, continues to run articles encouraging people to buy a second home in Wales, poverty forces local people out of areas of Cymru and unequal distribution of wealth allows rich people to buy up property at a price way beyond the ability of local people to pay and while we live in a society in which wealth is more and more concentrated in fewer and fewer hands then nothing short of taking land into public ownership will even begin to solve the problems associated with housing in Cymru.

We support the measures adopted by the Labour government and Plaid Cymru, as well as some local authorities, to attempt to reduce the impact of second homes by allowing councils to massively increase Council Tax rates for second homes or holiday lets. We also support the granting to local authorities of powers to raise local tourist levies, such as are common throughout much of western Europe at least. However, these measures alone can only have a limited effect and will probably mean that rather than rich people from outside Cymru being able to buy up property only seriously rich people will be able to do so. The Whitby referendum perhaps offers a more fruitful approach.

We believe it would be more effective for the government of Cymru to prioritise a programme of council house building as well as providing funds to councils to buy back former council houses when they come on the market. Wrexham/Wreccsam council, for example has already started to do this on a small scale. With backing from the Senedd this could be done on a scale that would help to increase the number of council houses available for families.

The current government in Westminster has introduced some of the most restrictive and punitive legislation that in practice seriously limits the ability of people to protest. It also effectively criminalises the Roma, Gypsy and Traveller communities denying them the right to continue to live in traditional ways. The right to demonstrate has also been severely curtailed and increased powers given to the Police to control protests. We are opposed to these and other oppressive, sometimes racist pieces of legislation and would hope that in an independent Cymru all restriction on the right of protest, including the right to strike would be abolished.

Q2. 2. What do you think the priorities for the commission should be?

The Commission should seek to discover what the people of Cymru want its current and future arrangements to be. It should explore all avenues and possibilities; for example, in the event of Irish reunification and/or Scottish Independence would either of those developments affect how people would view the future governance of Cymru.

Q3. 3. Thinking about how Wales is governed, by the Welsh Government and the UK government, what are the strengths of the current system, what aspects do you most value and wish to protect? Can you provide examples?

We support the devolution of powers to Y Senedd Cymru as this allows decisions to be taken closer to home. We support the expansion of Y Senedd to 96 members as this will allow it to more effectively carry out the hugely expanded workload – particularly because the number of MPs from Cymru at Westminster is being reduced by 20 percent. Devolution allowed Mark Drakeford (and Nicola Sturgeon) to deal with the Covid pandemic more effectively than Boris Johnson. Their TV presentations were generally far more coherent than those of the UK government and, unlike the Westminster government, both the Welsh and Scottish governments used a signer so that people with a hearing impairment were not disabled from understanding what was being said.

Elections in Cymru are more democratic than for the Westminster Parliament where the First Past The Post (FPTP) system allows parties to win large majorities in the House of Commons despite having amassed only a minority of votes. At the moment, in the case of Cymru (and Scotland), this effectively means they are governed by a party that did not win majority support in either country. The continued existence of the Welsh Office, answerable to Westminster rather than the Senedd, reinforces this.

While there may be some issues as to how proportional the electoral system for the Senedd is it certainly produces a more proportional result than FPTP and ensures a balance between male and female MSs. In Cymru elections (apart from for the Westminster Parliament) people can vote at age 16. This is also true in Scotland but not in England.

Q4. 4. Are there any problems with the current system, and if so, how could they be addressed? Again, please provide examples.

The ability of Westminster to interfere within devolved matters (and the underlying concept of unitary parliamentary sovereignty) is a dangerous precedent that must be abolished in all forms. The Internal Markets Act, for example, allows the Westminster government to override decisions of the Welsh government. Though even before this Act Westminster could still control important decisions. For example, the refusal by the UK government to support the proposed Swansea barrage that could have provided environmentally clean energy to houses in Abertawe. Westminster ministers have tried on several occasions (so far without success) to force the Welsh government to abandon its cancellation of the M4 relief road. Transport links in Cymru essentially run east-west rather than north-south. In other words, they are primarily concerned with transporting goods from England rather than allowing people in Cymru to move freely from one part of the country to another.

Most recently the Westminster government has announced its intention to repeal the Trade Union Wales Act 2017 a law passed by the Senedd which prohibits the use of agency staff to break strikes in Cymru. This is both an attack on trade union rights and on the right of the Senedd to make policy for Cymru. Now, in contravention of its own promises at COP26, it is insisting on opening the Aberpergwm coal mine.

It has also taken money unilaterally from the Welsh (and Scottish) government to finance military aid to Ukraine. While we are not opposed to providing the weapons Ukraine requires if it is to be able to defend itself against the Russian invasion this should not be done at the expense of services in Cymru (or the rest of the British state for that matter). Given the enormous profits the arms manufacturers are making they should be subject to a windfall tax to ensure Ukraine is able to defend itself AND there are no cuts to an already inadequate budget in Cymru.

Large areas of policy are reserved to Westminster, without which it is virtually impossible for a government in Cymru to function effectively. Westminster still controls monetary and fiscal policy, and the Barnett formula ensures Cymru does not get its fair share of finances, Trade policy, welfare policies, defence, foreign policy, the judiciary and others are all reserved for Westminster, even though the latter is devolved to the Scottish Parliament. Although the Labour government has declared Cymru a 'nation of sanctuary' it is unable to do this effectively because everything has to go through the UK Home Office which, in the case of refugees from Ukraine we have seen, has been slow, inefficient and lacking in care. And these are refugees the Westminster government claims to support.

This is not totally surprising since the UK government insisted on housing refugees at the disused army camp at Penally, despite most people who knew the area, knew the facilities (or rather lack of them) at Penally warning against this decision. The views of the Police and Crime Commissioner were totally ignored.

Moreover, the current government in Westminster has shown considerable hostility to even the current extremely limited devolution to Cymru. They have instructed all local and national governments that the Union flag must at all times take precedence over the Ddraig Coch or Saltire. They have attempted to impose unionist values on the people of Cymru, whether by insisting that schools all sing a frankly dreadful dirge celebrating the 'virtues' of 'Britishness' or trying to coerce schools in Cymru to distribute

Q4. 4. Are there any problems with the current system, and if so, how could they be addressed? Again, please provide examples.

copies of a pamphlet extolling the 'virtues' of monarchy.

Westminster has used the post-Brexit period to further step up its assault on devolution. The 'Shared Prosperity Fund', unlike the EU funding it replaces, completely by-passes the devolved governments. It can, and has been, used by the Westminster government to reward Tory seats. The Westminster government wishes to impose freeports in Cymru despite there being no discussion on the matter. Similarly, it wants to impose nuclear power stations in Ynys Mon without any discussion about the merits, or otherwise, of nuclear power.

The electoral system is a major problem. Cymru has been subject to Tory governments in Westminster despite the Tories never having a majority in Cymru. The anti-democratic First Past the Post system must be changed; most modern functioning democracies have much more rigorous democratic processes than those that currently exist within the UK, or what is being proposed by the Welsh government. Single Transferable Vote system needs to be introduced immediately for ALL elections – Westminster, Y Senedd, local councils etc – with the voting age reduced to 16 and all those who live in Cymru, wherever they were born, able to vote.

Q5. 5. Thinking about the UK government, the Welsh Government and Welsh local government (your local council), what do you think about the balance of power and responsibility between these 3 types of government – is it about right or should it change and if so, how? For example, who should have more power, or less?

The balance should be as local as possible, but also correspond to the appropriate level of strategic vision. The UK government in its current and likely future form is not interested in Cymru beyond its ability to uphold the union, and power needs to be devolved to the Welsh Government in areas that could have real benefit to the lives of the peoples of Wales; devolution of Justice and of Welfare are two notable examples within the current constitutional framework. Welsh Government must encourage local authorities to use the powers given to them to serve their constituents, not elected officials.

However the pre-modern, essentially undemocratic (if not actually anti-democratic) nature of the UK state (including the House of Lords, the monarchy, the FPTP electoral system, the control of the media by a tiny number of very wealthy individuals, the very narrow 'catchment' area for judges, senior civil servants etc) makes it largely irrelevant whether or not Westminster, Cardiff or local councils are responsible for particular things as virtually all power will remain in Westminster's hands. This is reinforced by the lack of a written constitution, the constant undermining of what rights people have by a government intent on removing large numbers of our rights and the often ignored 'Crown Powers', especially in centralizing decision making with a consequent lack of transparency and accountability.

There is nothing to stop UK government's attempting to weaken or even overturn the powers devolved to the Senedd. The current Tory government in Westminster has shown considerable enthusiasm for rolling back devolution. But there has been little enthusiasm from the British Labour Party for greater devolution: in fact, the Welsh Labour government has largely been ignored by the current leadership of the British Labour Party. It would be a step forward, in our view, if the Welsh Labour Party were to refound itself as a party separate from the British Labour Party

We do not believe it is acceptable for the ability of the Senedd to make lasting policy decisions to be dependent on the whim of whatever party happens to be in government in Westminster. If there is to be any meaningful change in the balance of power between the UK government, the Welsh government and local government the ability of the UK government to overrule or override the Senedd has to be taken out of the equation. This should be enshrined in a Constitution for Cymru.

The current Constitutional setup and the reliance on the UK government to provide the funds necessary also makes it more difficult to hold members of the Senedd and especially Welsh government to account. Certainly, it has been claimed that the Welsh government could have done more to oppose the Aberpergwm mine. And the Welsh Labour government has not criticised the below inflation pay rises (in reality pay cuts) for NHS and education staff for which they have responsibility. We can understand their reluctance to pay more than the UK government has decided since the pay 'increases' have to be paid for within existing budgets – meaning a reduction in services. However, we do expect a Labour government to support workers in their struggle against pay cuts.

We would add another tier to the decision-making process – local decision-making bodies. While some councils in England have taken a few steps in this direction (Preston and Salford in particular) our preferred model would be Porto Alegre in Brazil where all citizens could make proposals and vote on how the council's budget should be spent. This 'from the bottom up' form of democracy is, for us, the most important level – far more important than decisions being made for us. It is absolutely essential for those with physical or mental health impairments to be able to determine their own needs and ensure the

Q5. 5. Thinking about the UK government, the Welsh Government and Welsh local government (your local council), what do you think about the balance of power and responsibility between these 3 types of government – is it about right or should it change and if so, how? For example, who should have more power, or less?

resources to meet them are available so they can play a full role in their communities. It is about ordinary working people taking decisions for themselves without which, in our view, there can be no Socialism.

Q6. 6. As a distinct country and political unit, how should Wales be governed in the future? Should we: broadly keep the current arrangements where Wales is governed as part of the UK, and the Westminster Parliament delegates some responsibilities to the Senedd and Welsh Government, with those responsibilities adjusted as in Q5, OR move towards Wales having more autonomy to decide for itself within a more federal UK, with most matters decided by the Senedd and Welsh Government, and the Westminster Parliament decides UK-wide matters on behalf of Wales (and other parts of the UK) OR move towards Wales having full control to govern itself and be independent from the UK OR pursue any other governance model you would like to suggest alongside any of these options, should more responsibilities be given to local councils bringing decision making closer to people across Wales and if so, please provide examples.

In our view the nature of the UK state means that if Cymru is to become a modern democratic state that can only be done by separation from the UK, that is to become an independent state. In fact, it is debatable whether Cymru as it currently exists, is in fact a country. Most unionist politicians certainly don't see Cymru as more than a part of the UK, a region. At the height of the Covid pandemic Boris Johnson famously called on TV news stations to stop talking about the 4 nations, insisting there was only a single 'British' nation. The people of Cymru are undoubtedly a nation though the Dragon may have acquired a few more since Wynford Vaughan-Thomas and Alf Williams claimed in 1985 it had 2 tongues. Afghans, Syrians, Poles and now Ukrainians have all added their culture to the Welsh nation.

The current UK state is not a free and voluntary union. Cymru never voted for union with England: it was imposed on it via military conquest and legislation under Henry VIII. The 6 counties forming Northern Ireland also never voted for union: they were a creation of the British state against the wishes of the overwhelming majority of the people of Ireland. Scotland may have voted for union in 1707 but in rather difficult circumstances. In any case in a genuinely democratic union each of the constituent nations has the right to secede they don't have to go begging Westminster for the 'right' to hold a referendum on independence. In a genuinely democratic union they automatically have that right.

However, we don't believe a federal solution would answer the needs of the people of Cymru, not least because it would always be at the mercy of the government in Westminster. The anti-democratic FPTP and the sovereignty of Parliament rather than the people mean that a government in Westminster could pass laws revoking parts or even all of the federal arrangements. A federal structure would almost certainly be dominated by England since it is highly unlikely that any party which draws its support primarily from England would be willing to accept a federal structure in which Scotland, Wales and the 6 Counties (if Irish reunification has not yet taken place) would have equal status with England. And even if that did happen as noted above a government could use its Parliamentary majority (achieved via the anti-democratic FPTP system) to change the arrangements or scrap them altogether.

That does not mean an independent socialist republic in Cymru would refuse to enter into alliances with workers in other parts of the former UK. The idea that workers in Cymru will not unite with workers on the other side of Offa's Dyke is frankly ludicrous. If workers can unite in common international unions across the longest land border in the world, the border between Canada and the United States, then there will be no problem uniting workers in England and Cymru.

Nor does it mean we can't make a start on improving democracy and governance in Cymru, even under the current limited settlement. Campaigns around Free School Meals, transport provision (or the lack of it), defending asylum seekers, stopping the constant growth of second homes, defending Cymraeg, opposing nuclear power stations, fighting for clean renewable energy are all part and parcel of the struggle for an independent socialist republic in Cymru.

And students from an independent Cymru would be eligible to (re)join the Erasmus exchange scheme, from which they are currently excluded by virtue of being part of the United Kingdom which has withdrawn from the scheme. The Taith scheme launched by the Welsh government has many strong points, but it isn't really able to compete with the Erasmus programme.

Q7. 7. Overall, what is most important to you about the way in which Wales should be governed in the future? Is there anything else you want to tell us?

The only way in which Cymru can be sufficiently free to develop its social, economic and cultural potential within an international context of its own making is by establishing an independent socialist republic. Anything short of that will mean Cymru will be at the mercy of governments in Westminster who will almost certainly be uninterested in, if not downright hostile to, the needs and wishes of the people of Cymru. The people of Cymru will not be able to choose whether or not to enter into international alliances and will be bound by treaties entered into by governments they never voted for, governments probably elected on the basis of the anti-democratic First Past the Post system.

Without independence governments in Cymru will be unable to enact many laws that will improve the lives of ordinary working people because Westminster will almost certainly reject them if they are inimical to the political views of the governing party while laws developed in Westminster will be imposed on Cymru – as happens today despite devolution.

There are many issues that will need to be given much further thought if Cymru is to be independent. It will require financial sovereignty (i.e., a central bank) and political sovereignty; economic sustainability; how legacy arrangements with the UK (or England if the 6 counties have reunited with the rest of Ireland and Scotland is independent) are arranged to avoid further exploitation.

How can the work already begun around climate change and the environment be expanded to allow Cymru to achieve zero carbon in the shortest possible time?

There are many more questions, many of them raised in the submission from Undod Chwith Cymru/Left Unity Wales. We hope that since the Commission has not ruled out independence then it will launch a full enquiry into these and other issues that go beyond the purely constitutional

Q8. 8. In responding to these questions, we would welcome views on how the current forms of governance, and any proposals to change governance in the future, might impact on the Welsh language.

We are in favour of promoting the Welsh language as much as possible. All layers of government should ensure equality between English and Cymraeg in all its activities. Where necessary translation services should be provided. We hope that by taking some of the measures we have put forward above, particularly in relation to housing policy, Cymraeg may not only be protected from being replaced by English but may be able to grow, especially if local schools can be maintained and education conducted in Cymraeg.

Q9. Information to include: Please let the commission know if you are writing in a personal capacity or on behalf of an organisation. If you are writing on behalf of an organisation, it would be helpful if you could confirm its purpose, size and membership.

This is a submission from Anti*Capitalist Resistance (ACR), supported by Socialist Resistance and Ecosocialist.scot.

We are three ecosocialist organizations who work together around a common view on constitutional organization and political issues within the British state. Where possible we work with organisations like Labour for an Independent Wales, Melin Drafod, Undod, Welsh Underground Network and YesCymru. Our analysis of the national question in Cymru draws heavily on the work of the late Ceri Evans, published in Whispers of a Forgotten Nation.

Q10. Add your video or audio submissions here

No Response



ASLEF Evidence Submission – Independent Commission on the Constitution Future of Wales – Transport Sub-Group

1. The Associated Society of Locomotive Engineers and Firemen (ASLEF) is the UK's largest train driver's union representing over 21,000 members in train operating companies, freight companies as well as London Underground and light rail systems.
2. We represent just over 1,000 members in Wales as well as members who operate services which cross the border of Wales. We welcome the opportunity to provide evidence to the Independent Commission on the Constitutional Future of Wales. Our submission will focus on the rail questions raised by the transport sub-group of the commission.

Is the current devolution settlement sufficient and adequate to manage the network?

3. The current devolution settlement leaves an imbalance when it comes to planning an integrated public transport network. Whilst the Welsh Government has a greater say in road developments it is left having to work in partnership with, and in hope of, a favourable relationship with the Department for Transport (DfT), UK Government and Network Rail. This can impact on the ability to deliver an integrated network which links up with road, active travel and transport hubs, connecting communities and promoting a modal shift from private motor vehicle to train / active travel.
4. Whilst the current settlement has allowed the Welsh Government to bring the Wales & Borders franchise under the control of Transport for Wales (TfW) this is still limited and restricted by the Railways Act 1993 and overall control of the franchise ultimately sits with the UK Government due to the inability for a devolved government to truly nationalise a service. Despite having control over the franchise there are limitations in how the Welsh Government can grow the network due to the need for agreed investment on infrastructure plans from the UK Government and the DfT.
5. The heavy focus from UK Governments on investing in rail services in the South East and services and infrastructure that serves the South East of England and London has also impacted on the rail infrastructure in Wales due to the rail connections between South Wales and the South East of England. This has meant that a UK Government has looked more favourably on upgrades which had greater benefit for South Wales such as upgrades to the infrastructure in the South of England which connected London with Cardiff. Whilst the improved speed and frequency of services has helped to develop South Wales it hasn't helped to improve connections across Wales and the effects of the Beeching

cuts still being felt.

6. The current devolution settlement is not sufficient or adequate to manage the network due to this reliance on a partner in the UK Government whom the Welsh Government is able to work with and who sees the need to invest in and grow the network in Wales. As Wales has the least amount of control of its rail services out of all the devolved nations it highlights an inadequacy in the current settlement and an issue which could be lobbied around.

Does the Welsh Government need further powers?

7. In the interest of fairness across devolved nations the Welsh Government Should gain greater control and the potential financial benefits from further powers.
8. As a starting point the Welsh Government could benefit from having a provision similar to that in Scotland where railway services which begin and end in Scotland are devolved. This could allow the Welsh Government to deliver on connecting the North and South of Wales via a rail link without the need for Welsh citizens to cross the border to change to a service which takes them to the North of Wales or take the longest rail route in Wales, Cardiff – Holyhead which takes almost four and a half hours to travel 141 miles.
9. The divestment of control over the Core Valley Lines (CVL) could also serve as an example for further lines for which the control could be devolved to Wales. The ongoing work to build the South Wales Metro through investment in the CVL highlights how once given the powers, a Welsh Government can begin to deliver the upgrades and investment needed by its citizens. The Welsh Government would need further powers to ensure that the most benefits from CVL investments are seen by having control over connecting lines and control over further investment to help develop the benefits of the CVL investment on to different lines.
10. The Welsh Government would benefit from similar control over all the lines operated by TfW as it does with the CVL and we believe that these powers will be needed to ensure that any drastic changes in UK Government and the DfT / Network Rail do not severely impact the ability that the Welsh Government has to invest in and develop its network and overall transport plan.

Is there an opportunity to set up shared governance arrangements?

11. As the UK Government is currently working to deliver 'Great British Railways' (GBR) and still intends to keep rail infrastructure and future developments a reserved matter there is an opportunity to influence the current process and set up shared governance arrangements with the UK Government. This shared governance would help deliver GBR and create a connected network that serves the whole of the UK. There are plans for a joint working agreement to be reached between TfW and GBR and this could present an opportunity to shape the railways in Wales in a way which works better for the people of Wales

than the current arrangement.

12. Furthermore, with the creation of GBR and the UK Government's desire to have one network split in to regions there is an opportunity for the Welsh Government to set up shared governance arrangements to enable the Welsh Government further control of the railways in Wales whilst enabling the UK Government to achieve its goal of having a uniformed GBR across England, Wales & Scotland with regional / national brands.
13. There is also scope for shared governance arrangements on mainlines which cross borders, ultimately it would better serve the people of Wales for the whole line to be under the control of the Welsh Government but where resistance to this is in place a shared governance arrangement could help to balance the needs and wants of the Welsh people and the UK Government / the people of England.

How is rail infrastructure management connected with freight movements and shipping more broadly?

14. Rail infrastructure management is essential for freight movements and shipping. The Welsh Government has highlighted the importance of using land around ports and transport hubs for freight as well as the importance of utilising land-use planning to ensure that freight is accounted for and freight networks are connected. The Welsh Government is using what powers it can with the current settlement to ensure that freight is connected up more sensibly but to ensure that rail freight can truly grow they will ultimately need further powers / control over rail infrastructure.
15. We have recently seen a reminder of how important rail infrastructure management is for connecting freight movements, lack of effective maintenance on the Cherwell Valley Line led to the Nuneham Railway Bridge (built early 20th century) being out of use and re-routing freight services from Southampton. This could impact on the attractiveness of rail freight for businesses. This ultimately highlights the importance of the Welsh Government having control over the infrastructure in Wales to ensure that funding is there to properly maintain it and ensure that their plans to develop rail freight and reach net zero are not scuppered by a lack of funding for maintenance from the UK Government. We have recently seen via a leaked document¹, Network Rail outline an inability to properly maintain the network as part of current proposed CP7 funding and this could have a detrimental impact on Wales and its aims to achieve net zero by 2030 due to the impact this lack of maintenance will have on the attractiveness and effectiveness of rail travel.
16. We have seen from the DfT, an agreement as to the importance of properly connecting ports to the rail network as outlined in their plan for growth². The

¹ <https://www.msn.com/en-gb/news/uknews/leaked-network-rail-presentation-warns-train-delays-set-to-worsen/ar-AA19ZamR>

²

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1085917/future-of-freight-plan.pdf

plan highlights the need for rail infrastructure to be properly managed and connected with freight movements and shipping to help achieve net zero and ultimately grow rail freight. Despite this, we have seen cuts to current rail projects in the UK which would have helped to grow rail freight through enabling an increase in capacity.

How has franchise renewal for non-TfW services affected TfW services?

17. As the Welsh Government has no say in franchise renewals for non-TfW services it means that the Welsh citizens do not have a say over these operators outside of the Westminster elections in the running of the non-TfW services which impact on their communities. We have seen Avanti West Coast struggle to provide services and the poor running of other non-TfW services and how that can impact on the likelihood of passengers to use rail and TfW services as a whole due to the impact this has on their confidence in rail services.
18. The recent rail strikes have also shown the impact that services outside of the Welsh Government's control can have on TfW itself. Whilst TfW was able to settle its disputes we have seen disputes rumble on at all operators under the control of Westminster, inclusive of Network Rail. The Network Rail strikes from members of the RMT have had the greatest impact on the ability of TfW to run services, leaving Wales to suffer the effects of the refusal from the DfT to settle ongoing disputes, opting instead to draw out the dispute and introduce new legislation (Minimum Service Levels) to try and weaken worker's rights.
19. GBR talks of a want to remove duplication from the network, currently multiple operators use the same station with different staff dispatching trains depending on the operator. There is potentially the scope for the Welsh Government to push for an expansion of TfW services to cover parts of Wales where non-TfW services are currently in operation, this would help GBR avoid duplication and provide a more uniformed service for the people of Wales.
20. We have seen a true commitment to passengers from TfW with the recent £800M investment in new rolling stock and the current franchise renewal of failing non-TfW services can lead to an imbalance of the standard and accessibility of rolling stock across Wales.

How has HS2 affected the Welsh network operationally, and the Welsh Government financially? How does levelling up funding compare to the consequential that would have been received if there had been a Barnett consequential for HS2?

21. As HS2 is classified by the treasury as an England and Wales project it attracts a 0% programme comparability factor, meaning that Wales does not receive a Barnett consequential as a result. So in essence the UK Government considers Wales to be befitting from HS2 so is not applying it to the Barnett consequential, this has meant that Wales has lost out financially after it was previously factored into the consequential 2015-2019. Due to the spiralling costs of HS2 in part due to the constant cancelling and re-planning of the project Wales is now missing

out on even more funding.

22. Whilst there could be indirect benefits to Wales from HS2 due to increase in frequency and capacity of services to stations which connect to lines serving Wales, the benefit would not be felt as highly as if HS2 actually went in to Wales, ideally it could service North Wales and help to equal out the investment in rail between South and North Wales. The current uncertainty around HS2 and how much of it will actually be built and whether it will be new high speed rail or upgrades to existing track impacts on any plans to upgrade the rail infrastructure in Wales which connects to these lines. Currently England does not have a transport plan, this means that HS2 is a project being delivered outside of an overarching plan, this in turn, makes it hard for the Welsh Government to develop their own transport plan to maximise its benefit from the building of HS2 and the increased capacity, speed and frequency of services it would provide to stations which connect to Wales.
23. HS2 could lead to an increase in demand for services from Wales to England and vice versa to HS2 stations such as Birmingham and Manchester. This could enable more people the ability to visit Wales via changing from a HS2 service at a station that connects to Wales. However the main benefit will be felt in England as that is where the public and businesses will be able to better utilise the benefits of a new high speed line, there is also the concern that the North-South nature of HS2 could end up bypassing Wales as a destination for passengers due to the need to change and added time involved in changing for connecting services.
24. Both Scotland and Northern Ireland receive Barnett consequentials directly from spending on HS2 whilst Wales does not so there is now doubt that Wales is directly impacted financially by the loss of this funding. This funding could have been put towards greater investment in public transport in Wales.
25. In terms of the comparability of levelling up funding and the Barnett consequential taking into account HS2, Wales is ultimately losing out. Whilst the Levelling up Fund has helped the Welsh Government it should have been paid alongside HS2 being factored in to the Barnett consequential. The current amount of funding received as part of the levelling up fund does not come close to the total amount that would have been received as part of the spiralling costs of HS2. Whilst the levelling up funding can assist with investment in transport solutions for Cardiff it does not come anywhere near to the potential benefit that the HS2 Barnett consequential could have for Wales' transport system across the whole nation.

What would be the financial implications of the Welsh Government taking on a greater proportion of the rail infrastructure in Wales?

26. The financial implications of the Welsh Government taking on a greater proportion of the rail infrastructure in Wales, in the first instance, is the impact it would have on the Barnett Formula, currently around 37% of the UK Government's Transport spending responsibility is devolved to Wales, whereas in Northern Ireland and Scotland it is over 90%. Greater control of rail would

see this amount increase and with it, an ability to better plan future rail developments which would help create economic growth in Wales through more communities and businesses being connected by rail. As we have already outlined, whilst England does not have transport plan, Wales does, having greater control of rail infrastructure would mean that Wales can better deliver and develop its transport plans with the certainty of funding for projects as they would not need to be as reliant on working with a UK Government which does not have a coherent and clear transport plan.

27. With the Welsh Government taking on a greater proportion of the rail infrastructure in Wales there would be the added cost of maintenance of the network and with failings of funding to keep the network properly maintained over the years and the recent Network Rail document leaking which outlined that current funding would not let Network Rail operate, maintain and renew their tracks, bridges and earthworks infrastructure, there is the possibility that with greater control comes a very high financial cost to the Welsh Government as they would hopefully look to properly invest in rail infrastructure to ensure it is maintained, renewed and replaced when needed.

28. Ultimately though, although having greater control of rail infrastructure will bring with it greater cost, it will enable the Welsh Government to truly plan, prioritise and invest in the rail infrastructure in Wales. The Welsh Government has shown a real commitment to invest in and grow public transport to help the Welsh economy grow and to combat climate change, so whilst there would potentially be a greater cost, ultimately ensuring the railways are properly maintained and invested in should lead to greater economic opportunities for the people of Wales, as was revealed by Oxford Economics³, for every £1 worth of work on the railway system itself, £2.50 of income was generated elsewhere in the economy, so the higher investment would provide a greater return for the Welsh and UK economies.

³ <https://www.oxfordeconomics.com/resource/the-economic-contribution-of-uk-rail/>

Audit Wales

The Constitutional Future of Wales: some audit perspectives

Accountability and scrutiny of government—the work of PAC and other scrutiny committees

1. I very much welcome that within your consideration of mechanisms for strengthening representative democracy, you intend to continue to focus on the accountability and scrutiny of government at every level, including the work of scrutiny committees and ways of including citizens in the scrutiny process. I note that the Executive Summary of the interim report (under Citizen's Perspectives from your consultation) says that "The need for transparent and accountable government at all levels came up repeatedly." I think that in any constitutional arrangement, decisions about the use of collective resources are at the heart of the process of government. And in a democracy, public involvement, especially reporting to the public on the use of resources, is an essential means of ensuring decisions and actions align with the preferences of the governed¹.
2. The interim report's consideration of financial freedom and responsibility identifies, among other things, an issue of restrictive budget management (page 67). The report says that it is hard to see why constraints applied by HM Treasury to the Welsh Government are needed given that the Welsh Government is accountable to the Public Accounts and Public Administration Committee (PAPAC) of the Senedd for its stewardship of public expenditure.
3. I think that statement raises a couple of important issues: (i) adequacy of treasury management and (ii) maintaining accountability to elected representatives (and indeed the electorate/citizens in general). I address (i) further separately below. On (ii), I think there is scope to consider how to ensure the PAPAC accountability mechanism is commensurate with greater financial freedom and responsibility. This includes such matters as ensuring sufficient resourcing in terms of size, time and expert support, and safeguards

¹ **Subject of course to protecting minority interests. As the Council of Europe [12 Principles of Good Governance](#) puts it: "Decisions are taken according to the will of the many, while the rights and legitimate interests of the few are respected."**

to ensure objectivity, to hold the Welsh Government to account effectively, and whether the mechanism is operating in the best way to achieve that. PAPAC currently only has five members², all of whom except the Chair have memberships of other committees, a situation that inevitably limits the amount of time that members can devote to PAPAC work, such as reading and considering audit reports.

4. Developments that might be considered include:
 - a. Increasing the number of members of the committee and/or increasing the number of members who do not have additional committee memberships. While there is clearly a multiplicity of demands on the current 60 member Senedd, the proposed increase in the size of the Senedd should enable a larger PAPAC membership. The recommendations set out in Stirbu (2021)³, of which you are already aware, may be a means of capitalising on the opportunity that expansion provides.
 - b. Various forms of citizen-involvement, such as involvement of service users at committee. This would chime with the *involvement* “way of working” promoted by the Well-being of Future Generations (Wales) Act 2015.
 - c. Expanding the membership to include non-MS members, so that it can include direct involvement of subject experts at committee. For both this and b. above it might be helpful to have safeguards to ensure sufficient party-political independence of such non-MS members and attendees, as, for example, apply to the Auditor General.
 - d. Ensuring the committee is supported by a sufficiently effective audit provider and makes good use of that support—see para 7 for further information.

² [the minimum permitted by Senedd Standing Orders](#)

³ [Stirbu, D. \(2021\) Power, Influence and Impact of Senedd Committees: Developing a framework for measuring committees' effectiveness](#)

5. It may also be worth considering whether there are helpful features to be adopted from other jurisdictions. For example, elements of the Court of Audit model, which is dominant in Europe, may in some cases present advantages in terms of applying professional expertise in the examination of government officials. I should be happy to provide further information on such models if you would like to explore them.
6. There are, of course, other committees that operate in Wales that have a key role in helping ensure government is held to account. Under the executive arrangements in local government, one of the roles of overview and scrutiny committees is to hold councils' executives to account for the efficient exercise of executive functions. However, as identified in my 2014 report, [Good scrutiny? Good question: Scrutiny in local government](#), measures need to be taken to improve scrutiny, such as training for committee members to fully equip them with the skills required. I followed this up in 2019 with a [discussion paper: Six themes to help ensure scrutiny is fit for the future](#) and [Checklist: Six steps to help make scrutiny 'Fit for the Future'](#) that sets out some key areas where scrutiny functions could improve their operation.

Adequacy of public sector audit

7. Point 4.d. above—having a sufficiently effective audit provider—is clearly a matter of my direct responsibility. While I might be accused of lack of objectivity on this, my view is that PAPAC is supported by a reasonably effective audit provider, as outlined in the Wales Audit Office annual reports, including that for [2021-22](#). But, as indicated in the [Annual Plan 2023-24](#), I think there is also scope for improving the support provided. This includes doing more to help the public to understand how they are governed in terms of the sources and use of public money, a point which your interim report mentions on at page 73. I see a real need to promote concise and effective explanation of public finance, and I think Audit Wales, along with government and other public bodies, has some way to go on this. It is by no means an easy task, requiring a blend of technical financial and communication skills. It is not just a matter of turning technical terms into plain language, but also ensuring fairness of description.
8. I think there are also broader changes, including changes to legislation, that could be made to enable audit work to be better focused and more efficiently resourced. These include updating audit legislation relating to central government so that annual audits include consideration of whether bodies have proper arrangements for securing value for money in their use of

resources. This might sound like something that should already in place—indeed it is in place in local government and NHS bodies—but it is absent from the statutory audit requirements for most central government bodies. Aside from leading to a lower level of scrutiny in central government, at a practical level this omission means additional work has to be done in central government to meet the Auditor General’s duty to undertake sustainable development examinations under section 15 of the Well-being of Future Generations (Wales) Act 2015.

9. Similarly, some reform of the Public Audit (Wales) Act 2013 is needed, particularly in terms of the very exacting fee rules that apply to audit work, which undermine the efficiency of Audit Wales. Regrettably, the Senedd Finance Committee’s proposals⁴ for such reform are not now able to proceed as the Welsh Government has removed its support in light of competing priorities. I should be happy to provide more detail if you think that would be helpful.
10. Also, as Stirbu (2021) notes, current arrangements around the Wales Audit Office’s Estimate approval process (in the Welsh Government’s own Budget Motion), “sits oddly, from a constitutional perspective”, with audit independence and parliamentary practice elsewhere⁵. Developing the arrangements along the lines recommended by Stirbu would be helpful.

Adequacy of Treasury Management

11. While the accountability mechanism that PAPAC provides is clearly necessary, I do not see that as enabling replacement of the expenditure controls that HM Treasury provides. While there are links, treasury management (in essence ensuring spending is in line with receipts, including funds from borrowing) is not the same thing as accountability to the legislature for the stewardship of public funds. And while particular constraints on expenditure and borrowing could be varied, treasury management functions in

⁴ See <https://business.senedd.wales/mglIssueHistoryHome.aspx?IId=27117>

⁵ Stirbu, D. (2021) *Power, Influence and Impact of Senedd Committees: Developing a framework for measuring committees’ effectiveness*, page 45

some form are essential for effective government. I think it would be unrealistic for the full range of such activity to be undertaken by a Senedd Committee.

12. Instead, if the functions HM Treasury provide are to be reassigned, it would seem sensible for them to be exercised by a Welsh Treasury. A Welsh Treasury is already in existence within the Welsh Government, but it currently essentially operates within the framework set by HM Treasury and related legislation.
13. I should perhaps also mention in this context the role of the Senedd Finance Committee and the scope for further development of Senedd financial scrutiny. The Senedd Finance Committee's role is set out in Senedd Standing Orders⁶—in essence, to “consider and report on any report or other document laid before the Senedd by Welsh Ministers or the Commission containing proposals for financing, or the use of resources.” This consists of consideration of budget proposals, including estimates from relevant persons, such as the Senedd Commission, Welsh Rate resolutions (setting Welsh rates of income tax) and excess use of resources (supplementary budget motions to regularise the use of resources in excess of the budget motion). Apart from the last two items, the latter of which has not yet been done in practice, these tasks focus on spending proposals rather than outturn. There is scope to consider whether there is sufficient attention to scrutiny of spending outturn. Similar thoughts have been raised about this in relation to Westminster's finance procedures (see para 25 of the Commons Procedure Committee Report [Should there be a budget committee?](#)⁷).

⁶ <https://senedd.wales/media/ue1dqqdmq/so-eng.pdf> -- see in particular SOs 19 and 20

⁷ House of Commons Procedure Committee, *Should there be a Commons Budget Committee?*, Tenth Report of Session 2017–19, HC 1482, 9 July 2019



Response by the Bevan Foundation

The Bevan Foundation develops solutions to poverty and inequality in Wales. It is an independent charity funded by grants from trusts and foundations and donations from individuals and organisations. Its views on how Wales should be run reflect charitable mission of reducing poverty and inequality, based on its experiences of working with people living on low incomes in all parts of Wales. They reflect the views of its Trustees but are not necessarily shared by the charity's funders or supporters.

1. What matters to you about the way Wales is run?

The governance of Wales should be based on the fundamental principles of:

- Accountability – all organisations that take decisions that affect people's lives should be clearly accountable to the people they serve. The mechanisms for accountability include citizen engagement and effective scrutiny as well as democratic election.
- Responsiveness – organisations should reflect the legitimate expectations and needs of citizens, which will normally mean that decisions are taken as close as possible to the communities that organisations serve.
- Clarity – it should be clear to ordinary citizens who is responsible for which public service, whether that is between UK government and devolved functions or between different organisations within Wales.
- Transparency – all organisations should be open and transparent in how they conduct their business.

These principles should inform consideration of the relationship between devolved and non-devolved public bodies and should also inform consideration of the current plethora of devolved public bodies.



**Y Comisiwn Annibynnol ar
Ddyfodol Cyfansoddiadol Cymru**
**The Independent Commission on
the Constitutional Future of Wales**

2. What do you think the priorities for the commission should be?

The Commission's priority should be the needs of Welsh citizens and good governance by the institutions that serve them.

3. Thinking about how Wales is governed, by the Welsh Government and the UK government, what are the strengths of the current system, what aspects do you most value and wish to protect? Can you provide examples?

One of the strengths of the current system is where the Welsh Government and UK Government have common interests they can cooperate and leverage the greater budgets and powers of a UK-wide body. This was the case in, for example, the procurement of vaccines during the pandemic, or in the payment of certain social security benefits such as the state pension or maternity benefits. However this agreement is almost always assumed not sought.

4. Are there any problems with the current system, and if so, how could they be addressed? Again, please provide examples.

The current system has many problems.

A large number of functions are retained by UK government even though they closely align with devolved functions. The following are examples from housing which is widely regarded as a near-fully devolved area:

- housing in the private rented sector is subject to energy efficiency standards set by the UK Government, even though other aspects of energy efficiency and most aspects of regulating privately-rented homes are devolved;
- Local Housing Allowance is determined by UK Government, even though it has a direct impact on devolved functions such as homelessness;
- UK Government requirements limit total local authority expenditure on discretionary payments (Discretionary Housing Payments) to avoid or relieve homelessness – for which they a duty in Welsh law.



These retained functions limit Welsh public bodies' ability to comply with Welsh legislation and fulfil their own democratic mandate. A clear example occurred in the pandemic when the Welsh Government wished to exercise its public health powers to restrict the opening of some workplaces but the UK Government, which was responsible for the Coronavirus Job Retention Scheme (furlough), would not contribute to replacing wages if premises closed.

There are major issues which can arise at the interface between devolved and non-devolved functions. Not only are these issues rarely recognised, but there is no mechanism to manage them nor compensate either administration for the consequences. An example is changes to the social security system in respect of help with people's housing costs. Up to the mid-2010s, the UK government spent approximately £1bn on non-devolved housing benefit which helped people in low-income households to pay their rent. Multiple changes in the social security system have limited the help that people can receive, resulting in changes in the type of home tenants seek, increased risk and incidence of homelessness, and higher costs for local authorities and social landlords.

The system of funding of devolved public services and controls on capital expenditure are also problematic. The shortcomings of the Barnett formula are well-documented and are compounded by decisions about the extent to Wales does, or does not, benefit from expenditure in England. Expenditure on HS2 is an obvious example but there are many more. The Welsh Government's ability to chart a different fiscal path from that of England is also constrained by the current provisions in respect of the devolved rate of income tax and any new devolved taxes that the Welsh Government might wish to introduce.

5. Thinking about the UK government, the Welsh Government and Welsh local government (your local council), what do you think about the balance of power and responsibility between these 3 types of government – is it about right or should it change and if so, how? For example, who should have more power, or less?



The same principle of decisions being taken as close as possible to people affected by them should apply to arrangements for governance within Wales. This is not just a matter of delegating administration or devolving responsibility for specific functions – it is about empowering the sphere of government that is closest to people to be effective leaders of their respective communities. This requires a shift in approach across all spheres of government.

Crucially, where functions are retained, the UK government must acknowledge, respect and support decision-making by the Welsh government. There have been many examples recently where this has not been the case, and the continued lack of regard and respect for the Welsh Government is damaging for Wales and especially for vulnerable people.

Similarly, the Welsh Government must acknowledge, respect and support decision-making by local government, including town and community councils. That includes ending top-down and micro-management of local functions by other tiers.

The relationship between UK, Welsh and local authorities is not the only issue affecting the governance of Wales. Of equal concern is the plethora of other public and semi-public bodies, such as health boards, colleges of further education, universities, police and fire services, national park authorities, social landlords, leisure trusts, public transport providers and county joint committees, plus three Commissioners for different groups of people. The sheer number of bodies, their varied geographical footprints and overlapping responsibilities are deeply confusing to the public. They often have limited accountability to the communities they serve, limited transparency in how they operate and varied systems of complaints and redress.

These features, combined with the confusion and uneasy relationships between the Welsh and UK Governments, have created a governance minefield. It is too often the most vulnerable in society who are most adversely affected.

6. As a distinct country and political unit, how should Wales be governed in the future? Should we:



- broadly keep the current arrangements where Wales is governed as part of the UK, and the Westminster Parliament delegates some responsibilities to the Senedd and Welsh Government, with those responsibilities adjusted as in Q5, OR
- move towards Wales having more autonomy to decide for itself within a more federal UK, with most matters decided by the Senedd and Welsh Government, and the Westminster Parliament decides UK-wide matters on behalf of Wales (and other parts of the UK) OR
- move towards Wales having full control to govern itself and be independent from the UK OR
- pursue any other governance model you would like to suggest
- alongside any of these options, should more responsibilities be given to local councils bringing decision making closer to people across Wales and if so, please provide examples.

The Bevan Foundation considers that decisions about the future governance of Wales should be determined by the people of Wales.

In the absence of a mechanism to test people's views, the Bevan Foundation considers that more autonomy in decision-making on matters that affect Wales, combined with strengthening and streamlining governance within Wales, would ensure that decisions better reflect people's needs and circumstances.

Where matters are decided on a UK-basis, it should be done through agreement of the constituent nations.

7. Overall, what is most important to you in about the way in which Wales should be governed in the future? Is there anything else you want to tell us?

The most important issue is that organisations are actively accountable to people they serve and deliver high quality services that are responsive to people's needs. In our view this is best achieved by a high level of devolution from the UK to Wales, with further devolution to local level, coupled with effective leadership across the board.

Response from the Catholic Bishops' Conference of England and Wales

Introduction

- The Catholic Bishops' Conference of England and Wales (CBCEW) is the national permanent assembly of Catholic Bishops and Personal Ordinaries in the two member countries. CBCEW represents that Catholic community across the 22 dioceses across England and Wales, with three of those dioceses sitting within Wales.
- The Catholic Church in Wales comprises of the Diocese of Wrexham, the Diocese of Menevia and the Archdiocese of Cardiff. Their combined 181 parishes serve a Catholic population of around 200,000 making Catholicism one of the largest faiths in Wales.
- The Catholic Bishops' Conference commissions five agencies to undertake specialist work on behalf of the bishops. These are the Catholic Education Service (CES), the Catholic Agency for Overseas Development (CAFOD), the Caritas Social Action Network (CSAN), Missio and Stella Maris.
- The Catholic community in Wales contributes greatly to the nation's proud heritage of religious, cultural and ethnic diversity and we welcomed the invitation to submit a response. The Catholic Church, as a provider of schools in Wales, is a government partner and also a provider of other services such as hospital, prison and port chaplaincy across Wales.
- We will not be sharing a view on devolution. However as a community that engages with the Welsh Government and hopes to continue this positive engagement long term, we welcome the opportunity to submit a response relevant to the Catholic community in Wales.
- We note that Cytûn has provided a detailed response to the questions asked by the Commission. We ask that our response be read in conjunction with Cytûn's, as a Catholic framework in support of the Commission's work.

Promoting the common good

In the social teaching of the Catholic Church, the most important functions of all levels of government are the promotion of human dignity and the creation of the conditions in which *all members of society* can reach their fulfilment – often described as promoting the “common good”.

Preferential option for the poor and vulnerable

To protect the common good in society requires a particular concern for the poor and most vulnerable in society. This includes, but is not limited to migrants and refugees, those who have experienced or are experiencing human trafficking, the homeless, those who are struggling with their mental health, the elderly and lonely and those who are unwell. The wellbeing of future generations is also important to the Church. The threats that the climate crisis in particular pose places children, young people, and those not yet born within this group of vulnerable people:

*"The way we live and the choices we make affect the lives of others, including the poorest people in the world who will be less able to adapt to changes in the environment. Our choices will also affect the lives of the generations who are to follow us."*¹

The family as the foundation of society

We would propose that policies that strengthen family life are especially important for building the social infrastructure of Wales. The Catholic Church acknowledges parents as the primary educators of their children. It is important that all families feel supported as they bring up their children and are given the freedom to make decisions that they feel would most benefit the development of their children. It is also important that employers accommodate and respect their employees' family duties and obligations.

The Church welcomes engagement and support from Welsh Government for Catholic schools in Wales in assisting parents of all faiths and none in educating their children.

The principle of subsidiarity

We note the important points made in chapter two of the interim report of the Commission which mentions the idea of subsidiarity explicitly. We very much support the promotion of equality and inclusion, which accord with the long-held principles of Catholic social teaching.

Catholic social teaching on subsidiarity encourages higher layers of government are not to take on functions that can be undertaken by lower layers or by civil society groups where possible. Pope Benedict wrote:

*"[We need] a State which, in accordance with the principle of subsidiarity, generously acknowledges and supports initiatives arising from the different social forces and combines spontaneity with closeness to those in need."*²

This can only happen if government allows a range of social and civic institutions to flourish, including the Church itself. We agree with Cytûn's statement that they would like to see a government that "responds to the direction of society, without necessarily trying to steer it". Governing in such a way allows the Church and related charities to take responsibility for working with others to improve their lives. This includes the provision of schools which, as a result of the dedication of parishes, teachers and other staff, help develop the social, academic and spiritual side of the children who attend them. It is important that schools, parishes and local charities are able to have sufficient autonomy to respond to their own local situation. As Cytûn also mentioned, the effectiveness of this approach was demonstrated during the pandemic where charities and faith groups understood the needs of their communities and were able to serve them directly and practically.

¹ <https://www.cbcew.org.uk/wp-content/uploads/sites/3/2022/10/Call-of-Creation-2022b.pdf> Page 6

² https://www.vatican.va/content/benedict-xvi/en/encyclicals/documents/hf_ben-xvi_enc_20051225_deus-caritas-est.html (28)

We also agree with Cytûn on the importance of government being accountable to the public. In addition, trust in government requires a high standard of ethics in public life, with all those involved in governing behaving with probity. This is important not just for its own sake but also because probity in government leads to better governance and better social and economic outcomes.

Engagement with the Catholic Church as a faith group, a provider and a government partner

Pope Benedict XVI expressed the view that *“there are many areas in which the Church and the public authorities can work together for the good of citizens”*.³ There is a vast range of initiatives taking place within the Catholic Church in Wales, to help those most in need. Some of these have been supported by the Welsh Government or local government. One example was the Welsh Government-supported initiative to expand outreach to people self-isolating due to Covid-19 to a wider community as part of the ‘Staying Together While Apart’ project.⁴

We have been encouraged by the engagement we have received from Welsh parliamentarians as well as Government Ministers and officials and look forward to continuing to build this relationship moving forward. We ask that the Welsh Government offers the Catholic community recognition for their grassroots work and expertise in certain fields. We also encourage the Welsh Government to consult with the Catholic Church, especially in relation to legislation that will affect Welsh Catholics, in order to gain a deeper understanding of the Catholic faith.

As such, however the system of government evolves, we wish to be true partners in promoting a nation that flourishes in every respect.

END

Responses to consultations may be made public. To keep your response anonymous (including email addresses) tick the box.

³ <https://www.cbcew.org.uk/pope-benedict-xvi-requiescat-in-pace/>

⁴ <https://rcadc.org/staying-together-while-apart-a-new-project-to-help-the-most-vulnerable/>

Constitutional options analysis framework: Centre for Welsh Politics and Society, Aberystwyth University response

1.0 Context and general comments

This submission outlines the Centre for Welsh Politics and Society at Aberystwyth University's response to the framework for analysing and evaluating the three constitutional options outlined in the Independent Commission's interim report. In doing so, we draw on existing research projects, including the IMAJINE project on Autonomy Movements in Europe, and work on intergovernmental relations particularly in the context of sub-state diplomacy. In addition to this written submission, we would be happy to provide additional information or be involved in any subsequent discussions.

We are grateful for the opportunity to respond. We welcome the Commission's analysis framework. It strengthens the robustness of the process on which the three constitutional options will be evaluated. It also increases the transparency of the basis on which the constitutional options will be evaluated and this consultation on the analysis framework also contributes to the transparency of the evaluation process. Overall, the analytical criteria are wide ranging and effectively capture key issues to be considered in relation to the different constitutional options.

We organise our points by responding first to the analytical criteria and then the different scenarios.

2.0 Comments on the Analytical criteria

2.1. Alignment

2.1.1 The current analytical criteria vary in scope. Some are general and do not refer to a specific territory (e.g. 1, 3, 9). However, the wording of the majority refer to Wales. In doing so, they suggest that the focus for analysing the three constitutional options is on their specific implications for Wales. A key question therefore is whether the analytical criteria need to more strongly reflect the first Commission objective with respect to the implications of any option for the constitutional structures of the UK as a whole?

The two broad objectives outlined for the Commission are as follows:

'The first is to consider and develop options for fundamental reform of the constitutional structures of the United Kingdom, in which Wales remains an integral part. The second is to consider and develop all progressive principal options to strengthen Welsh democracy and deliver improvements for the people of Wales.'

The first objective is therefore broad in its remit in terms of considering options that have implications for the constitutional structures of the UK. The second makes explicit that the focus in investigating such options is to strengthen democracy and make improvements in Wales.

2.1.2 A key question therefore is whether the analytical criteria need to reflect the first Commission objective more strongly with respect to the implications of any option for the constitutional structures of the UK as a whole?

2.1.3 If the implications for the constitutional structures of the United Kingdom needs to feature more strongly in the criteria, a) would this be best incorporated by a set of questions specifically focusing on the broader repercussions for the UK's constitutional structures or b) where relevant,

expanding existing criteria to incorporate the UK dimension alongside any reference to the Welsh dimension?

2.2 Relations with other parts of the UK

If the intention is to focus specifically on the implications of the three constitutional options for Wales, it would be helpful for the analytical criteria to give somewhat greater attention to the implications of the arrangements for relations between the territories of the current United Kingdom.

2.2.1 A number of criteria are relevant to considering relations between the territories of the current UK, particularly:

2. Agency, the clause referring to Wales' voice being 'heard in decision-making at the UK level.'

and

8. Joined up government: How far does it facilitate the necessary co-ordination between different policy areas and effective service delivery across the border with England.

The focus in criteria 8 on cross-border policy and service delivery coordination with England only is understandable given the implications of the extensive border with England.

In referring to decision-making at the UK level, the wording of criteria 2 suggests a focus on the *shared rule* dimension of governance and policy-making in a decentralised political system, including influencing decisions at higher levels of government and territorial representation in a legislature / second chamber. It does not explicitly refer to mechanisms for the effective functioning of relations between different levels of governments (central and sub-state), nor to relations between different constituent parts of a state.

The Commission's interim report clearly identifies the fragility of and the importance of inter-governmental relations. Such mechanisms are critical to ensuring the effective functioning of *self-rule*, the autonomy granted to political institutions in Wales (relevant to constitutional options 1 and 2). Constitutional option 3 would also necessitate some form of institutionalised diplomatic relations with other constituent parts of the UK.

Consequently, overall, should the wording of the current criteria be amended to better encompass relations between constituent parts of the UK?

2.3 External Relations

Another aspect that is less apparent in the analytical criteria is evaluating the implications of the different constitutional options for a territory's ability to be involved in external relations. Criteria 6 on capacity and cost refers to state capacity 'to ensure Wales' place in the world' is maintained and promoted. It seems to suggest a focus on the financial and administrative capacity required for this type of activity.

However, another significant dimension is the extent to which different constitutional arrangements provide the competences and constitutional autonomy to enable a sub-state government to engage in international relations activity. Wales' political institutions have been active in external relations, Europe specifically, since the Welsh Office period and particularly from the 1990s onwards, with

these activities becoming more sustained and prominent following the establishment of devolved government in 1999.

Evaluation of the constitutional options for with respect to their implications for undertaking external relations could also be considered as part of the criteria.

2.4 Impact on the sustainability of societies and responding to climate change

With regards to key priority areas, the Commission have incorporated the impact of the constitutional options on equality and inclusion (criteria 4) and the economy (criteria 10, 11, & 12). Attention to the economic impact is critical to any evaluation of constitutional options. A focus on equality and inclusion rightly reflects the way these agendas have been a key feature of Welsh governance since the 1990s.

Another aspect that also came to the fore in devolution discussions in the 1990s was sustainable development, resulting in the statutory duty to sustainable development from the first devolution legislation for Wales onwards, alongside statutory commitments to equality.

Given the ongoing significance of sustainable developments to society and the growing significance of responding to climate change, the impact of constitutional options on the ability of governmental institutions to act in relation to sustainability and climate change could be more fully incorporated into the criteria.

3.0 Scenarios

The three main scenarios selected to be utilised to analyse the three constitutional options are an important addition to the analytical framework. Their strengths are in having pinpointed scenarios that would have direct repercussions for Wales and for encompassing options of constitutional change with repercussions for the structures of the current UK and incorporating recentralisation as a form of change to the territorial structure of the state (scenario C).



Ymateb i Ymgynghoriad / Consultation Response

Date / Dyddiad: 22/12/22

Subject / Pwnc: Have your say: the Constitutional Future of Wales

Background information about the Children's Commissioner for Wales

The Children's Commissioner for Wales' principal aim is to safeguard and promote the rights and welfare of children. In exercising their functions, the Commissioner must have regard to the United Nations Convention on the Rights of the Child (UNCRC). The Commissioner's remit covers all areas of the devolved powers of the Senedd that affect children's rights and welfare.

The UNCRC is an international human rights treaty that applies to all children and young people up to the age of 18. The Welsh Government has adopted the UNCRC as the basis of all policy making for children and young people and the Rights of Children and Young Persons (Wales) Measure 2011 places a duty on Welsh Ministers, in exercising their functions, to have 'due regard' to the UNCRC.

This response is not confidential.

The Commissioner’s office met in December 2022 with a group of 11 young people aged 11 plus in South Wales, who shared with us their thoughts on the themes of the consultation. We wished to share their views with the Commission.

Pros and cons of current system:

| Pros | Cons |
|---|---|
| Gives us more independence Can make things more specific to Wales than the UK as a whole More tailored to Wales | No control over certain areas e.g. refugees and asylum seekers. Some of the group felt there needed to be more controls/restrictions on immigration |

Priorities for Wales:

- Matters that people can get heard. Everyone needs to be heard and everyone’s opinions should be heard if they choose to be.
- Everyone should listen to each other even if not in same party might share same views. Otherwise just an unfair opinion. Could be more compromise to make more people happy
- Different view on education (changing to suit children with learning disabilities)
- More work experience x2
- Not everyone wants to go to university
- Health problems
- Becoming more independent/self-sustaining
- More universities in Wales/more specific to Wales
- More police patrols in major town centres and cities at night
- The safety and wellbeing of the upcoming generations need to be considered
- Help with exam stress with students x2
- Help lower cost of living to make it easier for young adults to live without stress of food prices and bills
- More police training in Wales
- Cost of living crisis and how young people can’t afford essentials is a problem
- The problems that will arise because of global warming not being pushed onto upcoming generations
- Mental health x2

Future of Wales:

Nobody wanted the current system to stay the same but nobody wanted a fully independent Wales. All young people wanted Wales to have more powers but shared they felt there are difficulties with being fully independent:

- “Need status and support of the UK but more independence to build our own position in making laws etc.”
- We need more powers on taxes, policing, immigration, environmental laws and exports/imports
- Tolls would be an issue if we were fully independent when going in and out of Wales – what is the border of Northern Ireland & Republic of Ireland like?
- Worries that if we were fully independent we wouldn’t be able to keep up with things and other countries
- Currently too difficult for us to be independent
- People in Wales might want something but it might not work. Say if Wales could afford but England couldn’t – could cause disagreement and agitation. E.g. if English people didn’t find it fair. Think having to approve through [UK] Parliament think it’s a good way as not all on Wales’ shoulders to make decisions.

Submitted by:

A handwritten signature in black ink that reads "Rocio Cifuentes". The signature is written in a cursive style with a horizontal line underlining the name.

Rocio Cifuentes MBE

Children’s Commissioner for Wales

Independence Commission- Climate Cymru submission

Climate Cymru is an active network of over three hundred partner organisations from every sector in Welsh society, and a movement of over 14,000 individuals from across Wales who are concerned about climate change. We wish to see a Wales where we can reverse the worst effects of climate change, by implementing policies that will free Wales from fossil fuels, that will support and develop a fair transition to green jobs, and ensure that nature is respected at all times.

We acknowledge that we do not exist in a vacuum, and wish to emphasise our work on global climate justice, and how any changes or developments to the Welsh constitutional settlements needs to ensure that Wales is an exemplar, is leading the way in developing new technologies, is committed to cutting carbon emissions, and works alongside other countries in achieving our global targets in this area.

- **Does the current constitutional settlement support or hinder the ability of governments in the UK to address climate change?**

The current settlement hinders the ability of our Nation to address climate change, as the general funding settlement is unfair, and does not allow for our Government to fairly fund schemes in Wales in relation to climate change, and a myriad of other issues that affect the country. A complete overhaul of the funding settlement is needed, to ensure that Wales gets its fair share of funding-based on need- so as to be able to deliver for the people of Wales.

The current settlement currently hinders the ability of governments in the UK to address climate change, for example, in relation to access to the grid by Welsh community renewable companies, and how the profit from that energy creation can be fed back into the local community.

It is important that communities receive benefits from hosting grid infrastructure of national importance. There is a lack of clear policy or incentives directing energy development companies on how to provide adequate benefits to communities hosting grid infrastructure. Communities should be directly consulted on the benefits they would like to receive. A starting presumption should be introduced that a proportion of all future energy projects must be partly community-owned or provide direct benefits to the community which hosts the energy project and associated grid infrastructure, such as reduced energy bills.

It hinders the ability of governments to address climate change, as the Welsh Government, for example, is not in charge of the funding decisions emanating from the UK leaving Europe. We believe it is essential for the UK Government to provide Wales with adequate(EU) replacement funding and for that funding to be allocated directly to the Welsh Government to invest in- including the transition to a zero-carbon economy, which will be developed and agreed upon with Welsh partners from the higher and further education, local government, business and third sectors.

It hinders the ability of the Welsh Government to address climate change as at present permitting any energy project with a capacity greater than 350MW is not devolved to Wales. Offshore wind projects are often larger than this so once again development is constrained by the UK government. A Cardiff tidal lagoon could have a generating potential of 3 GW (3,000 MW) but as yet, despite campaigning in Wales, this has not yet come to fruition.

Wales does not have full powers over our railway infrastructure, and this hinders the ability of the Welsh government to make viable, long standing changes for the future of the network, which will assist in changing people's modes of transport from those that currently contribute to the deterioration of our climate.

It hinders the ability of the Welsh Government to address climate change as, for example, the HS2 scheme is deemed an England and Wales project, but it does not impact Wales, and neither does Wales accrue any consequential funding from it. If there were consequential funding, Wales could decide to fund public sector infrastructure here to encourage people out of their cars, but funding has not been forthcoming.

It hinders the ability of the Welsh Government to address climate change, as currently, powers lie with the UK Government to be able to revise the Coal Industry Act. This Act must be changed to remove the statutory duty of the Coal Authority to maintain and develop an economically viable coal industry. It needs changing to reflect the need for the Coal Authority to consider climate policy in its decisions.

It hinders the ability of the Welsh Government to address climate change, as there is also the potential for new nuclear plants to be imposed on Wales by the UK government. SMRs proposed by Rolls Royce are planned to have a capacity of 470 MW.

If the latter, how should the current settlement be changed in order to enable more effective climate change policies to be put in place?

Provide powers for Wales to make decisions on all energy proposals, to devolve powers over laws that affect Wales (such as the Coal Industry Act and energy over 350MW), to change the current settlement to ensure the Welsh Government can influence how and where EU replacement funding is spent in relation to Wales.

There needs to be full devolution of rail services and infrastructure, and a fair funding settlement to ensure that Wales is able to decarbonise its rail network at a sufficient rate to deliver carbon budgets.

- **Are there powers that are currently held at a UK level that would be better exercised by Welsh Ministers in order to address climate change?**

Yes, there are powers that are currently held at a UK level that would be better exercised by Welsh Ministers. An example of those powers are those regarding the management of the Crown Estate. This currently resides in Westminster, and we believe that they should be devolved to Wales. The Estate recently confirmed six new offshore wind energy lease agreements, worth an estimated £1 billion. The Keeper of the Privy Purse has written to the Prime Minister and Chancellor to share the King's wish that this windfall be directed for wider public good, rather than to the Sovereign Grant, through an appropriate reduction in the proportion of Crown Estate surplus that funds the Grant. One of the 6 projects will be located off the North Wales coast, and is an opportunity for offshore wind to support and help grow the Welsh economy. Management of the Crown Estate in Wales is reserved, yet in Scotland, the management has been devolved to the Scottish Government since 2017. There is growing support for the Welsh Government to receive the same powers as Scotland so that we can benefit directly from the economic opportunities presented by the potential renewable energy production in question. We believe that the Committee should explore this matter, with a view to understanding how devolution in this area could better aid our economy.

As stated above, there needs to be a full devolution of rail services and infrastructure, and a fair funding settlement to ensure that Wales is able to decarbonise its rail network at a sufficient rate to deliver carbon budgets.

We support calls to devolve water. If you consider that we need water for developments such as barrage dams, we would require power over water so as to have control over future developments.



Independent Commission on the Constitutional Future of Wales Briefing Paper

Context

- Ynni Cymunedol Cymru's core mission is to support and accelerate the transition to a fair, equitable net zero and community-led energy system. Communities should not only shape the energy system through participation, but also, Welsh communities should retain the benefits of transition.
- Community Energy Wales supports communities to deliver renewable energy projects, we connect community organisations to share learning and best practice and we inspire through leading on innovative projects in partnership with our members so that others can learn and take action to start a project themselves. We support groups like Ynni Ogwen in Bethesda and Awel Aman Tawe in Neath Porth Talbot to share their knowledge and expertise with new groups through our Fforwm Datblygu and our working groups.

Benefits of Community Energy

- Community energy delivers 12-13 times more social and community benefit than equivalent commercial installations. It is a model that seeks to retain revenue within Welsh communities and support the circular economy.
- Our members describe it as a 'catalyst' that generates an income stream to support other green initiatives in their area. It builds community resilience across renewables, energy efficiency, housing, transport, biodiversity and culture. Integrated community energy has a genuine impact on local economic resilience.
- It is a positive, practical and value-led way for people to participate in decarbonisation and support their community at the same time.

Barriers to expansion

- Access to start up finance, limited capacity in terms of technically trained personnel, reliance on volunteers, and the lack of financial incentives (nothing has replaced the feed-in-tariff) are all challenges for the sector.
- Community energy has been limited to more rural areas in Wales. This has had an influence on the demographics of those engaged in community energy. Models that work within the urban environment have not been implemented in Wales.

Grid Connection barriers:

- Time delays and the cost of grid connections are serious barriers for communities wanting to be a part of decarbonising the energy system.



- Decisions relating to the grid are not devolved. Nor is its regulation. A change away from private, profit-driven distribution infrastructure to more local and smart distribution and significantly reduce injustices in the current energy system. Devolving regulation would enable greater flexibility to implement WG stated policies (target of 1.5GW of energy from community owned sources and its zero carbon targets). An energy regulator for Wales would fit neatly alongside the IWA's proposal for a Wales Systems Operator.
- The Welsh government through Ynni Cymru are considering smart local energy systems. At the same time, the UK Government must facilitate upfront investment in the electricity grid - We would like to see incentives or even specific requirements to be put in place that deliver strategic investment in grid ahead of need - both to facilitate the earlier connection of new generation and also as part of both (i) wider social policy objectives such as around community regeneration and (ii) also other decarbonisation targets such as EV take up/necessary charging infrastructure.
- The Welsh Government's guidance on shared ownership indicates that there is an expectation of at least an element of shared ownership in 'all energy projects'. This includes shared ownership of grid assets with a stake for local communities for any new grid assets that are built.
- Small-scale private networks that are independent of the grid is a possibility but will need ongoing support.

Local Trading

- Non devolved regulation also affects the ability to trade locally (or implement tier one – see below). Local trading – where community energy providers can sell the energy they produce at a reduced cost to local consumers – would also mean that smaller generators could achieve long-term stability for their business plans and create more certainty for the sector, enabling growth. It would also contribute to improved energy security, protecting communities from the shocks in the market we witnessed following Russia's invasion of Ukraine.
- Welsh Government are supportive of local trading and are considering what can be done on the distribution side of the energy equation with Ynni Cymru – their new green energy initiative. However, the UK Government opposed recent amendments to its energy bill that would enable local trading, offering £10 million for community energy start-ups in England only instead.
- The sector has participated in "sleeved" supply agreements that help reduce costs for consumer, while maintaining revenues for the generator.

Just Transition

- A just transition cannot be achieved unless people and communities are at the centre of our energy system. A just transition is not possible with the current energy model. The risk is that the transition will be paid for by the customers who can least afford to pay and there will be an understandable backlash to that. This can be avoided if communities have a right to community energy (tier one – see below).



- We want to develop a two-tier energy market, with community renewable energy, tier one, supplying as much local energy demand at lower prices as possible. The lower price would reflect minimised distribution costs and the avoided infrastructure costs arising from local, demand balancing and time of use impacts
- 'Tier two' would be more expensive energy from energy non-community energy sources eg the larger commercial renewable energy sector and its (much expanded) developments (bearing full transmission and distribution costs). Tier two must not be allowed to encroach on the democratising power of Tier one.

A two tier system would incentivise people to use locally produced energy (from energy assets that they may part own) when it is available and during low demand times, with tier two use disincentivised. A shortage of cheaper tier one energy would incentivise its expansion, enabling its growth over time.

Further Measures that would help the sector to grow

- Easier access to low interest loan finance for community energy projects to overcome the barrier associated with access to finance, especially in the project's early stages.
- Reform planning legislation so that community ownership is regarded as a material consideration in planning applications. We support the recommendations in NICW's renewable energy report in respect of planning reform. (Mandate renewable technologies in all new buildings, permitted development rights to remove barriers to renewable energy & the 'positive silence' approach).
- Control over The Crown Estate in Wales would enable us to impact the affordability of offshore wind licensing. (If Westminster regulation goes in the wrong direction, the benefit could be lost)
- A requirement on all public sector bodies to prioritise the procurement of local, community owned energy wherever possible.
- Give communities stronger rights to own and control buildings and local land.
- Local Authority land asset reviews to be shared with local community energy organisations.
- All suitable public sector land and buildings should be allocated to develop renewable energy projects either by the public body or made available to community energy organisations.
- Further collaboration with the public sector, with guarantees that control and ownership stay in community hands.
- Make community benefit a material consideration in planning.
- Public information campaign to promote greater understanding of the energy system, and the opportunities involved in community energy.

International Examples

- This is what a vision for renewable energy in a country with a population of 3million could look like: [This Country Runs on 98 Percent Renewable Energy | Ramón Méndez Galain | TED - YouTube](#)



Ynni
Cymunedol Cymru
Community Energy
Wales

- Ecopower Co-op in Belgium, who have 50,000 domestic customers supplied by wind and sun: Cwmni Cydweithredol Ecopower Co-op yng Ngwlad Belg, sydd â 50,000 o gwsmeriaid domestig yn derbyn cyflenwad ynni o solar a gwynt: https://www.spiegel.de/international/europe/more-affordable-and-sustainable-how-towns-in-belgium-are-producing-their-own-green-power-a-a8b14196-3fb3-4b16-82a3-15b5b726afbb?utm_source=pocket-newtab-global-en-GB



Ynni Cymunedol Cymru
17 West Bute Street
Caerdydd
CF10 5EP

Community Energy Wales
17 West Bute Street
Cardiff
CF10 5EP

info@communityenergywales.org.uk

02920 190260

www.communityenergywales.org.uk

Co-operatives and Mutuals Wales

1. What matters to you about the way Wales is run?
 - I. This is not just about government but also us as citizens. How will civic society develop capacity to effectively engage citizens a broad range of citizens? As Ed Mayo points out: <https://www.pilotlight.org.uk/news/are-we-past-peak-volunteering> This is becoming increasingly problematic, and no easy solutions are available.
 - II. That existing and future devolved powers are not eroded by the UK Government.
 - III. The Senedd should take decisions which enables a biodiverse natural environment with healthy functioning ecosystems that supports social, economic, and ecological resilience with the capacity to adapt, based upon international co-operative values and principles <https://www.ica.coop/en/cooperatives/what-is-a-cooperative>
 - IV. Good governance and public policy require effective government machinery able to implement existing, and new laws and regulations, whilst ensuring effective service delivery. With funding constraints, we will need to become much smarter.
 - V. **A closed Party 'list system' and 'good governance' do not sit easily together. A more transparent, directly elected Senedd via PR is required.** Political parties should ensure those elected are easily accessible and regularly accountable to their electors. This requires fresh thinking and commitment. For example, see future reference to Community Wealth Building which Welsh Government refers to as the '**Foundational Economy**'.
2. What do you think the priorities for the Independent Commission should be?
 - I. We urge attention be given, in its broadest sense, to how political education and active citizenship is delivered within our new national curriculum. For example, do we require changes in the current legislative framework for schools? Government provides information on teaching citizenship and guidance for practitioners on remaining neutral. Does this sphere require more attention?
 - II. Several years ago, **Co-ops & Mutuals Wales organised 'A Co-operative Education System for a Co-operative Wales?'** conference <https://www.youtube.com/watch?v=cjYSYuWUIUc&t=21s> We urge this co-operative approach be explored, since it sits well within the aspiration of renewing our democracy.
 - III. Such a long-term approach to our labour market and building a Co-operative Wales should enable people working inside and between public institutions to work co-operatively and collaboratively to tackle challenges that face us. Our national curriculum provides a once in a lifetime opportunity to bring this about, provided teachers are properly supported.
 - IV. We urgently require a **genuine and widespread national debate about the Commission's recommendations**, to include investigating, recommending, and promoting voting systems which encourage collaborative and co-operative styles of governance at all levels (e.g., STV).
 - V. J S Mill, J. J. Rousseau, and G. D. H. Cole, emphasise people need to learn democracy. How it works, how to reflect on big issues, how to discuss them, how to make decisions together, if we are not going to end up with too-powerful elites and apathetic citizens. This requires some level of political education to work.
 - VI. What Pateman was pointing out over **half a century ago was that people don't have control over their lives** through national democratic politics, even if they do participate in it. It is only when people have democratic participation in the things that most affect them, like their workplace, that they can start to gain some semblance of control over their lives
 - VII. If individuals are to exercise the maximum amount of control over their own lives and environment, then authority structures in these areas must be so organised so they can participate in decision-making. Spheres such as employment and schools should be seen as a political system, offering areas of participation additional to the conventional level.

3. Thinking about how Wales is governed, by the Welsh Government and the UK government, what are the strengths of the current system, what aspects do you most value and wish to protect? Provide examples?

Wales:

- I. As Co-ops & Mutuals Wales are relatively inside the system we have the confidence and the tenacity to speak out and encourage developments such as **Macora's Law which is currently a proposed 'backbench' law to boost the Co-operative Economy**. **We don't think all have this privileged position** and it would be nice if they did.
- II. As a small, self-financed organisation, we are working with several Welsh High Schools to highlight the iconic role of the educationalist, social reformer and pioneer Robert Owen and his impact upon Wales and the wider world; and the contribution of the Co-operative Movement in bringing about a fairer world. Our aim being to make learning packages and material available on the Welsh Hwb with support from the **People's Collection Wales, at the National Library for Wales**.

4. Are there any problems with the current system, and if so, how could they be addressed? Again, please provide examples.

- I. The UK constitution needs to be codified with the agreement of citizens from the four nations.
- II. Many electors have become disengaged. This is in part due to **the system of "First Past the Post Voting"** and needs replacing with a more proportionate system. See our response to Question 1, 2 & 3. above.
- III. Our system of Electoral Registration should be more inclusive, and we welcome recent pilots to remedy certain barriers to voting. New voting methodologies need to be trialled. E.g., weekend voting.
- IV. At Question 3. II we point to the potential role of the new national curriculum contributing to learning democracy. (See our response to Question 2.) Is our approach sufficiently rigorous and meaningful for pupils, some of whom rightly have the vote? If this is not the case, learning packages should be developed and shared via the Welsh Hwb. This could be done with minimal pump-priming from Welsh Government.
- V. We need to expand civic society capacity bearing in mind **Ed Mayo's comments** <https://www.pilotlight.org.uk/news/are-we-past-peak-volunteering> How do we strengthen capacity? We propose changed government priorities and funding of Adult Learning Wales.

5. Thinking about the UK government, the Welsh Government and Welsh local government, what do you think about the balance of power and responsibility between these three types of government – is it about right or should it change and if so, how? For example, who should have more power, or less?

- I. In our view, the key issue is not about the distribution between three levels of government. It is citizens who should have more power, with this being enabled at the local level through Community Wealth Building. Only when people have democratic participation in matters that most affect them, like their work, learning space or community, that they can start to gain some semblance of control over their lives.
- II. New patterns of work, consumption, and production in light of the pandemic and the climate crisis have raised critical questions as to who the economy works for and how wealth is created and distributed. Community Wealth Building with its focus on wealth and who an economy works for is key.
- III. It advances economic development into a new era of genuine economic system change – tackling the causes of wealth inequality and transforming how wealth flows to secure a wellbeing economy for people, place, and planet.

- IV. To this end, the global Co-operative and Community Wealth Building movements offers Wales a systemic and historic step change to how we approach the economy and the role of economic development. Neil McInroy, the Scottish Government Community Wealth Building Advisor, eloquently made this case at a recent Co-ops & Mutuals Wales event <https://www.youtube.com/watch?v=Pvr96GkT4ds&t=153s>
 - V. This approach is slowly beginning to emerge in Wales. For example, through for example, multi-stakeholder social care co-operatives at Cartrefi Cymru Co-operative <https://www.cartrefi.coop> In turn this model could provide greater opportunity for quality and choice, This as an alternative to a future centralised social care system as part of the Welsh NHS.
6. As a distinct country and political unit, how should Wales be governed in the future?
- I. In feedback, our members views were torn between (a) move towards Wales having more autonomy to decide for itself within a more federal UK, with most matters decided by the Senedd and Welsh Government, and the Westminster Parliament decides UK-wide matters on behalf of Wales (and other parts of the UK); and (b) move towards Wales having full control to govern itself and be independent from the UK.
 - II. So much radical change is taking place at Westminster for any clear response to be given at this time.
7. Alongside any of these options, should more responsibilities be given to local councils bringing decision making closer to people across Wales and if so, please provide examples

Please see <https://www.inclusivegrowth.scot/north-ayrshire-scotlands-first-community-wealth-building-council/> This is an ambitious example of **“bringing decision making closer to people across Wales”** and one which **materially makes a real difference to people’s lives**. *We provide the following detail to emphasise that Community Wealth Building is far more than a public sector body ‘locally invoicing goods and services’.*

“North Ayrshire Council launched Scotland’s first Community Wealth Building strategy in May 2020. It sets out how the council will work in partnership with local communities, businesses, and wider regional anchor institutions to create a fairer local economy to tackle poverty and inequality, embedding a new economic model focused on wellbeing and inclusion.

“The new [strategy](#) sets out the CWB mission of ‘Enhancing local wealth and the creation of fair jobs, and maximising the potential of all our places through working in partnership with our communities and businesses’. The strategy includes a comprehensive 55-point action plan and sets out six objectives to deliver CWB:

- Community Wealth Building Council: We will work across all our services and wider local and regional **partners to implement Scotland’s first approach to Community Wealth Building.**
- Procurement: We will use our spend to actively encourage and support a growing, diverse, and resilient local business base, and to support our net zero carbon ambitions.
- Fair Employment: We will encourage the creation of fair and meaningful jobs with progression opportunities to unlock the potential of our residents.
- Land and Assets: We will support the wider regeneration of our communities by maximising all our land and assets including through alternative uses for community and business benefit.
- Financial Power: We will invest locally and encourage regional and national institutions to invest in our communities.
- Plural Ownership of the Economy: We will support the creation and sustainability of a range of business models including SMEs, social enterprise, employee ownership, cooperatives, municipal activity, and community enterprises.

“A Community Wealth Building Commission of local and regional anchor institutions was formed in September 2019 to implement the CWB approach and establish North Ayrshire as a Community Wealth Building Council. To guide the **Council’s work, an Expert Advisory Panel (chaired by the Wellbeing Economy Alliance Scotland) was created and includes renowned experts on Community Wealth Building, wellbeing economy, fair work, and climate change.**

“In September 2020, the Council launched its Economic Recovery and Renewal Approach to build back better, fairer, and greener. The [approach](#) is based on the foundation of the Council’s Community Wealth Building approach and sets out a Local Green New Deal. The twin priorities of a North Ayrshire Green New Deal to build back better, fairer, and greener are to:

- Ensure an inclusive economic recovery by delivering our Community Wealth Building mission; and
- Ensure a green economic recovery focused on achieving our net zero carbon ambitions through the creation of sustainable infrastructure and regeneration projects and creating fair jobs”.

8. Overall, what is most important to you in about the way in which Wales should be governed in the future? Is there anything else you want to tell us?

i. This question is very connected with strengthening the Welsh economy and how the benefits are shared fairly between its citizens, alongside the conditions for building a healthy democracy without an overweening State at local or national levels. In addition to municipalisation, co-operative and mutual business models strengthen economic democracy and provide ingredients to strengthen civic society. This is because they are member-owned, member-governed businesses that operate for the benefit of their owners according to common principles agreed upon by the international co-operative community. In co-operatives, owners pool resources to bring about economic results that are unobtainable by one person alone. They are driven by members and or they will fail if directed from above. All levels of government, including the national curriculum have an important part to play in realising the potential of this ethical business model. Please see our response to Question 3. II.

ii. We understand that a country-wide consultation through a system of regional and specific events and roadshows to ensure wider meaningful participation and engagement takes place. However, there is no substitute for the hard work of delivering curriculum reform and long-term organising in our communities for transformative politics.

9. In responding to these questions, we would welcome views on how the current forms of governance, and any proposals to change governance in the future, might impact on the Welsh language.

I. A proud and independent sovereign Wales will be a society that promotes and protects its culture, heritage, and the Welsh language, and where people are proud to learn and speak Welsh and to participate in the arts, and sports and recreation. Further devolution should bring enhanced broadcasting responsibilities for the Senedd which would materially improve provision of Welsh language broadcasting and increase the number of people speaking Welsh.

31 July 2022

Cymdeithas yr Iaith

Mae Cymdeithas yr Iaith yn fudiad sy'n ymgyrchu'n ddi-drais dros y Gymraeg a holl gymunedau Cymru.

Bu Cymdeithas yr Iaith yn rhan o'r alwad am ryddid i Gymru ers y 70'au.

Erbyn hyn mae seiliau cyfansoddiadol y Deyrnas Gyfunol yn cael eu siglo ac annibyniaeth i'r Alban ac ail-uno Iwerddon yn debygol yn y dyfodol buan.

Wrth i annibyniaeth ddod i amlygrwydd yn y prif ffrwd gwleidyddol yn y blynyddoedd diweddar gwelodd Cymdeithas yr Iaith angen i ailddatgan ein dyhead am Gymru rydd mewn Cyfarfod Cyffredinol o aelodau yn 2017.

Mae'r cynnig hynny yn datgan:

Mae'r Cyfarfod Cyffredinol yn ailddatgan awydd Cymdeithas yr Iaith i weld rhyddid cenedlaethol llawn i Gymru, a hynny fel bod modd grymuso'n pobl i ddatblygu ein diwylliant fel cyfraniad at wareiddiad y byd, ac i ddatblygu ein cyfundrefnau cymdeithasol-economaidd fel esiampl i'r byd. Datganwn ein hawydd i weld y Gymraeg yn cael ei derbyn yn llawn ymhlith ieithoedd a diwylliannau'r byd, ac i Gymru hithau gymryd ei lle mewn sefydliadau cydwladol. Datganwn mai dim ond trwy gymryd ein lle yn y byd fel Cymry yr enillwn ein rhyddid ein hunain.

Ailddatganwn fod ennill rhyddid cenedlaethol llawn i Gymru'n golygu llawer yn fwy nag un newid cyfansoddiadol yn unig. Yn ogystal â sicrhau grymoedd llawn i Senedd Cymru a rhyddid iddi wneud cytundebau cydwladol, golyga hefyd ryddhau a grymuso cymunedau lleol Cymru.

Ailddatganwn fod rhyddid llawn yn golygu grymuso ieuenctid Cymru fel y bydd y cyfrifoldeb a'r gallu ganddynt i lunio Cymru'r dyfodol. Golyga hefyd ryddid a chyfrifoldeb i weithwyr ym mhob sector o economi Cymru o ran llunio strategaeth eu mentrau. Golyga hefyd roi grymoedd i fyfyrwyr yn ein sefydliadau addysgol i gyfrannu at yr hyn sy'n digwydd yn y sefydliadau, a golyga ddatblygu cwricwlwm Cymreig sy'n eu grymuso gyda'r wybodaeth a sgiliau hanfodol i gymryd rhan llawn yn y ddemocratiaeth Gymreig newydd.

Ailddatganwn na ddylid amddifadu unrhyw garfan o ran llawn yn y rhyddid hwn, a bod croeso i bawb sydd am ddod i gyfrannu at y Gymru newydd.

Yn fwy na sicrhau grymoedd llawn i'n Senedd ac, yn hytrach nag ail-greu'r wladwriaeth Brydeinig gyfalafol a gormesol ar raddfa llai, rydyn ni'n dymuno adeiladu cymdeithas tra wahanol, wedi'i seilio ar ryddid i holl bobl a chymunedau'r wlad.

Yn yr 80'au cynnar daeth pwysigrwydd cymunedau yn amlwg i'r frwydr dros y Gymraeg, ac mae'n parhau felly. Fel Cymdeithas, credwn fod cymunedau lle mae'r Gymraeg yn brif gyfrwng yn holl-bwysig er mwyn sicrhau dyfodol i'r iaith.

Mae cymunedau a fu'n gadarnleoedd traddodiadol i'r Gymraeg wedi bod o dan warchae economaidd a chymdeithasol ers degawdau. Mae patrymau allfudo a mewnfudo, tueddiadau'r farchnad dai, a datblygiadau anaddas wedi sicrhau bod y farchnad dai yn aml allan o gyrraedd pobl leol.

Yn ddiweddar mae'r broblem tai wedi ei hamlygu ac wedi gwaethygu, mae 'dianc' i'r wlad yn fwy deniadol yn sgil y pandemig ac arferion gweithio newydd wedi caniatáu pobl i symud i gymunedau Cymru o ardaloedd mwy llewyrchus, gan brisio pobl leol o'r farchnad.

Credwn felly y dylid ystyried tai fel cartrefi ac nid fel adnodd economaidd, ac y dylid sicrhau bod pobl leol yn cael mynediad at y farchnad dai, ac y dylai'r farchnad dai adlewyrchu cyflogau lleol.

Ond yn fwy na hynny bod angen galluogi ein pobl ifanc i aros, ac iy fw, yn ein cymunedau. I wneud hynny mae angen buddsoddi yn ein cymunedau ac yng Nghymru.

Tra bydd Cymru'n dal i gael ei gweld fel gwlad israddol, parhau i gael eu hesgeuluso bydd ein cymunedau a'n pobl.

Cyfeiriwn at ddiffyg diwydiant Cymru. Ers cau y pyllau glo prin fu unrhyw fuddsoddiad mewn diwydiant yng Nghymru, gan arwain at orfodi pob o'u cymunedau i chwilio gwaith.

A bu tanfuddsoddi difrifol yn isadeiledd Cymru yn gyffredinol wrth i Lywodraeth Prydain flaenoriaethu prosiectau fel HS2, nad ydyn nhw o fudd i Gymru, tra bod system drafnidiaeth cyhoeddus Cymru ar chwâl a'r Llywodraeth yn honni bod rheilffordd rhwng Aberystwyth a Chaerdydd yn rhy ddrud.

Mae ynysu cymunedau yn y fath fodd ac atal cysylltedd rhyngont yn ei gwneud yn anodd i nifer aros yn eu cymunedau.

Mae datganoli wedi rhoi lle mwy amlwg i'r Gymraeg. Mae'r Gymraeg yn iaith swyddogol yma yng Nghymru, wedi i'r Cynulliad (fel ag yr oedd ar y pryd) orfod mynd ar ofyn Llywodraeth San Steffan am yr hawl i wneud y Gymraeg yn iaith swyddogol.

Ond nid yw rhoi statws mewn deddfwriaeth yn ddigon i ddiogelu'r Gymraeg. Er mwyn sicrhau dyfodol y Gymraeg fel iaith gymunedol ac iaith bob dydd i bawb yng Nghymru mae angen ei sefydlu yn briod iaith Cymru ac arddel y cysyniad o ddinasyddiaeth Gymraeg i bawb.

Rhaid i hynny ddisodli'r dueddiad bresennol sy'n arddel dwyieithrwydd 'swyddogol' tra'n gweld y Gymraeg yn dirywio yn ein cymunedau ac yn parhau i gael ei chyfyngu i leiafrif ein dinasyddion.

Yn ogystal, mae profiad ymgyrchu dros y degawdau wedi dangos pwysigrwydd hunan-lywodraeth i ni. Mae'n henillion ni gymaint yn fwy, nid oherwydd lliw a thueddiadau llywodraeth y dydd ond am bod y penderfyniad a wneir yng Nghymru yn effeithio'n uniongyrchol ar y rhai sy'n gwneud y penderfyniadau hynny.

Cymerwn S4C er enghraifft. Sianel y bu raid brwydro am ddegawd drosti, ac sydd heb gael cyfle i ddatblygu ers ei sefydlu 40 mlynedd yn ôl, er ei bod dan gyfrifoldeb llywodraethau gwahanol iawn San Steffan.

Yn y blynyddoedd diweddar mae S4C wedi dioddef toriadau i'w chyllideb a cholli ei hannibyniaeth wrth i gyfran uwch o'i chyllideb ddod gan y BBC, a bod S4C yn rhannu adnoddau gyda'r BBC bellach.

Ar y llaw arall mae'r rhestr o enillion a ddaeth trwy ymgyrchu mewn llai na 25 mlynedd o ddatganoli yn cynnwys creu Coleg Cymraeg Cenedlaethol a Mesur y Gymraeg 2011, ac mae rheoliadau yn ymwneud ag ysgolion bellach yn gosod rhagdybiaeth o blaid cadw ysgolion bach a gwledig ar agor.

Mae darlledu yn un o'r meysydd i ni alw am ei ddatganoli ers degawdau, ac rydyn ni'n parhau i alw am hynny.

Mae'r pandemig wedi amlygu'r angen am ddatganoli grymoedd dros ddarlledu. Achoswyd dryswch wrth i ddarparwyr newyddion Prydeinig sôn am gyfyngiadau a mesurau Lloegr

mewn cyd-destun cenedlaethol gan roi'r argraff bod yr un rheolau mewn lle yng Nghymru, Yr Alban a Gogledd Iwerddon, er nad oedd hynny'n wir.

Dangoswyd effaith hynny wrth i gyfyngiadau teithio Lloegr rheoliadau am wisgo mwgwd gael eu codi ynghynt yn Lloegr na Chymru achosi trafferth i bobl oedd yn mynnu hawliau Lloegr yng Nghymru.

Dydy hyn ddim yn rhywbeth newydd, bu dryswch ers blynyddoedd am feysydd sydd wedi eu datganoli ond fe wnaeth y pandemig amlygu'r broblem, a dangos effaith a goblygiadau hynny.

Mae'r cytundeb cydweithio rhwng Llywodraeth Cymru a Phlaid Cymru yn nodi cefnogaeth i ddatganoli grymoedd darlledu i Gymraeg a'r bwriad i ymchwilio i greu Awdurdod Darlledu a Chyfathrebu cysgodol i Gymru. Credwn bod darlledu yn un o'r meysydd i'w blaenoriaeth o ran datganoli mwy o rymoedd i Gymru.

Dim ond trwy newid sylfaenol yn ein strwythurau democrataidd, cymdeithasol ac economaidd y bydd sicrhau Cymru rydd, Gymraeg, a byddwn yn parhau i arddel a gweithio tuag at y weledigaeth hon fel rhan o'r symudiad ehangach tuag at annibyniaeth.

Cymdeithas yr Iaith,
Gorffennaf 2022

Ymateb y Cyngor Cyfathrebu Cenedlaethol i ymgynghoriad y Comisiwn Annibynnol ar Ddyfodol Cyfansoddiadol Cymru

Gorffennaf 2022

Diolch am y cyfle i ymateb i'r ymgynghoriad hwn ar ddyfodol cyfansoddiadol Cymru.

Cefndir

Sefydlwyd y Cyngor Cyfathrebu Cenedlaethol ym Mehefin 2019 gydag aelodau cyntaf o'r Bwrdd yn cael eu hethol i'w swyddi, gan bobl lawr gwlad Cymru, ym mis Awst 2019.

Mae'r Cyngor yn gweithio ar ddatblygu strwythur rheoleiddio addas ar gyfer y cyfryngau cyfathrebu yng Nghymru. Mae hyn yn cynnwys datblygu polisi a syniadau yn y maes cyfryngau, cyfathrebu a darlledu.

Bwrdd y Cyngor yn y cyfnod 2021 – 2022 ydy:

- Angharad Mair
- Barrie Jones
- Beti George
- Betsan Powys
- Bethan Jones Parry
- Euros Lewis
- Llion Iwan

- Marc Webber
- Nia Ceidiog
- Owain Gwilym
- Sharon Morgan

Am wybodaeth bellach am y Cyngor Cyfathrebu Cenedlaethol ymwelwch â:

www.cyfathrebu.cymru

Gyda'r Cyngor wedi bod yn galw am ddatganoli pwerau yn y maes cyfathrebu a darlledu ers 2019, mae'n edrych yn debyg fod yr agenda hwnnw wedi symud ymlaen yn eithriadol ers hynny, gyda'r Cytundeb Cydweithio rhwng y Blaid Lafur a Phlaid Cymru wedi'i gyhoeddi, ble y nodir ynddo, dan yr is-bennawd 'Darlledu':

'Ymchwilio i greu Awdurdod Darlledu a Chyfathrebu cysgodol i Gymru, i fynd i'r afael â'n pryderon ynghylch elfennau bregus yn y cyfryngau ar hyn o bryd a'r ymosodiadau ar eu hannibyniaeth. Byddai'r corff hwn yn cefnogi'r defnydd o'r Gymraeg, yn enwedig yn y maes digidol ac yn annog lluosogrwydd yn y cyfryngau. Rydym ni o'r farn y dylai pwerau darlledu a chyfathrebu gael eu datganoli i Gymru.'

Erbyn hyn mae Panel Arbenigol ar Ddatganoli Darlledu wedi'i greu a fydd, ymysg pethau eraill yn gyfrifol am: 'gynghori ac yn darparu argymhellion ac opsiynau i gefnogi'r gwaith o gyflawni'r ymrwymiad i greu

Awdurdod Darlledu a Chyfathrebu cysgodol i Gymru.' Gwybodaeth bellach yma: <https://llyw.cymru/cyhoeddi-panel-arbenigol-ar-ddatganoli-darlledu>

Gyda'r Pwyllgor hwnnw wedi'i sefydlu rydym yn disgwyl iddynt fod wedi cyhoeddi eu hargymhellion erbyn yn gynnar yn 2023 a bod yr Awdurdod Darlledu cysgodol wedi hen ddechrau ar ei waith erbyn fis Mai.

Cyfraniad y Cyngor Cyfathrebu Cenedlaethol i drafodaeth y Comisiwn Annibynnol ar Ddyfodol Cyfansoddiadol Cymru

Yn fras, hoffwn yma roi'r ddadl gerbron y Comisiwn ei fod:

1. Yn hanfodol bod Pwerau dros Ddarlledu a Chyfathrebu yn cael eu datganoli i Gymru fel mater o frys i sicrhau democratiaeth iach, cenedl iach ac i amddiffyn hunaniaeth ein cenedl. A bod hyn yn digwydd fel symudiad datganoli ar y cyd â meysydd eraill yn y broses ddatganoli.
2. Yn hanfodol ein bod yn gosod sylfeini cadarn o ran yr amcanion wrth i ni fynd ati i gynllunio pa lun fydd ar y maes cyfathrebu a darlledu yn y dyfodol. Nid pwrpas y datganoliad fyddai ail greu pethau fel y maent ar hyn o bryd o dan Lywodraeth Lloegr. Mae'n bwysig sefydlu egwyddorion a chymhelliant cadarn, gwastadol. Ac ar y seiliau hynny bydd ein rheoliadau yn y maes hwn yn cael eu creu.

Mi ymatebwn yn ôl y cwestiynau a nodir ar wefan y Comisiwn. Ar ddiwedd y ddogfen hon gwelir ein hymateb i Bwyllgor Diwylliant, y Gymraeg a Chyfathrebu ar y pwnc o ddatganoli darlledu, a gyflwynwyd gennym yn Hydref 2020. Mi fyddwn yn cyfeirio at hwn yn aml yma i gefnogi ein dadleuon gan ein bod, yn y ddogfen honno, wedi cynnig nifer o atebion. Mae'r achos dros ddatganoli darlledu yn cael ei wneud yn y ddogfen honno gan gyflwyno darlun o sut allai pethau fod.

Hefyd, gweler bedwar Atodiad:

Atodiad 1: Enghraifft o reoliadau posibl parthed newyddion ar y teledu, ar y radio, yn y wasg brintiedig a'u safleoedd we cysylltiol i fynd i'r afael â diffygion gwybodaeth a democratiaeth.

Atodiad 2: Tystiolaeth a gasglwyd ar y Cyfryngau Cymdeithasol o'r angen i ddatganoli darlledu a chreu rheoliadau ein hunain yn y maes, er mwyn democratiaeth, eglurdeb a gwirionedd (cefnogi Atodiad 1).

Atodiad 3: Y dystiolaeth a gyflwynwyd i'r Pwyllgor Diwylliant, y Gymraeg a Chwaraeon yn Rhagfyr 2019. (Ail-agorwyd yr ymgynghoriad hwn ym Medi 2020 oherwydd y materion a amlygwyd ymhellach yn sgil y pandemig – ein dystiolaeth i'r ail agoriad hwn y gwelir ar waelod yr ymateb hwn).

Atodiad 4: Erthygl Sharon Morgan i'r Cymro y mis hwn yn nodi bygythiad i'n diwylliant ym maes dramâu yng Nghymru.

Ein Hymateb i Gwestiynau y Comisiwn Annibynnol ar Ddyfodol

Cyfansoddiadol Cymru

1. Beth sy'n bwysig i chi o ran sut y caiff Cymru ei rhedeg?

Mae'n hanfodol bod Cymru yn wlad ddemocrataidd, ymhob ystyr o'r gair; yn Gymru sydd yn cefnogi'r gwanaf a'r mwyaf agored i niwed yn ein mysg, yn Gymru hafal; yn Gymru â'i gwleidyddiaeth yn dryloyw ac yn Gymru sydd yn dathlu ac yn hyrwyddo ei hiaith, ei diwylliant a'i hunaniaeth; yn Gymru sydd â'i byd olwg wedi'u sylfeini ar y pethau hynny.

Yn hyn o beth rhaid bod gennym reoleiddiadau cyfathrebu a darlledu sydd yn adlewyrchu ac yn cefnogi hynny. Er mwyn cael democratiaeth rhaid bod dinasyddion y genedl yn hyddysg i wneud penderfyniadau wedi'u seilio ar wirionedd ac mae angen system ddarlledu a chyfathrebu sydd yn gallu craffu yn effeithiol ar bob lefel o Lywodraeth. Gweler dudalennau 9 – 39 ble rydyn ni'n nodi'r broblem sydd ar hyn o bryd ac yn darparu atebion posibl i hyn.

Mae angen ein bod hefyd yn dathlu yr hyn sydd yn Gymreig a taw o'r fan hon y daw ein cryfder a'n hysbrydoliaeth – yn gelfyddydol ac yn economaidd. Eto, gweler dudalennau 9 – 39 ble rydyn ni'n nodi'r problemau sydd ar hyn o bryd ac yn darparu atebion posibl iddynt.

O ran Cymru hafal sydd eisiau dileu tlodi, mae hyn yn cynnwys cyfartaledd o ran tlodi gwledig a thlodi digidol, ynghyd ag anghyfartaledd o ran buddsoddiadau. Eto, gweler dudalennau 9 – 39.

Mae'n hanfodol bod y pethau hynny sydd yn bwysig i Gymru yn cael eu hamddiffyn. Credwn fod hyn yn cynnwys nad cwmnioedd mawr a'r farchnad rydd a chyfalaf yw'r prif yriant ym maes darlledu a chyfathrebu, nac mewn unrhyw faes Llywodraethu. A dyma ble mae rhaid i reoleiddiadau ein Cenedl adlewyrchu hynny yn y maes cyfathrebu a darlledu, fel mewn meysydd eraill.

2. Yn eich barn chi, beth ddylai blaenoriaethau y Comisiwn fod?

Rydyn ni'n argyhoeddedig wrth i'r broses ddatganoli ddatblygu, na ddylasai hyn fod yn fater o'r naill beth na'r llall, gall y broses ddatblygu mewn sawl maes, law law â'i gilydd. Ond yn sicr rhaid blaenoriaethu darlledu a chyfathrebu wrth symud ymlaen gyda datganoli pethau pwysig eraill gan fod angen cyfathrebu'r wybodaeth yn effeithiol i sicrhau democratiaeth.

Er enghraifft, gwyddom bod datganoli maes Cyfiawnder yn un o flaenoriaethau'r Llywodraeth, ac arbennig o beth yw hynny. Cytunwn bod hwn yn faes hynod bwysig ac y dylasai gael ei ddatganoli ar frys. Ond gwrthodwn unrhyw ddadl y dylasai fod cystadleuaeth rhwng meysydd ac y dylsem orfod dewis rhwng meysydd – wedi'r cyfan wrth ddatganoli cyfiawnder, sut fyddai dal pobl i gyfrif a gwybod beth yw'r problemau, heb sôn am wybod yr atebion heb reoliadau cyfathrebu a rheoleiddio call wedi'u creu gennym ni.

Ond yn ogystal â hyn, wrth i ni ddatganoli fwyfwy, mae angen i ni allu codi cyfalaf ein hunain i allu gwneud hyn, fyddai'n golygu pwerau datganoli pellach.

Eto, gweler dudalennau 9–39 sydd yn mynd i'r afael â'r heriau a'r atebion.

Mae Atodiad 2 hefyd yn werthfawr i weld pa mor rhyng-ddibynnol a rhyng-berthnasol mae pob maes.

3. Wrth ystyried sut y caiff Cymru ei llywodraethu, gan Lywodraeth Cymru a Llywodraeth y DU, beth yw cryfderau'r drefn bresennol, pa agweddau sy'n fwyaf gwerthfawr i chi ac yr hoffech eu hamddiffyn? A allwch roi enghreifftiau?

Mae Lloegr a Chymru, yr Alban a Gogledd Iwerddon yn genhedloedd hollol wahanol, â'u hanes a'u traddodiadau yn wahanol, eu blaenoriaethau a'u byd olwg. Does dim byd yn gweithio i Gymru dan y system bresennol. Mae'r system bresennol wedi'i chreu i sicrhau nad oes dim byd yn gweithio i Gymru. Mae holl lwyddiannau Cymru yn digwydd er gwaethaf ein rhan yn yr 'undeb' anghyfartal, nid o'i herwydd.

O ran y maes cyfathrebu a darlledu sydd â'r pwerau yn gorwedd gyda gwlad arall, nid yn unig fod diffyg democratiaeth yng Nghymru ar hyn o bryd oherwydd cymysgwch negeseuon, gan ei gwneud yn anodd iawn i wybod ble

mae cyfrifoldebau yn gorwedd, ac felly yn ei gwneud hi'n anodd dal pobl i gyfrif, ond gellir yn wir ddadlau fod y system yn wrth-ddemocrataidd.

4. A oes unrhyw broblemau gyda'r drefn bresennol? Os oes, sut y gellid mynd i'r afael â nhw? Rhowch enghreifftiau os gwelwch yn dda.

Gweler bob rhan o'r ddogfen isod, tudalennau 9–39 sydd yn nodi'r holl broblemau gyda'r drefn gyfathrebu bresennol, a'r atebion posibl y gellir eu creu pan y datganolir y maes hwn i Gymru. Mae yma enghreifftiau penodol hefyd – yn ogystal â'r enghreifftiau yn yr Atodiadau.

5. Wrth ystyried Llywodraeth y DU, Llywodraeth Cymru a llywodraeth leol yng Nghymru (eich cyngor lleol), beth yw eich barn ynglŷn â'r cydbwysedd pŵer a chyfrifoldeb rhwng y tri math o lywodraeth – a yw'n iawn ar y cyfan, neu a ddylai newid, ac os felly, sut? Er enghraifft, pwy ddylai gael mwy o bŵer, neu lai?

Credwn mai cenedl o gymunedau yw Cymru yn wastad wedi bod a dyma un o'i chryfderau pennaf. Credwn ei fod orau pan fod y rhan fwyaf o benderfyniadau yn cael eu gwneud mor agos â phosibl at y bobl – boed yn Gynghorau Cymuned / Tref neu yn Awdurdodau Lleol, gyda Llywodraeth Genedlaethol yn llywio rhywfaint ar hynny.

Ond, law yn llaw â hyn mae rhaid gael newyddiaduraeth ymchwiliadol leol gref. Ac mae rhaid cefnogi hynny. Eto, gweler tudalen 9 – 39.

Yn ogystal â hyn credwn bod yr economi yn elwa petai datganoli (o Gaerdydd a'r ardal) enfawr yn digwydd i ar draws Cymru, gyda'r bunt yn teithio ac yn cylchdroi ymhellach ac yn hwyach, yn lleol.

Mae hyn yn arbennig o wir am y maes celfyddydau ac rydym yn amau yn fawr ai rhywbeth i'w ddathlu ydy yr arian cyhoeddus sydd yn cael ei wario i ddenu cwmnïau o bant i Gaerdydd ar y foment.

Nodwn bod peryg weithiau o ddathlu rhai llwyddiannau yn y maes cynhyrchu, gweithiasydd wedi'u creu gan gwmnïau sydd â phresenoldeb yn ne Ddwyrain Cymru ac nad sydd bob amser yn cynrychioli ein diwylliant unigryw, ac hynny ar draul cynrychiadau cynhenid Cymreig.

Mae hyn hefyd yn wir am gwmnïau 'parachute' sydd yn ennill arian comisiwn gan ddarllledwyr cyhoeddus Cymru.

Rhaid bob amser ddathlu a chefnogi cynrychiadau hyderus Cymreig, sydd wedi'u gwreiddio yma ymhob ystyr, a pheidio cyfrannu at danseilio hynny.

Nodir hefyd, bod 'llwyddiannau' economaidd weithiau yn cael eu mesur yn ôl yr arian a warir unwaith, heb ystyried gwir werth y bunt honno a'i chylchrediad pellach yng Nghymru. Hefyd heb ystyried ei gyfraniad pellach, neu beidio, i fywyd y genedl.

Gweler Atodiad 4 am wybodaeth bellach.

6. Fel gwlad ac uned wleidyddol benodol, sut ddylai Cymru gael ei llywodraethu yn y dyfodol?

O'r rhestr a gynigir gennych, mae'r Cyngor Cyfathrebu Cenedlaethol o'r farn mai'r opsiwn hwn fyddai orau i bobl Cymru:

- symud tuag at ymreolaeth lawn i Gymru lywodraethu ei hun yn annibynnol o'r DU.

7. Drwyddi draw, beth sy'n fwyaf pwysig i chi am sut y dylid llywodraethu Cymru yn y dyfodol? A oes unrhyw beth arall yr hoffech ddweud wrthym?

Gweler Ateb Cwestiwn 1

**RHAN O YMATEB Y CYNGOR CYFATHREBU CENEDLAETHOL
I'R GWAHODDIAD I GYFLWYNO TYSTIOLAETH BELLACH I'R
PWYLLGOR DIWYLLIANT, Y GYMRAEG A CHYFATHREBU AR Y
PWNC O DDATGANOLI DARLLEDU – HYDREF 2020**

**NODWN FOD HWN YN ATEGU AT Y DYSTIOLAETH A GYFLWYNWYD EISIOES I'R
PWYLLGOR HWNNW AR 17 RHAGFYR 2019 A'R DYSTIOLAETH LAFAR A RODDWDYD GER
BRON Y PWYLLGOR AR 11 MAWRTH 2020**

NODWN FOD DAU ATODIAD I GYD-FYND Â'R ADRODDIAD HWN

CYFLWYNIAD

Credwn fod dyfodiad Coronafeirws wedi cefnogi ac yn wir atgyfnerthu ein tystiolaeth wreiddiol a gyflwynwyd i'r Pwyllgor fis Rhagfyr 2019.

Mae'r dystiolaeth newydd y cyflwynwn yma yn tynnu sylw at y sefyllfaoedd hynny sydd wedi'u hamlygu ymhellach yn y maes darlledu, y cyfryngau a chyfathrebu o herwydd Coronafeirws. Credwn mai wedi amlygu y diffygion oedd eisoes yn bodoli yn y maes y mae Coronafeirws wedi ei wneud yn fwy na heb.

Mae dau atodiad pwysig i'r ddogfen hon:

1. Dogfen a gyhoeddwyd gan y Cyngor Cyfathrebu Cenedlaethol fis Mehefin 2020: Rheoliadau arfaethedig ar gyfer platfformau sy'n darparu newyddion yng Nghymru fyddai yn sicrhau cyflwyno gwybodaeth gywir i bobl Cymru.

2. Dogfen o dystiolaeth sydd wedi'i gasglu o Twitter ers dechrau'r pandemig yn tynnu sylw at ddiffygion ein system gyfryngol a chyfathrebu.

Beth sydd yn bwysig am y ddogfen hon a gyflwynwn i'r Pwyllgor ydy ein bod yn ogystal â chyflwyno'r sefyllfa fel ag y mae, dan benawdau penodol, rydym yn cynnig atebion.

Mae'r atebion yn cynnig ffordd newydd o weithio ac yn cynnig modelau newydd sydd yn unol â'n dyheadau, â'n gwerthoedd ac â byd-olwg Cymru. Mae'r atebion hefyd yn mynd i'r afael â'n democratiaeth simsan - i'w warchod ac i'w ddatblygu gan hefyd edrych ar y buddion economaidd a all ddod. Mae'r posibilïadau yn ddi-ddiwedd.

Credwn mai'r ffordd mwyaf effeithiol i wireddu cynlluniau i fynd i'r afael â diffygion yn y maes, ac yn wir, yr unig ffordd mewn amryw o'r achosion hyn fyddai i ddatganoli pwerau darlledu i Gymru, ac hynny fel mater o frys.

Credwn fod gweithredu ar yr atebion a gynigir yn y ddogfen hon yn cefnogi y saith nod llesiant a welir yn Neddf Llesiant Cenedlaethau'r Dyfodol. Yn wir, byddai peidio gweithredu yn methu yn y cyfrifoldeb o weithredu'r Ddeddf honno.

CYNNWYS

1. Ein Gwasg Brintiedig a'u Gwefannau Perthnasol; y Cyfryngau Cymdeithasol; a Newyddiaduraeth yn Gyffredinol.
2. Mynediad i'r We
3. Radio Lleol
4. Endid Creu Cynnwys
5. Cyllidol
6. Ymarferoldeb
7. Canlyniad

1. Ein Gwasg Brintiedig a'u Gwefannau Perthnasol; y Cyfryngau Cymdeithasol; a Newyddiaduraeth yn Gyffredinol.

Y Sefyllfa

Dros y misoedd diwethaf, prin y gellid fod wedi pwysleisio'n gliriach, na chyda mwy o frys, yr anawsterau a'r dryswch sy'n dod yn sgil diffygion yn y wasg brintiedig, gwefannau a rhaglenni newyddion sy'n cael eu gwyllo a'u clywed yng Nghymru.

Mewn cyfnod lle roedd hi'n allweddol fod negeseuon uniongyrchol i ddarllenwyr, gwylwyr a gwrandawyr yn glir, a dulliau strategol gwahanol lywodraethau yn cael eu hegluro a'u cyd-bwysu ac yn bennaf oll, eu deall, roedd yna ddryswch.

Mae argyfwng Covid-19 wedi dangos yr anawsterau a'r dryswch yn glir yn yr ystyr bod dulliau strategol ein Llywodraeth wedi ennill cryn gefnogaeth a chanmoliaeth yn ystod y cyfnod hwn, ond eto eu bod wedi'u cyfleu yn wael iawn gan y cwmnïau cyfryngol o Loegr sydd yn cyhoeddi a darlledu yng Nghymru. Bu iddynt ddrysu'r neges yn rheolaidd drwy gydol y cyfnod heb yr un syniad am y gwahaniaethau hollbwysig o ran safbwynt a pholisïau sy'n berthnasol i'r Gymru ddatganoledig, fel y maent yn parhau i wneud.

Os oes unrhyw beth erioed wedi tynnu sylw at yr angen i wneud rhywbeth i ddiwygio ein cyfryngau ar yr ochr hon i'r ffin, hwn yw e.

Mae'r Prif Weinidog wedi sôn yn yr wythnosau diwethaf bod ceisio cryfhau'r cyfryngau yng Nghymru yn hanfodol ond y byddai'n anodd i'r Llywodraeth gamu i'r bwlch hwnnw'n effeithiol. Gellir gwerthfawrogi'r pwynt hwnnw wrth gwrs ond mae'n deg dweud hefyd mai strategaeth gyffredinol y cwmnïau mawr Seisnig yw cynnal eu helw –

a does dim byd yn bod ar hynny – yn hytrach na sicrhau bod gan gyfryngau ein gwlad ni strwythur sy'n adlewyrchiad teilwng ohoni.

Roedd yn sicr yn wir ar un adeg bod meithrin newyddiaduraeth o safon yn mynd law yn llaw â'r ymgyrch honno am elw. Roedd yn gwneud synnwyr busnes cadarn bryd hynny i gwmnïau sicrhau bod eu papurau yng Nghymru yn cadw llw o newyddiadurwyr profiadol talentog. Cynyddodd maint eu cynulleidfaoedd – a gellid gwerthu'r gynulleidfa honno i hysbysebwr wedyn. Yn wir – tan yn gymharol ddiweddar, roedd y disgwyliad elw ymhlith cwmnïau papurau newydd mawr y DU oddeutu 30% yn rheolaidd pan oedd busnesau'r stryd fawr yn brwydro i ennill 8%.

Y gwir yw bod y dyddiau hynny wedi mynd ac na fyddant yn dychwelyd. Mae'r toriadau diweddar i swyddi yn cydnabod nad yw'r refeniw yno mwyach ac mae swyddi yn cael eu colli rŵan er mwyn cadw cymaint o elw â phosib. Gyda chwmnïau Reach, Newsquest – a BBC Cymru – yn wynebu toriadau swyddi newyddiadurol, a Media Wales yn dod dan adain yr “English Midlands division” yn y dyfodol, mae natur y bygythiad i newyddiaduraeth rymus yng Nghymru yn gliriach nac erioed.

Mae hyn yn anfantais ddifrifol i newyddiaduraeth o safon ac i ddemocratiaeth. Ond mae'n anochel y byddent yn cael eu haberthu er mwyn creu enillion rhesymol i ddeiliaid cyfranddaliadau er gwaethaf yr holl honiadau y bydd y safonau yn cael eu maethu a'u cynnal.

Mae'n ffaith bod gennym gwmnïau Seisneg enfawr yn cyflenwi ein cyfryngau yng Nghymru a go brin ei bod yn syndod felly nad yw'r sefyllfa bresennol yn cyflawni ei bwrpas.

Efallai mai'r darlun mwyaf amlwg yn ystod y misoedd diwethaf oedd cario hysbysebion ar tudalennau papurau dyddiol ‘Cymreig’, heb sôn am y rhai Seisnig sy'n cael eu

gwerthu yng Nghymru, yn tynnu sylw at neges San Steffan am yr hyn y dylem ei wneud yn ystod cyfnod y feirws – roedd hyn yn gwrth-ddweud neges ein Llywodraeth ni yng Nghaerdydd yn gyfan gwbwl.

Dros y blynyddoedd mae cwmnïau mawrion papurau newydd wedi llyncu cwmnïau bach er mwyn cynyddu eu helw. Mae hynny wedi golygu lleihad dramatig yn nifer y newyddiadurwyr proffesiynol. Mae 80% o'r wasg brint yng Nghymru, yn bapurau newydd dyddiol ac wythnosol, sydd â phresenoldeb cryf ar-lein, ym mherchnogaeth dau gwmni sy a'u pencadlysoedd yn Llundain. Mae yna gyfraith cystadleuaeth yn y Deyrnas Gyfunol (fel y gellir ei mabwysiadu yng Nghymru pe dymunir pan y datganolir y system gyfiawnder i'w briod le) er mwyn osgoi monopolïau lle mae rhaid rhoi gwybod i Gomisiwn Cystadleuaeth os ydy unrhyw uno cwmnïau yn golygu fod gan gwmni fwy na 25% o siâr o farchnad arbennig. Pe bai datganoli y cyfryngau wedi digwydd, fyddai deuopoli y wasg brint ddim wedi cael ei ganiatáu yng Nghymru.

Flwyddyn neu ddwy yn ôl cafwyd y syniad y dylai Cynulliad Cenedlaethol (y Senedd erbyn hyn) gyflogi tîm o newyddiadurwyr ei hun oherwydd torri swyddi gan y cyfryngau confensiynol.

Roedd adroddiad ar y pryd yn argymhell y syniad o gyflogi tîm o newyddiadurwyr ynghyd â 'golygydd profiadol, diduedd' ac i wneud popeth posib i sicrhau mai codi proffil penderfyniadau polisi wnaed yng Nghymru oedd y bwriad, annog gwell dealltwriaeth o'r hyn oedd yn cael ei gyflawni yn y Cynulliad/Senedd, nid siarad ar ran y Llywodraeth. Hwyrach i hyn gyflwyno'i hun fel ffordd gredadwy ymlaen ond hyd yn oed gyda'r ewyllys orau, byddwn yn awgrymu bod y canlyniadau'n debygol o ymylu ar PR i'r Llywodraeth, nid y math o newyddiaduraeth sy'n craffu ar y prosesau pwysig. Dyna fyddai'r Llywodraeth yn elwa ohono yn y tymor hir.

Ond sut mae darparu newyddiaduraeth gref yng Nghymru sy'n adlewyrchu ein gwlad?

Mewn sawl ffordd, mae'r cyfng-gyngor yn adleisio materion ehangach ar draws newyddiaduraeth ranbarthol.

Mae'r hen fodel busnes wedi torri. Gyda'r tybiad bod dirywiad cyffredinol yng ngwerthiant print, mae'r sbardun i fuddsoddi mewn newyddiaduraeth wedi lleihau hefyd. Os gall fideo deg eiliad o gath yn dawnsio ennyn mwy o ddiddordeb ymysg y gynulleidfa dorfol na brand newyddion, nid oes fawr o ysgogiad i gyflogi timau newyddion medrus ag adnoddau da.

Y sefyllfa yw, bod Cymru yn gorfod derbyn fersiwn ohoni ei hun trwy bersbectif y cyfryngau Saesneg. Er yr holl ddatblygiadau wedi datganoli a chyfrifoldebau cynyddol Llywodraeth Cymru, prin yw'r sylw, os o gwbl, y gellir ei ddisgrifio fel newyddiaduraeth lle gallwn weld olwynion democratiaeth ein gwlad yn troi gyda'r holl ffrithiant a gwreichion y gall hyn ei greu weithiau.

Credwn ei bod hi'n deg dweud hefyd bod pobol Cymru wedi sylweddoli, gyda mwy o eglurdeb nac erioed yn 2020, faint o rymoedd sydd bellach yn nwylo Llywodraeth Cymru.

Hynny yw, mae datganoli yn golygu rhywbeth allweddol i'w hiechyd, i'w swyddi, i'w hawliau nhw a'u teuluoedd. Mae codi 5c am fag plastig yn un peth. Mae i bob diben gau pobol yn eu cartrefi am fisoedd a chyfyngu ar eu hawliau i deithio yn stori gwbl wahanol. Ein dadl ni yw y byddai pobol Cymru – y rheiny sy'n prynu papurau newydd, yn darllen y newyddion diweddaraf ar-lein, yn gwyllo ac yn gwrando ar newyddion yn gyson – yn gweld gwerth cryfhau'r gwasanaeth newyddion yng Nghymru rwan yn fwy nac erioed.

Yr Atebion

Ar un llaw mae'r cysyniad o ymyrraeth y Llywodraeth i helpu i greu cyfryngau o safon yn un anodd. Ond ymhell o fod yn amhosibl. Mae gwir angen cyfryngau ar Gymru â llais Cymreig – nid fersiwn ohoni ei hun trwy lygaid Lloegr.

Byddai datblygu rhywbeth a allai fod angen cefnogaeth gan y Llywodraeth i ddechrau yn her ond yn un hynod ddiddorol.

Byddai angen i'w ymreolaeth a'i annibyniaeth gael ei ystyried yn 'sanctaidd' ar draws y sbectwm gwleidyddol gyda dyfeisiau dibynadwy ar waith i sicrhau y gallai adrodd mor ddiuedd ag unrhyw asiantaeth allanol.

Mae Llywodraeth Cymru wedi siarad yn y gorffennol am ddechrau trafodaeth ffurfiol i ddadansoddi'r anghenion a'r opsiynau ar yr hyn y gellid ei wneud i wella ein cyfryngau. Ond tydi siarad efo'r cwmnïau mawr presennol ddim yn mynd i wella'r broblem o ddiwallu ein hanghenion ni. Gwaethygu mae'r sefyllfa wrth i'w hadnoddau hwy ddirywio ac i flas Saesnig ein cyfryngau gryfhau.

Dyw hi ddim yn opsiwn bellach a ddylai ein Senedd ymyrryd – yn wir mae yn gyfrifoldeb arni i wneud.

Mae angen i'r Pwyllgor Diwylliant, y Gymraeg a Chyfathrebu roi ger bron ein Llywodraeth y dewisiadau o ymyrraeth a all ddigwydd. Dylid wrth gwrs, yn ogystal ag ymchwilio i bosibiliadau gwreiddiol, hefyd ymchwilio i'r hyn sy'n digwydd mewn gwledydd eraill ar draws y byd.

Dylid hefyd gadw mewn cof a gweithio ar sail yr hyn sydd yn hanesyddol wir am Gymru – mai gwlad o gymunedau o bapurau y mae Cymru wedi bod, ers canrifoedd bellach. Mae papurau lleol iawn wedi bodoli a rheiny yn bapurau ag iddynt lais cryf a galw

mawr. Mae yn sicr le amlwg i'r math hyn o fodel, boed yn wasg brintiedig neu ar lein. Arwain hyn at wneud lles i'n gwleidyddiaeth leol ac i'n gwleidyddion yn lleol gan arwain at genedl wleidyddol iachach.

Mae'r byd digidol yn magu stêm, a deliwn â hyn ymhellach isod, ond mae angen edrych hefyd ar fodolau busnes a fyddai yn gweithio i'r papurau traddodiadol a gochel rhag rhagdybio bod eu dyddiau hwy ar ben. Byddai ymchwil a chanfyddiadau i'r perwyl hwn yn werthfawr wrth i ni symud ymlaen.

Mae i'r dechnoleg ddigidol botensial aruthrol fel arf newyddiadurol. Fyddai'r Gwanwyn Arabaidd ddim wedi digwydd heb y ffonau symudol yn nwylo'r protestwyr a fydden ni ddim yn gwybod dim am rai o'r erchyllterau yn Syria heddiw hebddyn nhw chwaith. Mae yna rôl allweddol i'w chwarae gan 'newyddiaduraeth y dinesydd' ond mae rhaid hefyd cael ffordd o ddilysu yr hyn sy'n ymddangos.

Mae'r wasg draddodiadol gennym ni ers canrifoedd ac mae system o'i rheoleiddio wedi esblygu dros amser. Ac wrth gwrs, fel y dadleuwn drwyddi draw, mae dirfawr angen ei esblygu ymhellach yng Nghymru er mwyn democratiaeth ein pobl, ac i wneud hynny'n llwyddiannus yr UNIG ffordd ymlaen fyddai trwy ddatganoli pwerau darlledu, mae hynny yn hollol glir. Ond y pwynt ydy bod rheoliadau (er mor ddiffygiol ydynt i Gymru) wedi bodoli yn y maes ers canrifoedd.

Ers cwta chwarter canrif mae'r wasg ddigidol yn bod ac yn ei hanfod mae'r we yn anarchaidd, ddi-reolaeth.

Galwn ar y Pwyllgor hwn hefyd felly i ymchwilio i'r mater o fod rhaid i Nteflix, Google, Apple a Facebook a'r 'cewri' eraill fod yn atebol, fel y mae'r cyfryngau traddodiadol i gyfraith enllib, dirmyg llys, hawlfraint a phreifatrwydd.

Cyda Llywodraeth yn San Steffan yn ddiweddar wedi cyhoeddi y byddan nhw'n rhoi pwerau i OFCOM reoleiddio cynnwys y cyfryngau cymdeithasol i ddiogelu defnyddwyr rhag cynnyrch niweidiol ac anghyfreithlon, mae angen sicrhau nawr bod y pwerau hyn yn cael eu trosglwyddo i'r rheoleiddwyr yng Nghymru i gael penderfynu, yn unol â dyheadau, gwerthoedd ac anghenion pobl Cymru sut fyddai datblygu hyn.

Bydd angen ymchwilio hefyd ar frys i'r angen i osod ardoll ar y cwmnïau 'mawrion' hyn sy'n gwneud eu harian yng Nghymru ond ddim yn talu treth yma. Bydd angen argymhell, o gadw'r arian hwnnw mewn pot, ble byddai gwariant posibl yr arian hwnnw – er enghraifft ar ddatblygu newyddiaduraeth, ar ddeunydd ar-lein yn yr iaith Gymraeg, ar greu platfformau newydd, mae'r rhestr posibiliadau yn hirfaith a'r angen yn fawr.

Gofynnwn hefyd i'r Pwyllgor ail ymweld ag adroddiadau'r gorffennol sydd yn ymndrin â dyfodiad y we a'r cyfryngau cymdeithasol sydd wedi arwain at fod llai o newyddion Cymreig ar gael y tu fewn a'r tu allan i ffiniau'r wlad gyda corfforaethau mawr rhyngwladol, y BBC a llond dwrn o unigolion pwerus, bron yn monopoleiddio y cynnwys newyddiadurol.

Dyma rai o'r adroddiadau hynny. Cynigwn fod y Pwyllgor Diwylliant, y Gymraeg a Cyfathrebu yn ail ymweld â rhai o'r adroddiadau hyn, ac eraill, gan edrych ar a ydy'r argymhellion wedi cael eu gwireddu, os nad ydynt, yna pam ddim:

*Y Sefydliad Materion Cymreig – 'Media Audit 2008' ac wedyn 2015 ac un mwy diweddar yn yr arfaeth. Rhain ydi'r adroddiadau mwyaf cynhwysfawr sy'n cynnwys pob elfen o'r cyfryngau yng Nghymru yn cynnwys newyddiaduraeth.

*Is-Bwyllgor Darlledu y Cynulliad – ymchwiliad 'Y Diwydiant Papurau Newydd yng Nghymru' – Mehefin 2009

*Tasglu Comisiwn y Cynulliad ar Newyddion Digidol a Gwybodaeth 2017 – ‘Creu Deialog Digidol’ dan gadeiryddiaeth Leighton Andrews

*Mae Pwyllgor Diwylliant, y Gymraeg a Chyfathrebu y Senedd wedi cynnal sawl ymchwiliad i faes y cyfryngu sy'n cynnwys rhannau am y wasg, ac mae un adroddiad arbennig yn 2018 – ‘Penawdau’ – yn ymchwiliad i newyddiaduraeth newyddion yng Nghymru.

*Yn Brydeinig cyhoeddwyd Adolygiad Cairncross yn Chwefror 2019. Roedd yn adroddiad cynhwysfawr gan yr academydd a'r newyddiadurwraig Dame Frances Cairncross. Mi nath yr adroddiad 9 argymhelliad oedd a'r potensial i wella y rhagolygon ar gyfer newyddiaduraeth o safon. Yn eu plith roedd creu corff newydd – Y Sefydliad Newyddion Budd Cyhoeddus, cronfa ar gyfer mentrau newydd a manteision threth. Byddai gwerth edrych ar adroddiadau o'r fath yn ymwneud â'r maes hwn sydd wedi'u cynnal ar draws y byd.

Gellir hefyd ystyried rôl y Cyngor Cyfathrebu Cenedlaethol fel rheoleiddwyr wrth fwrw ymlaen â'r cynlluniau.

Fis Mehefin eleni cyhoeddodd y Cyngor Cyfathrebu Cenedlaethol bedwar rheoliad fyddai yn mynd i'r afael â'r her y nodir uchod o gamarwain a cham wybodaeth ar blatfformau newyddion yng Nghymru. O weithredu'r pedwar rheoliad hwnnw yn unig, mi fyddai safon a chywirdeb yr adrodd yn ein cyfryngau, ar bob platfform, yn gwella yn sylweddol a byddai rhan hanfodol o'r broses ddemocrataidd wedi'i warchod. Credwn fod y rheoliadau hyn yn hanfodol i hynny. Mae'r rheoliadau hyn wedi'u cynnwys yn Atodiad 1. Gofynnwn i'r Pwyllgor hwn ystyried yn ddifrifol dulliau o weithredu'r rheoliadau hyn ar frys wrth i'r broses o ddatganoli grymoedd darlledu i Gymru fynd rhagddi.

2. Mynediad i'r Wê

Y Sefyllfa

Mae sefyllfa'r Coronafeirws wedi amlygu ymhellach annhegwch o ran mynediad ein cymunedau i'r we fyd eang.

Mae pobol o bob oedran wedi gorfod troi at y we, yn eu anheddau ar gyfer gwaith, gwaith ysgol a choleg, cwmniaeth ac ar gyfer gwasanaethau.

Mae'r broblem o dlodi digidol a thlodi gwledig wedi'u hamlygu eu hunain ymhellach ac wedi gyrru'r lledaeniad yn y bwlch rhwng y rhai breintiedig a'r difreintiedig.

Cafwyd cyfnod, ac mae'n bosibl y bydd eto, pan oedd plant yn gwneud eu gwaith ysgol i gyd ar-lein o'u cartrefi. Roedd hyn yn her i nifer o'n plant mwyaf bregus a difreintiedig nad oedd a chanddynt fynediad addas i'r we fyd eang, heb sôn am yr offer cywir i wneud.

Yn ogystal â hyn doedd gan bobl yn ein cymunedau ddim mynediad i'r we am gwmniaeth teulu a chyfeillion, mewn cyfnod ble mae hynny wedi bod mor bwysig i'n hiechyd. Ar ben hyn, roedd pobl heb fynediad teilwng i'r we yn wynebu heriau ychwanegol ar gyfer gwasanaethau elfennol, sydd wedi symud ymhellach a pellach o'n cymunedau, fel bancio neu archebu meddyginiaeth. Mae'r banciau i nifer erbyn hyn dros ugain milltir i ffwrdd.

Mae hyn yn cynyddu'r bylchau yn ein cymdeithas. Ac mae hyn yn wirioneddol godi'r cwestiwn o ba fath o gasgliad o gymunedau a chymdeithasau yr ydyn ni eisiau i Gymru fod?

Pwysleisiwn eto yr hyn a roddwyd yn ein ymateb i'r ymgynghoriad gwreiddiol fis Rhagfyr y llynedd – ma rhaid ail edrych ar sut mae Cymru yn dewis tendro i gwmnïau sydd eisiau darparu'r we i'n cymunedau.

Os ydy Cymru eisiau bod yn wlad gynhwysol, sydd yn hyrwyddo cyfartaledd ac sydd yn gweld gwerth yn ei chymunedau gwledig ac mewn galluogi unigolion a busnesau i ffynnu yn y fan honno, yna ni ellir parhau â'r model presennol sydd yn cael ei benderfynu yn Lloegr.

Nodwn yma hefyd bod y feirws hwn, o fod angen ei drosglwyddo o berson i berson, wedi ffynnu yn ein ardaloedd mwyaf poblog. Wrth edrych i'r dyfodol ac ar fyd sydd wedi globaleiddio ble y gall pandemig fel hyn ddigwydd yn amlach, mae o ddiddordeb mawr i lywodraethau tybiaswn i i beidio gyrru pobl i'r dinasoedd i fyw oherwydd diffyg gwasanaethau yn ein cymunedau mwy gwledig. Yn wir mae Llywodraeth Cymru yn awyddus i gynnal y system gweithio o gartre sydd wedi profi'i werth yn ystod cyfnod y clo mawr fel polisi at y dyfodol.

Hefyd, mae'r ffaith nad yw mynediad i'r we ar gael i bobol nad sydd yn byw mewn tref neu ddinas yn trin y bobl hynny fel dinasyddion eilradd ac yn gwahaniaethu yn eu herbyn. Mae yma ddiffyg parch. I gael y we mewn rhai ardaloedd, mae rhaid i'r cymunedau hynny a'r unigolion sydd yn rhan ohonynt frwydro ac ymgyrchu a gwneud ceisiadau i gael mynediad i ffeibr (heb sôn am 5G sydd ar y ffordd). Ai dyma sut mae Llywodraeth Cymru eisiau trin eu dinasyddion. Gyda Brexit o'n blaen rhaid dechrau parchu ein cynhyrchwyr bwyd a'u busnesau. Gan nodi yma fod busnesau amaeth erbyn hyn yn gweithredu'n llawn ar lein – o gofrestru anifeiliaid ar gyfer pasbortau i ddefnyddio apiau effeithiolrwydd, i wneud eu trethi. Rhaid i'n polisiau fel cenedl

adlewyrchu y math o wlad yr ydyn ni, beth sydd yn bwysig i ni a beth yr ydyn ni yn ei barchu fel cenedl.

Gyda chammau yn cael eu cymryd i osod 5G, rhaid i ni symud ar frys ar hyn i allu gosod ein termau ein hunain o ran mynediad iddo, sydd yn adlewyrchu ein dyheadau a'n gwerthoedd ein hunain o ran y bwlch rhwng y breintiedig a'r di-freintiedig a rhwng ardaloedd trefol a gwledig.

Mae datblygiadau 5G yn mynd i fod yn bwysig iawn i fusnesau o bob math. Mae 5G yn mynd i alluogi ymhellach mwy o fand llydan, mynediad di-wifr band llydan, datblygiadau IoT ('the Internet of things'), y gallu i weithredu o bell, cynhyrchu effeithiol a rhwydwaith gydweithredol. Mae'r rhain oll yn mynd i fod yn hanfodol i ddatblygiad ein economi ynghyd ag i'n bywydau personol bob dydd. Mae 5G hefyd yn golygu mwy o ddata a mwy o ddyfeisiau ac ymateb cyflymach.

Gall Cymru ddim fforddio cael ei gadael ar ôl a gallwn ni ddim fforddio gadael hyn yn nwylo neb arall ond yn ein dwylo ni.

Mae'r penderfyniadau fel pwy fydd yn cael y sbectrwm a ble bydd y sbectrwm yn eistedd, ble fydd yr isadeiledd yn cael ei osod, beth fydd targed cyrhaeddiad argaeledd y dechnoleg ddiweddaraf, ac yn wir pwy fydd y cwmnïau fydd yn gyfrifol am hyn, oll yn cael eu gwneud ar hyn o bryd gan Lywodraeth Lloegr ac Ofcom. Ac o edrych ar ddogfennau cyfredol ac hanesyddol, nid Cwmtwrch na Thalylychau fydd ar frig blaenoriaethau y rheiny.

Wrth i ni wella mynediad i'r we bydd angen sicrhau hefyd bod ein holl ddyfeisiadau yn 'siarad' Cymraeg er mwyn gallu sicrhau ein bod oll, wrth i ni anelu at Gymru Gymraeg, yn medru defnyddio'r Gymraeg yn y cartref ac yn y gwaith. Mae normaleiddio hynny yn hanfodol wrth anelu tuag at y miliwn o siaradwyr (a defnyddwyr) yr iaith.

Yr Atebion

Mae targedau sydd yn cael eu gosod gan Lywodraeth San Steffan ar gyfer cyrhaeddiad y we, yn hanesyddol, wedi cael eu pennu yn ôl canran holl boblogaeth / anheddau y 'Deyrnas Gyfunol', yn hytrach na fesul gwlad oddi fewn i ynysoedd Prydain. Medrir cyrraedd y targedau hyn wrth ddarparu ar gyfer dinasoedd a threfi Lloegr yn unig, ac ambell i un yng Nghymru efallai, a chyrraedd y targed, gan olygu nad yw Cymru yn elwa o'r targedau hyn o gwbl. Mae'r dull hwn ynddo ei hun, yn ein barn ni, yn afiach gan ei fod yn ddull sydd, nid yn unig, yn gwahaniaethu yn erbyn pobl sydd yn dymuno creu eu cartrefi a sefydlu eu busnesau yn yr ardaloedd mwy gwledig, ond hefyd yn gwahaniaethu yn erbyn rhai o'r gwledydd oddi mewn i'r wladwriaeth. Credwn fod iechyd cefn gwlad unrhyw wlad, a'r parch sydd yn cael ei ddangos tuag ato yn hanfodol i lwyddiant bob cwr o wlad waraidd. Drwy ddatganoli darlledu gellid sefydlu system llawer mwy addas parthed cyrhaeddiad y we.

Mae'n allweddol bod dewis gan bobol Cymru i aros yn eu cymunedau ac i allu rhedeg eu busnesau o'r fan honno. Mae'n allweddol nad yw rheoliadau a pholisïau llywodraeth ganolog yn cyfrannu tuag at dlodi a difreintedd. Ac felly, mae'n dilyn ei bod yn hanfodol bod Cymru yn gallu gosod ei rheolau ei hun yn y maes hwn. Er enghraifft, pan gyflwynodd Llywodraeth San Steffan gyfleon i gwmnïau ymgeisio am dendr 3G, y cytundeb oedd ymgeisio am tua 70% o'r gwasanaeth yn hytrach na, dyweder, 99% ohono fel a wnaethpwyd yn Sweden. Ond y gwahaniaeth oedd mai mond £100,000 ddaeth nôl i Drysorlys Sweden, gyda £2.3 biliwn yn dod nôl i Drysorlys San Steffan, drwy werthu'r sbectrwm. Roedd hyn oherwydd y gwahaniaeth yn natur y gofynion a roddwyd i gwmnïau 'fidio' amdanynt gan San Steffan o'i gymharu â gofynion Sweden, a

oedd llawer mwy uchelgeisiol a chyfartal. Felly arweiniodd hyn at ddarpariaeth gwe gwell a thecach yn Sweden. Mae rhai gwledydd yn dewis gwneud fel y gwnaeth y Deyrnas Unedig ac yn gosod targed isel iawn, ond yn rhoi'r arian sydd yn dod nôl i'r Trysorlys i gyd mewn pot ac yn ei bridianu yn benodol ar gyfer gwella'r we mewn ardaloedd gwledig a difreintiedig. Mae rhai gwledydd yn gwneud fel mae Sweden yn ei wneud, gwledydd eraill yn gwneud cyfuniad o'r ddau. Mae angen i Gymru gael y pŵer i allu llunio ei gweledigaeth ei hun parthed hyn, yn ôl anghenion ein gwlad a'n pobol. I wireddu hyn mae angen i bŵer rheoleiddio ym maes y we gael ei ddatganoli i Gymru. Byddai awdurdod Gymreig hefyd yn gallu hybu'r Gymraeg mewn technoleg newydd fel Alexa a phodlediadau er mwyn sicrhau defnydd yr iaith Gymraeg.

3. Radio Lleol

Y Sefyllfa

Yn hanesyddol mae radio lleol wedi bod yn wasanaeth pwysig iawn i gymunedau ac yn le pwysig i fagu sgiliau, yn bennaf oherwydd ei natur unigryw lleol. Ta waeth, gyda symud i ffwrdd yn llwyr wrth hynny, dydy hyn ddim bellach yn wir.

Gallasai'r gorsafoedd lleol hyn fod wedi cynnig cymaint mwy yn ystod cyfnod Coronofeirws, gallasant fod wedi bod yn wasanaeth amhrisiadwy – yn cynnig gwybodaeth gywir leol parthed rheolau'r feirws, yn cynnig trafodaeth leol ac hefyd yn cynnig y gwmniaeth gyda'r hunaniaeth leol hynny y mae cymaint o bobol wedi bod yn ei erfyn yn ystod y cyfnod hwn.

Tybiwn ei bod yn hollol deg i ddweud fod Cymru wedi colli'i llais ar radio yng Nghymru.

Ac wedi colli'r Gymraeg bron yn llwyr. Ac mae'r rheswm am hyn yn llwyr oherwydd rheoliadau diffygiol ac annigonol Ofcom. Yn 1998 roedd yna chwech gorsaf radio masnachol yn darlledu rhaglenni Cymraeg. Dim ond dau sydd yn gwneud hynny erbyn hyn – Capital Cymru a Sain Abertawe. Mae Cymru wedi colli dros 50 awr Cymru wedi colli dros 50 awr o raglenni Cymraeg yr wythnos ers 1998.

Mae Ofcom yn Llundain wedi sicrhau dinistrio gwasanaeth masnachol Cymraeg drwy eu polisi i gloi radio masnachol lleol. Hynny yw, y ffaith mai polisi Ofcom (a Llywodraeth Llundain) yw rhoi caniatâd i gwmnïau fel Global Radio i gloi brandiau masnachol lleol fel yr hen Champion FM neu Red Dragon Radio a'u troi nhw mewn i rwydwaith radio Prydeinig fel Heart FM neu Capital FM gyda'r rhan fwyaf o'u rhaglenni yn darlledu o stiwdios Llundain.

Yr Atebion

Byddai awdurdod Gymreig yn gallu trawsnewid hyn ac agor tonfeydd newydd ar gyfer gwasanaethau Cymraeg.

Mi fyddai hefyd yn bosibl, ar ôl datganoli darlledu, i newid rheolau masnachol i sicrhau arian hysbysebu ar gyfer radio cymunedol. Ar hyn o bryd, mae gorsafoedd cymunedol dan reolaethau llym parthed faint o arian maen nhw'n gallu creu trwy hysbysebion (o achos fod cwmnïau masnachol yn cwyno am hyn).

Byddai rheoleiddwyr Cymreig yn gallu sicrhau rheoliadau sydd yn gwarchod natur leol ein radio lleol, a theledu lleol o ran hynny, gan alluogi y gorsafoedd hyn i chwarae eu rhan yn y broses ddemocrataidd ac adloniannol. Byddai rheoleiddwyr Cymreig hefyd yn sylweddoli gwerth y Gymraeg i gymunedau'r genedl ac i'r naws leol honno sydd yn ganolog i'r gwasanaethau hyn, ac yn gallu rheoleiddio yn unol â hynny.

Wrth ddatblygu rheoliadau yn y maes hwn rhaid edrych ar fodelau newydd, hybrid o rwydweithiau sydd wedi'u cysylltu i wasanaeth newyddion annibynnol Gymreig.

4. Sefydlu Endid Creu Cynnwys

Y Sefyllfa

Mae cyfnod Coronafeirws wedi amlygu a phwysleisio nifer o bethau am y maes cyfathrebu a chyfryngau yng Nghymru o ran cynnwys. Dyma rai ohonynt.

Cymru Ar-lein

Wrth i fwy ohonom ddefnyddio fwyfwy o dechnoleg, mae diffyg cynnwys Cymraeg a Chymreig ar-lein yn boenus o amlwg – efallai yn fwy na dim, deunydd ar gyfer ein plant a phobl ifanc. Ac yn arbennig felly plant a phobl ifanc o gefndiroedd llai breintiedig.

Yn ogystal â hyn mae perygl gwirioneddol fod yr ychydig iawn o ddeunydd ar-lein sydd ar gael yn Gymraeg ddim yn cyrraedd y bobl hynny nad sydd yn dod o gefndiroedd Cymraeg eu hiaith. Arwain hyn at fwlch pellach rhwng y rhai hynny sydd â'r sgil ieithyddol honno a'r rhai sydd hebddo. Ar y llaw arall mae'r dewis mor brin yn y Gymraeg mae plant o deuluoedd Cymraeg hefyd yn dueddol o droi at ddeunydd Eingl-Americanaidd ac yn tybio nad yw'r Gymraeg yn perthyn i'w byd nhw nac i fyd y dyfodol. Mae effaith hyn yn bellgyrhaeddol yn wir.

Newyddiaduraeth Ymchwiliadol Cymru

Mae'r angen am newyddiaduraeth ymchwiliadol Gymreig wedi dod yn amlycach.

Mae graddfa adrodd newyddion a ffeithiau nad sydd yn wir am Gymru, ar bob platfform, wedi cael ei bwysleisio ac mae'r angen dybryd am fwy o graffu ar yr hyn sy'n digwydd yn ein Senedd wedi'i amlygu ymhellach. Er bod rhai tudalennau newyddion ar rhai platfformau yn gwneud y gwaith hwn, prin ydyn nhw ac yn bendant nid oes yn agos i fod digon yn y cyfryngau prif ffrwd.

Rydym yn croesawu 'AM', dan nawdd Cymru Greadigol, fel platfform sy'n gartref, ymhlith pethau eraill, i'n podlediadau. Heb anghofio wrth gwrs mentrau unigolion fel ypod.cymru. Croesawn hyrwyddiad pellach ohonynt.

Ond beth am blatfform i bodlediadau Cymreig Saesneg eu hiaith?

Llwm iawn yw'r arlwy ymchwiliadol sydd yn mynd o dan groen ein gwleidyddiaeth yma yng Nghymru ac mae'r ychydig drafodaeth wleidyddol Gymreig sydd i gael wedi'u cyfyngu i raglenni penodol ar amseroedd penodol. Mae gwleidyddiaeth Gymreig yn golledig i ran fwyaf ein poblogaeth yma yng Nghymru, yn yr iaith Gymraeg ac yn yr iaith Saesneg. Dydy cwestiynu adeiladol ddim yn ganolog i bopeth yn ein cyfryngau a'n cyfathrebiadau, fel y dylasai fod.

Er mwyn sicrhau gwireddu Deddf Llesiant Cenedlaethau'r Dyfodol rhaid i gwestiynu gwleidyddol fod yn gynhwysol yn ein holl gyfathrebiadau a dim yn ystyriaethau atodol ac ymylol.

Prin iawn yw ein rhaglenni dogfen Cymreig a'n rhaglenni craffu Cymreig ac mae'r ychydig sydd yn bodoli wedi'u boddi ynghanol llif o ddeunydd Seisnig nad sydd hyd yn oed yn ymwybodol o'n bodolaeth fel cenedl, nac sydd ag unrhyw ddiddordeb ynddi.

Mae hyn yn warth ar ein democratiaeth ac mae hi'n warth nad oes dim wedi ei wneud cyn nawr i fynd i'r afael â hyn. Ond ni phoener, gwell hwyr nag hwyrach. Dyma'r awr.

Cynyddu Nifer o Sianeli a Gorsafoedd Cenedlaethol

Gellir dweud mai un o'r rhesymau am y diffyg amrywiaeth yn ein rhaglenni yw mai dim ond un sianel radio genedlaethol Saesneg 'Gymreig' sydd gennym, a llai na hanner sianel deledu Saesneg 'Gymreig'. Mae un sianel radio Gymraeg genedlaethol, (mae sianel Radio Cymru 2 hefyd yn cynnig peth amrywiaeth, sianel y BBC yw hon hefyd) ac

un sianel deledu genedlaethol Gymraeg. Mae hyn yn gwneud cam enfawr â'r genedl. Rhaid i'r sianeli hynny fod yn bopeth i bawb. Ac nid yw hynny yn bosibl. Rhaid sefydlu mwy o sianeli Cymreig ar frys gyda chynulleidfaedd targed penodol.

Efallai bod gwerth nodi yma hefyd fod iPlayer yn cynnwys BBC Scotland ynghyd ag S4C ac Alba. Ond does dim sôn am BBC Wales.

Nodwn yma hefyd fod enghreifftiau lu ar lawr gwlad o weithwyr o'r BBC yn Lloegr (nad sydd â chysylltiad na gwybodaeth am Gymru) yn dod i ddweud wrth y BBC yng Nghymru sut i wneud eu gwaith. Rhaid i ni gofio mai sefydliad Lloegr yn y bôn yw'r BBC ac mae ganddynt fonopoli dros ein holl newyddion 'Cenedlaethol', yn Saesneg ac yn Gymraeg, ar ein setiau radio a theledu.

Nodwn yma bod S4C wrthi'n creu egin wasanaeth newyddion ar-lein, hynny yw, gwasanaeth newyddion nad yw'n dod gan y BBC nac ITV a bod hyn i'w groesawu. Cam bach cyntaf yw hwn ond mae'n gam i gynnig ffynhonnell newyddion sy'n cynnig peth lluosogrwydd. Ac o ystyried llwyddiant Hansh, mae yna blatfform yna'n barod sy'n denu pobol iau tuag at y cynnwys, felly dyma gyfle i'w denu nhw at gynnwys newyddion. Nodwn fod hyn yn digwydd nid o herwydd polisiâu a rheoliadau presennol, ond er eu gwaethaf.

Mae gennym fwy na digon o allu yng Nghymru i gynhyrchu ar gyfer, dyweder tair sianel deledu genedlaethol Gymraeg a thair sianel deledu genedlaethol Saesneg eu hiaith a thair gorsaf radio genedlaethol Gymraeg a thair gorsaf radio genedlaethol Saesneg.

Mae S4C ei hun yn destament o'r hyn y gallwn ei gynhyrchu a pha mor gyflym a chreadigol all y diwydiant addasu, mae cynnyrch S4C y cyfnod Coronafeirws wedi dangos hynny.

Cymrwn S4C fel enghraifft yn unig, gan mai dyma'r unig sianel genedlaethol sydd gennym ar y teledu ac ar y radio, mewn unrhyw iaith, nad sydd yn dod dan y British Broadcasting Corporation o ran ei hannibyniaeth golygyddol, er bod lle i ddadlau bod hyd yn oed hynny dan fygythiad parhaus.

Ar hyn o bryd mae cannoedd o bobol sydd â'r sgiliau i weithio yn y maes hwn wedi gorfod croesi Clawdd Offa a thu hwnt i chwilio am waith.

Yn ogystal â hyn mae cannoedd yn fwy o bobol sydd â'r galluedd a'r sgiliau i weithio yn y diwydiant hwn ond nad sydd yn gweithio yn y sector o gwbl ar hyn o bryd.

Mae'r gallu a'r sgiliau a'r angen yma. Dydy'r cyfleon ddim.

Gall yr Endid Creu Cynnwys adnabod yr anghenion ddaw gyda'r datblygiadau hyn a magu ac adeiladu ar y sgiliau, y talentau a'r diddordeb sydd eisoes yma. Yn syml iawn, creu gwaith.

Byddai bod yn flaengar yn y maes hwn yn ddatblygiad anferth i'n economi tra ar yr un pryd yn gwarchod ac yn datblygu ein democratiaeth, ein hygyrdedd a'n hyfywedd fel cenedl. Buddsoddiad a fyddai'n talu ar ei ganfed yn wir.

Economi

Mae dirfawr angen syniadau a buddsoddiadau newydd o ran ein economi cynaliadwy, ble mae llwybrau gyrfaol cryf, y tâl yn dda a'r swyddi yn rhai parhaol. Mae angen buddsoddiadau a sgysiau mwy creadigol a chynaliadwy am ein economi ac mae'r diwydiant cyfryngau a chyfathrebu yn cynnig rhan o'r ateb i'r pair hwnnw. Gall y diwydiant hwn fod yn ddiwydiant cynaliadwy ymhob ffordd, gan gynnwys un sydd yn parchu ac yn datblygu diwylliant a iaith Cymru a'r economi ar draws bob cwr o'r wlad.

Yr Atebion

Mae Coronafeirws wedi amlygu diffygion a chyfleon ac mae hyn wedi rhoi'r cyfle i ni graffu, nid yn unig ar ein rheoliadau, ein strwythurau a'n platfformau, ond hefyd ar y sgiliau sydd gennym yng Nghymru i wireddu ein nod a sicrhau gwlad ddemocrataidd sydd yn gwneud y mwyaf o'r diwydiant cyfathrebu a chyfryngol er mwyn ein hiaith, ein diwylliant a'n byd-olwg ac hefyd er mwyn ein economi.

Mae'r rhan hwn o'r dystiolaeth yn cynnig ffordd ymlaen o sut allai ran o strwythur y diwydiant cyfryngol a chyfathrebu gyfrannu yn ddiwylliannol ac economaidd i'n cenedl wrth ddatblygu cynnwys. Byddai datganoli pwerau darlledu i'n gwlad yn angenrheidiol i wireddu'r oll o'r rhain, er mwyn gallu eu hariannu wrth gwrs, ond wrth fod y broses honno yn mynd yn ei blaen, mae angen edrych beth gellir wneud nawr i fynd i'r afael â'r heriau, gan gydnabod yr argyfwng.

Credwn y byddai Endid Creu Cynnwys yn gam gwych ymlaen.

Rydym yn cynnig felly fod endid yn gorwedd oddi mewn i'r corff rheoleiddio, y Cyngor Cyfathrebu Cenedlaethol, fyddai â chyfrifoldeb dros sicrhau ein bod yn gallu cynhyrchu'r cynnwys gorau, ym mhob maes cyfathrebu, i gefnogi ein dyheadau diwylliannol, democrataidd ac economaidd.

Byddai adrannau oddi mewn i'r endid hwn yn gyfrifol am wahanol feysydd, a gall yr adrannau hynny fod yn hyblyg o ran creu adrannau newydd yn ôl y galw neu diddymu rhai os yw'r galw wedi'i ddiwallu.

Byddai'r adrannau hyn, yn ddechreuol, yn edrych ar yr angen ac ar beth sydd ar gael yn bresennol i ddiwallu'r angen, i alluogi cynnwys. Byddant wedyn yn penderfynu os oes angen camau pellach i ddiwallu angen, nad yw yn ddigonol ar hyn o bryd i greu cynnwys digon safonol, digon amrywiol a digon niferus.

Byddant yn penderfynu ar y ffordd ymlaen gyda chynlluniau clir ac yn bwrw ati.

Byddai'r adrannau yn hyrwyddo eu gwaith yn ddwys ac yn effeithiol i gynulleidfaoedd anodd eu cyrraedd. Mae'n holl bwysig bod cynwysoldeb yn ganolog i weledigaeth yr endid.

Adrannau posibl oddi mewn i'r Endid Creu Cynnwys fyddai:

- Adran Cynnwys Cymraeg Ar-lein

Byddai'r Adran Cynnwys Cymraeg Ar-lein yn ymchwilio i'r ffyrdd gorau i greu mwy o gynnwys Cymraeg o bob math ar lein, ac yn galluogi hynny. Byddant hefyd yn ymchwilio i'r platfformau sydd eisoes yn bodoli, neu i'r angen i greu platfformau newydd yn gartref i'r cynnwys hyn ac yn galluogi hynny. Byddai angen i'r adran ystyried y ffordd mwyaf effeithiol o gyrraedd cynulleidfaoedd, ac mae hynny yn cynnwys cynulleidfaoedd anodd eu cyrraedd, ac os mai trwy greu platfformau newydd fydd yr ateb gorau yna'r adran hon fyddai'n gyfrifol am greu y rheiny a'u hyrwyddo. Mae nifer fawr o bobol yng Nghymru eisoes yn arbenigwyr yn y maes hwn. Byddai'r adran hon yn gyfrifol am sicrhau cydweithio a'r angen i ddod at ein gilydd i sicrhau llwyddiant ac effeithiolrwydd.

- Adran Newyddiaduraeth

Byddai'r Adran Newyddiaduraeth yn edrych ar newyddiaduraeth yng Nghymru o ran ansawdd a lluosogrwydd. Gall yr Adran hon, er enghraifft, fod yn gyfrifol am sefydlu cyrsiau a phrentisiaethau pellach os y gwelir fod safon newyddiadurwyr ymchwiliadol yn wan yng Nghymru neu nad oes digon ohonynt.

Yr adran hon hefyd fyddai'n sicrhau bod yr arfer o gwestiynu yn digwydd ar draws pob genre o raglenni.

Bydd modd ystyried a all unrhyw ariannu newyddion annibynnol, sydd yn derbyn arian cyhoeddus, brintiedig neu ar lein gael ei ariannu drwy'r adran hon.

Oddi mewn i'r adran hon hefyd byddai modd cartrefu y ganolfan newyddion a fyddai yn darparu newyddion i'n gorsafoedd radio a theledu lleol a chymunedol.

- Adran Cynnwys sy'n Gywir

Byddai'r Adran Cynnwys sy'n Gywir yn gyfrifol am sicrhau bod platfformau sydd yn adrodd newyddion yng Nghymru yn ffeithiol gywir a ddim yn camarwain cynulleidfaoedd. Byddai hefyd yn sicrhau bod rhaglenni yng Nghymru ac am Gymru yn gynrychioliadol o Gymru ac yn cynnwys yr ongl a'r ffenestr Gymreig. Bydd angen i'r adran ddod o hyd i ffyrdd o gydweithio yn rhagweithiol â chwmnïau cynhyrchu.

- Adran Technegwyr

Byddai'r adran hon yn edrych ar yr angen yng Nghymru ym maes cyfathrebu ac yn sicrhau bod y gweithlu yng Nghymru wedi'i gynllunio i ateb yr alwad hon gan gydweithio â'r adrannau perthnasol i sicrhau hyn.

- Adran Sgriptio

Byddai'r adran hon yn magu cenedlaethau o sgriptwyr talentog o bob math a fyddai yn gallu cyfrannu i greu cynnwys Cymreig ar bob mathau o blatfformau.

- Adran Darparu Adnoddau

Byddai'r Adran hon yn y lle cyntaf yn edrych ar argaeledd stiwdios bychain ac isadeiledd cynhyrchu ar draws Cymru ac yn gyfrifol am sefydlu (ac yna rhedeg) isadeiledd o'r fath, yn ôl y galw, yn ein cymunedau ym mhob cwr o'r wlad. Byddai'r isadeiledd hyn ar gael am ddim, neu o leiaf yn rhad ar gyfer galluogi pobl Cymru,

ein cymunedau a chwmnïau bychain Cymru i greu deunydd ar lawr gwlad i'w ddarlledu ar amrywiol blatfformau.

- Adran Creu i'r Diwydiant

Byddai'r Adran Creu i'r Diwydiant yn rhagweld pa offer – meddalwedd, caledwedd ac adnoddau dynol, fyddai angen ar Gymru a thu hwnt yn y maes cyfathrebu i'r dyfodol. Bydd yr adran yn adrodd i'r Cyngor Cyfathrebu Cenedlaethol ar yr angen hwn a'r posibiliadau ariannol ynghlwm â'r fenter, ac yna, o brofi ei werth, bwrw ymlaen â'r gwaith o'i greu. Byddai hyn yn golygu bod Cymru yn gallu elwa i'r eithaf yn ariannol o'r diwydiant wrth fod yn flaengar gan edrych i greu a gwerthu offer a chynnyrch i'r diwydiant adref, i wledydd eraill ynnysoedd Prydain ac i'r byd.

Bydd yr Endid Creu Cynnwys yn atebol i'r Cyngor Cyfathrebu Cenedlaethol.

5. Cyllidol

Byddai'n bosibiliad i gostau'r Endid Creu Cynnwys gael ei ariannu gan ardoll y cwmnïau 'mawrion' nad sydd yn talu treth yng Nghymru ar hyn o bryd, er eu bod yn gwneud arian yng Nghymru, er enghraifft Google, Netflix, Facebook ac yn y blaen.

Wedi dweud hyn, byddai'r oll o'r uchod, o fuddsoddi ynddynt, yn datblygu i fod yn fuddsoddiadau a fydd yn cynnal ei hunain o fewn rhai blynyddoedd.

Galwn ar y Pwyllgor hwn a'n Senedd i fwrw ati ar frys i wneud y symiau perthnasol ar hyn. Galwn arnynt hefyd i ymchwilio a chydweithio gyda gwledydd eraill ar draws y byd sydd yn symud i gyflwyno ardollau ar gwmnïau digidol mawrion sy'n gweithredu yn eu gwledydd.

Mae hefyd angen gwneud ymchwil i werth posibl model newydd Gymreig o'r math yr amlinellir yn y papur hwn, i economi y wlad.

Ble mae'r Gymraeg yn y cwestiwn, a'i chyfraniad i'r economi nodwn argymhellion diweddaraf yn Adroddiad Terfynol Marchnad Lafur Cymru:

Argymhelliad 2 - Ymchwil Newydd - Mae ymchwil ar berthynas yr iaith a'r economi yn brin ofnadwy. Gallai ymchwil pellach gryfhau achos gwerth y pwnc fel ffordd o ehangu defnydd y Gymraeg yn ein cymunedau. Mae angen mwy o ddeallusrwydd academiaidd er mwyn medru dylanwadu ar bolisi yn hytrach na dadansoddi ymchwil blaenorol nad yw bellach yn berthnasol. Bydd ymchwil cynhwysfawr ar ddylanwad yr iaith a'r economi yng Nghymru yn medru creu amodau mwy ffafrïol i'r iaith mewn byd busnes a Chymru'n arwain y byd mewn perthynas iaith leiafrifol a'r economi.' (Argymhellion yr Adroddiad Terfynol Marchnad Lafur Cymraeg, 2020).

Nodwn hefyd eu bod yn nodi yn yr adroddiad:

'...wrth geisio datblygu ymyraethau economaidd sydd o fudd i'r Gymraeg. Cred y tîm ymchwil y dylid ystyried y ffactorau allweddol canlynol: 1. Diffyg data a thystiolaeth o'r hyn sydd yn gweithio. Fel a nodwyd, mae cryn gonsensws ynghylch dylanwad prosesau economaidd ar batrymau defnydd a niferoedd siaradwyr Cymraeg. Serch hyn, prin iawn yw'r ymchwil sydd yn dadansoddi a manylu ar effaith newidynnau a phatrymau neu brosesau economaidd ar lefelau bywiogrwydd neu gynaliadwyedd ieithyddol. Ychydig o ddata a gwerthusiadau sydd ar gael ynghylch prosesau economaidd a'u heffaith ieithyddol h.y. nid oes data ynghylch pa fathau o ymyraethau sydd o fudd i'r iaith. Mae prosiectau megis Marchnad Lafur Cymraeg, Arfor a Revitalise yn ogystal ag adolygiad diweddar o'r lenyddiaeth yn cynnig arweiniad ac argymhellion ar gyfer ymchwil pellach...'

Mae angen i'r Pwyllgor hwn, y Senedd a'r Llywodraeth fynd ati i gynnal nifer o astudiaeth dichonoldeb fel man cychwynnol i'r symudiad tuag at ymreolaeth o'r maes cyfathrebu.

6. Ymarferoldeb

Yn ymarferol, mae gweithredu hyn oll yn hollol bosibl, yn dechnegol, fel y gwelir mewn gwledydd ar draws y byd.

Fel sydd yn wir am ymchwilio i'r amrywiol ffyrdd y gellir ariannu 'Yr Atebion' yn y ddogfen hon, mae angen cynnal astudiaethau ac ymchwil i sut y gellir ddechrau'r broses o symud y pwerau yn ôl i Gymru, ac hefyd sut mae sicrhau blaenoriaethu deunydd sy'n berthnasol i Gymru ar ein dyfeisiau.

Dyma un dolen o'r gorffennol, o laweroedd, sydd wedi'u paratoi gan yr IWA. Os yw'r ddogfen hon yn dangos unrhyw beth i ni, mae hi'n dangos ers faint o amser mae'r angen i ddatganoli darlledu wedi cael ei sylweddoli a'i ddadlau.

<https://www.iwa.wales/agenda/2009/03/english-is-a-welsh-language/?lang=cy>

7. CANLYNIAD

Yr hyn sydd angen arnom wrth y Pwyllgor hwn, wrth ein Senedd ac wrth ein Llywodraeth nawr ydy sylweddoliad bod y cwestiwn anghywir yn cael ei ofyn ar hyn o bryd. Nid 'os', ond 'sut' yw'r cwestiwn cywir, a sut i wneud hynny ar frys mawr. Digon ar hyn nawr, dewch i ni ddechrau ar y gwaith o holi'r cwestiynau cywir ac ar lunio ein dyfodol gwell i'r genedl, yn unol â Deddf Llesiant y Dyfodol. Mae'r ddogfen hon, ynghyd â'r dystiolaeth flaenorol a gyflwynwyd i chi wedi dechrau ar y gwaith. Bydd y Cyngor Cyfathrebu Cenedlaethol yn parhau â'r gwaith hwn tan bod ein Senedd a'n Llywodraeth yn barod i gydnabod eu cyfrifoldeb.

Cyflwynwn hefyd y clip hwn, fel dystiolaeth bellach, o gyfweiliad gyda dau aelod o Fwrdd y Cyngor Cyfathrebu Cenedlaethol yn esbonio eu haelodaeth:

<https://youtu.be/dCKAdzdrRr0>



Independent Commission on the Constitutional Future of Wales: Response from Cytûn (Churches together in Wales)

Introduction

Cytûn represents 19 of the main Christian denominations in Wales. These denominations have over 150,000 adult members, and close contact with thousands more adults, children and young people in every community in Wales. There are a number of Christian organisations that are 'Category B' members and take part in our work. A complete list of member denominations and organizations can be seen here: <https://www.cytun.co.uk/hafan/en/who-we-are/>

This response was drawn up following consultation with the relevant officers of our member denominations and organisations, and based on statements made by our members over the years. As the name 'Churches together' suggests, we speak in the name of Cytûn when our members are together in agreement; on issues where there is disagreement individual denominations or organisations will make their own declarations.

In particular, there is no agreement between us about the future constitutional pattern of Wales, and therefore we do not respond to question 6. From the 1950s onwards some of our member denominations supported the establishment of a Parliament for Wales, while others were neutral. In 1996 Cytûn published: *Wales: A Moral Society?* and that report noted that a majority (but not all) of its member churches at the time were in favour of a measure of devolution to Wales.

In the 1997 and 2011 referenda some denominations supported a vote in favour of change and the rest were neutral; none of our members have publicly opposed the establishment or expansion of devolution, but we know that many individual members in our churches have voted against, in the same way as others are enthusiastically in favour of devolution or support independence.

In the 2016 referendum regarding membership of the European Union, none of our members made a statement about how to vote in the referendum, although the Bench of Bishops of the Church in Wales announced that they would as individuals vote Remain. Individuals church members campaigned on both sides. After the referendum, Cytûn received a request from the annual conferences of three of our member denominations to establish a Working Group to address the implications, and Cytûn's Wales and Europe Working Group has been active in this policy area ever since, offering information to churches and working together with others in the third sector, and with church organisations throughout Europe.

1. What matters to you about the way Wales is run?

All our member denominations and organizations are committed to democratic methods of governing the country, while also believing that we receive guidance on moral issues from God and not necessarily through a majority vote. We would, therefore, reaffirm the position outlined in *Wales: A Moral Society?* in 1996:

Whatever criticisms can be made of its principles and practice, the democratic system which is characteristic of government within Wales and the United Kingdom should be valued and strengthened. In theory, it allows men and women access to power and enables them to participate in their own government locally, and within the UK... A democratic form of governance seeks to maintain fairness and consensus within society. Traditionally, democracy has maintained a realistic balance between the individual and community, freedom and order, self-interest and the common good. ... However, in practice, democracy has never wholly embodied these principles. It has been sullied both by the perversity of human nature and the perpetual imbalance within the structures of society. Private citizens have often despaired because they have perceived that the established forces of privilege have manipulated the political process for their own ends. Vested interests are scarcely touched by the electorate's desire for change, while whatever superficial improvements that do occur are offset by the effects of deeply entrenched power blocks, whether based on economic interest, class, section or gender interests. (chapter 6, para 1.2-1.3).

In 2022 as in 1996, it is important to us, therefore, that governance is:

- Characterised by truth and integrity. We warmly welcome the Commission's strong comments along these lines in Chapter 2 of the Interim Report, and we offer in addition the recent statement by Cytûn member the Society of Friends (Quakers) regarding these matters. **Their statement is attached to this response** as an example of how we believe such values should be integrated into governance at all levels. There is no commission for standards in public life in Wales, only the Senedd's standards commissioner. Having a commission on standards in public life in Wales could help maintain and develop public confidence in government.
- Open and transparent, and makes an effort to engage with citizens, especially on issues where there is deep disagreement. We are supportive of the 'five ways of working' in the Well-being of Future Generations Act, and are keen to see them fully implemented. The five ways are: long-term thinking; preventing problems; integration of decision-making; collaboration; and involvement. Some of our members would also like the Commission to make recommendations to improve transparency regarding lobbying in Wales.
- Comprehensible and accessible to ordinary citizens. The more complex the method of governing, the more difficult it will be to involve people in the decision-making process. The big questions of our time (such as the climate and biodiversity crises, or tackling prejudice and inequality) require action at all levels and from all departments of government, as well as from civil society. Government must therefore enable people to contribute where and in the way that is best for them, rather than referring people to another part of government.
- Responds to the direction of society, without necessarily trying to steer it. During the early weeks of the 2020 pandemic, grassroots organizations were seen offering support to their communities without any help from official crisis-style governments. On the whole this was appreciated by local authorities and the Welsh Government, but several attempts were seen to try to control these grassroots movements rather than learning from them.
- Accountable to the public. This means that it needs to be clear who has made a specific decision, and how therefore one could campaign to change it. This need for democratic accountability was one of the cornerstones of the campaign to leave the European Union, and the electorate's wish to have a constitutional system that allows this should be respected.

2. What do you think the priorities for the commission should be?

We understand that the Commission has a duty to present some recommendations about a constitutional future, but we believe that this should be within the context of recommendations about the issues mentioned in Qn 1 above, rather than trying to imagine a constitutional pattern for Wales in the abstract. We therefore welcome Chapter 2 of the Commission's Interim Report, and we would press for the values emphasised there to be more deeply embedded in the remainder of the final report.

3. Thinking about how Wales is governed, by the Welsh Government and the UK government, what are the strengths of the current system, what aspects do you most value and wish to protect? Can you provide examples?

- In devolved policy areas, the Welsh Government and the Senedd have developed accessible routes for civil society - including churches - to access Government ministers, civil servants, MSs and Senedd staff, through formal structures such as the Third Sector Partnership Council and the Faith Communities Forum, and through a willingness to respond to requests for less formal involvement. This paid off handsomely during the Covid-19 period, as a healthy relationship already existed between the Welsh Government and representatives of churches and faith communities in Wales, and the wider third sector, and we managed to use these to ensure intensive and frequent consultation as the situation changed.
- The Welsh Government is able to provide a useful and accessible bridge for Welsh civil society to engage with the UK Government. For example, as the UK Government prepared and implemented the Settled Status Scheme for European citizens, the Welsh Government convened a panel of representatives of the voluntary sector (including Cytûn) and the Home

Office to discuss the scheme, how it worked, and how to reach people who might miss out on it. This is very effective when engaging with issues, such as the Settled Status Scheme, where the needs of Wales are but a small part of the UK Government's overall consideration.

- Cytûn was part of creating a highly effective partnership between the two governments through the [Wales Strategic Migration Partnership](#) over a number of years. This partnership bore fruit in terms of giving practical meaning to Welsh Government's designation of Wales as a Nation of Sanctuary. Working with many and partners, especially Displaced People in Action, there were innovative schemes such as the WARD project which trains refugee doctors. A way was found to alleviate some of the difficulties in the location of asylum seekers in Penally in Pembrokeshire. Working with the UK Government's Home Office and other partnerships, innovative work was completed with regard to welcoming refugees from Afghanistan and Ukraine, making the Welsh Government's Super-Sponsor scheme possible.

4. Are there any problems with the current system, and if so, how could they be addressed? Again, please provide examples.

- Constant changes in the boundary between devolved and reserved matters create confusion and uncertainty for organisations and citizens. Some of the legislation in Westminster following exit from the European Union deliberately plans for such changes. For example, the UK Internal Market Act allows the UK Parliament to legislate for England only, but affect Wales without any consent process from the Senedd. Thus para. 16 of the [Explanatory Memorandum](#) for the Genetic Technology (Precision Breeding) Bill 2022-23 says: *The mutual recognition principle in the United Kingdom Internal Market (UKIM) Act 2020 will apply to precision bred plants and animals, and food and feed derived from them, which are produced in or imported into England, meaning that it would be possible to place them legally on the market in Scotland and Wales if they can be marketed lawfully in England as a result of this Bill and the delegated legislation to be made under it.* Should this become the norm, the boundary between devolved and reserved matters will shift regularly, raising questions about democratic accountability.
- A number of other Westminster Acts and Bills allow UK Secretaries of State to make secondary legislation in devolved areas, such as the [Northern Ireland Protocol Bill 2022-23](#), the [Trade \(Australia and New Zealand\) Bill 2022-23](#), the [Procurement Bill 2022-23](#) and – most notably – the [Retained EU Law \(Revocation and Reform\) Bill 2022-23](#). Each time such a bill becomes law it complicates questions of accountability, particularly where the powers are concurrent between Secretaries of State and Welsh Ministers, as there is no way for the public to know which minister is likely to use the powers or which Parliament would scrutinize the relevant secondary legislation. The situation is further exacerbated when such laws are implemented contrary to a vote in the Senedd refusing legislative consent.
- Where there is discussion between the two governments regarding the devolution boundary through the Legislative Consent process, the tendency is often to reach an agreement that UK Ministers' powers in devolved areas will not be used without the consent of, or at least consultation with, Welsh Ministers. All such agreements, although respecting the devolution boundary, increase the powers of Welsh Ministers at the expense of the powers of the Senedd, which has the constitutional right to legislate in these areas. This distances the public from the place where decisions are made, as their elected members will not be involved in the decisions in question.
- In addition to constitutional changes, political rivalry between the two governments can worsen the situation. For example, the [statement of the Minister for Economy](#) in the Welsh Government that *the Welsh Government will not deploy our own resources to implement UK Government programs in Wales which we consider to be flawed and undermining of the devolution settlement* means that communities that bid successfully for the Shared Prosperity Fund may lose out because Welsh Government will not contribute to the costs of running these programmes in their areas due to political disagreement between the two governments.
- Our concern about these matters is not theoretical. We believe that they are hampering an effective response to the cost of living crisis and equality in Wales – for example, the fact that

levelling-up money is being distributed directly to certain local authorities, by-passing Welsh Government and thus undermining devolution, makes co-ordination of effort and efficient use of limited public resources much more difficult. Local authorities have had to invest in extra administrative resources to establish direct relationships with UK Government, in addition to maintaining their relationship with Welsh Government, which provides most of their funding.

5. Thinking about the UK government, the Welsh Government and Welsh local government (your local council), what do you think about the balance of power and responsibility between these three types of government – is it about right or should it change and if so, how? For example, who should have more power, or less?

The Cytûn Wales and Europe Working Group want to emphasize that we support the principle of subsidiarity in governance - that is, that decisions should be made at the closest level to people as possible, and specifically by the people affected most. This concept derives from the social teaching of the Catholic Church, and is summarized in this short video by our member organisation, CAFOD: <https://www.youtube.com/watch?v=62I2IHxNz2w>

We would therefore reaffirm what *Wales: A Moral Society?* noted in 1996, prior to devolution, that on a day-to-day basis, local churches will be much more involved with their local council than with the Welsh Government or the UK Government. The help and support of local councillors and local authorities will often be important for churches when launching community projects, and it is with local government officials that they will discuss issues such as food hygiene certificates, registration of childcare facilities, planning permission and listed building consent, co-ordination with statutory services regarding food banks etc. Adult education services and social services often use church buildings for classes, carers' clubs, informal day care, etc. Many churches have close links with schools maintained by the local authority. They will also engage with regional authorities, such as fire authorities regarding fire safety in their buildings, and Local Health Boards regarding chaplaincy services and volunteering. In those areas with community councils, this is the level of which church members will often be most aware (and on which they are most likely to serve as councillors).

The result of this is that Welsh Government can seem distant, as so many of the services funded by the Government are provided through local and regional authorities. Local churches often express frustration that local councillors and local or regional officials simply implement regulations and use budgets set at Welsh Government or Westminster level, and there is a sense that those making the national decisions fail to understand the local reality for officers and the public.

We believe that the way to improve this is not to change the constitutional balance of 'powers' between the different levels, but rather to implement more fully the five ways of working in the Well-being of Future Generations Act in all the bodies covered by the Act. Integration and co-operation when formulating policy would be a great help for the public to also be able to understand what is happening and contribute constructively to improving policies and outcomes.

7. Overall, what is most important to you in about the way in which Wales should be governed in the future? Is there anything else you want to tell us?

What is needed is good, open, transparent and democratic governance, with accessible routes for the public to be able to contact elected members, and through them the people responsible for formulating policies before final decisions are made.

In responding to these questions, we would welcome views on how the current forms of governance, and any proposals to change governance in the future, might impact on the Welsh language.

Many of our member denominations and organisations operate partly or entirely through the medium of Welsh. Some of them (such as the Welsh Sunday Schools Council) have been established solely to promote Christian work through the medium of Welsh. The translation of the Book of Common Prayer and the Bible into Welsh in the 16th century were essential to the survival of the language and its becoming a literary language. Welsh Nonconformist chapels have been at

the core of Welsh language culture since the seventeenth century, and have also given their members experience of governance on a democratic pattern with all members, men and women, electing officers and contributing in church meetings long before they had the secular franchise.

Welsh Government and the Senedd generally operate bilingually and therefore promote the use of the Welsh language. Nevertheless, our experience of participating in policy work is that much of the early work is done in English only, with Welsh translation at the end of the process. This is not the same as working thoroughly bilingually, and the consequences of this are seen from time to time when documents are translated. For example, in one consultative document about religious education in schools, the English document mentioned "a pluralistic education" and the Welsh document about "addysg amblwyfol" ("multiparochial education"), which has a completely different meaning (and is ridiculous in this context). Similarly, when consulting on the Public Health Bill in 2016, reference was made to the intention to prevent "intimate piercing" for children under 16, but in Welsh reference was made to legislating to prevent "enwaedu" ("circumcision") for such children, causing consternation in the Jewish and Islamic communities. Working on the policy bilingually from the start, rather than relying on a translator at the end of the process, would have avoided anxiety, and saved the cost of re-publishing the corrected document. We believe, therefore, that there is still a way to go in terms of operating truly bilingually and ensuring operational equality for both languages.

In the case of the UK Government, the use of Welsh is inconsistent and fragmented. Some departments publish consultation documents, or at least a summary of them, in Welsh, but the public often have to respond in English - creating difficulty in correctly referring to the document and its terminology. Other departments operate through the medium of English only. Steps towards changing the devolution boundary in favour of centralising decisions in Westminster, therefore, reduce the use of the Welsh language in the public sphere. The fact that legislating for the Welsh language is a devolved matter, and that the Senedd cannot - since the Wales Act 2017 - legislate for matters beyond the borders of Wales, has exacerbated this difficulty, as there is no legal means of introducing language duties on departments of the UK Government or the Westminster Parliament.

Response to the Independent Commission on the Constitutional Future of Wales's Have your say: the constitutional future of Wales consultation

The Electoral Reform Society (ERS) welcomes the Independent Commission on the Constitutional Future of Wales's national conversation about the way Wales is run, through its open consultation. Debate and concerns around Wales and the UK's constitutional arrangements, and their long-term stability and effectiveness, have come to the fore in recent years, particularly in light of the UK's exit from the European Union and, more recently, the coronavirus pandemic. The ERS has long campaigned on issues relating to the future governance of Wales and the UK, including calling for UK-wide constitutional conventions as well as advocating for measures to improve democracy in Wales, from Senedd reform to the use of deliberative democracy tools.

About the Electoral Reform Society

The Electoral Reform Society is the UK's leading voice for democratic reform. We work with everyone – from political parties, civil society groups and academics to our own members and supporters and the wider public – to campaign for a better democracy in the UK.

Our vision is of a democracy fit for the 21st century, where every voice is heard, every vote is valued equally, and every citizen is empowered to take part. We make the case for lasting political reforms, we seek to embed democracy into the heart of public debate, and we foster the democratic spaces which encourage active citizenship.

Executive Summary

The Electoral Reform Society would like to see a Wales where every voice is heard, every vote is valued equally, and every citizen is empowered to take part. This includes improving our democracy by removing barriers to participation at all levels, increasing engagement and ensuring everyone has the knowledge they need to make informed decisions.

With devolved elections yet to reach 50% turnout and a backdrop of declining [trust in politics and politicians across the UK](#) more generally, it is clear that something needs to be done to reinvigorate democracy in Wales as well as across the UK.

The Covid-19 pandemic showed that the Welsh Government is able to forge a different path and that the [public is generally supportive of that](#). However, this support and increased salience of the Senedd, Welsh Government and devolution did not equate to significantly higher turnout in the 2021 Senedd elections (at [46.6%](#) this was the highest turnout to date, though still less than 50 percent of the electorate) or the 2022 local elections where turnout ranged from 31.33% in Torfaen to 48.6% in Ceredigion. We need to change how we do democracy in order to reconnect the electorate and politicians and in some cases forge first connections. We commend the Welsh Government for the steps it has taken to broaden democratic engagement in Wales over the last couple of years, from extending the franchise to the flexible voting pilots, however there is still much work to be done. Below we have outlined the changes we think could help reduce this democratic deficit and build a Wales where everyone's voice is part of the conversation.

These changes fall into three main themes:

- Process – improving access to democratic participation in Wales.
- Engagement – increasing engagement and understanding; embracing innovations in deliberative democracy.
- Governing – reimagining the governing structures of the UK to build collaboration and trust between different levels of government, and ensuring that decisions are being made as close as possible to the people and communities they will affect.

1. Process

The latest estimates from the [Electoral Commission \(December 2018\)](#) suggest that around half a million people in Wales (410,000 – 560,000) are missing from the electoral register. The report's chair, Sir John Holmes, [reflected that these findings](#) 'should not be acceptable in a modern democracy' and called for more innovative use of the national data already available in addressing this problem by moving towards automatic or more automated forms of registration. Improving access to our voting system through automatic voter registration would be a significant step forward in removing one of the first barriers to democratic participation.

In addition to increasing the accessibility of registering to vote, making sure everyone is able to follow through and cast their vote on election day is also crucial. We are keen to see the

outcomes of the flexible voting pilot schemes that took place during the local elections earlier this year and would advocate that any lessons in increasing engagement through broadening access to voting are taken forward and rolled out across Wales ahead of the next devolved elections.

We would like to see a voting system used in all devolved elections that ensures seats match votes and which maximises voter choice. The Single Transferable Vote (STV) is our preferred method of achieving this where, along with seats matching votes, voters are also enabled to express their voting preferences without the fear of wasting their vote. While we welcome the current progress on Senedd Reform in embedding a commitment to proportional representation and a clear rejection of the winner-takes-all First Past The Post (FPTP) system, the current plans for a Closed-List PR electoral system still do not provide the freedom of choice that the electorate deserves. While this system goes some way to addressing the [tactical voting regularly employed in FPTP elections](#), including the constituency voting element of AMS currently used in Senedd elections, it falls short on voter choice, with votes only given to a party not specific candidates. Here STV is the gold standard, maximising voter choice beyond a single 'X' through preference transfers while providing fair and proportional results. Progress has also been made on local government elections with the opportunity for councils to optionally move to an STV system if there is over 2/3rds support. While we welcome the option to introduce STV at a local level, much more needs to be done in supporting councils to make the move.

Decisions and the workings of government at all levels should be transparent and adhere to the principles of Open Government (transparency, integrity, accountability and stakeholder participation).

2. Engagement

It's clear from our 2017 [Missing Voices](#) report that a lack of understanding around politics along with frustration around how decisions are made are key reasons for disengagement in Wales. This lack of understanding was echoed by young people across Wales in our 2018 [Our Voices Heard](#) report.

The lack of a robust and varied Welsh media increases the democratic deficit in the country. It cannot be right that many people do not receive basic information about the Senedd and Welsh Government that allows them to participate meaningfully in Senedd elections and Welsh politics in general.

A survey by the BBC/ICM in 2014 found only 48% people could correctly identify that health was a devolved matter, and 42% of people wrongly believed the then National Assembly had control over policing.

A number of committee reports and academics have mentioned devolving or transferring some powers over broadcasting would improve media provision in Wales. This issue has been brought up frequently since the beginning of devolution and needs to be urgently considered especially now it is the view of the Welsh Government that broadcasting should be devolved following the Cooperation Agreement between Welsh Labour and Plaid Cymru.

ERS has long advocated for proper political education in Wales as one means of combating the democratic deficit. In 2018 as part of the [Our Voices Heard](#) project we worked with over 200 students in twelve schools throughout Wales co-producing recommendations about what they wanted to learn in school to prepare them to participate fully in democracy. As it stands, political education is patchy but when talking with young people, it is clear that there is a desire to know more about the way decisions are made, about how to campaign and influence those decisions, and how things in Wales actually work.

Statutory political education in schools would arm the next generation with the tools to make informed decisions while wider political education could help address the same issues amongst the wider population. Welsh Government's commitment to ensuring pupils '[understand and exercise their human and democratic responsibilities and rights](#)' through the new Welsh curriculum is a great step forward in addressing the knowledge gap amongst young people. However, every pupil must have an opportunity to learn the fundamental basics of our democracy or we will be repeating the mistakes of the past.

The use of deliberative tools, such as citizens' assemblies, ensure that people are at the heart of decision making and can see their voices and opinions being respected and having an effect. The use of deliberative tools at various levels of government can help build trust between the electorate and the system as well as providing legitimate, effective and sustainable solutions to the problems we face in the 21st century. ERS has led the way in Scotland using deliberative tools to empower local citizens to make decisions in their local areas through the [Reclaiming Our Coalfield Communities](#) project. As part of the [Our Democracy](#) coalition feeding into the Scottish government's [local governance review](#), ERS Scotland has piloted and developed innovative ways of involving citizens in the decisions

that affect them, showing how to create [‘a ‘honeycomb’ of democratic layers’](#). Projects such as these can provide a route map to how similar engagement could be achieved across Wales.

3. Governance

The current balance of powers within the UK is failing, anchored in Westminster and underpinned by its centralising and power-hoarding structures and culture. Despite devolution across the UK, this centralisation permeates the British state’s relationships with the UK’s nations and localities, acting as a barrier to genuine and long-term collaboration, trust and parity of esteem. The ERS believes that the overall structure of, and approaches towards, constitutional arrangements regarding the governance of the UK should be revisited. There should be a new constitutional framework, based on an overarching, comprehensive, long-term vision and purpose, and underpinned by clear principles and parameters, to serve as the overall structure of the UK’s governance arrangements – across, between and within each constituent part. Principles might include: transparency, participation and co-creation, subsidiarity, trust, collaboration, and parity of esteem. A new framework of this kind should not only inform reform of the UK’s constitutional arrangements, but the various devolutionary settlements across the UK. We would advocate for UK-wide constitutional conventions to help determine these arrangements.

We would also advocate for reform of the House of Lords as a central pillar in strengthening and enhancing the UK’s governance arrangements, recognising the UK as it is, not as a pre-devolution, unitary state. A reformed second chamber could serve as a forum in which the four nations can work together. An [elected second chamber](#) could be the place where UK-wide, sub-national, and cross-border issues are discussed, where sub-national interests and concerns can be raised and given a fair hearing away from the more politicised and short-term ethos of the House of Commons, and which provides a space for union-wide collaboration and shared learning on an ongoing basis.

Within Wales itself, devolved powers are still highly centralised within the Senedd. Powers should be dispersed more widely across Wales and brought as close as possible to people and communities, in line with the principle of subsidiarity, allowing for local policy-making and citizen involvement.



Federation of Small Businesses
Ffederasiwn y Busnesau Bach

The Independent Commission on the Constitutional Future of Wales
Cathays Park
Cardiff
CF10 3NQ

Thursday 22nd June 2023.

Annwyl Gomisiynwyr / Dear Commissioners,

Thank you for your letter dated 23 May 2023 asking for our views on the scope of devolution of employment law.

You outline in your letter that you have received ‘no specific proposals for devolution’. You’ll appreciate that responding to the general scope of devolution without concrete proposals is challenging. In terms of constitutional preferences, our members individually will obviously have widely varying views. This is not an area with which we have previously had detailed conversation with our membership nor have had to seek views on proposals.

Moreover, we have not explored or been involved in discussions with governments or other stakeholders on particular proposals on options for reform or devolution or where potential devolution of any responsibilities in employment law would improve the landscape for employees or employers or indeed make it less complex – both of which would seem sensible points of priority for any suggested changes.

We would note therefore that FSB would err on the side of caution, with a compelling case needing to be made for any further such devolution on employment that it would better serve SMEs and their employees than the current system.

On general principles, we would note the following:

- Lack of consistency and increased legal complexity can have an impact on SMEs’ work and time, with potential opportunity costs for growth.
- As a broad principle, FSB has been supportive of UK-wide approaches which promote simplicity, ease of understanding and allow businesses to operate in a frictionless way across the UK market.
- While FSB has supported devolution of additional powers and responsibilities in certain areas previously, there would have to be absolute clarity on the issues which are looking to be resolved or improved by any proposed changes.



Federation of Small Businesses
Ffederasiwn y Busnesau Bach

- Any divergence in law, policy and regulation on employment would necessarily require a significant investment in support and help for capacity building through institutions and agencies so as to advise SMEs to promote understanding and what changes they would need to undertake.
- Cross-border issues, where the role of employment based around workers across the border (whether commuting, hybrid, or remotely based in England) would need to be addressed to ensure clarity for employers and consistency across the workforce, with a means to ensure that SMEs do not fall into two separate employment practices or be inadvertently at risk of non-compliance. The porous nature of the border of Wales and England means that differential policymaking in such a significant area may be challenging to businesses and disproportionately so for businesses with less resource or access to sufficient professional advice.
- Any proposed changes would need to be made in a holistic and transparent way. We would be uncomfortable with attempts to 'stretch' the existing settlement through piecemeal changes that consequently indirectly affect employment. This is likely to cause greater complexity, confusion, and less confidence as well as make regulation and law more difficult to navigate for SMEs.
- Any proposals for devolution of responsibilities in any legislative areas affecting SMEs, should have at their heart, simplification of existing processes and procedures – in this instance, to make it simpler for simpler for businesses to employ.
- It is vital that SMEs in Wales by comparison to the other nations of the UK are not placed in a position of competitive disadvantage.

Thank you for requesting our views, and we hope this is a helpful contribution.

Yr Eiddoch yn Gywir / Yours Sincerely,

Head of Wales, Federation of Small Businesses

Have your say: Gwlad

Q1. 1. What matters to you about the way Wales is run?

Mae Cymru'n genedl, a chyflwr naturiol am genedl yw bod yn annibynnol. Felly y peth mwyaf bwysig oll wrth ystyried llywodraeth Cymru ydy, sut mae cyrraedd o le ein bod ni rwan hyd at annibyniaeth. Ar ôl cael annibyniaeth, mater am bleidleiswyr Cymru yn unig fydd y cwestiwn o sut caiff yr wlad ei llywodraethu wedyn; ond rydan ni'n dadlau mai cael ei llywodraethu o'r canol-dde gydag economi farchnad-rhydd a ffiniau agored fydd y ffordd orau i sicrhau llwyddiant economaidd a chymdeithasol i Gymru.

Q2. 2. What do you think the priorities for the commission should be?

Mi ddylai prif flaenoriaeth y comisiwn fod i edrych ar sut, yn ymarferol, y gall Cymru symud tuag at annibyniaeth mewn ffordd drefnus a sefydlog. Dylai'r Comisiwn tacllo'r cwestiwn hwnnw'n fanwl.

Q3. 3. Thinking about how Wales is governed, by the Welsh Government and the UK government, what are the strengths of the current system, what aspects do you most value and wish to protect? Can you provide examples?

Mae'r drefn bresennol yn anfoddfaol am lu o resymau. Os oes un peth da amdano, hwnnw ydy'r ffaith fod Cymru fel rhan o'r DU yn cadw ei chysylltiad gyda'r holl Ynys Prydain, gyda'r hon fod cymaint o'n hanes ynghlwm. Mae Cymru yn wahanol iawn o'r Alban nac Iwerddon yn y ffaith bod ein hanes ni fel diwylliant 'brodorol' yn ynys hon (noder y defnydd o'r gair 'diwylliant' ac nid 'tras') yn tarddu o'r holl ynys, yn cynnwys y rhan sydd y tu allan o'n ffiniau presennol, tra bod hanes yr Alban ac Iwerddon yn cymryd lle yn hollol o fewn eu ffiniau nhw. Mae'n wiw i gydnabod hynny, a bod yn ofalus na fyddai annibyniaeth yn cael y sgîl-ffraith annymunol o rwygo Cymru i fwrdd o rai o'i thiroedd cynhenid.

Q4. 4. Are there any problems with the current system, and if so, how could they be addressed? Again, please provide examples.

Mae'n anodd wybod lle i ddechrau, ond:

- 1) Wrth gymharu Cymru â gwledydd eraill o faint tebyg, neu llai, yn Ewrop (fel gwledydd y Llychlyn, a'r Ffindir, a'r gwledydd Baltig), mae'n debyg fod ein hiaith a diwylliant dan llawer mwy o straen fel canlyniad o geisiadau gan Lywodraeth y DU i'w dileu yn llwyr yn y gorffennol, a diffyg ffordd i atal mewnlifiad o Loegr yn yr oes presennol.
- 2) Wrth gymharu Cymru â gwledydd eraill o faint tebyg, neu llai, yn Ewrop (fel gwledydd y Llychlyn, a'r Ffindir, a'r gwledydd Baltig), mae'n amlwg fod ein cyflwr economaidd yn llawer gwaeth: gwaeth yn nhermau absoliwt wrth gymharu ein hunain gyda'r rhai yng Ngorllewin Ewrop, a llawer gwaeth yn nhermau tyfiant economaidd i gymharu gyda'r rhai yn y dwyrain.
- 3) Wrth gymharu Cymru gyda gweddill y DU, mae'n amlwg fod ein cyflwr economaidd yn llawer gwaeth: cymharer Wrecsam neu'r Trallwng gyda Chaer neu'r Amwythig, er enghraifft. Er fod gan hyn llawer i ymwneud gyda'r ffyrdd hanesyddol y tynnwyd adnoddau allan o Gymru (e.e. gwllân o Gymru yn cael ei fasnachu yn yr Amwythig yn hytrach nag yng Nghymru ei hunan), heddiw mae hyn yn gallu cael ei esbonio i raddau helaeth gan ddiffyg buddsoddiad yn isadeiledd yr wlad.
- 3) Mae'n beth prin i weld 'lliw' y llywodraeth yn San Steffan adlewyrchu pleidleisiau Cymru. Mae'r annhegwch sylfaenol o Gymru'n cael ei llywodraethu gan y Ceidwadwyr am y rhan fwyaf o'r ganrif ddiwethaf, er gwaethaf bod nhw erioed wedi cael mwyafrif yng Nghymru, yn amlwg iawn.
- 4) Ynghlwm gyda'r pwynt diwethaf, mae rhwystredigaeth gyda'r sefyllfa honno wedi arwain at atgasedd afresymol tuag at y Ceidwadwyr yn llygaid llawer o bleidleiswyr Cymru, sydd yn ei dro wedi cadarnhau cryfder y Blaid Lafur fel y ffordd gorau o 'gadw y Toriaid allan'. Mae hyn wedi arwain at ddominyddiaeth unbleidiol y Blaid Lafur yng Nghymru i raddau sydd yn afiach dros ben, yn arwain at lu o fan-lygreddigaethau ac at lywodraeth diog a aneffeithlon ar bob lefel, o'r Senedd i lawr.
- 5) Mae diffyg nerth gwleidyddol gwirioneddol yn y Senedd, oherwydd ei statws israddol wrth gymharu a San Steffan, yn arwain i ddiffyg sylw yn y cyfryngau (yng Nghymru ac yn y DU yn fwy gyffredin) a diffyg diddordeb gan bleidleiswyr yn y pethau sy'n mynd ymlaen yno. Mae hyn hefyd yn gadael i'r Llywodraeth

Q4. 4. Are there any problems with the current system, and if so, how could they be addressed? Again, please provide examples.

Lafur yno dianc rhag cael archwiliad go iawn, gyda'r canlyniad fod y safon llywodraethu (a safon y bobl sy'n gwneud o) yn llawer is nag y dylai fod.

Q5. 5. Thinking about the UK government, the Welsh Government and Welsh local government (your local council), what do you think about the balance of power and responsibility between these 3 types of government – is it about right or should it change and if so, how? For example, who should have more power, or less?

Yn gryno, mwy o bŵer yn y Senedd a chynghorau a llai yn San Steffan.

Ac eto, yn ymarferol yn y tymor byr, mi ddylai'r tyfiant ym maint i Senedd sydd newydd wedi ei benderfynu, mynd law yn llaw gyda lleihad ar y *rhif* o gynghorau lleol (yn enwedig cynghorau cymuned) a chynghorwyr lleol. Roedd yr etholiadau lleol ym mis Mai yn dangos unwaith eto fod llawer gormod o seddau cyngor yng Nghymru, gyda llawer iawn ohonyn nhw yn cael eu llenwi heb etholiad a rhai, yn wir, heb eu llenwi o gwbl. Yn yr etholiadau mi welwyd lawer o bobl yn cwyno nad oedd ymgeisydd ar gael o ba blaid bynnag yr oedden nhw eisiau pleidleisio drosto - doedd gan hyd yn oed y pleidiau mawrion digon o ymgeiswyr i sefyll ym mhob sedd.

Ar yr un pryd, mae'n wiw y dylai'r lleihad yn rhif Aelodau Seneddol o Gymru yn San Steffan, sydd wedi penderfynu yn San Steffan heb unrhyw ymgynghoriad gydag etholwyr Cymru, mynd law yn llaw â lleihad ym mhŵer a chyfrifoldeb San Steffan dros Gymru.

Felly:

San Steffan - llai o aelodau, llai o bŵer.

Y Senedd - mwy o aelodau, mwy o bŵer.

Cynghorau lleol - llai o aelodau, ond mwy o bŵer.

Q6. 6. As a distinct country and political unit, how should Wales be governed in the future? Should we: broadly keep the current arrangements where Wales is governed as part of the UK, and the Westminster Parliament delegates some responsibilities to the Senedd and Welsh Government, with those responsibilities adjusted as in Q5, OR move towards Wales having more autonomy to decide for itself within a more federal UK, with most matters decided by the Senedd and Welsh Government, and the Westminster Parliament decides UK-wide matters on behalf of Wales (and other parts of the UK) OR move towards Wales having full control to govern itself and be independent from the UK OR pursue any other governance model you would like to suggest alongside any of these options, should more responsibilities be given to local councils bringing decision making closer to people across Wales and if so, please provide examples.

Dylem fod yn wlad annibynnol, dim yn rhan o'r DU mewn unrhyw ystyr o gwbl.

Eto, dylai'i cwestiynau o 'annibyniaeth' a 'bod yn weriniaeth' cael eu cadw'n hollol ar wahân o'u gilydd. Mae enghreifftiau fel Awstralia, Seland Newydd, Canada, a hyd yn oed Iwerddon rhwng 1922 a 1949, yn dangos ei bod hi'n bosib i wlad fod yn hollol annibynnol i bod pwrpas ymarferol tra'n cadw Brenin neu Brenhines y dydd fel pennaeth. Os oes cefnogaeth ar lawr gwlad am gadw perthynas rhwng Gymru a'r teulu Brenhinol, nid oes angen i hyn fod yn dramgwydd rhag wasgu ymlaen gydag annibyniaeth ar lefel llywodraethol.

Mi ddylai cynghorau cael mwy o bwerau beth bynnag, ond llai o aelodau, fel y dywedwyd mewn ein hymateb i'r cwestiwn uwchben.

Q7. 7. Overall, what is most important to you about the way in which Wales should be governed in the future? Is there anything else you want to tell us?

Ym 1898, pan ymbiliodd grwp o Aelodau Seneddol Cymreig i Lywodraeth Llundain dros newid Jac yr Undeb i adlewyrchu presenoldeb Cymru yn yr Undeb, yr ymateb oedd fod hynny'n amhosib oherwydd "if we were to alter the Royal Arms, many other parts of her Majesty's dominions, besides Wales, would

Q7. 7. Overall, what is most important to you about the way in which Wales should be governed in the future? Is there anything else you want to tell us?

have to be considered".

Erbyn hyn, mae'r rhan fwyaf helaeth o'r "many other parts" hynny yn wledydd annibynnol. Dydy'r un ohonyn nhw wedi ymbilio i ail-ymuno. Dylai Cymru fod fel un ohonyn nhw, ac unig nôd dilys i brosiect fel hyn ydy gweithio allan y ffordd gorau i gyflawni hynny mewn ffordd sefydlog, effeithlon a llwyddiannus.

Q8. 8. In responding to these questions, we would welcome views on how the current forms of governance, and any proposals to change governance in the future, might impact on the Welsh language.

Fe ddylai tyfiant mewn hunan-lywodraeth a hunan-hyder unrhyw wlad yn arwain at broffil a statws uwch i'w hiaith cynhenid; ond mae profiad Iwerddon yn yr 20fed ganrif yn dangos nad yw hynny bob amser yn wir. Mae'n rhaid i lywodraeth Cymru fod yn ddyfal wrth ddysgu y gwersi cywir o brofiad Iwerddon.

Er enghraifft, dylid rhoi blaenoriaeth i greu economi ffyniannus yng Nghymru, ac yn enwedig yn yr ardaloedd lle bod Cymraeg yn cael ei defnyddio ar y mwyaf pob dydd. Dylid ddysgu oddi wrth gwledydd fel y Ffindir ac Estonia a.y.y.b sut y gellid uno'r angen i gadw yr iaith yn gryf gyda'r angen i denu'r talent gorau o'r byd i gyd i swyddi lefel-uwch yn addysg, diwydiant a llywodraeth. Mae'n bosib mae un ffordd o gyflawni hyn fyddai rhoi mwy o bwyslais ar wersi Cymraeg i oedolion, yn hytrach nag mewn ysgolion yn unig.

Q9. Information to include: Please let the commission know if you are writing in a personal capacity or on behalf of an organisation. If you are writing on behalf of an organisation, it would be helpful if you could confirm its purpose, size and membership.

Mae yr ymateb hwn ar ran Gwlad - Plaid Annibyniaeth Cymru - sy'n blaid wleidyddol Gymreig sydd wedi'w chofrestru gan y Comisiwn Etholiadol ers 2018. Ar hyn o bryd mae gennym ni un Cynghorydd Sir (yng Ngheredigion), a thri Cynghorydd Cymuned (un yng Ngwynedd, dau yn Rhondda Cynof Tâf).

Q10. Add your video or audio submissions here

No Response

Submit your response



Response to the Independent Commission on the Constitutional Future of Wales call for evidence

Institute of Welsh Affairs, IWA

info@iwa.org.uk

The IWA is a registered charity no. 1078435

29th July 2022

Have your say

1. What matters to you about the way Wales is run?

The Institute of Welsh Affairs (IWA) believes in democracy in its broadest sense, as the most **effective form of governance to protect and enhance citizens' rights and freedoms and as a** key enabler for developing a successful, clean and fair economy for Wales.

Democracy is far more than simply the election of representatives to legislatures and the resulting formation of governments and decision-making bodies. To maintain and enhance the health of our democracy, the people of Wales should have access to meaningful opportunities to both inform and scrutinise the ongoing activities of decision makers.

Where appropriate, the people of Wales should take part in direct decision making at a national and local level, too.

The IWA believes in the principle of subsidiarity, that decisions should be made as close as practicable to the people affected by those decisions. This principle should inform both the structure of governance and the mechanisms used to inform and make decisions, and to learn from the impact of those decisions.

We believe that how Wales is run (our system of governance) should be as clear as possible to the people of Wales, in order for lines of accountability to be evident for those wishing to understand who made which decisions and why.

Decisions are better and are better made by bodies where elected representatives are as diverse as possible, reflecting the people they represent, whether in terms of their individual characteristics, backgrounds or their political colours or beliefs. In practice, this means that we believe in affirmative processes within the electoral system to support the proportional representation of gender, race and other characteristics. This is why we support the Diverse5050 campaign.



It also means that we support maximum proportionality in terms of the number of representatives from political parties, or independents, elected based on the number of votes those parties or independents received across Wales. In practice, this means that we support the use of Single Transferable Vote at all levels of Welsh governance.

We believe that Wales should have a vibrant public sphere for open discussion of issues **relating to how decisions impact people's lives. We would like to see a thriving, well-read** media (online and in print) ensuring increased public knowledge of devolution. We would also like to see a significant proportion of the population – cutting across socio-economic status, class and occupation – taking an informed view on Welsh politics. We would like to see a minimum 75% turnout in Senedd elections and we are in favour of expansion of the Senedd to the proposed 96 member model but elected using the Single Transferable Vote to elect those members. We would also like to see people working in micro democratic structures at grassroots, community and local levels, as well as at national level.

The IWA also firmly believes that Wales should be an outward looking nation, active both regionally and globally. Regardless of the future constitutional make up of the UK, Wales should continue to build relationships with other nations and states, particularly locally within these islands, but also much further afield.

2. What do you think the priorities for the commission should be?

The IWA urges the Commission to focus on the following themes and areas:

1) Welsh citizenship

We believe that nations thrive when the population feel shared purposes. In practice, this requires people to feel a shared responsibility for the issues and challenges facing their community, area and nation, and to feel that they share in the wealth created as a result of national, regional or community efforts.

In order to achieve a shared purpose, there needs to be a shared understanding of issues and challenges, and an effective system of governance that enables people to feel collective responsibility for solving them.

For this to happen, there must be opportunities for people of all ages and backgrounds to both learn about and discuss challenges and issues, and for them to feel that they are being listened to, in some cases directly informing or taking the decision themselves.



To facilitate this, the Commission should focus on the following sub-areas:

- Understanding how people in Wales feel about citizenship
 - Ways of supporting people in Wales to participate in decision making and scrutiny
 - Opportunities for the use of deliberative democracy in Wales
 - Opportunities for the use of sortition within Welsh democracy
 - Opportunities for the use of direct democracy in Wales.
- 2) The challenges and opportunities posed by different models of governance for Wales within and without the UK

The IWA urges the Commission to look internationally as well as to the people of Wales for examples of different models of governance and learn from them, applying that learning to the issues and challenges faced by Wales both in the present and over future decades.

- 3) The impact of the current fiscal devolution settlement on the ability of Wales to invest in its people and economy

As the power and responsibility of the Senedd and Welsh Government have increased, the inability of Welsh Government to access sufficient funding to invest has grown in prominence. This inability to access investment funding is a blocker to growth and development in Wales. Both the Barnett Formula itself and the system for managing disputes relating to the formula should be assessed against alternative models of fiscal devolution such as a needs based system. The wider fiscal framework should be assessed, particularly in relation to the ability of Welsh Government to tax and borrow.

The IWA will **be submitting a separate paper on Wales' fiscal framework to the Commission** in Autumn 2022.

3. Thinking about how Wales is governed, by the Welsh Government and the UK government, what are the strengths of the current system, what aspects do you most value and wish to protect? Can you provide examples?

Strengths

- The current system theoretically provides for a sharing of wealth across the UK.
- The current system provides for an internal market within the UK, enabling smooth trading across national borders, though we recognise the specifics in relation to Northern Ireland at the time of writing.



- In relation to Covid:
 - Response to Covid in relation to the initial lockdown and associated furlough scheme, sharing the financial impact of additional support required to households and businesses across the UK. (However this was also a weakness when it came to Welsh Government decisions on subsequent lockdowns.)
 - Procurement for the vaccination programme for the whole of the UK.
- In devolved policy areas, Wales can try out new policy approaches as an incubator with a smaller population from which the rest of the UK can learn (plastic bags, organ donation, Future Generations agenda).
- Welsh Government can also design new policy approaches that relate to the particular circumstances and needs of the Welsh population.

Weaknesses

- Under the current system, UK Parliament has ultimate power to legislate for Wales and to amend or even annul the devolution settlement.
- Existing conventions empowering the Senedd to prevent action by UK Parliament and UK Government in non-reserved areas are weak
- This includes a total lack of redress over, for example, significant funding decisions made through the Barnett Formula and UK Shared Prosperity Fund
- The devolution settlement is different in each part of the UK, ie for Wales, Scotland and Northern Ireland, at a headline level. In addition, different UK government **departments' functions are also differently devolved. This complicated situation** leads to an ongoing lack of clarity (in part due to inadequate media provision) as to where decisions are made, how resources are allocated to address issues and how to resolve disagreements.
- There is significant inequity in our borrowing powers: Wales can only borrow £150m annually up to a limit of £1bn for capital spending, whereas both Scotland and Northern Ireland can borrow up to £3bn. Scotland can also borrow more for resource spending.
- We note that, despite considerably increased responsibilities over policy making and delivery of public services between 2009 and July 2022, the headcount of Welsh Government has reduced from 6,137 to 5,644. This is not proportionate to the size of the total number of staff in UK Government departments responsible for devolved matters, and has led to the under-resourcing of both policy making and, crucially, effective public service delivery. Clearly, the size of the central administration budget is a matter for Welsh Government budget setting, but it is heavily influenced by the overall fiscal devolution settlement, including the Barnett Formula.



**Y Comisiwn Annibynnol ar
Ddyfodol Cyfansoddiadol Cymru**
**The Independent Commission on
the Constitutional Future of Wales**

- Divergent electoral systems across the UK can lead to democratic confusion among people in Wales, particularly given the still-young nature of the Senedd and electoral reform. However, this is also a strength, as it allows the Senedd to implement democratic systems in Wales that work for the Welsh people at all levels of government, rather than those decided at a UK level.
- Westminster acts as both a parliament for England as well as for the UK and as England has over 19 times the population of Wales (59.59m to 3.1m according to the 2021 Census), the size of England will always be more important to political leaders in Westminster.
- We have previously published on inter-parliamentary relations and the weaknesses of the current system in terms of how both parliaments hold their respective governments to account for their individual decisions. We have also published recommendations as to how they might better coordinate and work together. Our September 2020 paper [Missing Links](#) sets out our concerns in detail.

The IWA will be submitting a paper to the Commission in relation to issues related to the potential devolution of broadcasting at a later date, so we have not included this issue here. However we refer the Commission to our longstanding media policy work and our audits in 2008, [2015](#) and [2020](#) which consistently note the detrimental impact on citizens in Wales of current media policy and public scrutiny of government and parliamentary decisions as they relate to Wales, whether at a UK or Wales level.

4. Are there any problems with the current system, and if so, how could they be addressed? Again, please provide examples.

Primarily, the lack of a written UK constitution leads to a sense of fragility for the devolution settlement, with the Senedd and Welsh Government protected through convention and Acts of UK Parliament rather than being placed on a more solid footing.

The lack of a clearly codified relationship between Wales and the UK also leads to regular friction points around the devolution settlement, and enables the UK Parliament to unilaterally override the settlement without an effective underpinning constitutional position for Welsh Government to use in challenging such actions through the Supreme Court. A recent example of this has been the UK Internal Market Act 2020.

Whatever the future constitutional arrangement of the UK may be, a written, codified constitution is vital to enshrine the rights of each legislature and government, and prevent unhelpful friction.



People in Wales may feel that democracy extends as far as voting for representatives and no further. Opportunities to engage meaningfully beyond this are few and these are poorly utilised. This leads to poor decision making and people holding elected representatives responsible for all issues perceived to be negative.

Increased use of citizens assemblies, appropriate use of referendums and public meetings could all create a more engaged and active population, leading to a feeling of shared purpose and better decision making.

5. Thinking about the UK government, the Welsh Government and Welsh local government (your local council), what do you think about the balance of power and responsibility between these 3 types of government – is it about right or should it change and if so, how? For example, who should have more power, or less?

The multi-tier system of governance in Wales is complex in regard to power, resourcing and responsibility. For example, some functions of local government in Wales, such as the administration of certain benefits, are resourced and overseen by UK Government, despite Welsh Government nominally holding control over local government in Wales. In another example, local government holds powers to implement certain schemes, such as road user pricing, whereas Welsh Government does not have the competence to implement such schemes on a national basis.

These anomalous situations generally arise from the ongoing design and ‘bolting-on’ of new policy to the current devolution settlement. They exacerbate the existing lack of public understanding as to which layer of government is responsible for what, and cause confusions and inefficiencies which ultimately impact negatively on citizens’ lives.

The bulk of funding for local government to exercise its functions is allocated by Welsh Government. The confusing interrelationship between funding and policy making power between Welsh Government, local government and UK Government should be addressed. This should include looking at the taxation system and how local/Welsh/UK taxes relate to their respective level of policy decision making.

In December 2021 we published a paper [What does Levelling Up Mean for Wales?](#) in which **we set out our concerns in relation to the UK Government’s exercising of powers and responsibilities post-EU funding.** Many of these concerns remain. We have followed up with our paper [Putting Businesses at the Heart of Levelling Up](#), pointing out issues in the interaction between UK Government, Welsh Government and local government.



6. As a distinct country and political unit, how should Wales be governed in the future? Should we:

- broadly keep the current arrangements where Wales is governed as part of the UK, and the Westminster Parliament delegates some responsibilities to the Senedd and Welsh Government, with those responsibilities adjusted as in Q5, OR
- move towards Wales having more autonomy to decide for itself within a more federal UK, with most matters decided by the Senedd and Welsh Government, and the Westminster Parliament decides UK-wide matters on behalf of Wales (and other parts of the UK) OR
- move towards Wales having full control to govern itself and be independent from the UK OR
- pursue any other governance model you would like to suggest
- alongside any of these options, should more responsibilities be given to local councils bringing decision making closer to people across Wales and if so, please provide examples.

As a politically independent think tank and charity whose objects are to educate by providing research on socio-economic, political and scientific factors and their impact on public policy in Wales, the Institute of Welsh Affairs does not hold an organisational position on the above options. Our role is to ensure that the public are informed as to the relevant strengths and weaknesses of the various options, based on the evidence available, and that they are able to have their voices heard in decision-making.

However, we are pro-devolution: we believe that decisions should be made as close as practicable to those affected by those decisions. Future models of governance should be **firmly based around this principle, whether it is Wales' relationship within or to the UK, or the relationship between Welsh Government and local/regional governance.**

7. Overall, what is most important to you in about the way in which Wales should be governed in the future? Is there anything else you want to tell us?

The IWA believes that the future governance of Wales should be centred around the following principles:

1. That decisions should be made as close as practicable to the people affected by those decisions



**Y Comisiwn Annibynnol ar
Ddyfodol Cyfansoddiadol Cymru**
**The Independent Commission on
the Constitutional Future of Wales**

2. That democracy should be nurtured in its broadest sense. People in Wales should have opportunities to, and feel empowered by, engaging with decision making, informing decisions and scrutinising elected representatives between the set pieces of democracy i.e elections
3. People in Wales should be supported to feel like citizens, with a shared responsibility for their communities, regions and the nation
4. That, where appropriate, direct democracy should be considered
5. That deliberative and participatory democracy should be placed at the core of our democratic system, both to inform decision makers and to set the parameters of direct democracy.

Responses to consultations may be made public. To keep your response anonymous (including email addresses) tick the box.

Submitted by email to: ConstitutionCommission@gov.wales

30th June 2023

Professor Laura McAllister and The Rt. Revd. and Rt. Hon. Rowan Williams
Independent Commission on the Constitutional Future of Wales
Cathays Park
Cardiff
CF10 3NQ

Dear Professor McAllister and The Rt. Revd. and Rt. Hon. Rowan Williams,

REF: Scope for Devolution of Employment Law, with Implications for Employers and Employees

We would like to acknowledge and thank you for the opportunity for IoD Wales members to feed into the important work of the commission.

Following consultation with our members, we would like to put the following considerations forward:

The UK legal jurisdiction (of which Wales greatly benefits) operates a world regarded system of common law - "Laws of England & Wales" (We recognise some minor differences in Scotland). Employment law, within that judicial framework is largely consistent across the home nations of the UK. This enables and benefits:

- common understanding in the employment arrangement (between employer / employees),
- consistency across the internal organisation, irrespective of a UK geographical base,
- reassurance for non-UK companies / investors, seeking a stable Wales/UK operating environment,
- clear expectation setting and maintenance to a common UK standard,
- stability and reduced complexity in National and International business planning,
- social mobility (working across an open UK, without limiting business or employment opportunities / becoming regionalised).

We understand that those involved in employment (in-fact many employees and citizens of other countries) look at UK employment laws, regulations and practice from a benchmarking perspective. Some our members have spent some of their careers abroad establishing what we might commonly take for granted here in the UK. These members have used UK Employment Policy and Practice as the benchmark to improve employment standards and regulations in other countries (particularly in the Middle East). Employees largely recognise this.

Members noted that there would be some concern that with a political agenda that might be to "develop greater National control and identity", that as a Nation, we inadvertently isolate ourselves from what really maintains and helps project our standing using the UK Platform.

We think a Wales-centred legislature seeking to differentiate laws, potentially based on political objectives, would be wasteful and create an industry of which businesses in Wales would have to bear increased cost and complexity. Wales is largely an SME-based economy where such a change might be perceived as just unnecessary and impractical. This would become particularly burdensome if employers are registered and established as based in Wales but are employing people in England, Scotland or Northern Ireland.

Members feel it is important to remember that employment law is only a minimum standard. Whilst we do not believe that it would be beneficial to look at creating a Welsh Employment statute, there is nothing stopping companies from offering "above" the legal requirements - economics and solvency are an obvious limiting factor, but more progressive and enlightened leadership and a forward-looking culture (borne out of good Directorship and business education) will lift employment standards. There does not need to be a new legal framework to "better" what is already a good platform.

There is nothing to stop Wales promoting our culture and what we want employment to look like in the economy by using the framework already in place.

It is our members view that there are more pressing business / social / community-critical priorities where a "Future Wales" can make a difference to our standing, as a nation. We believe that the Commission would benefit in considering how we promote a great business environment to retain and attract great people and investment in Wales, as a tool to lift standards of employment, rather than considering the establishment of a separate legal framework from the Laws of England & Wales, for employment.

Yours sincerely

On behalf of IoD Wales Members

IoD Nations Chair Wales

Response to the Independent Commission on the Constitutional Future of Wales

by

Labour for an Independent Wales

Signed by

Cllr Rachel Garrick and Dylan Lewis-Rowlands

on behalf of our executive committee and approved by our membership.

In creating our response, the executive committee consulted with our membership at large, and a working group made up of committee members and ordinary members, chaired by one of our co-chairs, developed all points raised into this document.

We have formatted this document in line with the model response provided by the Commission.

Following an in-depth discussion and debate, this document has been approved by the membership-at-large of Labour for an Independent Wales

28/07/2022

1. What matters to you about the way Wales is run?

That Cymru is run for the benefit of all the peoples who live within its borders, and that at all times the Welsh political process should strive to improve the lives of all the peoples of Cymru.

We believe that the working classes of Cymru have an inherent right to self determination, and that this has been ignored for the vast majority of the 'democratic' history of these isles. This sovereignty derives not from an ancient claim to culture or land, but the very real struggles of peoples day to day lives; and the will to make a change in that struggle.

That the Senedd and local government in Wales should always strive to improve the lives of the people of Wales, taking account of the impact of their decisions on future generations, to prevent problems occurring or getting worse, using an integrated and collaborative approach, considering and involving people of all ages and diversity.

That decisions at all levels of government are taken to improve the well-being of current and future generations, thinking about the long term impact of the decisions to ensure that future generations in Wales have at least the same quality of life as we do now, and that decisions taken are globally responsible.

That in Wales we work co-operatively and in collaboration to tackle the challenges that face us now and in the future, such as climate change, poverty, health and well-being, jobs and economic activity.

That subsidiarity is paramount so decisions are taken by local people who understand and care about the people of Wales and the Welsh language.

That the Senedd takes decisions which benefit the whole of the people of Wales, having the national interest as an overarching priority.

That the lives of future generations in Wales are more prosperous and healthy lives, in a nation which maintains and enhances a biodiverse natural environment with healthy functioning ecosystems that support social, economic and ecological resilience and the capacity to adapt to change (for example climate change).

That the lives of future generations should be more equal than ours and that communities become more cohesive and strong, with a vibrant culture and thriving Welsh language.

That elected members of government at all levels are easily held accountable to their electors.

That existing devolved powers and laws are not eroded by the UK Government.

What matters is that we have the constitutional, environmental, legal, and social systems in place for a fair & sustainable country: this means creating a constitutional arrangement and constitution that guarantees environmental, human, and legal rights that go far beyond what the United Kingdom offers today.

2. What do you think the priorities for the commission should be?

Exploring bold and transformative constitutional arrangements that will allow the Welsh government, Welsh local authorities, and y Cymry to work to better the lives of all.

Seek to discover what the polity of Wales wishes its current and future arrangements to be, and explore all avenues and possibilities; for example, in the very likely event of Irish reunification and/or likely case of Scottish Independence.

To investigate, evaluate and make recommendations on a range of constitutional options and relational models between Wales and the other nations of these isles and to undertake and encourage a genuine and widespread national debate about the Commission's recommendations about the future form of the constitution and governance of Wales at all levels; national, local authority and community.

To investigate, recommend and promote voting systems which encourage collaborative and co-operative styles of governance at all levels (e.g. STV), so that the well-being of the lives of the people of Wales both now and in the future are enhanced.

To promote and publicise the current work of the Senedd and in particular to make the case for the Senedd to have tax raising powers, and control over justice and infrastructure.

To take into account the overarching principle of subsidiarity in promoting the case for an independent Wales, irrespective of what happens in Ireland or Scotland. Cymru is a nation distinct, with the ability to decide its own future.

The priority should be building a national framework fit for the 21st Century, containing all the constitutional, environmental, legal, and social systems necessary for a fair & sustainable country, and proving what is necessary to achieve it.

3. Thinking about how Wales is governed, by the Welsh Government and the UK government, what are the strengths of the current system, what aspects do you most value and wish to protect? Can you provide examples?

The Clear Red Water is one of Wales's greatest strengths. The ability and more importantly, the political will to diverge from a UK Government of any political colour in order to best suit the needs of Wales served us well over the pandemic, and served us well before and will continue to do so.

Y Senedd Cymru allows decisions to be taken closer to home, closer to the hearts and minds of the people of Wales. We should look to expand Y Senedd.

The UK (including Wales) plays a major role in the world affairs, however the voice of Wales itself on the world stage is small.

The UK (including Wales) has a constitutional monarchy and a parliamentary democracy is world-renowned for its political stability, although Wales has little impact on either the monarchy or Westminster decision-making.

The UK (including Wales) is one the largest economies in the world, although the Welsh brand is not well-known.

The UK (including Wales) plays a major role in the world affairs and is one of the five permanent members of the United Nations, although Wales itself has little impact on foreign affairs.

The UK (including Wales) is a key ally of the USA, although Wales has no role to play in this relationship.

The UK (including Wales) is part of the Commonwealth, although it is unclear what the role of Wales is in this organisation.

The UK (and to some extent Wales) has some of the largest companies in the world.

The UK (including Wales) has one of the best higher education systems in the world.

The UK (including Wales) has a mixed economy with a leading financial sector as well as construction, tourism, food and drink, agriculture, manufacturing industries.

The monarchy brings some tourist benefit to London but not to Wales.

The strengths of the current system are continually undermined by its weaknesses. The strength is in Cymru being able to decide things for itself but when it cannot fund those decisions by its own Central Bank, then Westminster has ultimate control. We wish to protect the current Welsh Government's powers but know it needs more and, as the UK Government has recently proved by undermining the Trade Unions (Wales) Act 2017, we know that any law made by the Welsh Government can be removed by the UK Government - what we might wish to keep is irrelevant when the UK Government can remove it for political expediency, or on a whim.

4. Are there any problems with the current system, and if so, how could they be addressed? Again, please provide examples.

Y Senedd does not have enough members to adequately fulfil its responsibilities; with accountability and review of ministers and laws being a notable issue.

The Welsh Office has no place in the current constitutional set-up, it is merely a vestigial arm of historical Westminster rule. A vast majority of the powers of the Wales office has been transferred to the Senedd, and the rest must follow. If there is to be a 'Welsh' representative at Westminster and the Cabinet, they should arise from the Welsh government/governing party.

The ability of Westminster to interfere within devolved matters (and the underlying concept of unitary parliamentary sovereignty) is a dangerous precedent that must be abolished in all forms. The Internal Markets Act, for example, and recent changes in workers regulations (the allowing of strike-breaking and undermining of fundamental workers rights) directly opposed to Welsh law.

The electoral system must be changed; most modern functioning democracies (not necessarily something that the UK can be labelled as at the moment) has much more rigorous democratic processes than those that currently exist within the UK, or what is being proposed by the Welsh government.

Many electors are becoming / have become disengaged with the current democratic system. The system of "First Past the Post Voting" leads to electors disengagement, along with a hijacking of our systems by dangerous right wing populist forces that have sought to undermine our very democracy. The solution to this is electoral reform, and a development of a distinct political Welsh culture.

The system of Electoral Registration needs reform, along with making it easier to vote; for example, automatic registration, polling days being bank holidays (days off for workers), and political education.

New voting methodologies including secure electronic voting systems need to be trialled.

The UK constitution is uncodified, being made up of constitutional conventions, statutes and other elements which are unclear and can be abused by unscrupulous politicians. Wales suffers in this process.

The UK's hereditary monarchy and its established patronage system is unaccountable and archaic.

Wales as part of the UK plays a major role in the world affairs, however the voice of Wales itself on the world stage is small.

Wealth is not distributed equally. There is a big gap between the rich and the poor, between north and south, and between the four nations of the UK.

The UK is one of the most expensive countries to live in.

The UK is falling behind many advanced nations when it comes to spending on research and development as a proportion of GDP. Wales has no control over this.

Lack of investment is raising concerns over the health and growth of the industry. Wales has no control over this.

The Senedd currently does not have enough members to adequately fulfil its responsibilities; with accountability being a notable issue.

The Welsh Office has no place in the current constitutional set-up, being an historical relic of Westminster rule. The vast majority of powers of the Welsh Office have already been transferred to the Senedd, and the rest must follow. Any 'Welsh representative' in the Westminster Cabinet should arise from the Welsh government.

The ability of Westminster to interfere within devolved matters is a dangerous precedent that must be abolished in all forms [The Internal Markets Act, for example]

The electoral system must be changed to ensure that every vote counts; most modern functioning democracies - but not the UK - have much more rigorous and honest system of voting which better reflects the wishes of the electorate than that which currently exists within the UK, or what is being currently proposed by the Welsh government. A system of STV needs to be applied to all levels of governance in Wales.

The UK monarch remains the fount in which ultimate executive power over government lies. These powers are known as royal prerogative and can be used for many things. According to the uncodified constitution of the United Kingdom, the monarch has the following powers:

Domestic powers

- The power to dismiss and appoint a prime minister*
- The power to dismiss and appoint other ministers*
- The power to summon and prorogue Parliament*
- The power to grant or refuse Royal Assent to bills (making them valid and law)*
- The power to commission officers in the Armed Forces*
- The power to command the Armed Forces of the United Kingdom*
- The power to appoint members to the Queen's Counsel*
- The power to issue and withdraw passports*
- The power to grant prerogative of mercy (though capital punishment is abolished, this power is still used to change sentences)*
- The power to grant honours*
- The power to create corporations via Royal charter*

Foreign powers

- *The power to ratify and make treaties*
- *The power to declare war and peace*
- *The power to deploy the Armed Forces overseas*
- *The power to recognise states*
- *The power to credit and receive diplomats*

The Powers of the UK monarch and the system of establishment patronage which supports the monarchy is both undemocratic and unaccountable. Arguably this system of royal patronage undermines the principle of the common good in Wales. Such an archaic system of privilege has no place in the modern nation of Wales and should be destroyed in its entirety and replaced. Senedd Members and those serving the public should be swearing an oath of allegiance and service not to the monarch, but the people they represent. These powers should be transferred to the representatives of the people of Wales. The lands and holdings known as the crown estates should be nationalised and held by the Welsh government on behalf of y Cymry.

5. Thinking about the UK government, the Welsh Government and Welsh local government (your local council), what do you think about the balance of power and responsibility between these three types of government – is it about right or should it change and if so, how? For example, who should have more power, or less?

The balance must sway to be as local as possible, but also to the appropriate level of strategic vision. The UK government in its current and possible future form is not interested in Wales beyond its ability to uphold the union, and power must be devolved to Welsh Government in areas that could have real benefit to the lives of the peoples of Wales; devolution of Justice and of Welfare are two notable examples within the current constitutional framework. Welsh Government must encourage local authorities to use the powers given to them to serve their constituents, not elected officials.

In order to truly make a positive difference to the lives of the peoples of Wales (after all, that's what politics should be about), it is our position that in so long as radical governance of Wales is a possibility and likely, we should seek independence from the Union of Great Britain and Northern Ireland.

The current balance of power has shown us that Welsh democratic processes making decisions about Wales has proved the most effective. In that regard, devolution as a process must be advanced to its natural conclusion.

The balance must take into account the overarching principle of subsidiarity to be as local and accountable as possible. This means as much Devolution as possible even to the point of an Independent Wales when this is the freely determined will of the people of Wales. The UK government has shown itself to be dis-interested in devolution and is clearly trying to roll-back the process by clawing back some already-devolved powers,

More powers should be devolved to the Senedd including powers of Taxation and Justice for the common good of the people of Wales.

The current balance of power has shown us that Welsh democratic processes making decisions about Wales has proved the most effective. In that regard, devolution as a process must be advanced to its natural conclusion.

The empowerment of the working classes are paramount; in any future system, workplace democracy and grassroots power should be prioritised and developed. This may require an overhaul, but it is a necessary one.

6. As a distinct country and political unit, how should Wales be governed in the future?

Wales is not yet a distinct 'country' (nation-state). Cymru is a nation without a state. Wales should be governed as a sovereign nation-state; notable here is a Welsh central bank in order to enable us to enact policy, and sovereignty over the area of 'Cymru' where states may not interfere. In short, Wales should be an independent Cymru.

The common good of the people of Wales will be better served when Wales takes further steps towards and eventually becoming a proud and prosperous sovereign nation-state, independent of the Union of Great Britain and Northern Ireland, yet preserving strong economic and familial ties with England, Scotland and Northern Ireland, with a system of proportional voting used for both national and local elections and where decisions are made based on principles of subsidiarity for the common good.

7. Overall, what is most important to you in about the way in which Wales should be governed in the future? Is there anything else you want to tell us?

Most importantly, any changes to the constitution of Wales should be part of a nation-wide consultation through a system of regional events and roadshows to ensure wide participation and engagement in the consultation process which should be based on three principles.

Consultation Principle 1: That consultation with the public is genuine, meaningful, timely, balanced and with the ultimate objective of leading to better outcomes for the common good. Consultation should aim to achieve real engagement and ‘real listening’ rather than being a pro-forma exercise for bureaucratic ‘box-ticking’ purposes. Within these consultations, all options must be on the table.

Consultation Principle 2: That consultation should be targeted at and easily accessible to those with a clear interest in the policy in question. The size, type and scope of the consultative process depends on the proposed policy, the type and scale of the potential impacts of the proposal or decision being taken, the number of people or groups affected by them, and where relevant particular requirements of the child and young people and those who may be marginalised or vulnerable. So consultation on radical constitutional change leading to Welsh Independence will need wide-ranging and genuine consultation and real listening to feedback into the constitutional reform process.

Consultation Principle 3: That Government departments and agencies should make systematic efforts to ensure that interested and affected parties have the opportunity to take part in open consultations at all stages of the policy process on significant policy, services and legislative matters: development, implementation, evaluation, and review to feed back into the constitutional reform process.

In responding to these questions, we would welcome views on how the current forms of governance, and any proposals to change governance in the future, might impact on the Welsh language.

A proud and independent sovereign Wales will be a society that promotes and protects its culture, heritage and the Welsh language, where people are proud to learn and speak Welsh, to participate in the arts, sports, and recreation. Further devolution and an Independent Wales would bring enhanced broadcasting responsibilities for the Senedd which would materially improve provision of Welsh language broadcasting. When broadcasting laws and regulations are under our control, we will be able to foster a distinct Welsh media culture (Language and Polity) news and broadcasting culture.

Strengthening and developing the Welsh language should happen regardless, but we believe that the best hope for the future of our shared language and culture lies in a sovereign and independent Cymru.

Undod Chwith Cymru/Left Unity Wales

This is a submission to the Independent Constitutional Commission of the Future of Wales from Undod Chwith Cymru / Left Unity Wales (UCC/LUW).

<https://gov.wales/independent-commission-constitutional-future-wales>

UCC/LUW is an autonomous section of Left Unity (LU). It is a radical left ecosocialist political party that organises in England, Scotland and Wales. The purpose and principles of LU are stated on the website and can be accessed here: <https://leftunity.org/about/>. UCC/LUW shares these purposes and principles and, as an autonomous organisation in Wales, they underpin and inform our UCC/LUW manifesto which can be accessed here:

<https://chwithunedigcymru.blogspot.com/2020/12/left-unity-wales-manifesto-building.html>

This manifesto was prepared for the 2021 Senedd elections and updated for the 2022 local government elections. It was developed through workshops that were open and attended by ecosocialists in Wales from parties or none in addition to UCC/LUW members, and held over the preceding two years to 2021.

Through being in joint membership with LU, UCC/LUW is also in membership of the European Left Party that has 27 member parties and covers 25 European Countries:

<https://www.european-left.org/>

UCC/LUW was founded at an inaugural conference in December 2014. It has 30 members with around another 100 'supporters' who have actively decided to receive our regular emails and newsletters. We are democratically independent in Wales and hold an annual agm, conference and officer elections. This submission was developed collectively and drafts were made available for addition and comment by all members and supporters.

UCC/LUW has supported a fully independent, democratic and republican Wales since our founding meeting.

We hope that this submission conveys the main reasons why we support this position. We hope to be able to make further submissions both during this first call and the expected second round of consultations. We are also ready and available to meet with the Commission to provide a verbal presentation and respond to any questions you may have. We are also ready to respond to any questions you may wish to raise with us in writing as a result of your considerations of this submission.

We have structured our response around the questions you asked and at the end, under Question 7 include an overall statement of our position.

Question 1: What matters to you about the way Wales is run?

This question can only be answered by defining a criteria of what matters to us.

As socialists we start from the premise of how can the people of Wales be enabled to start to overcome the interlocking global crises of climate and breakdown; poverty, inequality and social injustice; wars and armed conflict; and increased authoritarianism involved in the systematic attacks on human rights and democracy.

Fully recognising that these crises are structurally embedded in capitalism as it seeks to sustain its system of exploitation of people and resources to maximise profitability and private returns.

We are therefore concerned that Wales has the sovereignty of independence providing the power to start to address these challenges.

Our guiding principles are

Independence

Choosing a future for ourselves in an independent Wales.

A democracy fit for the 21st Century where sovereignty rests with the people.

An outward looking Wales that offers a friendly hand to the people of the world.

A Welsh republic of citizens and not subjects.

Ecology

System change not climate change.

Sustainability of a race for growth that does not privilege the already rich.

Protecting our soil, seas and rivers for generations to come.

A just transition to a carbon free economy.

Equality

Living in dignity free of discrimination.

Living in dignity free from poverty.

Living in dignity with rights at work and security in employment.

Living in dignity by guaranteeing our rights to privacy and protection.

Community

Removing corporate control from our public spaces.

For decent public services.

Security and sustainability in housing.

Connecting communities with accessible and free transport.

Socialism

A more equal society through the redistribution of our vast wealth.

Public ownership of our land and natural resources.

Public ownership and control of our key utilities and public services.

A society that promotes the collective good above production for profit

The policies we believe need to be pursued to start to implement these principles in an independent Wales are outlined in our Left Unity Wales manifesto:

<https://chwithunedigcymru.blogspot.com/2020/12/left-unity-wales-manifesto-building.html>

Question 2: What do you think the priorities for the commission should be?

To give a full consideration to the case for independence for Wales

Question 3 Thinking about how Wales is governed, by the Welsh Government and the UK government, what are the strengths of the current system, what aspects do you most value and wish to protect? Can you provide examples?

Devolution has made a starting contribution toward achieving the aims and criteria we suggest in the first part. Overall it has initiated and sustained a democratic narrative about how increased governance powers to Wales can be used for the public good. However, the ability to be sufficiently effective in challenging the crises we face requires a social transformation and that has been blocked and turned back by austerity cuts and other restrictions on devolution initiated by UK governments over the last 12/13 years.

Question 4. Are there any problems with the current system, and if so, how could they be addressed? Again, please provide examples.

One of the original justifications of the devolution settlement was that it would ameliorate the democratic deficit caused by the political and population imbalance between the different components of the UK. Nevertheless, this was always intended to be a limited amelioration. Extensive powers were reserved to Westminster leaving Wales with limited control over the real levers of economic and political power. Monetary and fiscal policy, important aspects of industrial policy, trade policy, employment policies including social security and migration, defence and foreign policy are largely reserved, yet would have major impact on shaping Wales as a modern and progressive state.

Moreover, a recent report by Aileen McHarg (Professor of Public Law and Human Rights at Durham University) has highlighted post-Brexit Era of “Westminster override” undermining Holyrood’s relatively limited devolved powers still further. Her findings are equally applicable to Wales. She points to a “significant” amount of Brexit legislation relating to devolved powers being enacted through the UK parliament without Holyrood (Senedd) approval. This has eroded the devolution settlements to such an extent that: “It calls into question the extent to which devolution is still able to perform its constitutional function of ameliorating the democratic deficit arising from the asymmetry of the UK’s territorial composition, and political divergence between its territorial units”. Her report lists 6 pieces of legislation that have so far been enacted without consent in areas where it would have been required before Brexit, and references how this has rendered the Sewel Convention meaningless. She points to other mechanisms which the Westminster government is using to further restrict devolved decision taking. In particular the “shared prosperity fund” which, unlike the EU funds it replaces, is controlled directly by Westminster, and by-passes the devolved institutions altogether.

Further post Brexit changes that will undermine the devolution settlement in the future include legislation eroding civil liberties, human rights, worker, and Trade union rights. In a sense it could be argued that devolution “traps” devolved government into compliance with Westminster policies and forces it to accommodate to the dominant UK political and

economic narrative even if that is inimical to the interests of the people of Wales. In this way devolution can actually contribute to feelings of powerlessness, alienation, and marginalisation, which in turn feeds populist authoritarian solutions to economic and social discontent.

Question 5. Thinking about the UK government, the Welsh Government and Welsh local government (your local council), what do you think about the balance of power and responsibility between these three types of government – is it about right or should it change and if so, how? For example, who should have more power, or less?

Meaningless to suggest adjustments to the relative balance between the different elements of governance (Westminster, Cardiff, Local authority etc) – need to understand the nature of the British state;

- its pre-modern democratic structure (including, HofL, FPTP electoral system etc),
- Its lack of a written constitution or a basic law enshrining fundamental civil rights etc
- the fact that sovereignty lies with parliament not the people
- the central importance of the “crown powers” especially in centralising decision taking, with consequent lack of accountability and transparency.

Devolution and local government reflect the undemocratic nature of this centralised Westminster system. Our suggestions on how to make Wales a modern democracy in which the people of Wales participate fully as “citizens” rather than “subjects” can be outlined in the answer to Q6.

Question 6. As a distinct country and political unit, how should Wales be governed in the future? Should we:

- **broadly keep the current arrangements where Wales is governed as part of the UK, and the Westminster Parliament delegates some responsibilities to the Senedd and Welsh Government, with those responsibilities adjusted as in Q5, OR**
- **move towards Wales having more autonomy to decide for itself within a more federal UK, with most matters decided by the Senedd and Welsh Government, and the Westminster Parliament decides UK-wide matters on behalf of Wales (and other parts of the UK) OR**
- **move towards Wales having full control to govern itself and be independent from the UK OR**
- **pursue any other governance model you would like to suggest**
- **alongside any of these options, should more responsibilities be given to local councils bringing decision making closer to people across Wales and if so, please provide examples.**

Full Independence is necessary if Wales is to become a modern democratic state with a mature democratic system of governance. Once independence is achieved Wales should be constituted as a modern democratic social republic. See the governance and democracy sections of our manifesto.

This would mean as a minimum:

Elections on the basis of the fullest possible democracy (STV - multi-member constituencies)

A written constitution developed by a constitutional assembly which fully incorporates human rights, democracy, equality and social justice, enables public ownership with cooperative control.

Democratic, empowered, accessible and transparent 'open books' Welsh and local government.

A fully democratic republic of Wales would choose if it wanted to participate in a federation with the other components of the UK. Federalism granted by an unreconstructed Westminster system would not only maintain the problems outlined in our response to Q4, it would also be politically "unbalanced" and maintain the inbuilt bias towards elite interest groups enshrined in the current "social monarchy". Moreover, its permanence could not be guaranteed due to the operation of FPTP combined with parliamentary sovereignty (the majority party of the day could simply pass laws revoking the federal arrangements and/or changing them).

None of the above means that we cannot make a start on improving democracy and governance in Wales even under the limitations of the current devolved settlement. LU Wales has already made proposals in our manifesto.

Question 7 Overall, what is most important to you about the way in which Wales should be governed in the future? Is there anything else you want to tell us?

1. Full sovereign independence can be the only basis on which Wales as a country can be sufficiently free and in command of sufficient power to fully explore and develop its social, economic, cultural potential within an international context of its own making.
 - a. Devolution has worked but is constantly under threat by the UK government. There are strong arguments to both resist and prevent this by further devolution of powers such as over welfare, justice and policing. There is a contradiction in this argument as why stop there? When are devolved powers sufficient? Even if this happens the threat of these powers being undermined remains.
 - b. Thus only full independence would maximise the opportunities for the people of Wales to take control over the trajectory of our potential and determine our international relationships.
2. As we understand it the Commission does not intend to dismiss the case for independence as being outside of its terms of reference as referred to in 6 bullet point three in the initial set of questions. If this is the case then it has to initiate a full inquiry into the case for full independence, beyond constitutional questions, problems that are likely to be encountered and how they may be overcome.
3. Such a review would need to assess inter alia:
 - a. The potential for a written constitution, including commitments to social justice, human rights, forms of democracy - including proportional representation and republicanism.

- b. Economic sustainability and how this might be achieved.
 - c. Public services, spending and how legacy arrangements with the UK are arranged to prevent further exploitation.
 - d. Climate change and how Wales might maximise achieving zero carbon in the shortest possible time.
 - e. Sustaining Welsh society socially, culturally and bilingually.
 - f. International relations - with the EU and UN.
 - g. Military spending and the potential to be a neutral, nuclear free, nation.
4. Many of the other topics cannot be fully addressed without the question of independence being in place. However, we favour an independent nation and one with increased devolved powers, and we would recommend that the Commission considers:
- a. Ensuring governance in Wales works for all people through devolved decision making, maximising opportunities for local democratic involvement in these decisions; complete 'open book' provision of information; ongoing accountability of all elected representatives through regular election and recall; a return to committee decision making in all local government, providing an opportunity for additional public and worker representation; proportional representation and a maximum of a three year elected term of office in all positions including the Senedd and all local councils.
 - b. Many of these provisions also need to apply to other areas of public service, such as all Welsh Government Sponsored Bodies, Health Boards, governing bodies of universities, colleges and schools.
 - c. Accountability only effectively works if there is a free press. For many areas in Wales local newspapers providing reports of meetings and carrying out local investigations have, for varied reasons, disappeared, the Commission needs to examine options for addressing this situation such supporting a system of local press and media that is funded at arm's length and governed by a journalist cooperative.

Undod Chwith Cymru Left Unity Wales response to your Independent Commission Options analysis consultation.

<https://www.gov.wales/constitutional-options-analysis-framework-html>

As a reminder this is what we submitted to the first round of consultations:

<https://docs.google.com/document/d/19Djn35MDSPHashz4vtL6FENVUsCsuzEa/edit?usp=sharing&oid=109831181562023645185&rtpof=true&sd=true>

Our response:

The criteria used should depend on what type of country we would like to be and in what international community.

Our concern as Undod Chwith Cymru Left Unity Wales is to help humanity and life on the planet survive.

That requires collective and state action to stop contributing to climate collapse and ensuring substantive equality in all social and economic relations as equal citizens to ensure the needs of people in Wales are met, creativity for all is released and power is enshrined collectively in all: ecosocialism.

Achieving this will require a whole society transformation that will directly challenge the current power of the rich and the British state and ensure that the people of Wales are able to control all the key levers of economic and political power.

To make this work will require radically modernising the current constitutional structures of the UK state in order to ensure sovereignty lies with the people of Wales not the Crown in Parliament (the basis of the Westminster system). Such a constitution would need to be determined in detail by the people of Wales themselves but would embody basic written guarantees of a commitment to life on the planet, full human rights, bottom up democracy and accountability, complete openness and public ownership and control of the land and the means of production. It would need to be free to develop its own international relations both within these Islands and globally.

It is inconceivable that such change would be sanctioned by Westminster through the current top down devolution settlement. Wales would need to become an independent state in order to ensure such an economic, environmental, and democratic transformation. Anything less will limit the ability of the people of Wales to democratically determine their own futures.

The criteria should then not just ask the technical questions, about whether this is possible or feasible, but:

How can it be achieved in as short a time as possible?

How can expected problems be overcome?

How can it be sustained in a radically changed international context?

23.3.2023

INDEPENDENT COMMISSION ON THE CONSTITUTIONAL FUTURE OF WALES

Make UK's response to the Independent Commission's letter on devolution of employment law

About Make UK

1. From the first industrial revolution to the fourth, the manufacturing sector has been the UK's economic engine, and its source of innovation, wealth, and prosperity. We remain one of the world's top ten manufacturing nations. The manufacturers we represent consistently demonstrate their ingenuity and resilience, providing technological solutions to the biggest societal challenges we face. From healthcare to climate change, clean transport and green energy, manufacturers are providing the solutions.
2. Make UK works for the success of more than 2.7 million men and women employed in UK manufacturing. Representing member companies – from small businesses to multinationals – across every industrial sector, we are the most influential voice of manufacturing, enabling our members to connect, share and create opportunities together. We stimulate success for manufacturing and technology-related businesses, enabling them to meet their objectives and goals. We empower individuals and inspire the next generation.
3. Many of Make UK's member companies operate across multiple sites within the UK, and often in some or all of the different constituent nations of the UK. When considering the scope of devolution to the Welsh Government – and indeed the other devolved administrations – it is important to recognise that changes made in one nation can lead to the same employer being required to follow different rules, regulations and procedures depending on the location of the relevant site. As such, manufacturers often benefit when there is a high level of alignment and consistency in both high-level policy objectives and technical aspects of regulation between the UK Government and the Welsh Government.

Overarching principles of devolving employment law

4. Make UK supports the principle of the devolved administrations of the constituent nations of the UK developing policy and legislating according to their particular economic and labour market circumstances. There are many aspects of employment policy and regulation that could benefit from being developed closer to local labour markets; however, there should also be a central role for the UK Government in ensuring that there remains some degree of co-ordination between nations.

5. In understanding the potential scope for devolution of employment law in Wales and the likely impact on manufacturers, Make UK has consulted with member companies with a presence in Northern Ireland to understand the practical implications for businesses of how it has worked in this jurisdiction since 1998.
6. The foremost concern of manufacturers across the UK is to have a stable, predictable and consistent legal and regulatory framework in which to operate. Devolution of employment law to the Welsh Government, and any subsequent legal and regulatory divergence from the rest of the UK, should only occur there is a demonstrable, material benefit to both employers and employees of doing so. Pursuing divergence for its own sake risks creating unnecessary uncertainty and confusion for businesses – especially those with operations in both England Wales.
7. In prioritising stability and predictability for employers, any consideration of devolution by the Welsh Government should ensure that its scope is limited to areas where there is a fundamental difference in the aims of public policy between the devolved administration and the UK Government. Make UK members have raised concerns over the potential for different governments to share the same policy objectives but use devolution powers to adopt distinct approaches to implementation and enforcement when legislating, reinforcing the potential for confusion for employers operating across UK borders.

Manufacturers' experience of devolved employment law in other UK nations

8. Make UK members have cited a variety of benefits and challenges relating to their experience of devolved employment law in Northern Ireland, typically noting a 'mixed opinion' of the results to date of devolution. They have given strong support to the overarching principle of the UK nations being able to make policy decisions relevant to their own economy, labour market and culture.
9. Among the areas of divergence with the rest of the UK with potential benefits cited by employers with operations in Northern Ireland are:
 - a. Employment tribunal fees – which have never applied in Northern Ireland
 - b. Time period for unfair dismissal claims – this has remained at three months in Northern Ireland, compared with the increase to two years in the rest of the UK
10. Areas of divergence between Northern Ireland and the rest of the UK where Make UK members have identified challenges include:
 - c. Holiday pay regulations (differences in calculating holiday, including reference periods and limits on backdating of holiday pay)
 - d. Flexible working regulations (differences between the statutory process in Northern Ireland and government/ACAS guidance in the rest of the UK)
11. While there are unique challenges in Northern Ireland relating to the absence of an Executive and the consequent impact on the ability to develop policy and legislate, Make UK members with operations in Northern Ireland have noted that regulatory divergence may have sometimes occurred 'by accident' where the devolved administration has not been able to keep pace with changes to employment policy in the rest of the UK.

Potential challenges for Welsh employers from devolution of employment law

12. The possibility of discrepancy in technical regulations between different nations of the UK has been consistently highlighted by Make UK members as a risk of devolving employment law. There are two broad sets of impacts on employers arising from this:
 - a. **Resource and cost.** Inevitably, there would be implications for manufacturers where they would need to implement and maintain different HR policies, procedures and systems to reflect differences between jurisdictions. While this may be minimal for employers operating solely in Wales, it could be significant for those with a presence across the border.
 - b. **Workforce management.** It will also be important to ensure that leaders and managers within businesses accurately understand different processes for different groups of employees.
13. As noted above, should the Welsh Government decide to pursue devolution of employment law then the scope of this should be limited to areas where there is a genuine, material difference in the fundamental policy aims of the Welsh Government and the UK Government, and where there is sufficient evidence of a tangible positive impact on both employers and employees. Tweaking small aspects of policy and regulation across a variety of areas of employment law is likely to create confusion.
14. An example of this was highlighted during the pandemic, where divergence between England and Wales on public health regulations, particularly in relation to working environments, led to uncertainty and confusion for employers despite there having been broad alignment between governments on the fundamental direction of policy.



ACHIEVING AN INDEPENDENT WALES

FINANCE — DISCUSSION PAPER

ACHIEVING AN INDEPENDENT WALES

FINANCE — DISCUSSION PAPER





PUBLISHED BY MELIN DRAFOD © 2023
melindrafod.cymru

ALL RIGHTS RESERVED.

DESIGN: RHYS LLWYD

PRINTED IN WALES
BY SEROL PRESS, NEATH
SEROLPRINT.CYMRU

CONTENTS

1. INTRODUCTION
2. SUMMARY
3. FUNDAMENTAL PRINCIPLES:
BUILDING A NEW SOCIETY
4. THE FISCAL POSITION
5. THE WAY FORWARD
6. CLASSICAL ANSWER
7. A NEW SOCIAL CONTRACT
— POST-INDEPENDENCE VISION
8. CONCLUSIONS

1. INTRODUCTION

1.1. Melin Drafod believes that independence is a question that we are going to face as a nation in the years to come. We are the only think tank that looks at the path to independence for Wales and the policy questions that arise as a result.

1.2. Our think tank was established in 2021 in order to support, facilitate and be a critical friend to the grassroots independence movement. Melin Drafod is not affiliated to any political party. We work across parties and groups, and focus on giving detailed attention to the questions raised by the rising support for independence.

1.3. Our priority is promoting progressive independence, not independence for its own sake. We discuss solutions to the major crises of our age – from climate change and language minoritisation to the scourges of poverty and racism – both here and around the world. There is a real need to thoroughly prepare for an independent Wales: the question will face Wales sooner or later.

1.4. The purpose of this discussion paper is to add to the corpus of policy development outlining how Wales can be an independent, successful and progressive country. It is a consultative document and constructive criticism on its content is welcomed and encouraged.

2. SUMMARY

2.1. It is often said that Wales' fiscal situation is one of the biggest obstacles facing those trying to convince the public of the case for Welsh independence. However, there appears to be an academic consensus that the often-referred-to ONS figures¹ do not reflect what Wales would face on its first day as an independent country.

2.2. The Doyle report² presents a credible argument that Wales would face a deficit of 3.1% of Gross Domestic Product (GDP) on its first day as an independent country: a figure that would make Wales as capable as the vast majority of European countries of being independent.

2.3. It would be both sensible and precautionary to assume a degree of uncertainty about Doyle's figure of 3.1% of GDP, given that it is subject to negotiations between Wales' government and the remainder of the UK (rUK). There is more certainty about the higher revenue expected from corporation tax and foreign service spending, than his assumptions about pensions.

2.4. Although there is a strong argument that the fiscal position of Wales is healthy enough to maintain an independent state as it is, we propose to create a 'new social contract' between the state and its citizens which would consolidate Wales' fiscal position by around 6-7% of GDP over a period of years through policy changes, including the following:

- increase the ratio of revenue-to-GDP to the European Union average (from 39.6% to 46.0%), including the regulated supply of decriminalised drugs and taxes on rentierism;
- introduce a series of measures, including incentives for young people to stay and relaxing immigration rules, to increase the percentage of the population that is of working age, while at the same time transforming our relationship with work;
- reduce defence spending to the same level as Ireland, at 0.5% of GDP, and rule out funding nuclear weapons and energy;
- administrative and other expenditure changes, including the creation of a single emergency service, fewer county councils and a significant reduction in the prison population.

2.5. Using Doyle as a starting point, the above measures would boost the Welsh state's balance sheet by around £5-6 billion per year, leading to a financial surplus of around £2-3 billion per year, or 3-4% GDP. In this scenario, we believe that the surplus should be used to invest in initiatives such as:

- a significant child support payment in order to eradicate child poverty, as a step towards abolishing poverty;
- free universal childcare; and
- a program to decarbonise the transport, energy and housing systems.

1 <https://www.ons.gov.uk/economy/governmentpublicsectorandtaxes/publicsectorfinance/datasets/countryandregionalpublicsectorfinancesexpendituretables>

2 https://www.plaid.cymru/fiscal_gap_indywales

2.6. This report concludes that there is strong evidence that an independent Wales will be financially sustainable. It suggests a number of fundamental principles to steer the nation's decisions as it takes advantage of the new powers and opportunities that come with independence, transforming the country based on socialist principles. We have the ability and resources to build a new society that eliminates poverty, that lives within its one planet environmental limits and is a beacon of peace in the world.

3. FUNDAMENTAL PRINCIPLES: BUILDING A NEW SOCIETY

3.1. It is often said that the budget deficit is the main challenge facing those who make the case for Wales' independence. This is identified as one of the main questions for those who are in favour of independence in the interim report of the Welsh Government's Constitutional Commission³ which states: "in the case of independence, it is necessary to ask how an independent Wales would guarantee financial stability". However, we cannot consider fiscal questions in a vacuum: not expressing our principles would be tantamount to supporting the cruel and failed neo-liberal status quo.

3.2. It should also be noted that there are significant disadvantages, including opportunity costs, of Wales remaining within the UK. Indeed, Poole argues that: "it bears consideration that the economic and fiscal risks of staying a part of the UK are perhaps greater than ever."⁴ The financial, economic and social disadvantages Wales faces within the current union of the UK include:

- living within one of the least equal states in the OECD⁵ with almost 1 in 4 children living in poverty⁶;
- receiving much lower investment per head in our economic infrastructure, including research⁷ and transport⁸;
- a justice policy which in Wales incarcerates the highest percentage of population in Western Europe⁹;
- suffering as a result of the UK's very poor reputation on the international stage, with the United Nations criticising its treatment of trafficked people and slavery¹⁰ as well as refugees and migrants¹¹.

3.3. Furthermore, it should be acknowledged that the way we currently measure success or social progress is unsuitable, especially GDP, which promotes concepts such as growth and competition, and contrary to the needs of the planet and social cohesion.

3.4. Melin Drafod wants to see financial choices made by applying socialist and progressive values, in keeping with the various left-radical traditions that are deeply rooted in communities throughout the country. Central to our vision are these progressive principles, including common ownership, co-operation, workers' control and fairness for all, as well as re-imagining our decision-making structures.

3.5. In reading this paper and listening to the wider debate, we need to be cognisant that we currently live in the hyper-capitalist context of contemporary Britain. We need to start changing that narrow discussion and start opening people's eyes to the realities of a society where so many resources are privatised, rather than valuing the local, circular and foundational economies our communities need to succeed.

3.6. Independence offers us an opportunity to break the capitalist cycle of crisis and accumulation. The extractive power systems in place in the

3 <https://www.gov.wales/independent-commission-on-the-constitutional-future-of-wales-interim-report>

4 Pg. 10 https://www.cardiff.ac.uk/__data/assets/pdf_file/0004/1767424/Wales_Fiscal_Future_FINAL.pdf

5 <https://stats.oecd.org/Index.aspx?DataSetCode=IDD#>

6 <https://oxfamapps.org/cymru/cymraeg/tlodi-yng-nghymru-ar-cynllun-gweithredu-trawsbleidiol/>

7 <https://www.llyw.cymru/maen-rhaid-i-gymru-dderbyn-cyfran-deg-or-cyllid-ymchwil-datblygu-i-gyflawni-ei-photensial-gwein-idog>

8 <https://www.walesonline.co.uk/news/wales-news/wales-missing-out-uks-biggest-22288606>

9 <https://www.theguardian.com/uk-news/2019/jan/16/wales-has-highest-incarceration-rate-in-western-europe-prison-population-england>

10 <https://news.un.org/en/story/2022/12/1131867>

11 <https://www.ohchr.org/en/press-releases/2022/06/un-expert-urges-uk-halt-transfer-asylum-seekers-rwanda>

contemporary UK are completely unsuitable for, and incompatible with, the new Wales we wish to build. In many cases, these systems of power cause extremely profound problems in our society. We need to change our political society to an anti-capitalist one because, through that, an independent Wales will break away from the failings of the Union. A new Wales requires a new vision; we hope the principles outlined below will start a discussion on how we build a different society.

3.7. We propose applying the following fundamental principles as we face the future as an independent country:

- An Equal Nation - providing everyone with free basic services, including a home, and which distributes income and wealth much more equally;
- A Peaceful Nation - creating a society built on cooperation instead of conflict;
- One Planet Nation - rejecting the conventional capitalist precept of economic growth in order to tackle the climate crisis;
- An Inclusive and Participatory Nation - creating an anti-racist, anti-sexist, anti-prejudice society with as many decisions as possible made directly by people, workers and local communities;
- A Contented Welsh Language Nation - improving people's well-being and happiness and restoring the Welsh language as the country's own language (priod iaith);
- A Welcoming Nation - relaxing immigration borders to the maximum extent possible, a country that welcomes the contribution of peoples from around the world.

3.8. These principles are just a starting point. In discussing Wales' fiscal position we need to question what the economy is and who it serves.

3.9. In the sections later in this paper, considerable attention is given to the statistics measured within the constraints and framework of the Welsh economy as it stands within the union of the UK. However, it is important to recognize that wider structural responses are needed. The type of society we want to create should guide our financial and economic decisions, not the other way round.

4. THE FISCAL SITUATION

4.1. The viability of states cannot be measured on the basis of whether they have a balanced budget or not: few states in Europe could be considered sustainable if so judged. Of the members of the European Union, in 2021, 15 maintained a deficit higher than 3% of GDP, despite the currency union rule established in 1992 that efforts should be made to maintain a deficit of less than 3% of GDP and debt less than 60% of GDP. The neo-liberal rules of the EU's Growth and Stability Pact¹², considered far too conservative by many, are being reformed at the moment¹³.

4.2. Some argue that a separate currency and central bank for Wales, with appropriate capital rules, would mean that Wales' current budget deficit could be managed sustainably. By establishing a Welsh currency that is independent of the pound, greater fiscal powers and flexibility are available to the new state. Therefore, they argue that the current financial situation could be maintained by printing money: a policy that has been seen in action in a number of Western countries over recent years.

4.3. Furthermore, some argue that deficits are only relevant to the extent that they reflect the ability of states to repay loans. Given that the British Government has already committed to paying the full historic debts of the UK should Scotland gain independence¹⁴, it is argued that deficits would not be a cause for concern for the newly independent Wales.

4.4. However, there is an alternative point of view, especially from those who support Wales' membership of the European Union: that the financial markets and other states need to have confidence in the ability of the new independent state to pay its debts. Those are certainly choices facing members of the Euro area, as demonstrated by Greece's experience mainly during the 2010s.

4.5. Further discussion is needed on these issues, but it should be recognised that there is a valid intellectual argument that the budget deficit should

12 https://economy-finance.ec.europa.eu/economic-and-fiscal-governance/stability-and-growth-pact/history-stability-and-growth-pact_en

13 https://economy-finance.ec.europa.eu/system/files/2022-11/com_2022_583_1_en.pdf

14 <https://www.gov.uk/government/publications/uk-debt-and-the-scotland-independence-referendum>

not receive undue prominence when evaluating the various opinions, while at the same time acknowledging that there is an alternative view that it is necessary to demonstrate the financial sustainability of an independent Wales to markets and international organisations.

4.6. Recently, a healthy discussion has developed, centred on two academic interpretations - those published by the Wales Governance Centre and another by Doyle from Dublin City University¹⁵.

POOLE'S ANALYSIS

4.7. Poole, Ifan and Sion offer a detailed analysis of Wales' financial situation in their reports entitled *Government Expenditure and Revenue in Wales 2019*¹⁶ and *Wales' Fiscal Future: A path to sustainability?*¹⁷. The reports are valuable in terms of analysing the Office for National Statistics (ONS) figures together with changes over time and the reasons for the apparent shortfall.

4.8. The reports, partly funded by the Welsh Government, make a number of notable points, including that:

- lower revenue than the rest of the UK is the main driver of the relative shortfall between Wales' fiscal position and the UK average, specifically from income tax and national insurance;
- the level of tax as a percentage of GDP in Wales is much lower than the average of the countries of the Euro area, while the level of expenditure per capita is similar to the average of the OECD countries;
- Wales (along with 7 other OECD countries) is much more dependent on consumption taxes, for example Value Added Tax (VAT), while the majority of OECD countries tend to be dependent on income taxes or welfare contributions;
- capital investment by the UK in Wales, in transport and research and science, is much lower than the average for the rest of the state;
- Wales was a significant net beneficiary, in terms of expenditure, from its membership

of the European Union (unlike other parts of the UK);

- if the population of Wales were distributed across individual age groups in the same way as the average for the UK, the total expenditure forecast in 2019 for 2022-23 would be over £1 billion lower and tax revenue would be almost £500 million higher.

DOYLE'S ANALYSIS

4.9. Firstly, Doyle argues that the purpose of ONS statistics is not to estimate how much an independent Wales' budget deficit would be on its first day and that the body itself states that the statistics are 'experimental'.

4.10. Secondly, Doyle says that £4,626 million of the expenditure allocated to Wales is 'non-identifiable' and that much of it is an overestimate of how much an independent Wales would spend, citing defence and nuclear weapons as obvious examples. In addition, the report states that £1,240 million of the central expenditure of the UK that occurred abroad is attributed to Wales, which includes the diplomatic services and foreign aid.

4.11. Doyle identifies several areas of expenditure and revenue that would be subject to negotiation between the rest of the UK and the newly independent Wales, which he argues would reduce the fiscal deficit of an independent Wales:

- Pensions - he argues that tax payments made during the life of the union between Wales and the rest of the UK countries should be treated as insurance payments, that is, the rest of the UK should continue to pay for the pension rights gained during the life of the Union after Wales became independent. Reference is made to the agreements made by the UK Government with the Republic of Ireland and the European Union as important precedents in this regard. Doyle says negotiating a similar deal would reduce Wales' presumed fiscal deficit by £5,906 million;
- Debt - referring to the precedent of the establishment of the Irish Free State in 1925

15 https://www.plaid.cymru/fiscal_gap_indywales

16 Government Expenditure and Revenue Wales (Ifan, Siôn a Poole, 2019) https://www.cardiff.ac.uk/__data/assets/pdf_file/0004/1540498/Government-Expenditure-and-Revenue-Wales-2019.pdf

17 https://www.cardiff.ac.uk/__data/assets/pdf_file/0004/1767424/Wales_Fiscal_Future_FINAL.pdf

and the statement by the UK Government Treasury made in 2014¹⁸ in the context of the Scottish referendum, it is argued that an independent Welsh state would not need to pay a single penny of the debt of the rest of the UK. Reaching such an agreement would reduce the deficit by £2,672 million;

- Defence - £1,902 million a year on defence spending is attributed to Wales by the ONS, which includes nuclear weapons, but Doyle argues that an independent Wales would save £922 million a year by spending the average of the countries of the European Union, which is 1.3% of GDP;
- Foreign spending - Doyle argues that the £1,240 million a year attributed to spending on services such as embassies and international aid are political choices, not hereditary or stationary costs. The academic paper suggests that a state the size of Wales would not need the same level of diplomatic provision, saving £620 million a year;
- Others - Doyle considers that there is an underestimation of £735 million per year of Wales' income as a result of apportioning corporate tax revenue according to Gross Operating Surplus rather than per employee, given the disproportionate tendency for UK companies to locate in London. He also says that there would be £580 million per year through savings and higher tax income during the transition period to an independent country.

4.12. For the above reasons, Doyle concludes that the deficit of an independent Wales on its first day would be £2.6 billion (3.1% of GDP), not the £13.1 billion (18% of GDP) stated in ONS statistics.

CRITIQUE

4.13. It could be argued Poole and Doyle's analyses are bound by economic orthodoxy; it would perhaps be unfair to expect them to step beyond the boundaries of that field. By acknowledging assessments such as these, we can plan for a transition from the current economic situation to our wider vision for the country after independence.

4.14. It is important to note that the purpose of Poole's Wales Governance Centre 2019 report¹⁹ is not to reflect the fiscal situation that would face Wales on its first day as an independent country. However, that is how it has been interpreted by many, in the same way that there is a common misinterpretation of the ONS's experimental statistics.

4.15. Doyle's report is therefore a step forward in one sense, by making an effort to consider the situation of an independent Wales and apply the figures we have. There are however a few areas where we do not agree with his policy assumptions, which are detailed in section 6 below.

SUMMARISING THE DIFFERENT VIEWS

4.16. What the views identified above have in common is their acceptance that ONS statistics do not reflect the situation that would face an independent Wales on its first day.

4.17. There are however at least three very different views on the fiscal position of an independent Wales, including arguing that Wales:

- can establish its own currency, central bank and appropriate capital rules, and that therefore there is no need to pay much attention to the fiscal situation of an independent Wales;
- maintains a fiscal deficit of around 3.1% of GDP, a situation similar to other developed countries and is therefore in a healthy fiscal position;
- maintains a fiscal deficit between 3.1% to 18% of GDP, which is unsustainable, at least in the medium to long term.

4.18. Considering the possible analyses above, and while noting the argument that a budget deficit should not be given disproportionate importance, it should be recognised that some models for independence for Wales, such as joining the European Union, bring with them obligations to meet specific budgetary objectives. It is therefore argued that we need a deficit that is either 3% of GDP or on a credible path to reaching that level in the medium term.

18 <https://www.gov.uk/government/publications/uk-debt-and-the-scotland-independence-referendum>

19 Later Poole reports do make greater efforts to do this, but could still be described as conservative interpretations of the situation when compared with Doyle

4.19. It is estimated that £13.5 billion, or 18% of GDP, was the difference between expenditure and revenue in Wales within the UK in 2018-19²⁰ - a reduction from the 30% deficit of GDP in 2009-10. That compares to 1.8%²¹ of GDP at a UK level in the same year.

4.20. Eliminating the structural budget deficit is how one can describe the process of reaching a 3% deficit over a period of time. It should be noted that it is not beneficial to target the same level of deficit at all times, but that would be the average deficit over the period of the economic cycle.

4.21. The Doyle report suggests that an independent Wales would be in a fiscal position very close to that without controversial policy changes. On the other hand, Poole is more sceptical, arguing that "independence would require radical changes to fiscal and economic policy"²². We elaborate on these views below.

5. THE WAY FORWARD

TWO ANSWERS

5.1. When looking at the way forward, one needs to distinguish between two different answers to the question about the fiscal situation of an independent Wales. On a purely practical level, many people will ask if we can afford to maintain an independent nation. At the same time, but separately, we need to clarify the vision of the type of new society we wish to create, using the powers of an independent nation.

5.2. Of course, these solutions operate within the current economic system, namely the one in place before independence. There is therefore a tendency for them to focus on maintaining a neo-liberal capitalist system in the form of the current Western states. However, when looking to our future, we

need to start breaking away from these failed systems, which militate against the interests of the people and communities of our country. Our vision focuses on the devolution of power to people and communities, and our economy needs to reflect that.

5.3. However, there is a connection between the two answers. Within the constraints of the current economic system, we propose laying the foundations for our wider post-independence vision. The changes we propose as immediate steps in section 7 below are intended as a bridge to the wider 'New Social Contract' between the new independent state and its citizens, based on common ownership and equality of outcome.

6. A CLASSICAL ANSWER

6.1. Doyle's report deserves a great deal of attention and we believe there is valid argument to be made that all the assumptions in his report are well-founded.

6.2. However, we do believe there is greater uncertainty around the proposition that the rest of the UK would agree that Wales should not be liable for the pension benefit liabilities accrued during the life of the Union. Furthermore, and although it is absolutely clear that Wales would have no legal duty to pay a share of rUK's debt, it is possible to foresee some scenarios when the new free Welsh state would choose to make a voluntary contribution towards the historic debts of rUK. It should also be noted that the opportunity offered by independence to move to a system of Common Basic Services and wages for family care and housework could give a very different complexion to the debate around pension liabilities.

6.3. Applying the principles set out in section 3 above, Melin Drafod is bound to disagree with one of Doyle's suggestions: we believe that spending on defence should be lower than the 1.3% of GDP

20 <https://blogs.cardiff.ac.uk/thinking-wales/the-fiscal-gap-and-the-welsh-economy/> https://www.cardiff.ac.uk/__data/assets/pdf_file/0004/1540498/Government-Expenditure-and-Revenue-Wales-2019.pdf

21 <https://www.ons.gov.uk/economy/governmentpublicsectorandtaxes/publicspending/bulletins/ukgovernmentdebtanddeficitforeurostatmaast/september2019>

<https://obr.uk/overview-of-the-november-2022-economic-and-fiscal-outlook/>

<https://obr.uk/public-finances-databank-2022-23/>

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1126020/Public_Sector_Finance_bulletin_November_2022_HMT.pdf

22 https://www.cardiff.ac.uk/__data/assets/pdf_file/0011/2681543/plaid_conference_october2022_FIN.pdf

suggested by him and should instead be at the same level as Ireland, 0.5%.

6.4. However, and in taking a very conservative view of the Doyle report (which would be dependent on negotiations between Wales and the rest of the UK), it could be argued that the structural budget deficit would need to be reduced by around 6-7% of GDP. An independent Wales would face a number of choices if it were in such a situation, namely to cut spending, increase revenue or a combination of the two. If there is such a shortfall, it is recognised that it would not be necessary to close these fiscal gaps immediately, but rather over a period of time that is considered reasonable by those lending money to the new state.

6.5. Even taking this precautionary view, it is important to emphasise that it would only be necessary to strengthen Wales' finances by approximately 6-7%, as we have confidence that negotiations with the rest of the UK will leave us, at worst, with a budget deficit of approximately 9-10% of GDP per year.

6.6. This finding gives Wales an opportunity to start implementing the socialist and progressive principles identified in section 3 above, although more radical changes would have to wait until post-independence. Below we suggest areas which could be the basis for dealing with any financial shortfall facing an independent Wales.

6.7. The Poole report demonstrates its value by pointing to two facts relevant to Wales' fiscal situation, namely:

- Wales' lower level of revenue-to-GDP compared to the European Union average; and the
- net benefit accrued from increasing the percentage of the population that is of working age to the British average.

FAIR TAXES

6.8. A combination of tax measures could be used to increase the level of revenue-to-GDP to the European Union average (39.6% to 46.0%), raising around £4 billion a year and improving the fiscal position by around 5% of GDP. At the same time, this could be done in a way that distributes wealth much more evenly. It should be noted that a number of these measures could be introduced before independence in order to lay the foundations for building our wider vision for a new society thereafter.

6.9. Among the tax measures that should be considered therefore are:

- a wealth tax, learning lessons from the tax proposed in various US states;
- the legalisation/decriminalisation of drugs which would lead to additional revenue together with expenditure savings, with a net income boost of hundreds of millions per year²³;
- a tax on landlords' income/profits and other forms of rentierism, which would raise at least £375 million a year²⁴, as a step towards common ownership of housing;
- a tax on companies' profits from the export of water and energy;
- new tech media taxes which could raise around £50 million a year²⁵;
- a super-tax on foreign-owned property;
- aligning the income tax profile to the Welsh tax base;
- higher inheritance taxes;
- higher taxes on dividends; and
- a local income tax to replace council tax.

A YOUNG NATION

6.10. Melin Drafod believes that a series of measures are needed to increase the percentage of the working age population, while at the same time reassessing

23 <https://www.theguardian.com/society/2009/apr/07/drugs-policy-legalisation-report>
<https://transformdrugs.org/publications>
<https://committees.parliament.uk/writtenevidence/107437/pdf/>

https://www.unodc.org/documents/ungass2016/Contributions/Civil/DrugPolicyAlliance/DPA_Fact_Sheet_Approaches_to_Decriminalization_Feb2015_1.pdf

https://iea.org.uk/wp-content/uploads/2018/06/DP90_Legalising-cannabis_web-1.pdf

24 Cymdeithas yr Iaith estimates that by introducing a super-tax of 25% on landlords' income could raise around £375 million a year. On a practical level, such a measure would have to be combined with a system of rent controls. https://cymdeithas.cymru/sites/default/files/Mwy%20na%20Miliwn%20Cymdeithas%20d2_o.pdf

25 page 16, Darlledu yng Nghymru II, Cymdeithas yr Iaith, 2019 <https://cymdeithas.cymru/sites/default/files/Datganoli%20Darlledu%20-%20Ymgynghoriad%20Pwyllgor%20DGCh.pdf>

our relationship with work. Through these measures, we believe it is possible to improve Wales' fiscal position by approximately £1.5 billion²⁶ per year or 2.25% of GDP.

6.11. In considering these questions we take inspiration from an article entitled *Y lle gorau i dyfu lan* (The best place to grow up) written for our publication *Imagining an Independent Wales*²⁷, as well as progressive ideas about changes in the world of work. As part of this, policies will need to reverse emigration by retaining, and attracting back, young people to Wales.

6.12. Furthermore, and as part of the move to this new approach, an independent Wales should be the best country for young people and to raise a family. Measures, including the following, should be considered:

- Increasing the number of bank holidays to the best levels in Europe, from 8 to 15 per year²⁸;
- A four-day maximum working week (with 8-hour days and without loss of income);
- Reducing or abolishing tuition fees for students who remain in Wales;
- Measures to control rental and house prices, including giving local people and communities and those who work locally the first opportunity to buy houses.

WELCOMING BORDERS

6.13. Furthermore, it is generally accepted, on a purely economic analysis, that abolishing immigration controls would be a huge global economic boost²⁹. With an ageing population across the continent, there is a strong economic and

social argument that we have a significant need for workers.

6.14. However, as stated in section 3 above, it is not an economic argument, but a moral one, that places an imperative on the newly independent Wales to relax immigration borders to the greatest extent possible. Consideration should therefore be given to establishing the unconditional right to work here, regardless of origin and independent of an individual's citizenship.

SAVINGS OF THE NEW PROGRESSIVE SOCIETY

6.15. Building on most of the financial savings identified by Doyle, and in line with the principles set out in section 3 above, we suggest further policy measures that both create a fairer, greener and more inclusive society and consolidate Wales' fiscal position:

- Merge the three emergency services, and establish one 'Emergency Support Service' instead, which would have the primary aim of promoting the welfare of individuals and society;
- In line with the aim of creating a peaceful nation and reducing spending on defence to the same level as Ireland, maintain a defence service that has a small professional core and aims to promote the participation of all the country's citizens;
- Abolish nuclear energy and weapons, saving on subsidies and decommissioning costs;
- Reduce the prison population to the same levels as Finland³⁰ - from 154³¹ prisoners in every 100,000 of the population to 433 - saving around £150 million a year³²;

26 page 75, 'Government Expenditure and Revenue in Wales', Canolfan Llywodraeth Cymru
https://www.cardiff.ac.uk/__data/assets/pdf_file/0004/1540498/Government-Expenditure-and-Revenue-Wales-2019.pdf

27 *Imagining an Independent Wales*, July 2022, Melin Drafod

28 <https://www.tuc.org.uk/news/tuc-calls-creation-four-more-bank-holidays-improve-stingy-entitlement>

29 <https://www.aeaweb.org/articles?id=10.1257/jep.25.3.83>

30 <https://www.statista.com/statistics/957501/incarceration-rate-in-europe/>

31 <https://www.theguardian.com/uk-news/2019/jan/16/wales-has-highest-incarceration-rate-in-western-europe-prison-population-england>

32 Based on going from 4,291 prisoners (2018 figure) to 1,201 (28% of the current prison population) saving £48,409 per year per prisoner

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1050046/costs-per-place-costs-per-prisoner-2020-2021.pdf https://www.cardiff.ac.uk/__data/assets/pdf_file/0008/1195577/Imprisonment-in-Wales-A-Factfile.pdf

<https://www.gov.wales/devolved-justice-system-an-opportunity-to-reduce-the-size-of-the-prison-population>

- Establish fewer, more powerful local authorities, which would also have health responsibilities, saving around £151 million a year³³.

6.16. Excluding the defence savings (calculated as part of the cost reduction in our analysis of the Doyle report above), we think there is reason to believe that savings of around £400 million per year, or 0.5% of GDP, could be made through the policy changes identified in point 6.15 above.

7. A NEW SOCIAL CONTRACT – A POST-INDEPENDENCE VISION

7.1. Above we have identified ways to boost Wales' fiscal position by over 7% of GDP, based on our cautious interpretation of Doyle's conclusions.

7.2. However, if the Doyle report is assumed to be correct, the changes identified above would turn an assumed deficit of 3.1% of GDP into a surplus of approximately 4% of GDP, or £3 billion per year.

7.3. If the above measures lead to an annual surplus, we propose that some strategic investments should be considered. Some of them are identified above, but the following could also be considered:

- A significant child support payment in order to eradicate child poverty³⁴;
- A programme to decarbonise the transport, energy and housing systems³⁵, including significant investments in wind and wave energy;
- An English and Welsh language literacy programme for adults to ensure that all individuals are literate in both languages;

- A programme to bring housing into public ownership in order to make public housing the norm;
- Free universal childcare;
- Free universal public transport.

TRANSFORMING THE JUSTICE SYSTEM

7.4. Independence is an opportunity, as outlined above, to re-imagine so many of our current systems. Our current justice system - which is based on protecting the profits and property of the rich - searches, arrests and imprisons so many people completely unnecessarily. In many cases this is done on the basis of prejudice: on the basis of class and race, with far too many suffering harassment and violence from the authorities. In view of these injustices, above we propose to create one new emergency service, legalise drugs and reduce the percentage of the population in prison to the lowest levels in Europe. These policies have the potential to transform the lives of people and communities for the better.

CHANGING OUR RELATIONSHIP WITH WORK

7.5. Through independence, we have the opportunity to realign our relationship with work, so that all the benefits of work accrue to the workers. This should be done with the following in mind:

- that our reliance is on 'earning a living' instead of a proper living as a citizen's basic right;
- that work leads too often to a life of alienation: of low self-worth, little purpose and with mental and other health implications;
- the urgent and pressing need to reduce our impact on the climate and nature crises;
- the importance of ensuring workers' control and strong workers' rights so that employment is beneficial to individuals and to society as a whole;

33 <https://www.gov.wales/administrative-costs-local-authorities-review> <https://www.gov.wales/written-statement-review-local-authority-administrative-costs>

34 <https://www.bbc.co.uk/news/uk-scotland-63635698>

35 <https://foe.cymru/warm-homes-what-were-calling>

<https://www.theenergymix.com/2022/03/20/not-that-hard-to-grasp-uk-could-eliminate-need-for-russian-gas-with-insulation-heat-pumps-renewables/>

- the undervaluing of certain roles in society in relation to paid work, especially roles that are likely to be nurturing, caring etc.

7.6. An independent Wales could transform our relationship with work by:

- providing adequate, unconditional and universal basic services and wages for housework and caring, freeing citizens from the need to work to live;
- adopting and incentivising publicly-owned labour-saving technologies such as AI and automation to the maximum;
- reversing the narrative that we need paid jobs to survive and grow; instead we should make the most of our time, choosing how to spend it;
- being a country that seeks to support citizens to thrive in a wide range of ways;
- establishing a workers' democracy: restoring the right to strike, mandatory recognition of trades unions in the workers, and rights to hold a general strike;

COMMON OWNERSHIP PROGRAM

7.7. Marx argued for common ownership of industries so that workers gain all the benefits of their work. In line with this basic principle, there would be clear benefits from nationalising the key assets of the new state, such as energy, banks, water, transport, post and housing, bringing power back to the people. Furthermore, an independent Wales could consider the option of re-nationalising some essential services without paying compensation, given legacy profits and sub-standard services and investment.

7.8. In any discussion of the nationalisation or communitisation of assets and industries, there is a lot of focus on the 'cost' of nationalisation. Melin Drafod wants to change the discussion to focus on the costs of keeping these assets in private ownership. These costs are, in fact, much higher than many assume - a clear example of this being the huge cost of rescuing the banking system in a number of Western countries during the financial crisis of 2008-9.

7.9. Every penny of profit that goes into the pockets of the private owners is a penny less for the nation to spend. Private services focus on extracting profit, rather than on delivering a service; as such, profit and provision are conflicting concepts. Services run by the community, for the benefit of the community, do not need to make a profit: they just need to provide a good service.

7.10. The cost of keeping assets and industries private is a cost to our society in general - take energy and transport as examples. EDF (an energy supplier), for example, is owned by the French Government - and they have been able to cap the increase in energy prices to 4% this year, thanks to their state control. In August 2022, families in Britain, on average, paid 64.21 pence/kWh, while families in France paid only 25.01 pence/kWh.

7.11. It is a myth that our transport systems are in private hands; in fact they are often owned by foreign governments. In 2019, 80% of the train companies in Britain were owned by a foreign government either in full or in part, with the remaining 20% privately owned or owned by the UK Government. In France, the price of a train ticket per mile is £0.29, in Italy £0.14, and in Portugal £0.13. However, in Britain, the corresponding figure is £0.55³⁶. The costs of maintaining such private systems are clear: a more expensive, but not better, service³⁷.

7.12. We believe that further research is needed on the best method of implementing a program of public ownership as part of independence. This is in line with our objective of distributing wealth much more equally and benefitting from the common ownership of industries and key assets.

8. CONCLUSIONS

8.1. The debate about independence and its financial implications has undoubtedly progressed rapidly over the last few years.

8.2. The quality of Doyle's report gives us considerable confidence and good evidence to believe that Wales would be a financially sustainable independent country.

36 <https://www.vouchercloud.com/resources/train-prices-across-europe>

37 <https://www.consultancy.uk/news/13535/europes-best-train-systems-uk-railway-poor-in-service-quality>

8.3. Even taking a cautious view of the Doyle report, we have identified policy changes that would improve Wales' fiscal position by more than 7% of GDP.

8.4. We conclude therefore that these changes allow Wales to face a favourable scenario on its first day as an independent country. At worst, the country's deficit would be at a level similar to the average of European countries, and within the rules of the Growth and Stability Agreement of the European Union, at around 3% of GDP. At best, Wales would, in the short to medium term, have a surplus of up to 4% of GDP, or £3 billion a year, and would therefore be in a position to invest strategically in order to meet the needs of people, communities and the planet for the benefit of future generations.

*MELIN DRAFOD NATIONAL COMMITTEE,
JANUARY 2023*



FEEDBACK ON THIS PAPER

This is a discussion paper and we are keen to improve on the proposals.
Constructive feedback, comments and criticism are welcomed.
If you would like to write to us with comments, you can do so by emailing:
post@melindrafod.cymru



27 July 2022

Annwyl / Dear Commissioners,

Re: Independent Commission on the Constitutional Future of Wales - Consultation

Please see the attached response to your consultation on the Constitutional Future of Wales from Plaid Cymru Etholaeth Mynwy / Monmouth Constituency

Diolch

Have your say

1. What matters to you about the way Wales is run?

- Based on Human Rights values that are the bedrock of all policies and legislation – that everything can be traced back to them
- Democratically
- Proportional representation
- Promotes participative democracy – so it's hearing about the needs of citizens in Cymru from citizens. Build on the right to free speech – that can be interpreted as the right to be listened to, to be heard, to be engaged in decisions that affect people
- Builds trust and confidence in democracy
- Meets the needs of people in Cymru
- Develops an equal society – inclusive and accessible
- A fairer and more equal society
- Eradicates deprivation, poverty & homelessness
- Promotes Welsh culture and language
- An open society that values people and actively seeks to involve them in decision making
- Outward looking and welcoming, especially to those in distress
- Cymru is able to use its own resources to its advantage, e.g. sell water, sell energy, have control over its natural resources and assets such as the Crown estate
- Be free from interference from outside the nation e.g. Cymru hasn't voted for a Tory govt yet has it foisted upon us with increasing levels of disrespect and disdain for democracy
- A written constitution with Human rights embedded in it
- An elected Head of State

2. What do you think the priorities for the commission should be?

- Develop the learning and understanding about the options for how Cymru is governed
- Expand people's understanding of the options and the risks of the status quo including the risks of not being able to meet people's needs because of constraints imposed upon us, i.e. UK Govt, attacks on devolution, failing to devolve when recommended, Barnett Formula consequentials not being allocated, broken pre-Brexit promises, under-funded rail infrastructure etc

- Identify the national and societal outcomes that citizens desire for Cymru
- Identify the values that citizens want to be governed under
- Identifying the full range of options for the future of Cymru with the short/medium/long-term assessment of impacts of each plus a full assessment of the risks identified for each
- Assess the options and associated 'business cases' against how well they meet the delivery of outcomes and adhere to values
- Keeping citizens informed and engaged with their input being the driver of any recommendations
- Carry out the work from a whole-systems perspective so that you enable dialogue between participants e.g. the 'experts' in the myriad of fields required to be involved are involved in dialogue with citizens. Thus create greater common understanding – greater confidence on the output of engagement. Thus people will begin to see that getting involved matters and can make a difference
- Rely on facts and reliable research to underpin arguments / stances taken rather than pure opinion / political stance – to undermine disruptive politically motivated interference a la Brexit
- Be analytical in approach and conclusions drawn
- Design the approach / process to be as action oriented as possible. The findings could inform policies for parties and government regardless of the outcome around independence. Use deliberative / large group processes where you can to generate the dialogue and greater common understanding. Don't use poorly facilitated smaller groups that barely touch the surface – give people the time and space to properly engage
- To have too narrow a focus, for example, simply ask 'do you want an independent Wales?' is too simplistic – maybe the dialogue should be about informing options for a Welsh constitution / governance to meet the needs of people in Cymru? Making the links develops people's awareness and understanding

3. Thinking about how Wales is governed, by the Welsh Government and the UK government, what are the strengths of the current system, what aspects do you most value and wish to protect? Can you provide examples?

It sounds great calling for people to provide evidence in support of what they may propose but I suggest that deciding the best way to govern Cymru might be to identify what peoples' needs are and

then developing options, including independence, to assess which best fits meeting those needs – along with societal / national held values e.g. Human Rights

Devolved government in Cymru has enabled the nation to do things differently and even be World-leaders e.g.

- Play strategy
- Recycling
- WBFGA
- More proportional representative elections
- Voting for 16 / 17 year olds
- Support for Welsh language and culture
- Not developing unsustainable road development – M4 relief road
- Rewarding public sector workers where WG is able despite UKGovt policy
- Managing the COVID pandemic – because the WG can make decisions to protect its citizens despite UKGovt mismanagement

Value and protect

- Devolution – moving to independence – to make choices that support citizens in Cymru that meet their needs and desired outcomes
- Welsh identity, language and culture and sometimes simply the look of the country e.g. architectural styles on housing developments
- Wales has never voted Tory and devolution has enabled the nation to diverge from the UKGovt in some aspects and be a generally more progressive and outward looking nation
- Not having voted Tory shows a different political outlook that is ignored and dismissed by UKGovts especially Tory ones
- Being a nation of sanctuary
- Public services
- Language & culture

4. Are there any problems with the current system, and if so, how could they be addressed? Again, please provide examples.

- The current devolution arrangements are too weak. The current UKGovt's approach is to wave the Union flag more and to undermine devolution e.g. 'UKGovt in Wales' appearing and trying to out-brand the Senedd and Welsh Government
- Brexit and the Internal Markets Act is the framework for a UKGovt power grab to undermine and destroy devolved government contrary to two referenda results in support of having the Senedd
- For many decades / centuries the UK economic model has been one that only works for London and the South East of England. The economy in Cymru has been largely extractive leaving the nation impoverished, either in absolute or relative terms as industries were obliterated, Barnett formula funds not appropriately shared (HS2 being a recent example). My father and his brother were sent away from their S Wales village to find employment in the 1930s and this is a cycle of migration seen over successive generations – to get on you have to move out of Cymru. An independent nation would be free to make decisions for the benefit of its citizens without interference from a UKGovt
- UKGovt habitually disrespects devolved government, e.g. not engaged in meaningful dialogue, ignoring the Sewell Convention e.g. IMA, refusing to further devolve powers despite recommendations to do so e.g. CJS, threatening to override WG decisions e.g. road development, constantly using false comparisons between England and Cymru to make political points e.g. NHS services, using the IMA to delete Welsh food branding
- The economy is still extractive. For example, large housing developments are undertaken by large corporations who take their profits away from Cymru
- The transport infrastructure is extractive and not a national unifying arrangement e.g. to travel south to north by train you have to travel into England. A similar argument can be made about the road infrastructure
- UKGovt won't allow Cardiff airport to compete with Bristol because it favours the Western Gateway – or the English part – emphasizing the extractive economic structure
- Imposing nuclear power stations, wanting to impose fracking
- Withdrawing funding for rail electrification and leaving the rail network in Cymru massively under-resourced
- Classifying HS2 as an 'England & Wales' project when it has little or no benefit to Cymru and thus denying Barnett formula funds
- Not allowing Cymru to capitalise on its natural resources e.g. energy production, water exports

- Imposing a disaster capitalist approach to the economy regardless of the wishes of citizens in Cymru
- Usurping the purchase of COVID tests at the start of the pandemic
- Whilst cross-border arrangements around health services may well be a solution – they create tensions e.g. car park charges in England, rationing, or threat of, of cross border access to health services
- Loss of ferry traffic from Cymru to Ireland because of Brexit
- Funds to Cymru are often described in terms of English largess that citizens should be grateful for and not really deserve
- Limited free press/media in Cymru – dominated by England / London / S E England oriented news outlets

All of these problems would be better addressed if Cymru was independent

5. Thinking about the UK government, the Welsh Government and Welsh local government (your local council), what do you think about the balance of power and responsibility between these 3 types of government – is it about right or should it change and if so, how? For example, who should have more power, or less?

- Representative democracy only works as well as people choose to be engaged and elect the best politicians to work for them. In recent decades the public as a whole has been dumbed down by a right wing dominated press and as a result may not be as engaged as they ought to be
- WG – needs to expand the number of MSs to provide the capacity to make decisions, hold govt to account, respond to people's needs
- There could be a model for a Senedd that is not so politically divided – involve people in decisions from across the spectrum rather than excluding opposition
- Welsh politicians should have allegiance to Cymru and not as with Labour and Tory parties – where they are a subset of a UK party. Plaid and the Greens are Cymru-specific – and thus are not necessarily bound to follow a particular dogma as we see particularly with the Tories and to a lesser extent with Labour

- Attempts to reduce the number of unitary authorities has failed – and it is unclear whether the current structure is the best way to deliver services or whether it is about parochialism and holding on to power bases ... Different structures could be envisaged / visioned e.g.
 - More empowered community / town councils
 - Fewer county borough / city councils
 - Develop a more participative and responsive structure
 - Try to ensure councils ensure that all are represented
 - Remove a layer of local govt – but ensure local representation occurs via a committee structure instead but allied to an open, transparent, dialogue and decision-making with local residents – lose representatives but have enshrined in law the need to hold deliberative events with residents. This suggestion will be dismissed as ‘too time consuming’, too expensive’ etc but the value added is that people are likely to buy into democracy and learn more about how to make it work locally
 - Proportional representation voting processes

6. As a distinct country and political unit, how should Wales be governed in the future? Should we:

- broadly keep the current arrangements where Wales is governed as part of the UK, and the Westminster Parliament delegates some responsibilities to the Senedd and Welsh Government, with those responsibilities adjusted as in Q5, OR
- move towards Wales having more autonomy to decide for itself within a more federal UK, with most matters decided by the Senedd and Welsh Government, and the Westminster Parliament decides UK-wide matters on behalf of Wales (and other parts of the UK) OR
- move towards Wales having full control to govern itself and be independent from the UK OR
- pursue any other governance model you would like to suggest
- alongside any of these options, should more responsibilities be given to local councils bringing decision making closer to people across Wales and if so, please provide examples.

Centuries of governance from Westminster have resulted in Cymru being more impoverished than it should be with levels of deprivation and poverty and other equality metrics higher than they need to be if resources and wealth are used for the common good. Cymru has shown that it tends towards being more progressive and socialist based as a society / nation. A UKGovt tends to dismiss the



needs of Cymru, as it does regions of England and other nations and rolls out comparative statistics to feed a narrative that Cymru is granted English largesse

Cymru has a separate and distinct identity – geographically, culturally, by language, topography, history. It's acknowledged that better decisions are often made by, or at least closer to, those who will be affected by them. Mayors, PCCs have been introduced to that end. However, decision-making needs to be accompanied by control over revenue in order to be effective and not reliant upon largesse from another body. Thus whichever model is proposed for Cymru it needs to have as fundamental autonomy over all the functions of everyday government – so federal / confederal versus independence are the options. And within those federalism and confederalism are fudges around the issues and could allow an overriding body (UKGovt) to usurp their devolved powers – as we are experiencing at the present time. Taking it a stage further then – independence is the option to aim for that would allow Cymru to make decisions about defence etc that are in line with citizens' views. It would be possible to enter into a negotiated agreement with other independent nations to form appropriate collective arrangements

The democratic and power deficit between Cymru and the UKGovt will not be resolved with the status quo – something has to change. The only way Cymru can assert itself is to be independent. Alongside the democratic and power deficit goes the economic imbalance and thus poorer people, weaker public service infrastructure, inadequate transport links and other infrastructure e.g. broadband, IT etc

7. Overall, what is most important to you in about the way in which Wales should be governed in the future? Is there anything else you want to tell us?

Cymru gets the political hue of a sovereign government its citizens wants and not that imposed upon it by a UKGovt where its make up is overwhelmingly biased by whatever England wants

The decisions about a Scottish independence referendum and a resolution to the tensions created around the NIP, GFA in NI and Ireland will have an impact upon perceptions of how Cymru should be governed

An independent Cymru helps defend against the attacks upon Cymraeg and our culture. There's been articles recently in the right wing press attacking the use of Welsh language and Welsh Govt



decisions to protect language, culture, health, well being. What's the point of such attacks by the press and UKGovt unless it's to protect their vested interests ...

Cymru gets the political hue of a sovereign government its citizens wants and not that imposed upon it by a UKGovt where its make up is overwhelmingly biased by whatever England wants

The decisions about a Scottish independence referendum and a resolution to the tensions created around the NIP, GFA in NI and Ireland will have an impact upon perceptions of how Cymru should be governed

After 22 years of devolution it is now time to take the step to independence, as so many other small countries have done over the past century. We, the people of Wales, have the ability and the expertise to run our own country. We have many natural resources. We have had more that two decades of experience in government. We live in communities which are socially supportive and active. The final step is before us. Unnecessary interference from outside is no longer acceptable.

Different areas of government have different areas of strength and of challenges inevitably. To consider many of them briefly:

Environment and Climate Change

Wales is a country with many resources for energy generation. All Governments of Wales have worked positively in this field and that of energy conservation. Given full, independent powers, Tidal Energy generation in Swansea Bay could be at or near implementation. More buildings could have been well insulated. At present, major road building by the UK Government, and ensuing increase in fossil fuel use, is being resisted by the Welsh Government.

Biodiversity is largely not too badly damaged in Wales to be restored to former levels.

Health and Social Care

The Government of Wales has taken more rational and sensible measures to control the pandemic, despite UK efforts to reduce controls too quickly. Control of NHS funding by the UK Government is a



serious problem, forcing privatisation of some services despite no welcome for it in Wales. This is very wasteful of taxpayers' money, providing big profits for some companies.

Economic and Fiscal Viability

This is the crucial area of concern for many when considering independence. Yet this is the area of government where the needs of Wales have been most neglected by UK governments from industrialisation onwards, and earlier.

The fact that Wales lags economically is an indictment of outside government, and, if considered rationally, should be the most compelling reason for full economic and fiscal powers in an independent government.

Culture and Language

In this field, where the Welsh government has considerable powers, many measures have been taken to strengthen our language and cultures. Success is still not certain, but progress is being made, despite vital economic powers, used to damaging effect by outside government.

Housing

Throughout Wales, people are suffering from an uncontrolled free market. Fiscal rules preventing the building of good quality houses available for fair rents and secure tenancy have been in place for many years. While these are now partially relaxed in Wales, nevertheless financial issues are still prohibitive in tackling this effectively. The take-over of Welsh-speaking communities in particular is highly destructive.

Defence

While I support the need for a defence capability, it should be appropriate to needs. Trident is an unnecessary expense for Welsh taxpayers. If it were ever to be used there would be nothing left to defend. The argument that it keeps a UK 'place at the top table' is specious. The UN structure is anyway in need of significant reform.



Democracy

The size and powers of the Senedd are totally inadequate.

Powers

It is unacceptable that powers have been removed since leaving the EU, and that the UK Government is able to remove devolution of all powers whenever it wishes.

Size

Sixty members are inadequate to carry out their work as well as should be possible. In addition, the low numbers mean that carrying out one duty can conflict with another. This is not acceptable. A minimum of 80-90 members are needed.

Method of Election

The hybrid method of voting is not sufficiently democratic. The Single Transferable Vote system would give each member the same mandate. For example, the present 40 constituencies could be paired, and could each elect 4 members. This would entail minimal administrative change, but a more thorough revamp could have better long-term results.

Internationally

Wales and international relations would benefit from direct participation in international organisations and discussions. As part of this, it would be beneficial to apply to rejoin the European Union, following a referendum.

Finally, the fact that the Senedd is much more accessible to the people of Wales provides better government and mutual understanding. There is also less chance of election of parties and leaders who are undemocratic, incompetent or even authoritarian.



In responding to these questions, we would welcome views on how the current forms of governance, and any proposals to change governance in the future, might impact on the Welsh language.

Responses to consultations may be made public. To keep your response anonymous (including email addresses) tick the box.

Submit your comments by 31 July 2022

email to: ConstitutionCommission@gov.wales

or post to:

The Independent Commission on the Constitutional Future of Wales

Cathays Park

Cardiff

CF10 3NQ



Have your say submission by National Pensioners Convention Wales (NPC Wales).

1. What matters to you about the way Wales is run?

The principle of cooperation and collaborative working was widely supported in the comments made in our NPC Wales members meeting.

2. What do you think the priorities for the commission should be?

It was noted that there is some scepticism about “consultations.” We, as older people, have been around for a while and have seen some genuine consultations but also some that were really “rubber stamping operations” after a decision had already been made and were not truly consultative. NPC Wales hopes that the Commission is a genuinely consultative one.

Members pointed out the importance of democracy but also of the need for a much wider consultation with the people of Wales. But how to do that? Digital Exclusion was growing, and NPC Wales were actively pursuing that issue through the NPC Wales connections for all campaign.

The Commission needed to be as open and transparent as possible with as wide a range of methods as possible used to engage with the people of Wales. Members pointed to the extensive community-based consultation that was used in Scotland during the referendum campaign with events being held in Cities, Towns, Villages, Religious premises etc.

3. Thinking about how Wales is governed, by the Welsh Government and the UK government, what are the strengths of the current system, what aspects do you most value and wish to protect? Can you provide examples?

NPC Wales does support devolution. It has resulted in some major gains for people of all ages in Wales and we wish to see those retained and enhanced in future for all



generations. There are many examples for older people: We have an Older People's Commissioner for Wales. We have retained a Publicly Owned Health Service, we have Free Prescriptions, no charges for hospital parking, the over 60 24/7 Travel Pass etc. Now we have in place a Welsh Government Ageing Well Strategy all very welcome. We also have a new Curriculum for Wales which is just starting to be implemented and is based on the Scottish Donaldson approach but designed to allow each school flexibility to develop its own curriculum according to local needs, although within certain parameters.

4. Are there any problems with the current system, and if so, how could they be addressed? Again, please provide examples.

The opacity of Public Finances and who (Westminster-Welsh Government-Local Authorities) does what makes the task, facing the Commission, more difficult. People do not understand "how it works" and are therefore put off from engaging. It is shown by the relative voter turn outs in UK Wide General Elections in Wales (66.6% in 2019), Senedd Elections (46.6% in 2021) and Local Government Elections (~35% in 2022).

NPC Wales members expressed major concerns about Local Government in Wales. NPC Wales believe that 22 Local Authorities was too many and there were governance issues as well with very low turn outs in Local Elections, in some places no elections because of limited interest in people wishing to become Councillors. Some expressed a view that Councillors should only be allowed to hold elected office for two terms (in effect 10 years) to avoid ossification, risks of nepotism etc.

The Nolan principles need to be applied, and been seen to be applied, to all holding Public Office in Wales.

Some members expressed the view that Welsh Government should impose a Local Government re-organisation but further noted the cost and complexity involved plus the "turkeys won't vote for Christmas" effect.



**Y Comisiwn Annibynnol ar
Ddyfodol Cyfansoddiadol Cymru**
**The Independent Commission on
the Constitutional Future of Wales**

5. Thinking about the UK government, the Welsh Government and Welsh local government (your local council), what do you think about the balance of power and responsibility between these 3 types of government – is it about right or should it change and if so, how? For example, who should have more power, or less?

We would refer to our response to Question 4.

6. As a distinct country and political unit, how should Wales be governed in the future?

NPC Wales supports the option 6.2.

6.2 Move towards Wales having more autonomy to decide for itself within a more federal UK, with most matters decided by the Senedd and Welsh Government, and the Westminster Parliament decides UK-wide matters on behalf of Wales (and other parts of the UK)

6.5 Alongside any of these options, should more responsibilities be given to local councils bringing decision making closer to people across Wales and if so, please provide examples.

NPC Wales notes that the Westminster Parliamentary Boundary Review would, likely, reduce Welsh Representation in Westminster from 40 Members of Parliament (MPs) to 32 MPs. This does strengthen the argument for a larger Senedd and 96 seems appropriate. But such a change would also raise the question do we need so many Councillors as well? It would mean that the case for a Local Government re-organisation and a review of their powers becomes stronger.

7. Overall, what is most important to you in about the way in which Wales should be governed in the future? Is there anything else you want to tell us?



The principle of cooperation and collaborative working was widely supported in the comments made in our NPC Wales meeting. Openness and transparency are the key.

- **On that basis the, unanimous, view of the members of NPC Wales was that we do not support the proposal to use a closed list electoral system for Senedd elections.**
- **NPC Wales members would support a Single Transferable Vote (STV) system for Senedd elections.**

This submission was drafted following a meeting of the Full Council of NPC Wales held on 19th May 2022. It was then circulated to members for review and comments and the final submission was approved by the Executive Committee of NPC Wales on 21st July 2022.

NPC Wales would like to thank the Independent Commission for the opportunity to comment and commend its' work.

Chair NPC Wales 21ST July 2022



**Y Comisiwn Annibynnol ar
Ddyfodol Cyfansoddiadol Cymru**

**The Independent Commission on
the Constitutional Future of Wales**

Submit your comments by 31 July 2022

email to: ConstitutionCommission@gov.wales

or post to:

The Independent Commission on the Constitutional Future of Wales

Cathays Park

Cardiff

CF10 3NQ



The Constitutional Future of Wales

A Response from Neath Port Talbot Council for Voluntary Service

Neath Port Talbot CVS
Tŷ Margaret Thorne
17-19 Alfred Street
Neath
SA11 1EF

Introduction

Neath Port Talbot CVS is the County Voluntary Council and a Charitable Company set up to promote, support and develop the Third Sector in Neath Port Talbot. It has over 500 member organisations and has contact with many more Third Sector organisations operating in Neath Port Talbot covering various communities of interest, public services and geographical communities (from small local groups covering smaller wards and deprived communities to large national organisations). Some are wholly volunteer-led and run, and others employ a workforce.

As an infrastructure organisation, our role in supporting the development of communities and building community resilience is clear. We provide capacity building, support and guidance to third sector organisations, helping them to develop, plan for growth and sustainability, to deliver services, opportunities and activities that positively impact on, and improve outcomes for, citizens and service users. We also have an important role in engagement and representation.

Our aim is to promote the development of a local third sector that is effective and efficient, informed and influential; a sector which is able to improve and achieve positive outcomes for local people. The organisation has strong partnership links locally and regionally and works in a number of strategic areas, such as Health, Education and Learning, Regeneration, and Children and Young People.

As part of this work and its key representative function, Neath Port Talbot CVS facilitates a range of third sector forums and networks, which engage the sector in Neath Port Talbot in order to gather the views of the sector and to feed these views into key decision-makers and delivery partners. The organisation also promotes a range of messages to its staff and to the wider community through its newsletters, website and social media.

Neath Port Talbot CVS welcomes the work of the Commission and the opportunity to share our thoughts on the constitutional future of Wales.

As a member of the Wales Council for Voluntary Action, we support and endorse the points raised in their separate response to this consultation whilst also wishing to feed in additional comments below.

WHAT WORKS ABOUT OUR CURRENT CONSTITUTION?

We recognise that strengthening Welsh democracy has facilitated the introduction of groundbreaking legislation and enabled Wales to diverge from the UK on certain issues, namely:

- Becoming the first country in the UK to make the UNCRC part of its domestic law through the introduction of the Rights of Children and Young Persons (Wales) Measure 2011
- Becoming the first country in the world to put the UN's Sustainable Development Goals into statute and legislate for the wellbeing of current and future generations under the Wellbeing of Future Generations Act
- Making the physical punishment of children illegal under the Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020
- Introducing a basic income pilot for young people leaving care

Devolution has given policymakers the opportunity to introduce a distinct Welsh curriculum which supports children and young people to become not only capable learners but ethical informed citizens who are empowered to contribute to the social, economic, environmental, and cultural wellbeing of Wales.

We are encouraged by the direction of travel and values underpinning legislation and policy development in Wales. The above mentioned examples which strengthen rights and promote equality and social justice align with the goals and values of the third sector and distinguish Wales as a nation which takes a compassionate approach to policy development.

WHAT DOESN'T WORK ABOUT OUR CURRENT CONSTITUTION?

The ambitions of the Welsh Government are restricted within the current devolution settlement where policy areas interact with non devolved responsibilities.

An example being the Welsh Government's basic income pilot for care leavers and its interaction with the tax and benefit system. Any extension of the pilot to a truly universal benefit would not be possible at present due to a lack of power and finance.

Wales has the highest level of child poverty in the UK. Despite the introduction of measures to break the cycle of poverty, levels remain persistently high and many of the most important levers for tackling this exist outside Welsh Government control.

Despite having bold ambitions and inspiring other nations, the impact of Welsh Government legislation such as the Wellbeing of Future Generations Act has failed to drive change at the scale and pace needed. The Act whilst aspirational is not enforceable as evidenced by the failed attempts of communities to use it to protect local community assets.

The effectiveness of the Welsh fiscal framework has been called into question. The limited financial powers of the Welsh Government (in terms of its borrowing powers and inflexible, finite budget) restrict its ambitions and ability to operationalise policy.

We welcome the civic conversation about the constitutional future of Wales and efforts to engage with people who wouldn't ordinarily speak on these matters but would draw attention to the lack of information, discussion, analysis and monitoring of Welsh politics in the media. This lack of political coverage contributes to political disengagement and has a direct impact on democracy.

WHAT SHOULD THE CONSTITUTION LOOK LIKE IN FUTURE?

The constitution should be underpinned by the democratic values and principles of respect for human rights, promotion of wellbeing and sustainable development, and the pursuit of social justice.

The constitution requires a strengthened and vibrant Welsh media landscape to provide accessible and detailed information on Welsh politics to facilitate an engaged and educated public which will in turn support democracy and civic participation.

The role and value of the voluntary sector in the pursuit of social justice and achieving the wellbeing goals should be fully understood. To that end, the voluntary sector should be treated as equal partners and involved alongside statutory and public sector bodies in decision making, influencing policy and legislation, and scrutinising Welsh Government.

Network Rail

Questions on transport devolution **Transport sub-group – Independent Commission on the Constitutional Future of Wales**

Network Rail is a public sector arm's length body of the U.K. Government's Department for Transport (DfT). We operate most of the rail infrastructure across Great Britain, working within the governance arrangements agreed between the governments in Great Britain and by our regulator, the Office of Road and Rail (ORR). Within this structure of accountabilities, we are focussed on improving our relationships in Wales with both the Welsh Government and Transport for Wales (TfW). We recognise the importance of providing the best possible service across Wales and Borders according to franchise specified by the Welsh Government.

We are a not-for-dividend organisation, and any profits we make are used to reduce costs to the taxpayer. We are given the commercial and operational freedom to manage Britain's railway infrastructure in Wales, Scotland and England within independent regulatory and control frameworks set by the ORR. Our income is a mix of direct grants from Governments, charges levied on train operators that use our network, and revenue, mainly from our commercial property estate.

Our funding to operate, maintain and renew the railway infrastructure network is delivered in five-year settlements known as control periods. In Wales and England, the UK government and the ORR specify what they need from the railway and how much they can afford to contribute in the Statement of Funds Available (SOFA) and the High Level Output Statement (HLOS). In Scotland, the SOFA and HLOS are made by the Scottish Government based on the powers and funding settlement between the Scottish and UK Governments. This means that although Network Rail still operates as a single company across Great Britain, we are accountable to the Scottish Government for its activities in Scotland and the UK Government for its activities in Wales and England.

Network Rail produces detailed control period business plans setting out what it requires to operate, maintain and renew the rail network. This is informed by comprehensive stakeholder input including from the Welsh Government, train operators and local authorities. We are reaching the end of Control Period 6 and are now agreeing with the ORR our operations, maintenance and renewal funding for Control Period 7 which runs from 2024-2029.

In terms of train performance management, project delivery, and passenger and stakeholder communications, we have worked hard to integrate the activities of Network Rail, TfW and Amey Infrastructure Wales (AIW) through joint accountability, joint performance improvement plans and mutual challenge. AIW delivers TfW's infrastructure management and transformation work on the Core Valley Lines.

The Welsh Government and the UK Government jointly support and guide TfW and Network Rail through the Wales Rail Board which makes decisions on enhancement investment opportunities and priorities. This relatively recent approach has great potential to further unlock more joined up, system-level benefits.

If ownership or effective control of the network were to change in some way, as it did with the divestment of the Core Valley Lines to the Welsh Government, it would be for

governments in consultation with the ORR to confirm what effect (if any) this would have on the funding available.

As the asset owner, the Welsh Government is obligated to manage the Core Valley Lines infrastructure, through TfW, and also has the right to invest in the entire rail network in Wales and Borders. Enhancements to the Wales and Borders rail network are funded by the UK Government, the Welsh Government, local authorities and private investors on a case-by-case basis, depending on the strategic objectives and outputs desired by each partner. The funding for such enhancements incorporates discrete funds for policy objectives, such as levelling up, access for all and the new stations fund.

Network Rail does not independently bid for enhancements, but we are committed to engaging and supporting all investment which supports and enhances the rail network in line with government policy objectives and network sustainability.

In the Union Connectivity Review I gave an overview of the opportunity for the UK government to identify funding streams for further strategic investment in enhancements to the rail network. I recognised the benefits to the whole of the UK of improving transport links, some of which are the responsibility of the devolved administrations and would otherwise fall to be funded solely by them. In Wales, examples of where the UK Government could work in partnership with Welsh Government to develop enhancements include multi-modal improvements on the North Wales transport corridor, better connectivity and journey times between Cardiff, Birmingham and beyond, and the recommendations from the South East Connectivity report for new and upgraded stations on the existing South Wales Main Line.

Transport for Wales, which is wholly owned by Welsh Government, manages rail services and fares regulation through its subsidiary, Transport for Wales Rail Ltd. England only services operated by Transport for Wales are then specified through an Agency Agreement in place with the DfT for service provision in England, within specified limits. This arrangement maintains democratic accountability on both sides of the political border. Non-TfW franchises which operate in Wales and Borders are specified independently by the DfT with Welsh Ministers' input into that process established in a Collaboration and Cooperation Agreement between the two governments.

The rail industry Network Code is used to allocate capacity and regulate the relationship between all access beneficiaries, including passenger franchise train operators, freight operators and open access operators.

Network Rail is required by our network license to coordinate the system for all passenger and freight operating companies without favour, and we are particularly aware of this responsibility for rail freight which must largely operate without a subsidy. The management of limited capacity within the complex rail system gives Network Rail and TfW the shared opportunity to make strategic trade-offs between passenger and freight services to encourage modal shift from road to rail.

Rail freight is vital to the UK economy, especially the movement of bulk products and containerised traffic. Freight contributes to the Welsh Government's ambitious decarbonisation targets for Wales, as well as increasing the case for the further decarbonisation of rail. Investment in rail capacity is essential for removing vehicles from roads, driving modal shift and contributing to climate change adaptation. In particular, the

route across South Wales from Milford Haven to the Severn Tunnel is critical in supporting the UK's energy security, steel traffic flows and the movement of consumer goods. In North Wales, specific sites such as the cement works at Padeswood can only viably operate due to the capacity enabled by rail. Freight traffic is growing in Wales. Wentloog freight terminal has recently opened 24hrs a day. A second daily 'Tesco' freight train has started to use the terminal, which brings in an additional 1,000 tonnes of freight to South Wales daily. A second aggregate flow started from Penmaenmawr, and we have undertaken further trials of timber traffic from Aberystwyth to Chirk.

Network Rail looks forward to supporting the increase of freight flows that may arise from the commitment to two new freeports in Wales, Celtic Sea and Ynys Môn. There are significant renewable energy opportunities in the Celtic Sea, which will play a critical part in the decarbonisation and renewal of the Welsh economy. Major investment, including the potential conversion of the blast furnaces at Port Talbot to electric arcs, will be a major project which rail is excellently placed to resource, and could contribute to the case for further electrification of the South Wales Main Line.

The Welsh Government is shortly going to commence work on a new multi-modal freight strategy and Network Rail's route director for Wales and Borders has already met jointly with Welsh Government and the DfT to articulate our full willingness to engage with and support that important work.

HS2 is a separate organisation to Network Rail, and its funding is entirely separate from Network Rail's core funding for operations, maintenance and renewals activities. At its closest point to Wales, it is intended that HS2 will serve Crewe station. The indicative train plan for HS2 does not envisage trains running from Crewe into the Welsh railway network. I enclose a copy of my 15 March 2023 address to the House of Lords in which I shared further thoughts on HS2 in relation to Wales.

In this address I also stated that the structures used to run the railway are not aligned to customers and are convoluted and excessively contractual. Cost is accounted for in a different place from revenue, track and train are divided, and innovation and investment are suppressed. This is all because the railway is not managed as a whole system. The reform of our railway is essential because the connectivity it delivers is a major driver of economic growth, jobs, housing, social cohesion and sustainability, and with the right structure, we will do better.

The rail industry has been substantially negatively impacted by the COVID crisis and is now subject to wholesale reform following the Williams Review into rail that agreed in 2021 to establish Great British Railways with a view to a simpler, more effective rail network for Britain. The details are currently subject to consultation and forthcoming legislation, and Network Rail will continue to work with all Governments as this new organisation is created.

Recognising the Welsh Government aspirations set out in Llwybr Newydd, The Wales Transport Strategy 2021, and in collaboration with TfW, we established a joint project team called Cyfuno, the Welsh word meaning, "to work together or combine". This joint team is exploring how to work more effectively within existing industry structures, as well as identifying opportunities to challenge system constraints. We are finding that the closer we work, the greater our opportunities to improve outcomes for passengers and freight, drive efficiencies and reduce the friction at interfaces between the organisations.

This joint team is also partnering with the Great British Railways Transition Team to explore a range of scenarios for how rail industry arrangements in Wales might evolve to reflect the agreed policy direction of the U.K. and Welsh governments.

On the face of it, the railway infrastructure is a system of assets which individually and collectively carry significant liabilities. However, the case for its continued existence and ongoing enhancement is the huge socio-economic benefits that it unlocks, including decarbonisation. We have an enormous opportunity and indeed a responsibility to take a more joined up approach to long term strategic decision making across the whole transport system, that maintains a strong connection to a coherent GB wide network as well as supporting the Welsh Government's transport and decarbonisation strategy aspirations.

Appendix A: Commission Questions for Rail

- Is the current devolution settlement sufficient and adequate to manage the network?
- Does the Welsh Government need further powers?
- Is there an opportunity to set up shared governance arrangements?
- How is rail infrastructure management connected with freight movements and shipping more broadly?
- How has franchise renewal for non-TFW services affected TFW services?
- How has HS2 affected the Welsh network operationally, and the Welsh Government financially? How does levelling up funding compare to the consequential that would have been received if there had been a Barnett consequential for HS2?
- What would be the financial implications of the Welsh Government taking on a greater proportion of the rail infrastructure in Wales?



FUTURE OF LOCAL GOVERNMENT CONSULTATION RESPONSE



**Y Comisiwn Annibynnol ar
Ddyfodol Cyfansoddiadol Cymru**
**The Independent Commission on
the Constitutional Future of Wales**

Dated 10th February 2023

To The Independent Commission of the Constitutional Future of Wales
Welsh Government Cathays Park Cardiff CF10 3NQ

From The North & Mid Wales Association of Local Councils
Crown House High Street Llanfair Caereinion SY21 0QY
Tel 01938 811378 Mob 07767 267830 Email supercommter@mail.com

The Association represents over thirty larger town and community councils in North and Mid Wales.

The Future of Government in Wales

Have your say

1. What matters to you about the way Wales is run?

- i) Cost of government compared to the population level.
- ii) A 'one size fits all' does not work for Wales and flexibility is important.
- iii) A dedicated North Wales Minister.
- iv) Honesty, transparency, and scrutiny of the actions of members and their senior staff.
- v) Delivery taking into account the views of its population.



2. What do you think the priorities for the commission should be?

- i) Ensuring the cost of government is kept under control.
- ii) Health Service delivery (social care is an urgent action)/
- iii) Public Transport provision with timetables and vehicles (or rolling stock) to suit the provision required.
- iv) Ensuring that representation is 'real', and that Town and Community Councils consultation responses are a 'material consideration'.

3. Thinking about how Wales is governed, by the Welsh Government and the UK government, what are the strengths of the current system, what aspects do you most value and wish to protect? Can you provide examples?

The Association supports devolution and would like to see more powers passed to the Welsh Government. There are numerous occasions where a decision needs to be made where Westminster and Cardiff either disagree or take an extortionate amount of time taking projects forward.

The Association is of the view that there is too much duplication, too much procedure and less delivery than is required.

4. Are there any problems with the current system, and if so, how could they be addressed? Again, please provide examples.

- a) The general feeling was that Wales was over governed for the size of population which is expensive. For just 3m people we have Westminster, Welsh Government, 5 Joint Committees, 22 County Councils, 735 Town & Community Councils and 8 area health boards.
- b) A 'one size fits all' does not work for Wales and flexibility is important.
- c) There was general support for retaining the existing system in place today.
- d) The Town and Community Councils often feel that their views are not taken seriously. The consultation responses of Town and Community Councils (i.e. planning as well as general) should be upgraded to a 'material consideration'.
- e) There is a specific need for a dedicated North Wales Minister. The people of North Wales feel often left out with the South of Wales gaining most of the attention.
- f) There needs to be more honesty, transparency and scrutiny of the actions of members and their senior staff. Reports of the behaviour of MP's and Senedd members do not make good reading.



5. Thinking about the UK government, the Welsh Government and Welsh local government (your local council), what do you think about the balance of power and responsibility between these three types of government – is it about right or should it change and if so, how? For example, who should have more power, or less?

- a) The members did not see any justification in extending the number of members of the Senedd.
- b) A 'one size fits all' does not work for Wales and flexibility is important.
- c) There was general support for retaining the existing system in place today.
- d) Town and Community Councils should decide themselves on the model which suits their area.
- e) There is provision for Town and Community Councils to combine if they so wish already.
- f) Any new arrangements should not be based on relying on volunteers.
- g) The Town and Community Councils often feel that their views are not taken seriously. The consultation responses of Town and Community Councils (i.e., planning as well as general) should be upgraded to a 'material consideration'.

6. As a distinct country and political unit, how should Wales be governed in the future? Should we:

- broadly keep the current arrangements where Wales is governed as part of the UK, and the Westminster Parliament delegates some responsibilities to the Senedd and Welsh Government, with those responsibilities adjusted as in Q5, OR
- move towards Wales having more autonomy to decide for itself within a more federal UK, with most matters decided by the Senedd and Welsh Government, and the Westminster Parliament decides UK-wide matters on behalf of Wales (and other parts of the UK) OR
- move towards Wales having full control to govern itself and be independent from the UK OR
- pursue any other governance model you would like to suggest
- alongside any of these options, should more responsibilities be given to local councils, bringing decision making closer to people across Wales and if so, please provide examples.



The Association supports the current system across Wales with the following points of note:

- a) The general feeling was that Wales was over governed for the size of population which is expensive.
- b) The members did not see any justification in extending the number of members of the Senedd.
- c) A 'one size fits all' does not work for Wales and flexibility is important.
- d) Town and Community Councils should decide themselves on the model which suits their area. There is provision for Town and Community Councils to combine if they so wish already.
- e) There should be separate elections for any regional Joint Committees.
- f) The more centralisation that takes place the less efficient it becomes.
- g) There is a specific need for a dedicated North Wales Minister.
- h) There needs to be more honesty, transparency and scrutiny of the actions of members and their senior staff.

7. Overall, what is most important to you in about the way in which Wales should be governed in the future? Is there anything else you want to tell us?

The Association members wish to make the following comments overall:

- a) Although the Association supports the existing system of Government and Local Government there was a feeling that Wales was over governed for the size of population which in turn makes it very expensive per head of population.
- b) The members did not see any justification in extending the number of members of the Senedd. Government in Wales is too expensive already.
- c) There is a specific need for a dedicated North Wales Minister.
- d) There needs to be more honesty, transparency and scrutiny of the actions of members and their senior staff.

In responding to these questions, we would welcome views on how the current forms of governance, and any proposals to change governance in the future, might impact on the Welsh language.

The Association supports the Welsh Language and its culture however the Association does not see the relevance of the Welsh language with regard to this consultation.



Responses to consultations may be made public. To keep your response anonymous (including email addresses) tick the box.

If a committee is to consider the responses and it was thought to be helpful the Association would be willing to attend to give oral evidence.

Submit your comments by 28 February 2023
email to: ConstitutionCommission@gov.wales



Have your say: the constitutional future of Wales

July 2022

Introduction

The Commissioner welcomes the opportunity to contribute towards the work of the Independent Commission on the Constitutional Future of Wales.

The Commissioner believes that the discussions around the constitutional future of Wales must be focused on how change can improve the lives of all of Wales' citizens, including older people, and whether increased powers for the Senedd, over issues such as financial entitlements and justice, could enable improvements to be made in the quality of life of our citizens.

It is also important that Wales is governed in a way that can be easily understood by the public and that enables people to participate in the democratic process. The Covid-19 pandemic has increased recognition of devolved government in Wales and it is crucial that it is built upon to help the public to understand the decisions that are made in the Senedd that affect their lives and the importance of participating in our collective governance.

Engaging directly with older people to seek their views will also be a crucial part of the Commission's work, particularly in reaching diverse representation of older people, to ensure that the varying experiences of older people from different backgrounds are sufficiently represented and listened to.

It is important that the Commission considers how Wales is governed at all levels of government and should look to ensure that decisions are made as closely as possible to citizens, with engagement and representation as core drivers for decision-making.

In Wales' case, the Commission should consider not just the powers that are held in the Senedd and Westminster, but how local authorities can be empowered to transform their communities through increased autonomy.

Applying this principle to the Senedd should also mean increased powers being devolved from Westminster to Wales' national parliament, which is best placed to be able to legislate on the issues that affect people's everyday lives and should include additional levers to

administer financial entitlements, the devolution of justice, and greater flexibility to make the investments needed in our public services and to tackle deep seated inequalities.

Tackling Inequalities in the older population

The Covid-19 pandemic has exposed many inequalities in our society and in Wales' ageing population, with older people being disproportionately impacted by the pandemic and our responses to it. There are long-standing inequalities within the older population with significant gaps in life expectancy and healthy life expectancy between Wales's most affluent and most deprived areas. The Commissioner's *State of the Nation* report highlighted a gap of over 10 years between healthy life expectancy in Blaenau Gwent and Monmouthshire.

Without the necessary ability to make significant investments in tackling these disparities, Wales risks these inequalities continuing through future generations of older people. The latest available figures show that nearly 1 in 5 older people in Wales are living in relative income poverty, which will have been exacerbated by the current cost of living crisis. One way of helping to tackle this level of poverty is through the financial entitlements that are made available to support older people.

Whilst the Welsh Government does administer some financial entitlements, such as the Council Tax Reduction Scheme, the majority of the responsibility for this area resides in Westminster. Schemes available for older people and those who care for them include Pension Credit, Attendance Allowance, Warm Home Discount and Carers Allowance.

By devolving some of these entitlements, the Welsh Government would be empowered to improve the targeting and generosity of these schemes to ensure that a greater level of support is being provided to the older people who need it most. In Scotland, where there has been a partial devolution of some financial entitlements, a Charter has been established which sets out the principles of dignity, respect and human rights that underpin the approach to entitlements there. Wales would have a similar opportunity to refocus the approach of financial support for older people if further devolution was taken forward.

The devolution of financial entitlements in Scotland has also enabled the Scottish Government to enhance the offer that is made through the system, for example, by introducing the Carers Allowance Supplement and extending the eligibility for the Winter Fuel Payment.

As a starting point, there needs to be improved partnership working between the Welsh Government and Department for Work and Pensions to increase the take-up of entitlements such as Pension Credit (which goes unclaimed by nearly a third of those who are eligible) and to improve the sharing of data and expertise to help identify those who may be eligible for additional support.

Intergovernmental Relations

Working at that the cross section of devolved and non-devolved areas can sometimes be a challenge, and the statutory powers of the Commissioner are limited to fields in which functions are exercisable by Welsh Ministers, the First Minister of Wales or the Counsel General. However, the Commissioner is able to make representations to these individuals about any matter relating to the interests of older people in Wales.

Many of the issues affecting older people in Wales are within matters reserved to the UK Government and UK Parliament. Whilst the Commissioner's legal powers do not stretch to these matters, she is active in engaging with UK Ministers and members of the House of Commons and House of Lords on issues affecting older people.

Despite reserved matters being excluded from the Commissioner's powers, UK Ministers have usually been willing to engage on these issues, including during the passage of the Domestic Abuse Act 2021. The Commissioner met with the Minister sponsoring the Bill and engaged with Welsh members of the House of Lords to raise particular issues around the abuse of older people and the work underway in Wales.

In the case of domestic abuse, and abuse of older people more broadly, there are multiple interchanges of devolved and non-devolved responsibility, including safeguarding processes, the police, the criminal justice system, prisons and Welsh specific legislation on VAWDASV. Whilst it is possible for these different sectors to work together in the current system, it would be more efficient and effective to align priorities if responsibility and powers over all of the areas that affect the abuse of older people were held by the Senedd and the Welsh Government.

Many older people who are victims of abuse or other crimes can also find it challenging to access justice in the current system, with low rates of prosecution for crimes committed against older people. A devolved justice system and distinct Welsh jurisdiction would enable an improved approach to be taken, which placed a greater focus on supporting victims and ensuring that crimes committed against older people were given greater consideration.

The Welsh Government recently published *Delivering Justice for the People of Wales*, which included a commitment to give a prominent voice within the justice system to older people. This commitment is a positive step forward and sets the groundwork for implementation of a distinct approach to justice in Wales.

Conclusion

The Commission has an opportunity to set out how reforming the way in which Wales is governed can lead to better outcomes for individuals and reduced inequalities in our

society. This should be the starting point when considering whether responsibilities should lie at the Senedd, the UK Government or with local authorities.

It is the Commissioner's view that the matters set out in this submission would benefit from being administered in Cardiff to allow for a different approach to be taken. The further devolution of powers to the Senedd and Welsh Government would enable the Commissioner to better influence how government policy impacts on lives of older people.

The Older People's Commissioner for Wales

The Older People's Commissioner for Wales protects and promotes the rights of older people throughout Wales, scrutinising and influencing a wide range of policy and practice to improve their lives. She provides help and support directly to older people through her casework team and works to empower older people and ensure that their voices are heard and acted upon. The Commissioner's role is underpinned by a set of unique legal powers to support her in reviewing the work of public bodies and holding them to account when necessary.

The Commissioner is taking action to end ageism and age discrimination, stop the abuse of older people and enable everyone to age well.

The Commissioner wants a Wales where older people are valued, rights are upheld and no-one is left behind.

How to contact the Commissioner:

Older People's Commissioner for Wales
Cambrian Buildings
Mount Stuart Square
Cardiff
CF10 5FL

Phone: 03442 640 670

Email: ask@olderpeople.wales

Website: www.olderpeople.wales

Twitter: [@talkolderpeople](https://twitter.com/talkolderpeople)

Plaid Cymru

The Independent Commission on the Constitutional Future of Wales has invited views on its Constitutional options analysis framework. Generally, we find that the framework offers a useful analytical basis for appraising the viability and potential impact of the three constitutional options that the Commission has undertaken to examine: entrenched devolution, federal structures and independence.

However, we have proposed some revisions to the framework. Suggested revisions to particular criteria, and the individual rationales for such suggestions, are outlined below. Broadly, these suggested amendments are framed by three key principles:

1. That the analytical criteria should provide a basis for determining which constitutional option(s) best provides for sustainably meeting the needs and protecting the interests of the people of Wales.
2. That these criteria should not intrinsically or in principle privilege any one of the three constitutional options over the others.
3. That each of the constitutional options should be judged fairly against the status quo, as well as against each other.

While we accept that our proposed revisions may not be adopted precisely as they are laid out here, we would ask that the Commission review the analytical criteria with a view to ensuring that these principles are incorporated and upheld.

Analytical criteria

What would this option mean for:

The commission's values

1. Accountability

How far there is clarity about where and by whom decisions are made and how those decision makers can be held to account.

Interim report pressure points: 8

Suggested revision:

How far there is clarity about where and by whom decisions are made and how those decision makers can be held to account **by the people of Wales.**

Rationale:

The suggested addition of 'by the people of Wales' acts to clarify that the critical issue at stake is the accountability of those making decisions about and for Wales to the people of Wales.

2. Agency

How far the people of Wales can exercise control or influence over the key decisions made in Wales that affect their lives and have confidence that Wales' voice is heard in decision-making at the UK level.

Interim report pressure points: 2, 10

Suggested revision:

How far the people of Wales can exercise control or influence over **all of** the key decisions that affect their lives, and have confidence that **they are able to meaningfully influence** decision-making at **all levels of governance, nationally and internationally**.

Rationale:

Given that independence is among the three viable options for Wales' constitutional future to be explored by the Commission, we would query the privileging of 'decision-making at the UK level' within the analytical criteria. By definition, independence would fundamentally change the nature of Wales' enrolment in (and, indeed, remove it from) key decision-making processes and institutions at the UK level, including, critically, the UK Parliament. This is notwithstanding Wales' need to maintain close intergovernmental relations with its neighbours in the event of independence.

The essential principle that we have sought to retain in our proposed revision is that the people of Wales should exercise control or meaningful influence at all of the levels of governance at which decisions are made that affect their lives, including internationally (e.g., at the European level). Indeed, we have sought to reinforce this principle by replacing 'voice is heard in' with 'are able to meaningfully influence'.

3. Subsidiarity

How far does it ensure that decisions are taken as close as meaningfully possible to the people and communities they affect.

4. Equality and inclusion

How far does it ensure inclusion in the democratic process of all those who live in Wales and more broadly enable policies to be put in place which ensure equality of treatment and access to services for all the people of Wales.

From theory to reality

5. External dependencies

What would need to happen in terms of the agreement or goodwill on the part of institutions outside Wales to enable this option to become a reality.

Suggested revision:

What would need to happen in terms of the agreement **of, negotiation with** or goodwill on the part of institutions outside Wales to enable this option to become a reality.

Rationale:

Our suggested revision retains an acknowledgement that delivery of any of the three options to be examined by the Commission would require that agreement be reached with institutions outside Wales. But we feel that this criterion should reflect that any new settlement would be reached through a process of negotiation in which Wales would and should be a co-equal partner, with a legitimate mandate (based, for instance, in the will of the people of Wales as expressed through a referendum or election) for any such negotiation: one which it would be reasonable to expect was respected by the other parties to the negotiation.

6. Capacity and cost

What additional state capacity would Wales need to build (e.g. to manage policing and justice or welfare, or to ensure Wales' place in the world was maintained and promoted), in order to make it a reality and what would be the net financial impact of developing this capacity.

Suggested revision:

What additional state capacity would Wales need to build (e.g. to manage policing and justice or welfare, or to ensure Wales' place in the world was maintained and promoted), in order to make it a reality and what would be the net financial impact of developing this capacity, **relative to the costs implied by the status quo, and the other options for constitutional change.**

Rationale:

The Commission's interim report acknowledges that there are costs for Wales implied by the constitutional status quo. This is particularly the case in the context of the current 'cost of living crisis', but issues of poverty and lack of productivity are long term and structural. As the Commission's interim report has also noted, current funding formulas – as exemplified in the case of HS2 – do not provide for an equitable financial settlement. We feel that a fair appraisal of the financial implications of any potential constitutional change would measure these implications against the costs implied by any continuation of the status quo.

Further, these financial implications should be assessed relative to those implied by the other options for constitutional change, in order to create a balanced picture of what is at stake financially in any process of constitutional change.

The tools to do the job of governing Wales**7. Stability**

How far does it provide a stable and sustainable model for government in Wales.

Interim report pressure points: 1, 7

Suggested revision:

How far does it provide a stable and sustainable model for government in Wales **in the long term.**

Rationale:

This proposed revision acknowledges that any process of constitutional change is liable to be destabilising in the short term – albeit that, as acknowledged in the Commission's interim report, the status quo is itself unstable and unsustainable. We feel that the critical criterion should be how stable and sustainable a model for government each of the options might provide into the future.

8. Joined-up government

How far does it facilitate the necessary co-ordination between different policy areas and effective service delivery across the border with England.

Interim report pressure points: 4

Suggested revision:

How far does it facilitate the necessary co-ordination between different policy areas **and different levels of government, including intergovernmental co-ordination**, ensuring effective service delivery **for all the people of Wales**.

Rationale:

We are unclear that 'service delivery across the border with England' (i.e. outwith Wales) *per se* should be embedded in this way within the criteria for examining the viability of models for Wales' constitutional future. It certainly should not be presented as having equal weight with the much more salient question of how to encourage greater holistic, cross-silo working within Wales. To illustrate this point, some 15,000 Welsh residents are registered with English-based GPs, which represents less than 0.5% of the Welsh population. However, the crucial question of the integration of health and care, or the relationships between housing, employment, education and health and wellbeing are relevant to 100% of the Welsh population.

This is notwithstanding the importance of the questions of relationships with England and the future of the border, as identified in the Commission's interim report. What is critical, and what our suggested revision seeks to retain a focus on, is the role of coordination across levels of government and of intergovernmental relations in ensuring effective service delivery everywhere in and for all the people of Wales.

9. Public finances

How far does it provide for an adequate financial basis for maintaining and improving public services.

Interim report pressure points: 5, 6, 9

Suggested revision:

How far does it provide for an adequate financial basis for maintaining and improving public services, **relative to the status quo, and the other options for constitutional change**.

Rationale:

The rationale for this revision is similar to that for 6, above. The Commission has acknowledged that the status quo does not provide an adequate financial basis for Wales' public services, and this is the bench-mark against which the different options

for change should be measured. Further, options for change should be appraised against each other in terms of measuring their potential impact on financing for public services.

Impact on the economy and society

10. Appropriate economic policies

How far it is likely to enable macro-economic policies geared to sustainably meeting Wales' needs.

Interim report pressure points: 9

Suggested revision:

How far it is likely to enable **macro- and micro-economic** policies geared to sustainably meeting Wales' needs, **including the needs of future generations**.

Rationale:

To be comprehensive, economic policy needs to include not just fiscal and monetary and exchange rate policy, but also other important areas that are judged to be key determinants of economic success, including labour market policy, education and training, innovation and entrepreneurship, export promotion and import substitution, industrial policy and research and development.

The second suggested revision reflects the Commission's embedding of the Well-being of Future Generations Act within its values framework, and would provide a criterion by which to measure the relative impact of different constitutional options across the Act's overlapping goals - prosperity, resilience, health, equality, community cohesion, Welsh language and culture, and global responsibility – and ways of working.

11. Economic stability

How far (if at all) it risks destabilising the Welsh economy.

Interim report pressure points: 9

Suggested revision:

How far (if at all) it risks destabilising the Welsh economy, **relative to the status quo, and the other options for constitutional change**.

Rationale:

In line with the view expressed under 6 and 9 above, we believe this criterion should reflect the Commission's finding that the status quo is itself defined by economic instability (for example, the period of stagnation in real incomes in Wales over the last fifteen years, the current surge in inflation and the cost of living crisis), and that the relative risks of any option for constitutional change should be measured both against this and the relative risk implied by the other options.

12. Flow of people and goods across borders

How far it enhances or inhibits individuals and businesses working effectively across the border between Wales and England and how it might impact on Wales' demographic challenge.

Interim report pressure points: 3

Suggested revision:

How far it enhances or inhibits individuals and businesses working effectively across **Wales' borders** and how it might impact on Wales' demographic challenge.

Rationale:

As per our proposed revision to 8, above, and notwithstanding the need for the Commission to address the question of the border with England in its work, we are unclear that it should necessarily be privileged in the analytical criteria for assessing the viability of constitutional options for Wales in this way.

Our suggested revision retains acknowledgement of the need to explore the impact of different constitutional options on Wales' borders, including with England, but also leaves space for assessment of the implications of different constitutional futures for other of Wales' borders – e.g. in the Irish/Celtic Sea – as well as, more generally, the question of freedom of cross-border movement for people, good and services between Wales and its European neighbours.

Scenarios

As noted above, it will be important to 'stress test' the analysis against different potential scenarios.

The scenarios we envisage using are:

- A. Where there is major constitutional change elsewhere in the British Isles, i.e. Scotland votes for independence (and potentially rejoins the EU), reunification of Ireland

Suggested revision:

A. Where there is major constitutional change elsewhere in **Great Britain and Ireland**, i.e. Scotland votes for independence (and potentially rejoins the EU), reunification of Ireland

Rationale:

To a degree, this proposed change is a cosmetic one. However, it is important to acknowledge that ‘the British Isles’ is a politically contested term, and one which has been formally disavowed by the Irish government. Another alternative would be ‘the British Isles and Ireland’.

- B. Where there is a UK government with a significant programme of constitutional reform aimed at entrenching devolution and increasing regional devolution in England
- C. Where a UK government uses the supremacy of Parliament, without Sewel consent to make further changes which are perceived in Wales as undermining the roles and responsibilities of the Senedd and Welsh Government, e.g. enabling the UK government to intervene in health or education matters.

Suggested revision:

C. Where a UK government **continues to use** the supremacy of Parliament, without Sewel consent to make further changes which are perceived in Wales as undermining the roles and responsibilities of the Senedd and Welsh Government, e.g. enabling the UK government to intervene in health or education matters.

Rationale:

This proposed addition affirms that, as identified in the Commission’s interim report, this is the status quo against which the options for constitutional change should be appraised. We feel it would be right to acknowledge that scenario C represents the present constitutional reality.

In addition, in the case of independence we will also consider the case where an independent Wales were to join the EU.

Further papers submitted by Plaid Cymru

[Paper submitted in the name of Rhun ap Iorwerth MS, as Leader of the Plaid Cymru Senedd Group, on the Group's behalf](#)

['The Projected Public Finances of an Independent Wales - some alternative scenarios'](#) Professor John Doyle, Dublin City University

['Currency options for an independent Wales'](#) Thibault Laurentjoy

['Wales and its Borders: The implications of independence for managing Wales' land and sea borders'](#) (Katy Hayward and Nicola McEwen)

Plaid Cymru: ['The Road to Independence'](#)

Police and Crime Commissioners



The case for an early decision to devolve

Policing and Justice to Wales

“The four of us support the devolution of Policing and Criminal Justice to Wales, and the sooner the better. In the longer term, Dafydd would probably want to go further than devolving responsibility but in terms of the immediate future we are as one.”

We wish to explain why we believe that there should be an urgent and clear decision to devolve Policing and Justice to Wales followed by a period in which details are thrashed out collaboratively in terms of responsibilities, governance, scrutiny and priorities for action and where lines need to be drawn between devolved and reserved powers. Holding back in order to decide everything in advance on the basis of organisational or legal theory would be a missed opportunity, in our view.

The Gordon Brown Report recommended devolution of Probation and Youth Justice and neither is controversial. Probation was always a local service until it was nationalised and operates now on both Wales and local footprints. Youth Justice is local under arrangements set out in the 1998 Crime and Disorder Act which passed through Parliament at the same time as the first Government of Wales Act and made provision for Welsh Government to share the oversight. We work with both services and it would be simple to provide for accountability to Welsh Ministers and scrutiny by the Senedd for the existing system in Wales.

Gordon also suggested further devolution of Policing and Justice and saw your Commission as holding the pen on what those further steps should be. We suggest that you should build confidently on the remarkable developments of recent years which have laid firm foundations for devolving Policing and Justice.

There is little general knowledge of these developments and we have not promoted wider understanding of how the Criminal Justice System (including Policing) now works in Wales, partly because we have been preoccupied with “doing the doing”, partly because the developments accelerated dramatically during COVID-19 when the emergency commanded everyone’s attention and partly because there is little wider interest in the governance of delivery which

is where our attention has been focussed. Nevertheless, individually, collectively and with partners we have been part of very significant developments.

Initially our primary focus was on early intervention and prevention for example.....

- The Women's Pathfinder – intervening early when women start to offend through a collaborative approach involving PCCs, the Probation Service women's organisations, and Welsh Government.
- Developing shared approaches to VAWDASV – a priority for PCCs since 2012 and a priority shared with Welsh Government and other partners.
- Extending the Youth Justice approach into the 18+ age group.
- Promoting the IRIS approach to identifying victims of Domestic Violence and Abuse in collaboration with GPs.

When research on the impact of four or more ACEs was published by Public Health Wales (PHW) we joined with PHW and the then Minister, Carl Sergeant, to turn understanding into action. We won £7.4million from the Home Office to spread understanding of why people act as they do throughout the four Forces and partners through "Early Action Together". We were invited to bid for money to extend the approach to English Forces when a change of direction by the Home Office ended that suggestion.

In order to engage fully with Welsh Government – acknowledging that we work in a devolved environment, that prevention of crime and harm is the first Policing priority (Sir Robert Peel) and that prevention can only be achieved through joint working by devolved and non-devolved agencies, the four PCCs and the four Chief Constables established the Policing Partnership Board for Wales and invited the First Minister to chair it. That enabled regular top-level interface between Police Leaders and Welsh Government Ministers. It also involves local government (WLGA), Public Health Wales, Probation and others but also engages Officials and Ministers of the UK Government (Home Office, MoJ, Secretary of State for Wales) who regularly acknowledge the benefits of this shared space for dialogue.

This is driven by making good use of two central characteristics of the governance of local police accountability:

- the accountability of the PCC to the electorate of the Police Force area with responsibility for the Police & Crime Plan and the Budget
- and the operational independence of the Chief Constable

It is the voluntary commitment by all eight to pool authority and to share leadership through a collaborative approach that had come to initial maturity when COVID-19 struck.

For the first time the police were called on to enforce Welsh law because this was a health crisis and health is devolved. But the arrangements described above – together with the decision of the First Minister to engage at the same time with leaders in Policing, Health and Local Government – created a high level of engagement and consultation leading to shared priorities, joint enforcement and growing mutual understanding.

But the biggest change grew from the massive impact of distancing requirements on the court system, which rapidly ground to a halt. Because of joint work on prevention and early intervention, we used our positive relationships to seek ways of reopening courts starting with the “Nightingale Court” in the former West Glamorgan Council Chamber but becoming ever more ambitious. As the then Lord Chancellor said at the time: “You do seem to be better at doing things together in Wales”.

But responding to COVID-19 was just the start. We widened our collective ambition to do Justice better in Wales, with the stated purpose to “make the Criminal Justice System in Wales the most effective, the most efficient, and the fairest it can possibly be”. The Steering Group established by the Criminal Justice Board for Wales still meets fortnightly and is attended by leadership and top management because it is useful. The work plan for Criminal Justice in Wales has just been refreshed and signed off for 2023-2024.

We are proud of the shared commitment that has developed across the sector including devolved and non-devolved bodies alike. We share a One Public Service ethos because we all serve the same public. That commitment has led us to go beyond a wish to tackle race disparity in the system – important though that is – to develop the Anti-Racism Action Plan for Criminal Justice in Wales, which includes Policing, and was designed in partnership with the communities who have experienced racism and with delivery overseen by a powerful board that represents those interests. Next month a “One Public Service Day” will look at progress on two plans that are different but which resonate with each other in Wales: the Welsh Government Anti-Racism Action Plan and our Anti-Racism Action Plan for Criminal Justice in Wales.

So why do we need the devolution of Policing and Criminal Justice to Wales?

Quite simply because of the fragility of these arrangements and the lack of any structures of governance and accountability.

Relationships with Welsh Government are good – particularly with the First Minister and the Minister for Social Justice and their officials – but that needs to be put on a formal basis and there also needs to be a relationship with the Senedd. Each of us has connections with the Senedd Members and MPs who represent constituencies within our patch but in particular the increased size of the Senedd will allow them to use the additional membership to plan scrutiny for Criminal Justice and Policing and that opportunity should not be missed.

Above all, the decision to devolve should be taken as soon as possible so that all the available energy goes into planning the processes and the myriad details that will need to be addressed – standards, inspection, complaints, appeals etc. – rather than in vague arguments which leave the public cold.

We are recommending devolution not separation and in the current arrangements across the UK there are systems for mutual support and engagement which work well. Examples include the NATO Summit and the European Championship League Final when officers from Scotland and Northern Ireland as well as England helped our Forces, just as our officers helped at the Olympics or during the London Riots in 2011.

The central problem is that the decision to devolve is a political decision and Chief Officers will rightly stand back from commenting until a decision has been taken. Once a decision **has been** taken, they will engage with the detail to make sure that the arrangements are worked through with the benefit of professional policing knowledge and experience.

For that reason our recommendation is to reject the idea of a “gradualist” approach to the key decision – have confidence and confirm the decision to devolve Policing and Justice, and then let us all work together to work on the myriad essential details.

That will build on the success story that is voluntary joint working in Wales and make sure that Policing and Justice in Wales becomes the most efficient, the most effective and fairest it possibly can be - a system of which we can all be proud.

Jeff Cuthbert

Dafydd Llywelyn

Andy Dunbobbin

Alun Michael

PCC for Gwent

PCC for Dyfed Powys

PCC for North Wales

PCC for South Wales

Consultation on the Constitutional Future of Wales

Response by the Presbyterian Church of Wales to the consultation by the Independent Commission on the Constitutional Future of Wales

Introduction

The Presbyterian Church of Wales (PCW) currently has some 600 churches, two thirds of which are Welsh speaking. It was established as a separate Welsh church denomination following the Welsh Methodist Revival in the eighteenth century (sometimes known as Welsh Calvinistic Methodists) and it has become actively involved in Welsh cultural and political renewal. We welcome the general invitation to participate in this consultation and this paper is submitted on behalf of the Church by the Church's Church and Society Department. There is a long history of engagement by members of the PCW with questions of Welsh home rule and devolution. Most recently one of our department's previous chairpersons, Professor Noel Lloyd, was a member of the Silk Commission on devolution.

Questions to help you respond

1. What matters to you about the way Wales is run.

Living in community is part of our understanding of what being an individual means and reflects the view that recognises humanity's social nature as human beings made in the image of God. The state is an expression of community in a formal way and should provide for good order, ensure that all have the opportunity to live life to the full and be grounded in action to meet the needs of the poor, the needy and the vulnerable. For us the recognition of Wales as reflecting that sense of community is important and the way it is run matters to us all. We set out below some general issues that seem important.

1. Ensuring that nothing is done at a higher level of government that could be better done at a lower. This is a basic idea subsidiarity and the way that devolved government has been set up in Wales so far reflects it. The power of the modern state needs proper checks and balances and, while not fail proof, some separation of powers, democratic accountability and the recognition of human rights are good for government.
2. It is important that all levels of government keep before them the principles of fairness and justice and that standards in public life are seen to be maintained.
3. All entrusted to run government in Wales should ensure there is democratic rule and accountability and a culture of freedom of speech and open debate.
4. Ensuring good relations between Welsh and UK governments are maintained and developed with a view to respecting the devolution settlement both ways.

2. What do you think the priorities for the commission should be?

1. To look at the relationship between the UK and Welsh government and propose changes. Some of the matters raised later are relevant.
2. To look at the sharing of functions between Welsh Government and the communities in Wales, and to find radical ways of involving communities as a whole;

the experience of actions by Welsh Government such as Communities First should be reviewed.

The Commission's review should also look at models for collaboration between different levels for financing the public services

3. It is difficult to see how a constitutional review can avoid looking at the economic levers in Wales, with consideration of alternative models to support and reinvigorate prosperity

4. Also, to consider a review of the health and social care provision in Wales to look at bringing them closer together, and to make efficiency and accountability at a local level in governance a real target.

3. Thinking about how Wales is governed, by the Welsh Government and the UK government, what are the strengths of the current system, what aspects do you most value and wish to protect? Can you provide examples?

The strength of the present system of devolution is that it brings some vital public services to a level with which the community can more clearly identify. A good example of this was the sense of Welsh identity and leadership provided by Welsh government in its NHS response to the Covid crisis; another is the way in which student funding is provided.

Another example is the running of Cross-Party Groups in the Senedd appears more transparent than that of the equivalent All-Party Parliamentary Groups in Westminster, as their minutes are more likely to be put online. This is an example of the checks and balances that can be achieved in the detail of government where there are shared powers of government

The achievements of current system of devolution can be seen but there are problems which are raised below.

4. Are there any problems with the current system, and if so, how could they be addressed? Again, please provide examples.

1. Devolution in Wales is welcomed but how it stands in relation to the Westminster Government and other nations and regions in UK is a matter that we would like to see on the Commission's agenda. Devolution powers are the subject of UK legislation and the Commission could consider whether there should be additional constitutional checks on any proposed change. The ad hoc way in which devolution has developed is confusing, as seen recently on responsibility for rail services. There are problems created by overlap, e.g. in relation to end-of-life healthcare, where the law on death and dying is reserved to Westminster, which means that the minute someone in Wales dies any Welsh provisions cease to apply.

2. The ad hoc development of devolution also affects other national and regional devolution settlements, as in the differences in powers, particularly those given for Scotland. Within a compact state like the UK this is a matter of concern to good governance.

3. The application of international treaties which the UK has signed and ratified is another issue. For example, it is assumed that UK human right legislation applies to laws passed in Wales but nothing in the law on devolution seems to stipulate what would happen if the UK law changed - would Welsh laws still need to be compatible with the decisions of the European Human Rights Court. The Commission is asked to make proposals to clarify and protect. Another case in point would be the application of the UN Convention on the Rights of the Child. It is understood that the Convention is incorporated into Welsh laws but the status needs clarification and protection.

4. There is no commission for standards in public life in Wales, only a Senedd standards commissioner. Having a commission for standards in public life in Wales could help maintain and develop public confidence in government. Also there is currently no Welsh lobbying register for the devolution settlement. Introducing one would also help increase transparency.

5. Thinking about the UK government, the Welsh Government and Welsh local government (your local council), what do you think about the balance of power and responsibility between these three types of government – is it about right or should it change and if so, how? For example, who should have more power, or less?

The untidy sharing of powers between UK and Welsh Government and Welsh Government and counties needs review as to which functions can effectively be carried out at the lower (county) level. It is, of course, possible for separate functions, e.g. different parts of the health service, to be shared. Community or town councils should not be overlooked and their form, powers and funding should be considered. This level of governance should be recognised as nearest to the community.

Considering the ideas mentioned already, one major problem is that of funding. It is difficult to have responsibility for functions if there is not a real say in how funds are raised. Rates and local income tax are both used in Wales but most funding depends upon UK government and here the big decisions are made. This also needs review.

6. As a distinct country and political unit, how should Wales be governed in the future? Should we:

broadly keep the current arrangements where Wales is governed as part of the UK, and the Westminster Parliament delegates some responsibilities to the Senedd and Welsh Government, with those responsibilities adjusted as in Q5, OR

move towards Wales having more autonomy to decide for itself within a more federal UK, with most matters decided by the Senedd and Welsh Government, and the Westminster Parliament decides UK-wide matters on behalf of Wales (and other parts of the UK) OR move towards Wales having full control to govern itself and be independent from the UK OR pursue any other governance model you would like to suggest

alongside any of these options, should more responsibilities be given to local councils bringing decision making closer to people across Wales and if so, please provide examples.

Whether we work towards a federal system for UK is important but might obscure some of the more urgent matters facing Wales. It would probably involve another commission and one of the issues for this present commission might be whether there should be a recommendation for this to happen. It could involve review of the relations with the courts and action to make for a second chamber at Westminster representative of the home nations and regions.

Until there is a common pattern of governance throughout the UK, there is a range of functions that might specifically be exercised by Westminster as central government e.g. foreign affairs, safety and security, armed forces, perhaps taxation and finance. But Wales and with the other nations and regions who so choose, should have a constitutional right and duty to exercise all other functions. The home nations and regions might be expected to have referendums on the constitutional changes. There needs to be flexibility in any settlement so that given powers can be shared between Westminster and the home nations and regions. All of them should exercise their powers under the constitutional settlement and decisions on the constitutional responsibilities should be safeguarded- by referendums for change, voting majorities or/and by a separate body set up under the constitutional provisions.

Any changes to local government arrangements in Wales should not be allowed to undermine the devolution settlement, and again the principle involved in subsidiarity should be observed.

7. Overall, what is most important to you in about the way in which Wales should be governed in the future? Is there anything else you want to tell us?

In responding to these questions, we would welcome views on how the current forms of governance, and any proposals to change governance in the future, might impact on the Welsh language. -

As the suggestions made above can affect the rest of UK it may be worth saying that the impact on the Welsh language will obviously be a matter primarily for Wales. The

Commission is asked to consider whether constitutionally there should be a body to oversee the promotion and development of Welsh culture, in both the Welsh and English languages. Support is needed for the encouragement of the distinct Welsh culture in both languages.

Overall, the combination of accountability and efficacy in the service of communities at the lowest appropriate level of government should be the target and government should function accordingly. New constitutional provisions, if accepted, could herald a new strength for communities in Wales.

RMT (National Union of Rail, Maritime and Transport Workers)

Questions on transport devolution Transport sub-group – Independent Commission on the Constitutional Future of Wales

Maritime

- **Does the Welsh Government have a sufficient role in ports and shipping to be able to manage the strategic interconnectivity of the transport network, and to deliver on its environmental and economic policies?**

There are clearly areas of the shipping and ports sector which would be worth exploring further in the context of Wales constitutional future. For example, the position of ferry services from Holyhead and Pembrokeshire, which are being undermined by the establishment of direct ferry links between the south of the Republic of Ireland and the continent.

Ownership issues in ports in Wales are also worth exploring. Holyhead, Fishguard, Mostyn, Port Talbot, Swansea, Barry, Cardiff and Newport were all privatised in the 1980s and Milford Haven is technically a Trust Port. The Wales Government has responded to the creation of Freeports in Holyhead and Milford Haven with proposals that differ from Freeports in England. Some of these differences are of benefit, potentially, to the Wales Government's strategic control of Freeports and the shipping services and local jobs they support. There is a case for looking more closely at these, particularly in partnership with local authorities, as well as trade unions in Wales.

The interconnectivity of the domestic road and ports network is also a strategic priority in terms of the Wales Government's Net Zero targets, particularly the offshore wind projects subject to leasing agreements signed in January this year.

- **What has been the impact of maritime devolution on the UK and GB strategic transport network?**

Powers in relation to the regulation of ports and harbours in Wales, with the exception of reserved trust ports like Milford Haven, were devolved to the Welsh Government and the Senedd under the Wales Act 2017. We cannot judge whether maritime devolution has had a significant impact on the UK-wide strategic transport network but the significance of the 5-yearly targets for maritime and ports in the Wales Government's Transport Strategy is inevitably increased in these circumstances.

Roads

- Does the Welsh Government have sufficient powers and responsibilities to innovate in Electric Vehicles, and make full use of the opportunities EV technology creates?
- What has been the UK wide impact of regional decision making on major roads, especially following leaving the EU and the Trans-European Network?

What is the extent to which the devolution of roads is compatible with the strategic overview of road network and connectivity?

- Do authorities in Wales have sufficient powers and responsibilities to promote modal shift to active travel?
- Should local authorities in Wales have a greater role in managing the trunk road network?

Aviation

- Should Air Passenger Duty be devolved to Wales?
- Should Welsh Ministers be statutory consultees to decisions affecting nearby English airports (e.g., Bristol, Manchester)?
- Should the Welsh Government have a greater role in determining state aid matters relating to air transport (such as attracting airlines to Cardiff Airport, subsidising socially necessary flights) now that the UK has left the EU and its competition law framework?

Rail

- Is the current devolution settlement sufficient and adequate to manage the network?

No. in respect of rail passenger services although the Welsh Government has taken Transport for Wales Services back into public ownership, the 1993 Railways Act stipulates that rail passenger services can only be operated in public ownership on a temporary basis this means TFW services can legally only be kept in public ownership on a temporary basis (although this has not been enforced by the UK government). The WG also has less powers than the Scottish Government in respect of rail passenger services within its jurisdiction. For example, the Scottish government has the powers to invite public sector bids for franchises although, as in Wales, the Scottish government have chosen to simply take services back into public ownership. In summary the UK 1993 Railways Act prohibits the permanent operation of rail passengers' services in public ownership and this should be amended. Our preference would be to revert to the pre 1993 arrangements which in effect required that rail passenger services be operated in public ownership and updated so that the Welsh government should be required to operate any passenger services it is responsible for in the public sector. Our second preference would be that the Welsh government should have the powers to operate rail passenger services in the public sector if it chooses to do so, without the need for a tendering process of any description. It should also be noted that there are no longer any constraints from EU legislation, such as the fourth railway package, on these options.

Of course, there is a further pending imbalance of power between the UK and Welsh Government through the UK Governments Minimum Service Levels Strikes legislation which, unless successfully challenged or repealed, will override the Welsh Governments oversight of TFW industrial relations and also TFW's responsibility for setting service levels.

- **Does the Welsh Government need further powers?**

Yes, in respect of rail passenger services see above and also see our comments below in respect of rail infrastructure.

- **Is there an opportunity to set up shared governance arrangements?**

Yes, in the context of a GB national rail structure. The UK governments, or a future Labour governments plan for a “GB Rail” should present an opportunity to introduce shared governance arrangements. RMT policy is for a GB wide nationally integrated, publicly owned railways but also a more accountable railway and that includes the devolved nations. The union has done a considerable amount of work in this area which has contributed to the creation of Labour’s Rail White Paper as have key stakeholders in Wales. This envisages a radical increase in power for the devolved nations over rail management, governance and funding for rail services and infrastructure, both within national boundaries and also cross border services, whilst retaining the benefits of a nationally integrated railway. The paper including its contribution on devolved rail powers can be found here. [https://labour.org.uk/wp-content/uploads/2020/03/GB Rail Labour Opposition White Paper.pdf](https://labour.org.uk/wp-content/uploads/2020/03/GB_Rail_Labour_Opposition_White_Paper.pdf)

- **How is rail infrastructure management connected with freight movements and shipping more broadly?**

The lack of WG management control over both rail infrastructure and rail freight and also ownership of ports means that the WG cannot optimise rail freight opportunities and connectivity with ports. The greater control over rail infrastructure outlined above could move some way to addressing this as would the WG being given powers to optimise control over its ports including the eventual public ownership of ports. The WG should also explore options to introduce publicly owned rail freight.

- **How has franchise renewal for non-TFW services affected TFW services?**

It is unacceptable that the WG does not have any meaningful say over cross border services. Presumably not being able to influence service specifications and requirements of cross border services inhibits the optimal planning and integration of TFW services with cross border services as has the UK governments refusals to take meaningful action against failing cross border services.

- **How has HS2 affected the Welsh network operationally, and the Welsh Government financially? How does levelling up funding compare to the consequential that would have been received if there had been a Barnett consequential for HS2?**

We are not clear of the basis for this question. RMT fully supports HS2 but also high-speed links to Wales. The economic and climate case for high-speed trains and the fact that the economic and social value return means these investments pay for themselves

means there is an overwhelming case for high speed and higher speed rail and more frequent services from and to Wales. The fact that has not been forthcoming is in part due to lack of governance powers to afforded to the WG over GB rail strategy generally.

- **What would be the financial implications of the Welsh Government taking on a greater proportion of the rail infrastructure in Wales?**

Due to age and indeed possible lack of detailed information on the state of rail infrastructure there could be significant financial risks and further risks in the event that major improvements are required, for example from severe weather incidents which are an increasing occurrence. RMT would reiterate that we think Rail in Wales is best delivered as part of a GB wide nationally integrated railway. This includes retaining the benefits of “cross subsidy” where revenues from high passenger volume services can be used to support perhaps less frequently used services but which are equally socially and economically important.

RMT would be opposed to any break of the GB rail infrastructure manager Network Rail. We were opposed to the breakaway from Network Rail to create the Core Valley Lines and whilst we were able to deal with this constructively with the WG any further attempts to pass ownership of Network Rail assets and transfer staff would create significant industrial relation difficulties. The WG having similar rail infrastructure powers as the Scottish Government would be a better initial option and a preferable route has been outlined in Labour’s Rail White paper as outlined above.

Royal College of Psychiatrists Wales

Response to the Independent Commission on the Constitutional Future of Wales 28th Feb 2023

The Royal College of Psychiatrists Wales welcomes the work of the Commission, and the opportunity to respond to this consultation.

In consideration of our response, we have highlighted several areas where we would welcome scrutiny on the prospective impact and opportunities of constitutional reform. These individual areas each have unique relationships and interaction with the implementation of approaches that are currently designed for England and Wales.

We have given commentary on the areas of Health Inequalities, Mental Health Act, and Prison Mental Health.

We would be very happy to provide further information at any stage of the work.

This further includes detail on opportunities to protect and enhance areas of significant interest and profile to Wales, and where Wales has a unique and global presence (such as through mental health research in areas of neuropsychiatric genetics and genomics, digital mental health and others).

For further information, please contact:

Manager

Royal College of Psychiatrists Wales

Health Inequalities

Health inequalities have been documented between population groups across at least four overlapping dimensions – socioeconomic status and deprivation, protected characteristics, vulnerable groups of society and geography. Psychiatry as a profession has a responsibility and a role to alleviate the distress and harm that is associated with health inequalities.

Differences in socioeconomic status can lead to differences in health status:

- People in lower socio-economic groups are more likely to have long-term health conditions, and these conditions tend to be more severe than those experienced by people in higher socio-economic groups.¹ Deprivation also increases the likelihood of having more than one long-term condition at the same time, and on average people in the most deprived fifth of the population develop multiple long-term conditions 10 years earlier than those in the least deprived fifth.²
- Children's mental health is disproportionately affected by socio-economic deprivation including because of food poverty, parental stress and mental illness, benefit reductions and the impact of local authority cuts on support services.
- There is a well-recognised link between unemployment and poor mental health. The Adult Psychiatric Morbidity Survey 2014 showed that most mental disorders were more common in people living alone, in poor physical health, and not employed. Claimants of Employment and Support Allowance, a benefit aimed at those unable to work due to poor health or disability, experienced particularly high rates of all the disorders assessed.³ This is consistent with previous analyses of Adult Psychiatric Morbidity Survey 2007, which showed associations between psychotic disorder and low equivalised household income.⁴

Differences in protected characteristics can lead to differences in health status:

- The Royal College of Psychiatrists Wales is committed to improving the quality of mental healthcare in a way that respects and values the principles of diversity and inclusion. We recognise that racism and racial discrimination is one of many

¹ [What are health inequalities? | The King's Fund \(kingsfund.org.uk\)](https://www.kingsfund.org.uk/what-are-health-inequalities/)

² [What are health inequalities? | The King's Fund \(kingsfund.org.uk\)](https://www.kingsfund.org.uk/what-are-health-inequalities/)

³ [mental health and wellbeing in england full report.pdf \(digital.nhs.uk\)](https://digital.nhs.uk/mental-health-and-wellbeing-in-england-full-report.pdf)

⁴ [apms-2014-full-rpt.pdf \(nationalarchives.gov.uk\)](https://nationalarchives.gov.uk/apms-2014-full-rpt.pdf)

factors which can have a significant negative impact on a person's life chances and mental health.⁵

- The Equality and Human Rights Commission highlighted that an individual from a Black, Asian or minority ethnic background is more likely to experience poverty, to have poorer educational outcomes, to be unemployed, and to come in contact with the criminal justice system⁶. These, in turn, are risk factors for developing a mental illness.⁷
- The Adult Psychiatric Morbidity Survey 2014 showed heightened prevalence of mental health problems in certain groups of the population, for example common mental disorders were more prevalent in Black women than White women, and rates of psychotic disorder were found to be higher in Black men than men from other ethnic groups – a finding that is replicated in academic research⁸. This is despite the fact that Black adults had the lowest treatment rate.⁹
- In a Royal College of Psychiatrists Members' Survey of the Mental Health Act review, 80% of psychiatrists named stigma and a lack of services, especially in the community, as the most common reason for why more people from some Black and minority ethnic groups were being detained.¹⁰
- People who identify as LGBTQ+ are at increased risk of both mental ill health, suicidal ideation, substance use disorders and deliberate self-harm than heterosexual people¹¹¹²¹³. A 2017 study by Stonewall found that over the previous year: half of LGBTQ+ people had experienced depression, three in five had experienced anxiety, one in eight aged 18-24 had attempted to end their life,

5

https://www.rcpsych.ac.uk/docs/default-source/improving-care/better-mh-policy/position-statements/ps01_18.pdf?sfvrsn=53b60962_4

⁶ [Race Report 1j final.indd \(equalityhumanrights.com\)](#)

⁷ [Cumulative Effect of Racial Discrimination on the Mental Health of Ethnic Minorities in the United Kingdom - PubMed \(nih.gov\)](#)

⁸ [Prevalence of psychosis in black ethnic minorities in Britain: analysis based on three national surveys | SpringerLink](#)

⁹ [mental health and wellbeing in england full report.pdf \(digital.nhs.uk\)](#)

¹⁰ [rcpsych-members-survey-on-the-mha.pdf](#)

¹¹ [A systematic review of mental disorder, suicide, and deliberate self harm in lesbian, gay and bisexual people | SpringerLink](#)

¹² [A systematic review of mental disorder, suicide, and deliberate self harm in lesbian, gay and bisexual people | BMC Psychiatry | Full Text \(biomedcentral.com\)](#)

¹³ [Mental health challenges within the LGBT community - Public health matters \(blog.gov.uk\)](#)

and almost half of trans people had thought about taking their life.¹⁴ People who identify as LGBTQ+ may be particularly affected, as they are more likely to experience poor mental health. There is also the impact of the pandemic to consider – a survey by LGBT Foundation in April and May 2020 showed 42% would like to access support for their mental health, with specific issues including isolating at home with LGBT phobic households and lack of access to LGBT specific spaces.¹⁵

Differences in geography can lead to differences in health status:

- Evidence shows that coastal communities have the worst health outcomes, with a high burden of mental ill health largely explained by deprivation, migration, and age profiles¹⁶. These issues facing coastal towns are compounded by the fact it is harder to recruit the medical workforce that is needed in these peripheral areas, creating a gap between workforce demand and workforce supply that needs to be addressed.

The Marmot Review *10 Years On* shows that, health is getting worse for people living in more deprived districts and regions, health inequalities are increasing and, for the population as a whole, health is declining¹⁷. It is therefore important that all healthcare professionals have appropriate skills and training to minimise inequalities, and possess the competences to deliver fair, non-judgemental, and least restrictive care¹⁸.

The growing prevalence of health inequalities, as well as unmet need in excluded or overlooked patient groups, creates demand for an increased mental health workforce in areas with high proportions of people from the different population groups that are most affected – an approach that will require detailed demographic and geographical surveys. It also creates demand for new skills and new ways of working to identify mental health problems across different groups of the population, reduce the treatment gap, and work to eliminate inequitable access, outcomes and experience.

¹⁴ https://www.stonewall.org.uk/system/files/lgbt_in_britain_health.pdf

¹⁵

[Hidden%20Figures-%20The%20Impact%20of%20the%20Covid-19%20Pandemic%20on%20LGBT%20Communities.pdf](#)

¹⁶ [Chief Medical Officer's annual report 2021: health in coastal communities - GOV.UK \(www.gov.uk\)](#)

¹⁷ [Health Equity in England: The Marmot Review 10 Years On | The Health Foundation](#)

¹⁸ [amhe-resource.pdf \(rcpsych.ac.uk\)](#)

There are also wider societal factors that should be considered, including issues with the social care system and carers needing support with their mental health which may lead to demand for an increased mental health workforce.

Mental Health Act

Throughout the process of scrutiny of reform of the Mental Health Act (1983), Welsh Government officials have been engaged with counterparts in the Dept of Health & Social Care and Ministry of Justice. Welsh Ministers have taken the decision that the reforms should extend to Wales, and this has been announced in the Senedd and communicated to UK Government through an exchange of Ministerial letters. Working arrangements between Welsh Government and UK Government have been discussed and agreed at official level, and Welsh Government officials have joined various UK Government governance structures and working groups to jointly progress the work. The intention to introduce legislation has been formally announced.

Changes by the UK Government to non-devolved elements of the Mental Health Act detention regime such as giving patients additional rights to challenge decisions and for a 28 day limit on prison transfers will have an impact on devolved functions such as the mental health review tribunals and the NHS in Wales. Choosing to accept equivalent changes to devolved mental health services in Wales to those proposed in England would come at a financial cost but would maintain a more consistent system that would facilitate cross-border working. There may also be difficulties beyond money in terms of securing suitable qualified personnel to carry out additional work.

The changes are being led by England, and will need to take account the ways in which the system in Wales has already diverged, such as through the Mental Health Measure (Wales) and the absence of Clinical Commissioning Groups in Wales.

Receipt of the devolution assessment will enable work on an Legislative Consent Memorandum to commence. This will include a legal assessment on how legislation changes impact on devolved areas. Initial implementation planning is taking place.

Prison Mental Health

Providing effective, high quality and sustainable healthcare; along with protecting, rebuilding and developing services for vulnerable people, are two of the ten well-being objectives set out in Welsh Government's programme for Government.

As illustrated by the unequal impacts of the pandemic and its disproportionate effect on certain groups, we also know that we need to do more to support those with poorer health outcomes and reduce those health inequalities which currently exist. Evidence suggests that one of the groups at risk of poorer health outcomes are people in prison.

People in prison will often have a higher prevalence of substance misuse and poorer mental health, as well as a higher prevalence of Adverse Childhood Experiences and trauma. A 2018 study by Public Health Wales to understand the prevalence of Adverse Childhood Experiences amongst the male offender population found that over 8 in 10 prisoners in Wales reported at least one Adverse Childhood Experiences, and nearly half had four or more. These and other challenges facing the prisoner population in Wales were recently highlighted by the Health, Social Care and Sport Committee in their inquiry into health and social care in the prison estate in Wales.

With the view to improving health outcomes and reducing those health inequalities which currently exist, the Welsh Government has worked with Public Health Wales and the Royal College of Psychiatrists Wales to develop a new Substance Misuse Treatment Framework and new standards for mental health services for prisons in Wales.

The policies are priorities in the Partnership Agreement for Prison Health, which was developed collaboratively between the Welsh Government, HMPPS, Health Boards and Public Health Wales – support the fundamental principle of equivalence and seek to ensure people in prison have access to the same levels of support and healthcare as those in the community.

The development of the SMTF (Substance Misuse Treatment Framework) and the new standards for mental health services are also important in the context of the recently published UK Government Prisons Strategy White Paper, as well as recent

recommendations made by the Criminal Justice Joint Inspection (with the Care Quality Commission and Health Inspectorate Wales) of the criminal justice journey for individuals with mental health needs and disorders, and Her Majesty's Inspectorate of Prisons (HMIP) thematic inspection of community-based drug treatment and recovery work with people on probation.

Crucially, the work also aims to align with the principles set out in the Youth Offending Blueprint and the Female Offending Blueprint, as well as the work of Traumatic Stress Wales and their Prison and Criminal Justice workstream that aims to build capacity to identify and assess traumatic stress within the prisons in Wales, and to increase access to effective psychological therapies. This also includes support for the training of staff in trauma-enhanced practice and supporting effective transitions back into community services.

The development of the SMTF and the new standards for mental health services will help to ensure that while a person is in prison, they have access to equivalent care and treatment to that available in the community. It will also help to support people in prison to improve their health and wellbeing and make an important contribution to reducing those inequalities in outcomes which currently exist.

In Wales there are currently six male-only prisons. Welsh women in custody must serve their sentence in English Prisons, predominantly in Eastwood Park, Gloucester. There are also no category A (high security) prisons in Wales. Category A offenders (and others from Wales) will be required to serve their sentences in prisons in England, returning to Wales on release, or potentially prior to release for male non-category A offenders. As such, the SMTF also gives consideration to addressing the needs of men and women being resettled into their communities in Wales post-release, in line (for example) with the priorities set out in the Women in Justice Blueprint for Wales. Similar considerations in relation to transition to the community are included in the draft standards for mental health services.

We hope these areas provide some commentary and example of the challenging relationship between areas of policy that are both devolved (i.e. health), and non-devolved (i.e. crime and justice).

As an organisation, committed to supporting our members in delivering mental health services, and in informing improvement in services to deliver the best possible patient outcomes - we are acutely conscious of the impact and opportunity of both alignment and increased divergence.

SRA Written Evidence

Constitutional Commission for Wales

July 2023

Contents

| | |
|------------------------------|----------|
| Contents | 2 |
| Introduction | 3 |
| Our response | 4 |
| Contact details | 8 |

Introduction

1. The Solicitors Regulation Authority (SRA)¹ is the regulator of solicitors and law firms in England and Wales. We work to protect members of the public and support the rule of law and the administration of justice. We do this by overseeing all education and training requirements necessary to practise as a solicitor, licensing individuals and firms to practise, setting the standards of the profession and regulating and enforcing compliance against these standards.
2. We are the largest regulator of legal services in England and Wales, covering around 90% of the regulated market. We oversee some 4,000 solicitors and more than 400 law firms in Wales².

Our work in Wales

3. We have made a commitment to develop our presence in Wales and take full account of Wales throughout our work. In 2021, we appointed our first Head of Welsh Affairs, the first time we have had a physical presence here. In October 2022, we opened our Cardiff office. We are committed to growing this presence, enabling more roles from across the organisation to be based here. Later in our response, we highlight some examples of our work in Wales.
4. We welcome the opportunity to submit a response to the Constitutional Commission and provide information about our role.
5. Decisions about future constitutional arrangements, including further devolution, are a matter for government. As outlined in our response to the [Commission on Justice in 2018](#), the same applies to wider justice issues, such as access to legal aid.
6. However, our regulatory model is not dependent on jurisdiction. It would be equally as effective and relevant, whether or not England and Wales become separate jurisdictional models in the future.
7. The flexibility of our regulatory model has already allowed us to respond to changes in Welsh law (as evidenced by the approach we are taking with our Solicitors Qualifying Examination (SQE)). We are, therefore, able to continue to respond to ongoing changes in constitutional arrangements. Even in the event of a separate legal jurisdiction, we would be able to make appropriate adjustments in our regulation.
8. Specifically:
 - a. Our core principles of regulation would remain the same, should there be any changes in arrangements.
 - b. Consistency of high standards across the nations and the ability to identify and address issues if these occur would continue to be of importance.

¹ sra.org.uk

² Across England and Wales we oversee 156,928 solicitors and more than 9,860 law firms

- c. We rely on post-admission obligations that people only practise in areas where they are competent.
 - d. As part of our continuing competence arrangements, we expect solicitors to stay up to date and competent as part of providing high-quality legal services, and we set this out in our Statement of Solicitor Competence.
9. In this response, we outline our expectations of solicitors in relation to their understanding of laws in England and Wales, both at admission to the profession and in practising, which we consider are particularly relevant in relation to any future constitutional arrangements.
10. We would of course be happy to provide further details about any of the information in this response or answer any other questions about our work.

Our response

11. We set the education and training standards for solicitors to make sure the people we allow into the profession are competent.
12. In 2019, following an extensive reform programme and review of our regulatory approach, we introduced a new set of Principles, Codes and rules to help us focus on setting and maintaining clear, high professional standards.
13. The aims of this regulatory work were to:
 - a. set clear, high professional standards for those we regulate
 - b. offer flexibility, both for legal services providers in how they structure their businesses and for consumers in how they choose to access legal services
 - c. allow us to keep pace with rapid developments in the market while also maintaining appropriate protections for consumers and the public
 - d. make sure our regulation is user friendly, so our rules can be understood by the people and businesses we regulate and their customers
 - e. ensure that consumers have the information they need to make informed choices about the purchase of legal services.
14. Our regulatory approach therefore means that we have the flexibility to respond to changes in the market, as well as any changes in constitutional arrangements. This is because our focus is on high professional standards.
15. As a result, our core principles of regulation would remain the same should, there be any changes in arrangements. We would still expect consistency of these high standards across England and Wales.
16. The ability to identify and address issues if these occur, across both England and Wales, would continue to be of importance. The importance of the maintenance of a single regulator across both England and Wales also continues to be important, no matter what the future arrangements are, given the expectation that solicitors would still be entitled to practise in both England and Wales.

17. We have arrangements in place as part of our post-admission obligations that people only practise in areas in which they are competent.

Statement of Solicitor Competence

18. As part of our continuing competence arrangements, we expect solicitors to stay up to date and competent as part of providing high quality legal services. We set this out in our [Statement of Solicitor Competence](#).
19. The Statement of Solicitor Competence sets a broad definition of competence. The advantage of this definition is that it recognises that requirements and expectations change depending on job role and context.
20. Made up of three parts (a Statement of Solicitor competence, the [Threshold Standard](#) and a [Statement of Legal Knowledge](#)), the competence statement defines the continuing competences that we require from all solicitors.
21. The statement includes specific reference to legal knowledge and developments in the law, as noted below:

A2 – Maintain the level of competence and legal knowledge needed to practise effectively, taking into account changes in their role and/or practice context and developments in the law, including:

 - a. Taking responsibility for personal learning and development.
 - b. Reflecting on and learning from practice and learning from other people.
 - c. Accurately evaluating their strengths and limitations in relation to the demands of their work.
 - d. Maintaining an adequate and up-to-date understanding of relevant law, policy and practice.
 - e. Adapting practice to address developments in the delivery of legal services.
22. It is also important to note that the competence statement should be read holistically. Our expectation is that each element, such as the above, is threaded through all areas of work and underpins all of the competences in the statement.

Solicitors Qualifying Examination

23. We are committed to making sure that everyone who joins the profession meets the same high professional standards. In September 2021, we introduced a new way to qualify as a solicitor in England and Wales. This single rigorous assessment, the SQE, will replace the current routes to qualification as a solicitor and become the sole route to qualification. It will give both the public and the profession confidence in legal services and encourage more flexibility and choice in training.
24. We also see the SQE as a route to supporting greater diversity and increasing social mobility in the legal sector. It will do this by increasing access and opening up more flexible options to qualification, as well as through initiatives such as solicitor apprenticeships (where these are offered

SRA Written Evidence to the Constitutional Commission for Wales – May 2023

in England). Enabling people within the legal system to reflect their communities, is an important way of breaking down barriers to access and people seeing legal services as for them.

25. Candidates can take both parts of the SQE here in Wales. SQE1, the Functioning Legal Knowledge (FLK) element of the exam can be taken at a number of locations across Wales, based in Pearson VUE centres. Whilst Cardiff is currently one of four centres across the UK where SQE2 can be taken.

Expectations of aspiring solicitors with regard to laws in England and Wales

26. The depth and breadth of knowledge of English and Welsh law required of candidates is that of FLK. This means that candidates must apply their knowledge of the law to demonstrate the competences required to the level of a newly qualified solicitor of England and Wales. The SQE is about assessing the core knowledge and skills needed to practise law, so this would remain relevant wherever you are practising. It has the flexibility to recognise emerging or increasing distinctiveness between the laws of England and Wales.
27. Candidates taking the SQE are expected to have an understanding of the laws in England and Wales and those individuals going onto qualify are able to practise in both nations.
28. We have recently undertaken a review of our SQE Assessment Specification and FLK assessments for the SQE, to ensure our expectations for candidates and training providers preparing them for it, are clear in relation to this. We have made some changes to the Specification to make sure that candidates understand they can expect to be tested on areas of Welsh law as well as English law, for instance around Stamp Duty and Land Transaction Tax. We have also introduced reference to the right to use Welsh in court. Further details can be seen in our [updated Assessment Specification](#).
29. We have committed to making sure that we monitor any changes to Welsh law and how these may affect the exam in future. We will continue to keep this under review on an ongoing basis. In carrying out this work, we engaged with Welsh universities through the Law Council's Education and Training sub-group.
30. Importantly once we had completed this work, we also communicated with both candidates and training providers (in Wales, England and more broadly) to make them aware of these changes.
31. The updated FLK will apply to SQE assessments that take place after 1 September 2023.
32. As part of these changes, we have also amended the Assessment Specification of the SQE to include the following statement, (which we consulted on with stakeholders, particularly including those in Wales, prior to publication):

'The sources and application of law in the single legal jurisdiction of England and Wales

SRA Written Evidence to the Constitutional Commission for Wales – May 2023

- Whilst Wales does not form a separate legal jurisdiction (it is part of the legal jurisdiction of England and Wales), the laws that apply in England may be different from the laws that apply in Wales. In Wales, the Welsh language has official status and can be used in proceedings in Wales. These factors have consequences for how the law operates in Wales.
- Candidates will be required to show that they can apply their knowledge of the sources of primary and secondary legislation in England and Wales and how that law is applied.
- Solicitors of England and Wales are entitled to practise both in England and in Wales. Candidates will be required to apply, at the level of the newly qualified solicitor, their knowledge that, in relation to certain topics, the law is different in the two territories.³

33. It is still very early days for the SQE in Wales. However, from September 2022, we have seen some universities in Wales offer options for undergraduate and postgraduate SQE modules and courses to support aspiring solicitors to take this route, which will significantly reduce the amount it will cost to qualify as a solicitor (the private sector is also offering a range of preparatory courses). Some law firms in Wales are also starting to offer opportunities to support aspiring solicitors to prepare for the SQE, although this is at an early stage. We expect this to increase over time, as we are already seeing demand for SQE exam bookings increase.

Solicitors Qualifying Examination in Welsh

34. By the end of 2024 candidates will also be able to take the whole of the SQE in Welsh (some elements of the exam are currently being offered in Welsh as part of a phased approach). We have been engaging with stakeholders in Wales as we develop our approach to this, including Welsh Universities. We have undertaken pilots of both SQE1 and SQE2 in Welsh to help us test our approach and highlight any areas for adjustment. We have also engaged with Senedd Cymru and the Welsh Government on issues such as translation tools and commonly agreed legal terminology.

35. We will make sure that we provide clear information to candidates about how the exam will work in Welsh. This is to help candidates make the most informed choice for them when choosing in which language they undertake the exam. We want to make sure that our offer is realistic and support candidates to know what to expect when taking it.

36. We are also aware that there are currently no preparation courses available in Welsh. We recognise that this may be an issue for some candidates. We are keen to work collaboratively to encourage training providers to make such an offer available.

³ Updated SQE Assessment Specification published following FLK review

37. We would be very happy to discuss any of the issues that we raise in this paper or our role more broadly with you, should this be helpful.
-

October 2023

Introduction

- This document is designed to provide the Independent Commission on the Constitutional Future of Wales ('the Commission') with information on The Crown Estate's role, how we work to enable long-term and shared prosperity for the UK through our activities, and our relationship with our stakeholders including UK and Welsh Governments.
- We have already provided the Commission with a copy of The Crown Estate Annual Report and Wales Review. We hope that this submission supports the Commission's understanding of our work. We have also provided a considerable amount of information on offshore wind leasing processes and how we operate in the Annex to this document.

Further engagement

- Given the breadth and detail covered in this submission, we welcome the opportunity for further engagement with Commissioners on our work, our relationships with Welsh Ministers and the Welsh Government and other key partner organisations; in addition, on how we can work in partnership to contribute to the future economic well-being of Wales.

The Crown Estate's role and our governance

- 2.1 The Crown Estate was established by the Crown Estate Act of 1961 ('the 1961 Act') as an independent commercial business, uniquely positioned between public and private sectors, with a clear mandate to enhance the value of its portfolio for the benefit of the nation both now and in the future. We return 100% of our net revenue (i.e. our annual profit) to HM Treasury, and over the last ten years, we have contributed over £3.2 billion towards public spending.
- 2.2 Our statutory role enables us to act as a trusted long-term business partner to support Wales, England and Northern Ireland, and to focus on addressing key shared long-term structural challenges. We are focused on delivering the following three strategic objectives:
- Being a leader in supporting the UK towards a net zero carbon and energy-secure future.
 - Helping to create thriving communities and renew urban centres across the UK.
 - Taking a leading role in stewarding the UK's natural environment and biodiversity.
- 2.3 We do this through the holistic, long-term management of our diverse portfolio of assets to create financial, social and environmental value:
- Financial - We aim to balance short-term and long-term financial value, achieving returns today, while also creating value for future generations.

October 2023

- Social - Through tackling inequalities, putting health and safety first and foremost in our decision making, and creating inclusive opportunities and outcomes, we play a positive role for our stakeholders.
- Environmental - We are committed to help tackle the global climate and biodiversity crises by creating greener, healthier and more sustainable spaces, and accelerating renewable technologies.

2.4 The operations of The Crown Estate are overseen by The Crown Estate Commissioners (also known as the Board Members) whose statutory function under the 1961 Act is to invest in and manage certain property and other assets which ultimately belong to the Sovereign “in right of the Crown” (with no control over them, all rights of ownership being exercised independently by the Commissioners), and to remit its revenue surplus each year to HM Treasury. Our relationships with each of these stakeholders is set out in more detail below.

- Our relationship with the Royal Household:
 - The assets managed by The Crown Estate are owned by the Sovereign “in right of the Crown”. In other words, lands are owned by the Crown as an institution and not personally by the reigning Monarch, who has no control over the estate and no involvement in its management. The concept of “the Crown” is distinct from the Sovereign. It encompasses the interests of both the Sovereign and the government.
 - We do not return our profits to the Royal Household. All of our net revenue profit is returned to HM Treasury through the Consolidated Fund. UK Government allocates funds for the Royal Household, in accordance with the Sovereign Grant Act. The Crown Estate has no involvement in that process.
- Our relationship with the UK Government:
 - We are constituted to return our entire net revenue profit into the UK Consolidated Fund for the benefit of the UK. As our sponsor department, HM Treasury are charged with general oversight of our business, and our relationship is set out in a framework document made available online.¹ We are classified as a non-financial corporation and HM Treasury’s oversight is to enable it to account to Parliament. It does not exercise any executive role in the running of The Crown Estate. Ultimate responsibility for fulfilling the duties set out in the 1961 Act rests entirely with The Crown Estate’s Commissioners.
 - The 1961 Act requires us to make a report on our performance each year, and to lay a copy of the report before Parliament – our Annual Report and Accounts.²

¹ [The Treasury | The Treasury \(thecrownestate.co.uk\)](https://www.thecrownestate.co.uk/the-treasury)

² [annual-report-2022-23.pdf \(thecrownestate.co.uk\)](https://www.thecrownestate.co.uk/annual-report-2022-23.pdf)

October 2023

- 2.5 The Crown Estate portfolio is varied and reaches across England, Wales and Northern Ireland. Its assets include the seabed and much of the foreshore, rural land, and urban assets, which include commercial and housing related activities across the country. As a result of the breadth of the portfolio, we are involved in a broad range of economic and industry sectors, with energy being one of these.
- 2.6 The diversity of our work gives us a framework to look holistically at assets, and to apply learning from one area of our business to another. Whether that is integrating renewable energy solutions, designing district heating systems, or creating new jobs and skills opportunities – each part of our portfolio has developed critical skills and experience that can be shared with others, meaning we have the opportunity to think beyond the confines of a single industry. This systems thinking approach that we bring is vital in responding to the complex and interrelated challenges that we face.

Alignment with Welsh priorities

- 3.1 There is a strong correlation between The Crown Estate strategy and the ambition of Welsh Ministers to tackle some of the greatest challenges of the day. Our ability to take a long-term view to support the creation of social, financial and environmental value for future generations shares similar values with the principles that underpin Welsh legislation, such as the Wellbeing of Future Generations Act. As an example, when Welsh Ministers initiated a 'Deep Dive' into the Renewable Energy policy, we were able to contribute insight and information to explore the role of the sector in contributing to our shared ambition of net zero.
- 3.2 The Crown Estate meets regularly with Welsh Ministers and has a regular dialogue and programme of engagement with Welsh Government officials, to ensure there is shared understanding of needs and opportunities and that we are aligning our work to deliver against shared objectives, where appropriate.
- 3.3 We were pleased to appoint a Director for Wales in 2022 to support our work in Wales, providing a point of contact for Welsh Ministers, Welsh Government and stakeholders, deepening understanding of shared objectives and challenges and enabling opportunities for closer working to deliver on our shared ambitions.

Deployment of Offshore Renewable Energy

October 2023

- 4.1 We are mindful of the ambitions and targets of Welsh Ministers for renewable energy, which were recently consulted upon³, and recognise the role that offshore wind plays in this.
- 4.2 The Crown Estate has played a fundamental role in creating successful markets for offshore wind and other seabed uses across the UK. We invest a significant amount of capital, and time, to enable each Gigawatt (GW) of offshore wind to come to market. Currently, there are approximately 12GW of offshore wind in operation around Welsh and English waters with a total pipeline of over 44GW in development, planning and construction, and operation. Despite the work we have undertaken to create a successful offshore wind market in the UK, which has reduced the cost of development, we anticipate needing to invest more in future years because of the work needed to ensure the sustainable growth of renewable offshore energy in the UK (outlined in section 3 of this document).
- 4.3 As managers of the seabed, and half the foreshore in the areas we operate, our role is to is to unlock the potential of those assets to support the renewable energy transition to a resilient, sustainable and decarbonised future in a highly competitive global market. This includes seabed leasing activity to unlock renewable energy through sectors such as offshore wind and new technologies such as carbon capture, utilisation and storage (CCUS) and green hydrogen. These technologies have the potential to deliver on the energy security transition, whilst also underpinning growth and productivity across a wide range of supporting industries, from ports and shipping to cable networks.
- 4.4 We work closely with Welsh Government and wider stakeholders in Wales to better understand the competing needs for seabed space, ensuring balance and prioritisation, supporting nature and the rich biodiversity of our seas, and facilitating the development of other sectors outside of renewables including cables, pipelines and marine aggregates (please see the Annex illustrating the processes involved in bringing offshore wind to market and the role we play in this).
- 4.5 Securing UK energy security is an increasing priority for all, requiring a shared understanding of the need to coordinate and accelerate investment in associated infrastructure during a time of difficult economic challenges, where the UK is competing with other countries around the world for international investment.

³[Written Statement: Publication of Summary of Responses to the Consultation on Wales' Renewable Energy Targets \(14 July 2023\) | GOV.WALES](#)

October 2023

- 4.6 The need to attract investment is set against demands to mobilise a significant expansion in the volume of offshore wind to deliver against UK offshore wind ambitions and targets, including Welsh Government's ambitions for the decarbonisation of electricity by 2035.
- 4.7 The Crown Estate continues to evolve the leasing and participation models to respond to the complex global market and demand clean and carbon reduction technologies to ensure that the UK market is recognised as an attractive market to invest in. We are investing in the steps needed to deliver a global first-of-a-kind commercial-scale opportunity in the Celtic Sea:
- Round 5 (Celtic Sea) is our first tender process to include supply chain and port requirements as part of our leasing process, which is aimed at driving the growth of supply chains which will benefit South Wales.
 - The Crown Estate is also investing in multi-million pound pre-consent surveys up front, to de-risk investments for prospective developers and we are working closely with National Grid ESO to ensure the Celtic Sea floating offshore wind programme has an integrated grid design, speeding up development and minimising impacts for communities onshore.
 - We are continuing to explore further ways we can invest to accelerate development, including looking at ways we can use our unique position to bridge gaps between the public and private sector to drive inward investment and to deliver economic benefit.
- 4.8 All of this investment will reduce risk for development in the UK and accelerate the successful deployment of renewable energy projects in UK waters.

Working in Partnership

- 5.1 Through partnership, collaboration, and direct investment we are playing our part in responding to some of the greatest issues the UK faces, seeking solutions which will unlock benefits today, and for future generations.
- 5.2 The Crown Estate plays an active and important role in a wide range of forums and discussions – at both a national and international level - bringing our skills, knowledge and experience to the conversation. For example, The Crown Estate are members of the Coast and Seas Partnership, where we work closely with Welsh Government on a broad range of marine planning functions and hold deep technical relationships.
- 5.3 We also invest in world-class data and evidence to fill evidence gaps which inform decision-making, de-risk investment, and unlock barriers facing renewable energy development – both now and for the future. Some examples of our partnership in action include:

October 2023

- Our Offshore Wind Evidence and Change Programme (OWEC) - In 2020, The Crown Estate launched a new £50 million pound partnership programme with over 26 other organisations, including Welsh Government and Natural Resources Wales – plus representatives from Northern Ireland and Scottish Government’. Over a five-year period, the programme has sought to drive the sustainable and coordinated expansion of offshore wind, whilst supporting biologically diverse seas through the funding of a number of strategic research and data projects. The work of the OWEC programme provides essential insights that help the sector and policy makers to better understand and address environmental considerations and interactions with other industries and activities, both around the coast and offshore.
- Our partnership with Blue Marine Foundation, Finance Earth and Pollination, to invest in a major “first of its kind study” on ‘Developing High-Integrity Marine Natural Capital Markets in the UK’ - With input from almost 100 stakeholders and global experts across civil society, private sector enterprises, academia, government, and financial institutions, our study aims to build consensus around the key barriers and solutions to high-integrity marine natural capital markets – sometimes referred to as nature markets. We recognise natural capital markets and financing models are at a nascent stage and by working in partnership, we have invested to understand what could be done as we grow our knowledge of options that might work effectively for all of the UK.
- Our work to expand and build on the strength of our world leading Marine Data Exchange (MDE) - MDE currently holds one of the world’s largest collections of freely available data relating to the seas around England, Scotland, Wales, and Northern Ireland, and has been running for a decade. Containing ~260TB of data, the information is publicly available, and is used to de-risk offshore renewable investments and drive sustainable marine development across the UK.

Conclusion

- 6.1 All of the information in this document has been provided with the purpose of supporting the Commission in understanding the breadth of The Crown Estate’s work to create long term value and to support our stakeholders and governments across Wales, England and Northern Ireland to deliver against their priorities. This includes the sustainable management of assets to provide opportunities which drive the accelerated and successful deployment renewable energy technologies, which are critical to our shared goals in tackling climate change, securing energy security and delivery of net zero – whilst also creating jobs and economic growth and responding to biodiversity loss.
- 6.2 These issues are broad ranging and, if it would be helpful, we welcome the opportunity for further direct engagement with Commissioners to support their work.

**Response to the Independent Commission on the
Constitutional Future of Wales**

October 2023



October 2023

ANNEX

Examples of our work in Wales

- Enabling fixed offshore wind farms:
 - The current operational windfarm capacity of assets we have enabled in Wales is 0.73 GW from Gwynt-y-Môr, Rhyl Flats and North Hoyle wind farms. We are also working with developers to deliver the expansion of the Gwynt-y-Môr windfarm, Awel-y-Môr, which is expected to deliver an additional 350MW of capacity.
 - In January 2023 we signed the agreements for lease for six new windfarms that comprise Offshore Wind Leasing Round 4, which combined have the potential to generate 8GW of new renewable electricity by 2030 – enough power for more than seven million homes. This includes three projects in the North Wales and Irish Sea – off the North Wales, Cumbria and Lancashire coasts – with a total capacity of around 3.5GW.
- Renewable innovation:
 - This year we expect to launch a tender process for Offshore Wind Leasing Round 5 – which presents a first-of-a-kind opportunity to build commercial-scale floating offshore wind farms in the Celtic Sea.
 - We are also working with industry to provide leadership in developing tidal stream energy projects, which have enormous potential in Welsh waters. The Crown Estate has made a £1.2 million investment to help develop early-scale tidal projects as part of the Morlais Tidal Stream demonstration zone off the coast of Holy Island, Anglesey. At full potential Morlais is set to deliver up to 240MW of new clean energy extracted from the tides, and will help lay foundations for an industry that leads to opportunities for jobs and supply chain benefits in the regional economy.
- Nature recovery and regenerative agriculture:
 - Stewarding the natural environment and nature is at the heart of our purpose and strategy, and we are enabling a number of projects which focus on maintaining healthy habitats and ecosystems that mitigate the effects of climate change, and provide an ecosystem of services that support livelihoods and thriving economies. This includes working with Project Seagrass on Llŷn Peninsula to trial new licensing and leasing to enable seagrass planting at various sites, and peatland restoration opportunities being delivered in and around Hiraethog.
 - We are seeing increased interest in opportunities for regenerative aquaculture practices around Wales, demonstrating the growing awareness in the potential of seaweed-based products in food, packaging and fertiliser. We have granted a license

October 2023

for Câr-y-Môr, a three hectare site in Ramsey Sound, North Pembrokeshire, which is the first community-owned regenerative ocean farm in Wales.

Our offshore wind leasing processes

- A.1 With long coastlines, favourable wind conditions and shallow waters in many areas, the UK offers world-class natural resources for offshore wind. But the seabed is increasingly busy, with demands ranging from cables, pipelines and sand and gravel extraction, to navigation, fisheries and aquaculture. There is also the need to maintain an ecologically coherent network of marine protected areas, and to ensure that offshore development takes place in balance with the UK's nature and biodiversity ambitions.
- A.2 Over the last two decades we've played a key role in establishing the offshore wind sector and accelerating offshore wind leasing.⁴ From zero capacity at the turn of the millennium, the UK is now home to one of the largest operating offshore wind sector in the world.⁵ We've played a fundamental role in supporting the UK's world-leading offshore wind industry by identifying and leasing suitable seabed sites for development, as well as working with partners to build evidence, share data and support innovation.
- A.3 The building blocks that define our work on offshore wind leasing are -
- Engagement with statutory stakeholders to inform our spatial seabed analysis and refinement;
 - Design of a market tender process which is robust, seeks to attract international investment and grant rights to projects with the greatest chance of being delivered in a way that supports UK energy, climate, and economic ambitions;
 - As a Competent authority for the Habitats Regulations, we play a key role in assessing plan level impacts against the network of the UK's most valuable habitats [including SPAs and SACs].
 - De-risking to support development - through direct investment and through the provision of specialist in house spatial analysis with the aim of mitigating some of the barriers and risks developers face, when investing in the UK market.
- A.4 These processes are complex and involve high levels of data, expertise and stakeholder engagement over several years to ensure projects are delivered successfully. Please refer to Fig. 2 in the annex for an indicative overview of an offshore wind project lifecycle.

Offshore Wind leasing Round 4 overview

- A.5 In order to bring to life the way in which we work with stakeholders to underpin and validate our leasing activity, during our recently concluded leasing process - Offshore

⁴ See Fig. 4 - Delivery of major offshore wind leasing rounds in the UK have enabled development of offshore wind into a core renewable technology

⁵ See Fig. 3 - UK offshore wind pipeline as at June 2023

October 2023

Wind Leasing Round 4 (which will enable ~8GW of Offshore Wind) - we engaged extensively with statutory, government and environmental stakeholders to inform our seabed spatial mapping. The process we ran for spatial mapping, saw us:

- Develop a Technical resource model as the starting point of the analysis, defining the area of seabed that was most favourable for offshore wind development.
- Following this our team of experts created an Exclusions model to map in activities and receptors that would preclude the development of offshore wind infrastructure e.g. existing seabed infrastructure and rights, and areas where health and safety or policy reasons meant that development wasn't feasible.
- This was followed by development of a Restrictions model, which included all other criteria that we structured and weighted in terms of the constraint each presented to development of offshore wind. As part of this activity we took information from a broad range of statutory stakeholders on shipping, fishing, navigation, ornithology and MOD exercise areas.
- This then led on to development of Characterisation areas, a result of combining the findings from the Technical Exclusions and Restrictions models and taking the least constrained 50 per cent of these.

A.6 Further to this, we undertook a process to refine the areas in order to bring the most favourable areas forward for fixed wind development, again engaging with stakeholders to validate our proposals ahead of sharing this methodology for developers in order to support them with their project development.⁶ In total for this part of our leasing work alone, we took over 500 pieces of feedback working with over 20 organisations, including Natural Resources Wales.⁷

A.7 Once this activity concluded, we moved forward with the next stages of the leasing activity - a three stage tender process [Pre-qualification questions, Invitation to Tender 1 and Invitation to Tender 2]. Running over a number of months, the process was designed to be fair, transparent and to ensure that successful developers would be selected based on their technical competence and ability to deliver projects in the UK market.

- During a 14 week PQQ phase, we assessed potential Bidders' financial capability, technical experience and reviewed legal compliance
- Successful potential bidders then moved through to ITT1 stage of the tender - a forward looking assessment of the financial and technical aspects of proposed projects, this took approximately 18 weeks
- As a final step in the tender process, those potential bidders who had met criteria in the previous assessments, were invited to take part in a multi-cycle bidding process, using option fees bid by Eligible Bidders to determine award - ITT2.

A.8 This was followed by a plan level Habitats Regulations Assessment for Offshore Wind Leasing Round 4, which was a vital final step, ahead of Agreements for Lease, to ensure

⁶ [tce-r4-regions-refinement-report.pdf \(thecrownestate.co.uk\)](#)

⁷ [3994-TCE-R4 Document covers-V7.indd \(thecrownestate.co.uk\)](#)

October 2023

development could come forward in a responsible, sustainable way supporting clean, healthy, safe, productive and biologically diverse seas.

Floating Offshore Wind and Round 5 in the Celtic Sea

- A.9 Building on our work on Offshore Wind Leasing Round 4, during 2021, The Crown Estate set out plans to explore viable options for a potential leasing opportunity for the first commercial-scale floating wind projects to be located in the Celtic Sea off the coast of Wales and the South West of England. This is a new technology, not yet tested at scale, which sees turbines placed on floating platforms tethered to the seabed, meaning they can be located in deeper waters than fixed-base wind farms. We believe that this is an exciting opportunity that with the right support and investment from multiple stakeholders it could provide clean, secure, renewable energy for millions of homes, while also putting the UK at the front of a new global industry, with opportunities to drive skills, investment and growth.
- A.10 As part of our work, we engaged a wide range of stakeholders, including governments, industry and the full range of seabed users. This has focused on a number of important issues, including the spatial work to identify broad areas of search, with the aim of refining these into project development areas to be made available to market via tender. This engagement has helped highlight that the Celtic Sea is subject to many competing demands and that there are a number of spatial considerations and policy drivers that the UK Government is currently working to resolve, supported by The Crown Estate.
- A.11 Recognising the busy sea space in the Celtic Sea as well as the need for enabling industries to develop the capability and scale to support the development of new technology in the region, we have evolved our approach to leasing for this planned leasing round.

Collective Global Challenges

- B.1 Whilst The Crown Estate plays an important role in leasing and consenting processes to support governments, and industry, in developing low carbon infrastructure that is crucial to delivery of net zero and energy security, these are shared priorities which we must work in partnership to overcome.
- B.2 In particular, rising inflation and the instability we have seen in energy markets in recent years exacerbated by the ongoing conflict in Ukraine, combined with increasing global competition to capture the benefits of green technology growth and increasingly complex post-EU environmental policy landscape, mean that the UK is experiencing a challenging international investment climate. We recognise the role governments can play in supporting the long-term market certainty investors need, however, as a trusted, experienced partner in the delivery of infrastructure projects - across England and Wales in particular - The Crown Estate can also play an important role in providing investors with

October 2023

confidence in the long term value we can create. We recognise that the needs of today require a step-change in renewable technology deployment which we are focused on working with all of our stakeholders to deliver.

C.3 Acceleration of low carbon offshore also deployment brings further, shared challenges which we are actively collaborating with governments, regulators and industry to overcome. For example:

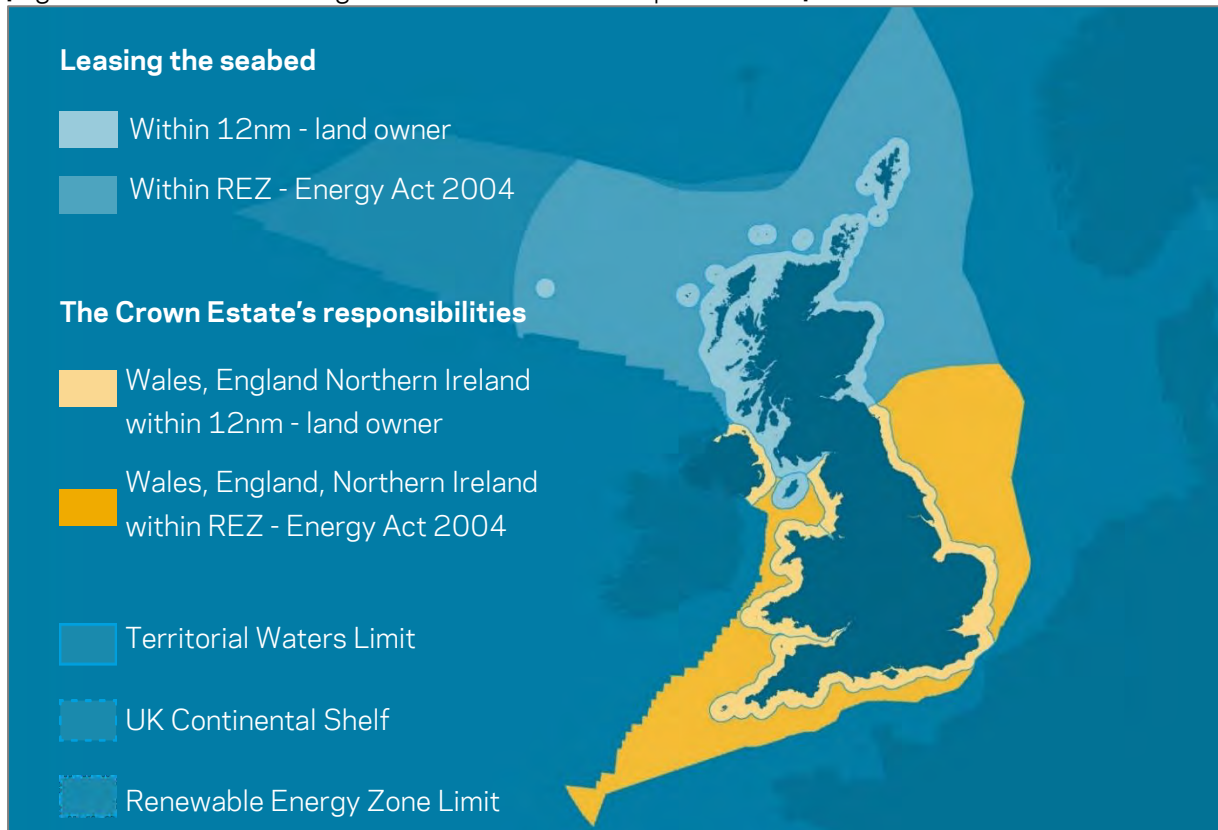
- The seabed is already a busy space and demand for activity linked to the seabed is likely to increase 10-fold to 2050, with additional demand from other marine industries (e.g. Defence, fishing, shipping).
- Marine nature is in decline and urgent action is needed to protect and restore biodiversity, which will increase consenting risks for developers.
- Transmission network and supply chain constraints risk impeding offshore technology development which require long term visibility for investments.

C.4 We are seeking to help overcome these challenges by adopting a holistic approach which builds on our experience and data capabilities, and moves away from project-to-project delivery, towards a longer term, pro-active approach. We have already begun pioneering work to convene stakeholders and to digitally map the seabed resource needed to meet future demand, enabling the delivery of multiple priorities including net zero and nature recovery to 2050. This includes work to encompass grid, environment, supply chain and community interests to accelerate projects in a way that is attractive to international investors in the context of a global subsidy race. We welcomed the publication of the Nick Winser Report to UK Government in August 2023 who, as Electricity networks commissioner, recommended that The Crown Estate can play a key role in strategic planning of resources to enable better transmission network connectivity, aligning closely with the work we have already begun.

October 2023

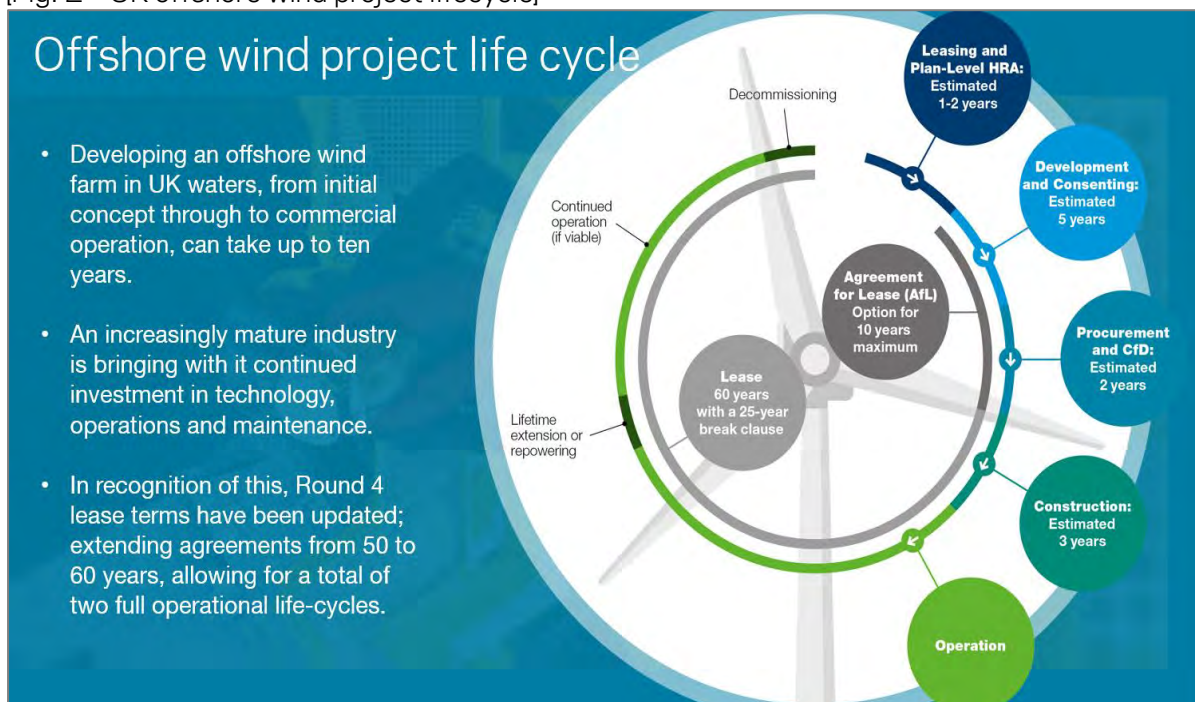
Figures

[Fig.1 - UK offshore leasing framework and TCE responsibilities]

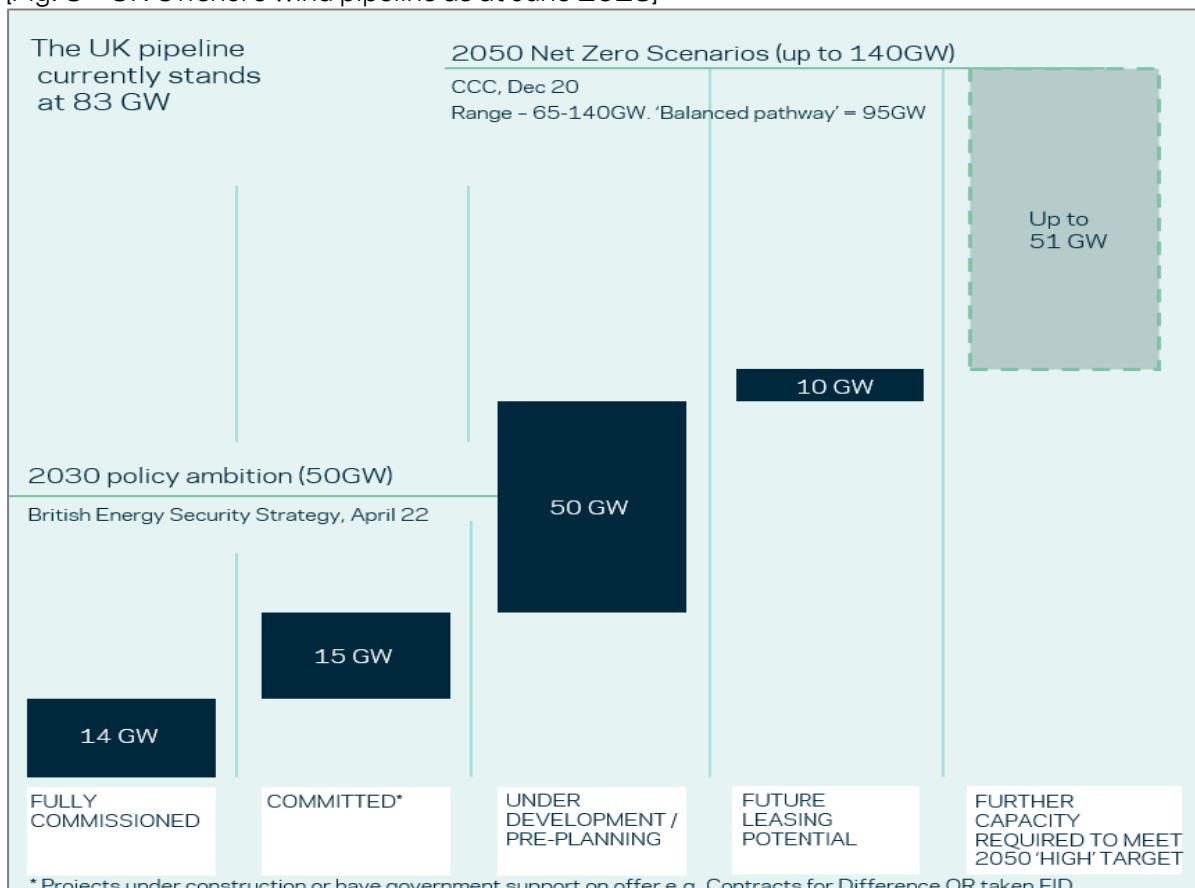


October 2023

[Fig. 2 - UK offshore wind project lifecycle]

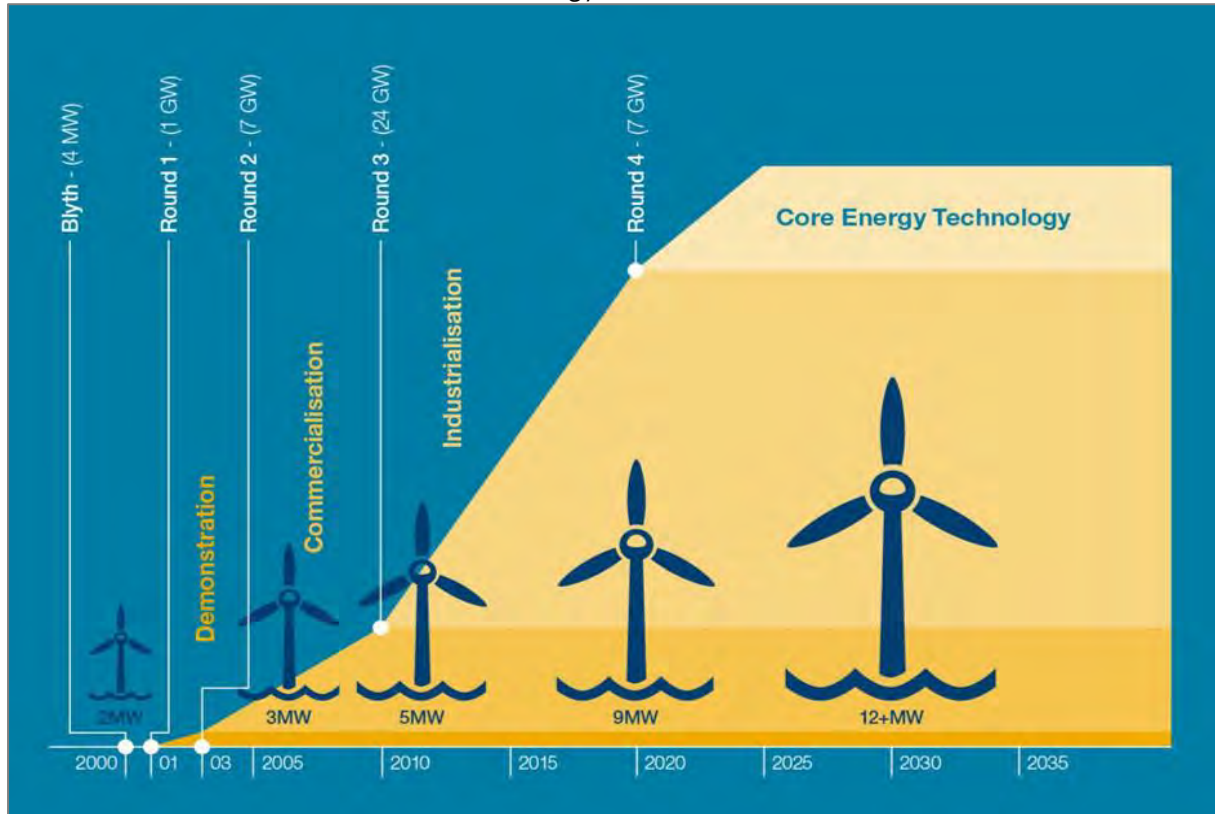


[Fig. 3 - UK Offshore wind pipeline as at June 2023]

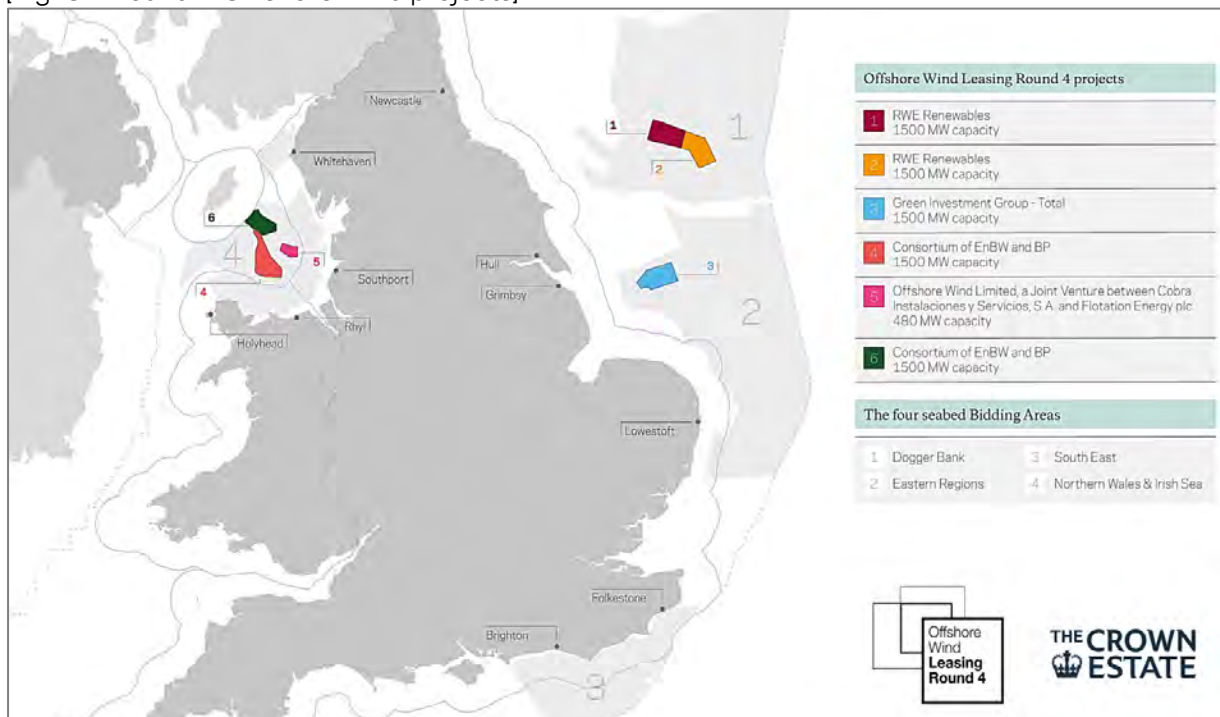


October 2023

[Fig. 4 – Delivery of major offshore wind leasing rounds in the UK have enabled development of offshore wind into a core renewable technology]



[Fig. 5 – Round 4 Offshore Wind projects]



The Law Society

Cymdeithas y Cyfreithwyr

Briefing report: "The Constitutional Future of Wales"

Adroddiad briffio: "Y Ddyfodol Cyfansoddiadol Cymru"

March / Mawrth 2023

Contents

| | |
|---|-----------|
| Key summary: Devolution | 3 |
| Devolution of Justice in Wales: Process and aftermath | 3 |
| i. Evolution not revolution | 3 |
| ii. Full generational costing and sequencing | 3 |
| iii. Aligning policy implementation and resources | 3 |
| iv. Apprenticeships and legal sector recognition | 3 |
| v. 'Distinct' not 'separate' jurisdiction..... | 3 |
| Policy report: “The Constitutional Future of Wales” Executive overview and summaries | 4 |
| Thomas Commission: The Law Society’s position | 5 |
| Access to Justice | 5 |
| Criminal Justice | 5 |
| Family justice | 5 |
| Civil and administrative justice | 6 |
| Knowledge and innovation | 6 |
| Welsh language | 6 |
| Thomas Commission: Immediate action to be taken: | 7 |
| Adjustments to Government..... | 7 |
| Further changes (requiring support from the MOJ)..... | 7 |
| Current complex arrangements requiring streamlining | 7 |
| Judiciary | 7 |
| Thomas Commission: Welsh Government progress | 8 |
| Proposals that have been implemented..... | 8 |
| Proposals that have not yet been implemented | 8 |
| The Law Society position on Welsh Government progress:..... | 8 |
| Devolution of Justice in Wales: Process and aftermath | 9 |
| i. Devolution: Evolution not revolution | 9 |
| ii. Devolution: Generational costing and sequencing..... | 9 |
| iii. Aligning policy implementation and resources | 9 |
| iv. Apprenticeships and legal sector recognition | 9 |
| Thomas Commission: Long-term devolution vision | 9 |
| The legal sector in Wales - a rapid review | 10 |
| Important insights into the Welsh Government..... | 10 |
| Recommendations into the Welsh legal sector | 10 |
| The Distinct Jurisdiction of Wales | 11 |
| Summary | 11 |
| The position of The Law Society of Wales | 11 |
| Jurisdictional definition | 11 |

Key summary: Devolution

The Law Society, based on the deliberations of the previous Wales Committee, and in consultation with our internal committees supports, in principle, the devolution of justice to Wales, as recommended by the Commission on Justice in Wales. Alongside the broader picture of presenting a meaningful and discernible positive difference to our members the following tests must be met before support in principle can become unqualified support:

- i. Any devolution of justice functions must be accompanied by an adequate commitment to full funding from UK Treasury and meaningful intergovernmental collaboration with the legal sector to ensure its success.*
- ii. The ability of solicitors in Wales and England to practise across the border without any impediment must be maintained without restriction.*
- iii. The current single regulatory framework for solicitors across Wales and England should be preserved whilst recognising the unique circumstances of Welsh law.*

Devolution of Justice in Wales: Process and aftermath

Aware that devolution occurs when the Westminster Government sees fit, the Law Society has noted four guiding working process recommendations, alongside the three 'red lines on devolution' to advise caution on the process before and after the devolution of justice process.

i. Evolution not revolution

The Law Society asks that the Devolution of Justice is built gradually through evolution, rather than a sudden unforeseen 'revolution' in devolution. This is built from the rational view of the current capacity of the Welsh Government.

ii. Full generational costing and sequencing

The Law Society asks that the costing and sequencing plan for the devolution of justice is built for a 'generation', not just the immediate period following devolution. Whilst a fully funded justice system is a prerequisite, it is important that funding is allocated and sequenced.

iii. Aligning policy implementation and resources

The Law Society asks that the Welsh Government works to build capacity and sustainability of the legal sector, identifying areas which will require additional support during the process and aftermath of devolution.

iv. Apprenticeships and legal sector recognition

The Law Society is working to achieve level 7 apprenticeships in Wales and ensure a priority sector status recognition which we believe is a necessary pre-requisite for devolution of justice.

v. 'Distinct' not 'separate' jurisdiction.

As the concluding page of this report details, the Law Society believes that a move to a separate jurisdiction carries enormous risk. Our proposal for a distinct jurisdiction is outlined on page 11.

Policy report: “The Constitutional Future of Wales”

Executive overview and summaries (March 2023)

This paper consolidates the position of the Law Society relating to proposed constitutional futures for Wales relevant over the past five years. In detailing recommendations to existing proposals and conclusions, this paper does not pose new suggestions, solely reflections on existing work.

Thomas Commission on Justice in Wales (October 2019)

We agree strongly with the majority of the recommendations as outlined by the Thomas Commission, including the overall conclusion that there exists complex division between the responsibilities of the Welsh Government and the Westminster Government and the proposed solutions. We note that in certain instances, the Welsh Government has intervened on specific policy areas such as low police numbers, which has further complicated the division of responsibility in justice policy and practice.

Devolution

The Law Society, based on the deliberations of the previous Wales Committee, and in consultation with our internal committees believes that whilst we support, in principle, the devolution of justice to Wales, as recommended by the Commission on Justice in Wales. Alongside the broader picture of presenting a meaningful and discernible positive difference to our members the following tests must be met before support in principle can become unqualified support:

Jomati Review: The legal sector in Wales

The Jomati review establishes an important and well researched business report of the legal sector in Wales, with comparisons to England further afield. Whilst the data from 2019 may now be somewhat removed from that of 2023, the trends and focuses of the report remain important for the Law Society and form much of the basis of our Vision 2030 justice paper.

Welsh Government progress

The current period of constitutional reform has been notable for the very slow pace of activity by the Welsh Government to implement any the recommended proposals or offer timelines for any commenced work.

Future constitutional matters and our membership

Membership to the Law Society is significantly diverse, constituting a wide spread of political and economic backgrounds, from all four corners of Wales. There is therefore not one universally prevailing view on the constitutional future of Wales held by our membership.

Thomas Commission: The Law Society's position

We share the concerns of the Thomas Commission that:

- i. In many aspects there exists complex division between the responsibilities of the Welsh Government and the Westminster Government. In certain instances, the Welsh Government has intervened complicating the division in responsibility.

Access to Justice

- II. There exists 'advice deserts' in rural and post-industrial areas, this poses a serious risk to the sustainability of legal practice elsewhere, especially in traditional 'high street' legal services.
- III. Increasing numbers of people representing themselves in courts and tribunals has had a consequential adverse impact on outcomes and the efficient use of court resources.
 - a) *The Law Society agrees with the recommendations of the Thomas Commission and supports reform to access to justice. Work to finalise our recommendations is currently ongoing and set to be published in our 'Vision 2030' justice paper.*

Criminal Justice

- i. There is no overall alignment of policy and spending in Wales.
- ii. The arrangements for coordination between devolved and non-devolved bodies are overly complex, are expensive and do not provide transparent accountability for effective performance.
- iii. Criminal prosecutions have fallen.

We agree with the following criminal justice recommendations:

- i. *A positive development would be the joint working between the police and Public Health Wales to address the consequences of Adverse Childhood Experiences. An approach focused on the experiences of children and young people has strong potential to reduce the numbers of first-time entrants into the youth justice system.*

Family justice

- ii. There exists a high number of children in care in Wales.
 - a. The Law Society agrees with the welcoming of the Welsh Government's recent initiative to hold local authorities to account for reducing the number of children in care, those placed out of county and those removed from parents with a learning disability. However, significant further action to work with local authorities is required. *Work to finalise our recommendations is currently ongoing and set to be published in our 'Vision 2030' justice paper.*

Civil and administrative justice

- i. In addition to a lack of legal aid, people with civil disputes are faced with high fees which deter many from pursuing a court case.
- ii. Resolving a dispute is complex for many reasons, including the lack of coordination between the courts, Tribunals, and different forms of alternative dispute resolution. The proportion of challenges to decisions made by Welsh public authorities that are heard in Wales is low. Welsh Tribunals - needs to be seen to be fully independent from the Welsh Government and needs a closer relationship with other bodies that review administrative decisions. The Welsh Tribunals have been under-used as a means of enforcing Welsh legislation.
- iii. Those in Wales who live in rural and post-industrial areas of Wales face long and difficult journeys to their nearest court due to court and Tribunal closures. This is compounded by the low use of remote access facilities. The advantages of digital technology have not yet been fully realised in Wales."
 - a. *The Law Society supports an overall reform to Tribunals in Wales. We currently in the process of building digital policy to counteract the difficulties faced by rural and dispersed communities in accessing justice.*

Knowledge and innovation

- i. Although parts of the legal professions in Wales are strong and competitive, opportunities to strengthen the legal sector more broadly have been missed. South Wales should be promoted as a legal centre
- ii. There ought to be a focus on 'law tech' which is crucial for success of the legal profession and a clear strategy for rural and post-industrial areas of Wales.
 - a. *The Law Society agrees strongly with the detail by the Thomas Commission and others regarding a lack of technological competitive focus. We are working to create policy to implement the successes of other non-London legal centres of excellence such as Manchester and Liverpool and policy to resolve the distinct challenges of rural and post-industrial areas.*

Welsh language

- i. The current justice system does not consistently treat the Welsh language on a basis of equality with the English language. This is coupled with a lack of materials and teaching focus.

Thomas Commission: Immediate action to be taken

The Law Society agrees with the following immediate recommendations:

Adjustments to Government

- i. The formation of leadership, Welsh Gov Minister, or Deputy Minister with oversight of all justice matters.
- ii. Closer liaison between the Welsh Government and the judiciary on proposed legislation, as well as on work to improve outcomes for children at risk of being taken into care.
- iii. Given the importance of the legal sector to the Welsh economy and the potentially greater economic contribution the sector could make, a collective drive to promote the sector in Wales and to attract new businesses offering technology-based services.

Further changes (requiring support from the MOJ)

- i. Establishing problem-solving criminal, and Family Drug and Alcohol Courts in Wales.
- ii. Improving access to digital court services
- iii. Proceeding urgently to establish alternatives to custody for women across Wales.
- iv. Providing specific justice data for Wales, including at local authority level.

Current complex arrangements requiring streamlining

- i. The large All Wales Criminal Justice Board should be replaced with a streamlined and strategic Wales Criminal Justice Board. It should report on progress to the Assembly.
- ii. The role of the Family Justice Network for Wales should be strengthened.
- iii. An independent board should be established to give strategic direction for funding both legal aid and third sector advice; and
- iv. there should be an independent board to oversee developments in civil and administrative justice and to promote greater coordination between the work of ombudsmen, those providing alternative forms of dispute resolution, and courts and Tribunals.

Judiciary

- i. Consider greater use of intensive alternatives to custody and of a problem-solving approach in criminal and family justice when appropriate.
- ii. Create an appointment of a Welsh judge to the supreme court

Thomas Commission: Welsh Government progress

Despite the thorough outline of a recommendations established by the Thomas Commission, progress to meet the outlined work has been slower than desired, across the series of recommendations. Whilst the Welsh Government met the recommendation to establish the Law Council, progress in other areas has been slow. The Law Society are keen to work alongside the Welsh Government to ensure progress on implementing the Thomas Commission recommendations.

A Report on the Implementation of Law Commission Proposals (2022-23) published on the 13th February 2023 provided an updates on the progress made over the last twelve months on a range of issues that have been the subject of Law Commission recommendations over the past 12 months.

The below are areas of interest for the Law Society.

Proposals that have been implemented

- i. *The Welsh Government has not completed the implementation of any Law Commission proposals during this reporting period (22-23).*

Proposals that have not yet been implemented

- i. *Planning Law in Wales*
 - a. *“Good progress is being made on the production of the Planning Consolidation Bill”*
- ii. *Electoral Law*
 - a. *Reform and modernise the electoral administration in Wales*
- iii. *Devolved Welsh Tribunals*
 - a. *Law Commission report completed report in Dec. 2021, Work to implement recommendations is ongoing.*

The Law Society position on Welsh Government progress:

We hold the current questions for Welsh Government:

1. What are the priorities of the Welsh Government in achieving the recommendations of The Law Commission?
2. Following an unsatisfactory report on the implementation of Law Commission 22-23, will the Welsh Government commit to a full update report?
3. What barriers are the Welsh Government struggling to overcome to meet the implementation of the Law Commission to a satisfactory time?
4. Is the Welsh Government clear on the recommendations and the work required to achieve the recommendations to a satisfactory standard?

Devolution of Justice in Wales: Process and aftermath

Aware that devolution occurs when the Westminster Government sees fit, the law society has created four guiding working process recommendations, alongside the three 'red lines on devolution' to advise caution on the process before and after the devolution of justice process. structured approach to ensuring that the process proceeding devolution is comprehensive.

i. Devolution: Evolution not revolution

The Law Society asks that the Devolution of Justice is built gradually through evolution, rather than a sudden unforeseen 'revolution' in devolution. This is built from the rational view of the current capacity of the Welsh Government.

ii. Devolution: Generational costing and sequencing

The Law society asks that the costing and sequencing plan for the devolution of justice is built for a 'generation', not just the immediate period following devolution. Whilst a fully funded justice system is a prerequisite, it is important that funding is allocated and sequenced.

iii. Aligning policy implementation and resources

The Law society asks that the Welsh Government works to build to build capacity and sustainability of the legal sector, identifying areas which will require additional support during the process and aftermath of devolution.

iv. Apprenticeships and legal sector recognition

The Law society is working to achieve level 7 apprenticeships in Wales and ensure a priority sector status recognition which we believe is a necessary pre-requisite for devolution of justice.

Thomas Commission: Long-term devolution vision

The Thomas commission seeks to present and address the "fundamental problem" present within the future of justice in Wales, which it notes as the split of two Governments and two legislatures. The Law Society agrees with the below problems which exist as a product of the current structure of justice in Wales

- An inability to allocate spending in a coordinated manner;
- A lack of accountability.
- A level of complexity which is wasteful of resources;
- Failure to develop and implement a coherent set of overall policies;
- A lack of innovation directed to the needs of the people of Wales;

The Law Society agrees that full legislative devolution, combined with executive powers, will overcome the obstacles of the current devolution scheme. Providing:

- alignment of justice policy and spending with social, health, education and economic development policies in Wales, to underpin practical long-term solutions.
- clearer and improved accountability.
- Advantage to be taken of Wales's size and ability to innovate by integrating legal aid and third sector advice, bringing health and justice resources together to tackle drug abuse, and providing better means of dispute resolution through ombudsmen services.

The legal sector in Wales - a rapid review

A report by Jomati Consultants

Jomati review: Our position

The Jomati review establishes a business report of the legal sector in Wales. Regrettably the review concluded just before the 2020 Covid-19 pandemic and therefore misses a large section of the most prevalent business discussions and problems since the start of the decade. The Jomati review, whilst without modern comparison regarding the legal and business nature of Wales falls short in certain conclusions (outside of its control) due to insufficient data. Regardless of this there are some important conclusions.

Important insights into the Welsh Government

Important summaries on the areas and specialised practice, economic comparisons with England. The report sheds light on areas of comparative concern in the Welsh Legal System.

In focus, we share concerns of findings of demographic pressures facing the solicitor's profession and have proposed a series of policy recommendations to resolve this multifaceted challenge regarding the structure, subscription, and output of legal education in Wales, including recommendations towards legal apprenticeships in Wales. Recommendations of 'succession planning' are outlined in our 'Vision for Justice 2030' working paper.

We also note the described 'positive highlights' of the report detailing how the legal market in Wales does not merely consist of conventional legal practices, employing large numbers of regulated lawyers and the unique areas for progress and development.

Recommendations into the Welsh legal sector

Whilst the Jomati review conducts a useful membership survey of opinions regarding the impacts of devolution (and Brexit for that matter), it does not seek to recommend a political or procedural plan for devolution.

We understand the conclusions drawn by the Jomati review regarding the public sector procurement of legal services. However, The Law Society differs from the doubts expressed by Jomati regarding the ability of the Welsh Government to have meaningful impact on the sector. The report details a series of findings of potential legal practice innovation including that of past attempts to encourage nearshore service centre (SC) investments such as those in Belfast. The Law Society notes the support for legal sectors in other parts of the world given by their respective administrations and look to emulate their successes in our 2030 vision for justice. Further, we aim to explore various forms of legal practice including digital and online creative solutions.

The Distinct Jurisdiction of Wales

Summary

England and Wales are, in law, one and indivisible, even though their territories are now legally distinct. Despite the increasing divergence in several areas of law which apply separately in England and Wales, there remains a common (and understandable) misconception that there is a unified or single jurisdiction of England and Wales. This arises from the existence of the ‘law of England and Wales’. In response to this misconception, the Welsh Government has drafted proposals to establish a discrete law of Wales and a discrete law of England. It is recognised that the draft proposals of the Welsh Government need discussion and refinement. A Law Society paper titled “*A distinct jurisdiction - work in progress*” details reservations and recommendations to this work.

The position of The Law Society of Wales

We maintain that the Welsh Government should be proactive in developing a jurisdictional solution to the accommodation of Welsh law and the distinct needs of Wales, without creating barriers for the operation of justice or the ability of practitioners to continue to work across England and Wales. We understand that the damaging confusion created by this problem is easily redeemable. We have created the following definitions to aid formation of jurisdiction:

Jurisdictional definition

A distinct jurisdiction

A distinct jurisdiction refers to a geographical area or a particular territory over which a government or a legal authority has the power to govern and enforce laws. Put simply, a distinct jurisdiction refers to a geographical area, such as Wales, that is recognised as having its own set of laws and regulations.

Separate legal jurisdiction

Separate legal jurisdiction refers to a situation where two or more distinct jurisdictions overlap. For example, a federal government and a state government may each have separate legal jurisdiction over the same geographical area. In this case, the laws and regulations of the federal government and the state government may be different and may apply to different aspects of life within the same geographical area.

Summary recommendation

We believe that the current situation regarding the operation of Welsh Law and the laws of England and Wales is best defined as being a distinct jurisdiction and not a separate legal jurisdiction. The law of Wales is accommodated within the jurisdiction of England and Wales through the development of a distinct Welsh set of laws, which operates within the larger framework of the law of England and Wales. This allows for the unique cultural and linguistic heritage of Wales to be reflected in its legal system.



CYMDEITHAS DDYSGEDIG CYMRU THE LEARNED SOCIETY OF WALES

The Learned Society of Wales welcomes the opportunity to make a submission to the Independent Commission on the Constitutional Future of Wales.

The Learned Society of Wales is the national academy for arts and sciences. Our Fellowship brings together experts from across all academic fields and beyond. We use this collective knowledge to promote research, inspire learning, and provide independent policy advice.

Our response will specifically reflect the Society's primary interests and in particular, consider the constitutional arrangements and characteristics that could be better recognised and developed to support thriving Higher Education and Research and Innovation sectors in Wales. Our contribution will follow the seven questions set by the Commission.

What matters to the Society about the way in which Wales is run?

Academia needs a climate in which learning, scholarship and research are appreciated, and part of an educational and social system which identifies talent, nurtures it and gives it the encouragement and opportunity to be fulfilled, whatever that talent.

Wales' universities are playing a vital role in tackling the many challenges we face today and will face in the future. Successful research is vital to developing the Welsh economy and universities recognise their responsibility to fuel economic growth and provide necessary skills and play their part in reducing social inequalities/disparities/deprivation. Resources are obviously pivotal as are clarity of direction and accountability. Academic freedom is important but so is accountability to the different stakeholders.

Responsibility for most aspects of education and training is devolved, including higher education and the capacity to provide research funding – primarily 'Quality Related' (QR) funding. The Welsh Government was also responsible for implementing and overseeing the distribution of EU structural funds, over half a billion pounds of which was invested in research and innovation in Wales in the period 2014-2020.

There remain a number of areas that are reserved to the UK Government which directly impact higher education and research in Wales, including UK wide research and innovation policy. The relatively high level of cross-border student flow between Wales and England can also see England-only policies (eg caps on student numbers, tuition fee caps) potentially impact the HE sector in Wales.

In areas where competence is shared between Cardiff and London, the Society underlines the importance of clarity of responsibilities and sensible cooperation between governments. The Dunlop review and the proposed principles for intergovernmental working demonstrate some progress, but there is much to be done. For the Society the issue is less the extent of devolved powers than the

need for clarity and genuine collaboration by UK Government, its agencies and the devolved nations in the exercise of present arrangements.

Constitutional arrangements are of basic importance. But overall resources allocation is perhaps even more important if Wales's long-standing challenges are to be better met.

What should be the priorities for the Commission?

The initial devolution project of the late 1990s was an asymmetric process lacking strategic planning. It failed to recognise England's concerns and paid insufficient attention to the consequences of this for the integrity of the United Kingdom. As such, problems of coherence and overlapping competences were exacerbated by repeated change.

The UK Government retained reserved powers for issues such as foreign affairs, international trade and defence, while finding itself acting as the government of England in areas where powers rest with the devolved governments.

In some cases Ministers have failed to be clear about the geographic limits of their responsibility. A direct consequence of present arrangements is that legally UK Government can act internationally and legislate and at the same time impact on issues in Wales which have been devolved. Conversely the Senedd can legislate correctly but have consequences for UK international obligations, or at least be incompatible with them.

Four nations can theoretically end up with different legal provisions in a particular area e.g. animal health. The EU Internal Market ensured uniformity of law in such cases so as to ensure free movement. Post Brexit that external constraint no longer delivers a UK internal market. The remedies include legislation, political agreement by the nations to align policies, or some understanding and agreed process. These are challenges with the present arrangements and could prompt raising the case for further devolution.

Against that background the Society recommends that a priority should be to produce an inventory of the many issues with the present arrangements, consulting widely with a range of stakeholders. The Commission should propose solutions to the challenges, which may appropriately include the transfer of more powers to Wales.

What are the strengths of the current system, what aspects are valued?

The higher education and research sector of Wales benefits from the wider recognised UK brand and the UK wide provisions for research, cooperation and recognition. It also offers a unique experience of studying and working in Wales with all that the country offers. The marriage between both has benefitted the nation.

More generally the advantages of being part of a larger internationally recognised state speak for themselves. However, Wales should strive to strengthen its position within UK structures and challenge them to do more for Wales. At the same time, there should be concerted efforts to strengthen our own Welsh national institutions.

Are there any problems with the current system, and if so, how could they be addressed?

They are many. Wales receives insufficient funding under the Barnett formula for projects designated 'England and Wales', such as the HS2 line. The vagaries of Treasury interpretation seem often to preclude a Welsh share of what appears to be obvious spending primarily benefitting England.

EU Structural Funds provided substantial support to Welsh universities – over half a billion pounds of which was invested in research and innovation in Wales in the period 2014-2020. Despite promises, EU funds have not been adequately replaced by the UK Shared Prosperity Fund, and its disbursements are fewer and not necessarily part of a strategic approach by the Welsh Government.

The muscular unionism approach of the present UK Government has not been helpful or constructive. Policy developments shaped by this approach position devolved governments as consultees rather than active participants. Greater clarity around the relative roles of the UK Government and devolved governments in terms of agenda-setting is required. Reservations remain regarding how the four nations of the UK have a voice within UK-wide public bodies and are party to agreed outcomes.

Inconsistencies and anomalies abound in the present system, and efforts to produce a system which is clear and transparent, and which functions pragmatically, face real challenges. Current structures to facilitate consideration of issues, negotiate their solution, and above all provide for systematic fruitful cooperation between governments are not working as well as they might.

Structures to facilitate consideration of issues, negotiate their solution, and above all provide for systematic fruitful cooperation between governments do not work. The commission will want to look at the Dunlop report's analysis and recommendations. But adopting new mechanisms will not be sufficient unless there is respect between governments and the political will to make them succeed.

What should the balance of power and responsibility between UK government, the Welsh Government and Welsh local government?

Much will depend on the results of the Commission's investigation and findings.

Recent experience has shown that even well-established traditions can be ignored when there are insufficient checks in place to protect them. Who should be the guardians to ensure respect for new provisions? - the judiciary, Westminster, devolved legislatures, press, public opinion? There is no easy answer.

Legal recourse is the norm in federated states. At present there seems little prospect of a federated UK, and the practicalities of such a solution would be challenging, though less economically disruptive than full independence from the UK. However there seems no prospect of a federal UK, notably because England has no interest in such an outcome.

The UK union is a voluntary one, and the overall aim should be to maximise the transparency and cooperation of intergovernmental relations.

The prospective expansion of Senedd members will draw fresh attention to the need to revisit the rationalisation of the number of Unitary Authorities.

What is most important about the way in which Wales should be governed in the future?

If the current settlement is to continue, then the difficulties and challenges need to be addressed and mechanisms put in place to resolve them. The political will and necessary safeguards to ensure successful implementation of existing and new policies should be reinforced. Any increased autonomy for Wales would need to be accompanied by a more generous resource transfer from UK central government to Wales. Most matters decided in Cardiff already require resources beyond the current level to tackle the challenges which need to be addressed. Politically and socially, it would be

to Wales's advantage to increase its 'quasi-federal' status, but only if this were accompanied by a realistically-costed financial settlement. More powers for Wales would not necessarily equate to a more federal UK as the English dimension excludes it; the 'quasi federal' aspect might increase.

A move towards Wales having full control to govern itself and be independent from the UK is actually to say that Wales would be an independent State, internationally recognised and presumably a member of the United Nations. That would be a huge step requiring consideration of the political and economic consequences, the benefits and disbenefits for Wales, and the circumstances and global context of leaving the UK. What would be the relation with the EU for example?

Overall what is most important about how Wales should be governed in future?

Where the economy is flourishing, aspirations are more likely to be met and our bilingual nation would be more likely to be able to express itself confidently and successfully externally. The focus should be on articulating wider national ambitions, and on the authentic characteristics that distinguish Wales. Actions must go beyond a 'marketing' exercise – we must exude a genuine confidence in the national credibility of Wales.



Responses to The Independent Commission on the Constitutional Future of Wales from The Sovereign Party / Plaid Sofren

Have your say

1. What matters to you about the way Wales is run?

Honesty

Accountability

Transparency

Genuine democracy including public referendums locally and nationally

Open debate and free speech – to stop the anti democratic and dangerous cancel culture, divisive identity politics from 'all sides', censorship, polarised political correctness and dangerous group-think from stifling open and what may sometimes be necessary and difficult lively debate.

Break through the tired and defunct left/right paradigm and treat each issue on its own merit.

Stop allowing unelected and unaccountable transnational corporations and bodies, including big tech and big pharma, from dictating what democratically elected national and local government in Wales should do or not.

2. What do you think the priorities for the commission should be?

a) The inherent right to sovereignty

Look in to how Wales would best transition smoothly in to a fully self sufficient sovereign state if that is what the people of Wales decide they want. As a



party we believe that all nations/countries, including Wales, have the inherent right to be fully sovereign and to have full self-determination if that is what the people of that nation or country decide. We also believe that the UK state is now a corrupt, failed state, fast moving towards a dangerous corporate-driven dictatorship, and we believe that the case can be made that self-determination for Wales is becoming more and more of a necessity for our future safety and the protection of our essential freedoms and rights. We believe that Wales should also support and offer friendship and cooperation with any other nation in Britain or elsewhere which desires its own sovereignty, whilst celebrating our rich diversity as nations and peoples.

b) Developing a debt-free Welsh pound (sovereign money)

We believe that the commission should also look in to how Wales could develop its own debt-free Welsh pound currency for Wales (matched to the annual Welsh GDP figure) that can be overseen and steered by an 'at arms length' money creation panel that is accountable to the Welsh Parliament. For example, if using the 2017 GVA (Gross Value Added) balanced figure for Wales by the Office of National Statistics (GVA being a very close indicator of GDP), a sovereign Welsh state could print approximately £62,190 billion pounds of debt-free Welsh pound currency on top of the tax take, and spend it on Wales and its people as it sees fit. The Welsh pound currency can be a parallel currency that would only be accepted in Wales and could be pegged to and exist side by side with the pound sterling in Wales.

c) A housing priority law for all Welsh citizens / permanent residents similar to the island of Guernsey, Switzerland etc.

We also believe that Wales should create a housing priority law for all the citizens of Wales so that the vast majority of new and existing housing, as well as social housing, are prioritised for the citizens / permanent residents of Wales who have lived here for at least ten years (this being a gradual process over time when it comes to working with existing home owners that might want to sell). Wales can follow the example of the island of Guernsey (and



many other countries such as Switzerland and New Zealand) so that all Welsh housing can be divided into two basic groups; an approximate 90% group for the local / national priority market for the present and long term resident citizens of Wales, and the remaining 10% or so group for the open market and for anyone to buy - with local authorities across Wales also deciding annually how much of the 90% local/national priority market would be available for citizens within the local authority and how much would be available to citizens from the rest of Wales.

d) Food and energy independence for Wales

We would also like to see food and energy independence ensured for Wales locally and nationally. We believe that Wales should work to ensure that Wales becomes as self-sufficient as possible in its own food sovereignty and energy production, ready for the challenges of the future.

e) A full investigation in to the undue influence of unelected bodies and corporations on Welsh democratic institutions and policies

We would also like to see a full, open, public investigation in to what influence unelected and unaccountable transnational corporations and bodies, including big tech and big pharma, have on the democratically elected Welsh Government body as well as local authorities and all related policies, and stop this from happening where it does.

f) Oppose the unwanted push for a cashless society

We believe that Wales should not be allowed to turn in to a cashless society – this would create a very unfair society where the poorest and those without access to technology would be punished and suffer the most. We believe that cash and a digital option should exist side by side.



g) A constitution and bill of rights for Wales

We believe that the best way for the country to be governed, whether under a devolved government or as a sovereign state, is by establishing a solid and robust constitution and bill of rights for the equal protection of all in Wales, similar to the American constitution and bill of rights – a constitution and bill of rights in which a great deal of Welshmen were involved in creating all those years ago.

3. Thinking about how Wales is governed, by the Welsh Government and the UK government, what are the strengths of the current system, what aspects do you most value and wish to protect? Can you provide examples?

It would seem that the current system does not work, is not an equal or fair structure between equal partners and is therefore not fit for purpose.

4. Are there any problems with the current system, and if so, how could they be addressed? Again, please provide examples.

As mentioned, we believe that the UK state is now a corrupt, failed state, fast moving towards a dangerous corporate-driven dictatorship, and we believe that the case can be made that self-determination for Wales is becoming more and more of a necessity for our future safety and the protection of our



essential freedoms and rights. The response to Covid demonstrated many things including how much influence unelected bodies and corporations representing big pharma and big tech have on the decision making of the UK government especially. It should be obvious what kind of threat to democracy and essential freedom and rights this represents. We also believe that Wales should also support and offer friendship and cooperation with any other nation in Britain or elsewhere which desires its own sovereignty, whilst celebrating our diversity as nations and peoples.

5. Thinking about the UK government, the Welsh Government and Welsh local government (your local council), what do you think about the balance of power and responsibility between these 3 types of government – is it about right or should it change and if so, how? For example, who should have more power, or less?

We believe that the devolved situation for Wales within the UK state is not really a fair and equal one and that sovereignty would be the only real fair and just way for Wales to operate in the future-if that is what the people of Wales decide. We also believe that more powers should be devolved to local authorities where possible, especially in terms of ensuring that the majority of new and existing housing are prioritised for local citizens. Local and national referendums would help to ensure that unwanted measures, policies or developments could be voted out if enough people want it, and new policies also created if enough people want it - similar to the system in Switzerland.



6. As a distinct country and political unit, how should Wales be governed in the future? Should we:

- broadly keep the current arrangements where Wales is governed as part of the UK, and the Westminster Parliament delegates some responsibilities to the Senedd and Welsh Government, with those responsibilities adjusted as in Q5, OR
- move towards Wales having more autonomy to decide for itself within a more federal UK, with most matters decided by the Senedd and Welsh Government, and the Westminster Parliament decides UK-wide matters on behalf of Wales (and other parts of the UK) OR
- move towards Wales having full control to govern itself and be independent from the UK OR
- pursue any other governance model you would like to suggest
- alongside any of these options, should more responsibilities be given to local councils bringing decision making closer to people across Wales and if so, please provide examples.

We believe that a move towards Wales having full control to govern itself and be independent and sovereign from the UK (and the EU as this has already been decided in a referendum) is the best all round solution for Wales - if that is what the people of Wales decide. If this happens, this wouldn't mean that Wales shouldn't have a great friendship and a great deal of cooperation with the other nations of Britain (and elsewhere) of course – these countries could have an even better relationship and cooperation than now - in the same way as occurs between the Scandinavian countries for example.

If Wales does become a sovereign independent state, we believe that the best way for the country to be governed is by establishing a solid and robust constitution and



bill of rights, similar to the American constitution and bill of rights – in which a great deal of Welshmen were involved in creating all those years ago.

7. Overall, what is most important to you in about the way in which Wales should be governed in the future? Is there anything else you want to tell us?

To gently move away from devolution and ensure a smooth transition to genuine sovereignty and a sovereign state of Wales if that is what the people of Wales decide.

In responding to these questions, we would welcome views on how the current forms of governance, and any proposals to change governance in the future, might impact on the Welsh language.

It should be fairly clear to see that Wales having it's own laws and controls on the majority of Welsh housing is key to ensuring the rights of not only all Welsh citizens, but also of Welsh speakers and Welsh speaking communities, so that they can healthily exist in Wales side by side with everyone else. Without this, Wales and the Welsh language faces a situation of modern mass colonialism as its citizens are priced out of their communities all across the country..



Responses to consultations may be made public. To keep your response anonymous (including email addresses) tick the box.

Submit your comments by 31 July 2022

email to: ConstitutionCommission@gov.wales

or post to:

The Independent Commission on the Constitutional Future of Wales

Cathays Park

Cardiff

CF10 3NQ



**Y Comisiwn Annibynnol ar
Ddyfodol Cyfansoddiadol Cymru**
**The Independent Commission on
the Constitutional Future of Wales**

About UNISON Cymru Wales

UNISON is the UK's largest trade union organising and representing 1.3 million public sector workers UK wide, including 100,000 public sector workers across Wales.

Our members, 85 per cent of whom are women, work in the delivery of public services through direct public sector provision, private and voluntary contractors providing public services, and in the essential utilities. They include frontline staff and managers, working full or part-time in public administrations, local authorities, health and social care, the police and justice service, university, colleges and schools, the electricity, gas, environment and water industries, transport, and in the voluntary and community sectors.

Have your say

1. What matters to you about the way Wales is run?

1. Wales needs a vibrant democracy where decisions are taken at the lowest possible level (the principal of subsidiarity), and Welsh people are engaged and involved in those decisions.
2. A Welsh government and Senedd which are trustworthy and conduct business in a professional manner helps build people's confidence in how their government is working for them. Similarly, a diverse Senedd membership which looks and sounds like the people of Wales is vital.
3. We want a Wales that reflects UNISON's socialist values, where decisions are made on what is best for people rather than looking at the profit that can be made from them. This requires a government that has the power and resources to effectively tackle inequality and poverty, racism and all forms of discrimination, and to build the happier, healthier and fairer country we want to live in. We want a government able to take action to improve women's rights.
4. This argument naturally leads us to seek more powers for Welsh people and the Senedd.
5. Although, the Welsh government has taken some steps to protect the public sector, there is no doubt important services that bind our communities and make them liveable places, have been badly damaged or disappeared entirely because of severe Westminster austerity measures lasting more than a decade. If the Welsh government is to have the power to intervene to invest and to redistribute wealth, it needs the funds to do so too and that means seeking further devolvement of tax powers.

6. Political realities are driving increased interest in devolution amongst the population and UNISON members in other ways too and have shown why changing the status quo is necessary. The shamelessness of a prime minister completely without morals contrasts starkly with the measured judgements of the first minister throughout the covid pandemic. More detail is provided on this in our response to Q.4.

7. Since 2010, Welsh voters have three times returned a Welsh Labour government or a Labour led coalition government, yet the weight of voters in England has four times delivered a UK Conservative government or Conservative led coalition in UK national elections. These Westminster governments have been ideological opposites of the Welsh governments which value investment in public services and yet Westminster controls the purse strings.

8. This Welsh government is to be commended for bringing forward a Social Partnership and Public Procurement Bill which acknowledges the vital importance of trade unions and ethical employment in supply chains. Going forwards, it is essential for trade unions to be involved at an early stage in the formulation of all Welsh government policies and strategy and for their opinions to be recognised by ministers and civil servants as holding weight. Trade unions articulate the voices and aspirations of millions of Welsh workers and their families and by listening to them, Welsh government will be strengthening democracy and civic society.

2. What do you think the priorities for the commission should be?

9. We'd like the commission to explore in detail what the greatest devolution of powers and taxation to Wales within a federalist UK would look like and how that might be achieved.

10. Further devolution of powers must be followed by enough money and funding to allow them to be properly utilised. There is no point providing Welsh government with increased responsibilities if it lacks the resources to invest as it wishes.

11. Devolution of certain powers and taxes should only take place if will deliver greater investment in our public services and in the workforce that delivers them.

12. Over the last 23 years, the various Welsh Labour governments and coalition partners have proved the value of devolution. Our Senedd has matured over that time and the recent proposals to expand its size will strengthen democracy and better hold the executive and its legislation to account. Now there is a desire for more decisions affecting Welsh people, to be taken by Welsh people in the Senedd.

13. Devolution though, has been regularly attacked by Conservatives MPs in Westminster and the UK Conservative government has (knowingly or otherwise) failed to grasp the concept of devolution and regularly works to undermine the Welsh Labour government. More detail on this is provided in our response to Q. 4. Devolution must be strengthened and more powers devolved.

14. We'd like the commission to consider how much greater tax powers could be further devolved to the Senedd, including more income tax, which would improve our ability to raise funds in Wales. We acknowledge full fiscal autonomy is not possible in a federalist structure, but the Welsh government needs greater powers to borrow, direct and invest in the Welsh economy, pay better wages and redistribute wealth and it should be able to introduce new taxes based on need.

15. Whilst the Barnett formula may currently be providing Wales with a block grant per head funding higher than, England, it certainly hasn't always been that way and 'fair funding for Wales' has been a familiar rallying cry of Welsh government and trade unions for years. There are high levels of deprivation in Wales which form no part of the calculation of the Barnett formula. Similarly, it is blind to the fact large parts of Wales are rural and more money might be required to provide services over geographical distance, despite the smaller population.

16. Put simply, the Welsh government requires more money to intervene positively to invest in the services which help to alleviate poverty and make Wales a more socially just country. The commission could examine how a Welsh investment bank might work.

17. One of the most keenly felt problems in the current cost of living crisis is the lack of social housing, which has driven up private rents to unaffordable levels. A Welsh investment bank could transform Welsh government's aim for a massive social housing building programme.

18. The commission should be looking to identify how more powers over policing and justice, welfare, equalities, employment law (including minimum wage enforcement), health and safety and industrial relations law and their enforcement could be devolved to Welsh government.

19. Welsh government has already published detailed proposals for the devolvement of justice and described this development as 'inevitable'. Powers over policing should be devolved too. It is important to acknowledge here, the scale of reorganisation is likely to be substantial and any costs borne should not be from already stretched existing budgets, but from additional resource that Welsh government would have to provide in conjunction with Westminster.

20. We note that workplace protection and minimum wage enforcement is entirely devolved in Northern Ireland. Of course, there are unique political factors involved, however devolution of these powers has not led to pressures to drive down the levels of workplace protections.

21. Rather, devolution of employment law, health and safety and industrial relations law offers the chance for Wales to improve standards to help working people and their families.

22. For instance, it could better tackle incidences of industrial injury and death in Wales with tougher legislation, compared with Westminster's deregulatory approach to health and safety. Devolution of the above powers could allow Welsh government to legislate to improve maternity and paternity rights and so develop a more

progressive approach on childcare. Currently, trade unions face restrictions in securing access and bargaining rights in smaller employers. As a result, employment conditions for workers in places where there are fewer than 20 employees are often poorer. Welsh government could relax the tight restrictions on trade unions here and help transform the livelihoods of thousands of low paid workers. It could also promote sectoral bargaining and abolish tribunal fees amongst other things.

23. Defence and international treaties would remain at a UK national level, however, the commission should consider how the Welsh government can have more of a say on the latter and their ratification. In particular, Welsh government should be able to protect its public services from privatisation.

24. There needs to be a thorough review of what services should be delivered by councils in Wales (and by town councils) and how these services can be funded appropriately so they fully meet local need and aspirations. We think this goes beyond simply providing certain services just to the level of statutory duty (more detail is provided in our response to Q. 4).

25. We are already at a point where the services councils provide have been hollowed out and this has profound implications for local democracy and whether people actually have a say on their community services.

26. A decade or more of Westminster-driven austerity has left Welsh government and Welsh local authorities with even less money and that has had a terrible impact on the quality of services they can provide. The move of Welsh councils to outsourcing care, leisure and other important services to the private and third sector was driven by resource considerations and not the consideration of what was the best for clients, the local community or staff.

27. As we emerge from covid, we want councils to have the power to intervene to positively shape and improve the lives of local people. They won't be able to take effective action if they don't control services directly. Strong council services keep people healthier and out of hospital. Our local services ought to be funded properly and this means local councils being provided with greater resources.

28. The commission has the chance to evaluate the example of the greater devolution of powers to Scotland and learn what has worked and what hasn't, so that the process of greater devolution here could function better.

3. Thinking about how Wales is governed, by the Welsh Government and the UK government, what are the strengths of the current system, what aspects do you most value and wish to protect? Can you provide examples?

29. Since the time when Rhodri Morgan talked of "clear red water" between Wales and Westminster, Welsh governments have pursued a markedly different and more progressive agenda than UK governments.

30. The presence of a Labour government here has afforded Wales some limited protection against the severe austerity spending cuts from Westminster over the last twelve years.

31. We applaud that social partnership working and ethical procurement will be made law in Wales and this has huge transformative potential for thousands of Welsh workers and their families.

32. The Welsh government's desire to work with trade unions and value their input was clear throughout the covid pandemic. In many key areas, the common endeavour meant the reaction to the health emergency in Wales was more effective than in England where the UK government was actively hostile to unions, did not seek to engage them in any planning and disregarded the safety concerns of their members.

33. A good example of partnership working between UNISON and Welsh government is how the serious problems with personal protective equipment (PPE) supply for the NHS were overcome in the early days of the pandemic. We set up a reporting line and were able to share data with government officials which meant deficiencies were addressed more rapidly.

34. Elsewhere during the emergency, Welsh government worked closely with trade unions representing school staff to plan how education might continue in lockdown and how children were best protected. Trade unions were able to share their knowledge and the experiences of school members with Welsh government, which may not otherwise have known exactly how things were running through the pandemic.

35. In social care staff, Welsh government recognising the unions' argument, acted to introduce a fair sick pay scheme that allowed for care staff to isolate if they got covid and keep people safe. It also introduced covid bonus payments for care workers and NHS workers.

36. In this cost-of-living crisis, the Welsh government is making free school dinners available through the summer and school uniform grants, so helping people in dire need.

37. It is important to note the very significant steps Welsh government took to disapply elements of the UK Trade Union Act, which undermined what it saw as a 'Welsh way of working', in other words social partnership. More detail is provided on this in our response to Q4.

38. So, the Welsh government has shown a desire and will to intervene to the limit of its powers. We want the powers to be extended so they might go much further to help Welsh citizens.

39. Trade unions in Wales enthusiastically supported Welsh government's publication of a Race Equality Action Plan last year as demonstration of its commitment to achieving racial equality. Although we urged Welsh government to go further around employability and apprenticeships and to bring forward legislation, we

noted at the time that Wales was the only nation taking a proactive stance on race equality in the UK.

40. The Welsh government has actively promoted Welsh culture and the Welsh language including through Welsh medium schools.

41. The Senedd operates in a responsible and professional way, with integrity and honesty and has suffered none of the corruption scandals of Westminster. Welsh governments have worked in a more collegiate way with other parties where there is common ground; the co-operation agreement with Plaid Cymru being the latest example.

42. There is a general perception that Members of the Senedd have entered politics for the right reasons and people feel more affinity with the democracy of the Senedd than the House of Commons. Of course, this may be due to the proximity of Cardiff measured against the distance of London.

4. Are there any problems with the current system, and if so, how could they be addressed? Again, please provide examples.

43. Since 2010, Conservative or Conservative – Lib Dem coalition governments have dramatically shrunk the state by slashing public spending and this has tied the hands of the Welsh government from investing as they might wish. Indeed, Welsh ministers would likely say they lacked the fiscal powers to do much about it. The drastic cuts resulted in a huge number of job losses in Welsh councils and consequent devastating impact on local service provision.

44. A UNISON Cymru Wales Audit of Austerity investigation in 2018 recorded an enormous 28,000 job losses from local authorities in decade. This was equivalent to losing seven of the eight largest private sector employers in Wales. Council spending in 2017/18 it would have been £1.02 higher (£9.02bn) if it had kept pace with CPI since 2010/11 and £1.59bn higher (£9.59bn) if it had kept pace with RPI.

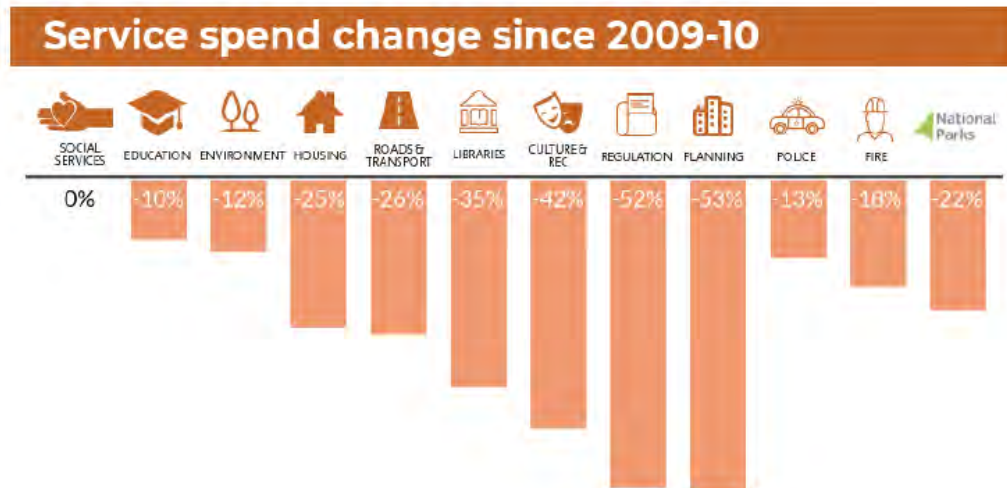
45. The Welsh Local Government Association agreed that local councils had borne the brunt of austerity and our investigation quoted their 2018 figures that Welsh local government core grant funding has reduced by 22% after adjusting for inflation by 2019-20. If school funding is not included, as is the case in England, core funding fell by 35%.

46. Local government is the economic bedrock of Wales. Councils spend £3.5bn a year on goods and services in national & local economies and councils employ over 10% of the Welsh workforce. Severe cuts here matter.

47. This unprecedented squeeze on funding has had a dramatic impact on local public services and the people that provide them. This cash cut happened at the same time as councils faced rising costs, a growing population, increasing demand for their services and extra responsibilities but without the extra funds needed to pay for them.

48. Our full report can be accessed via the link below and it contains this graphic from the Welsh Local Government Association illustrating how service spending reduced in the following areas between 2009/10 – 2018.

<https://cymru-wales.unison.org.uk/content/uploads/sites/9/2018/11/Wales-Austerity-Audit-2018-Final.pdf>



Source: Fair and Sustainable Funding for Essential Local Services; WLGA; 2018

49. Important services, like youth services, clubs and youth workers for example, have disappeared altogether from some councils, depriving young people of opportunities, particularly in disadvantaged areas. Austerity has stripped Wales of many of its libraries and public conveniences have disappeared. These are just a few examples of what we've lost as a result of the severe spending cuts and the costs to the health and well-being of our communities will be felt for years to come.

50. Elsewhere, local authorities reacted to severely diminished funds by outsourcing services which worsened service quality for the public and staff wages and employment conditions were squeezed. Nowhere was this more apparent than the care sector, where many in the overwhelmingly female workforce suffer in-work poverty, something that would never have happened had services continued to be provided directly by councils.

51. The introduction of profit-making possibility into a service like care, has led to corners being cut to improve profit margins. Staff are forced to rush client care when allocated too many clients and many are not paid for travel time between client appointments, despite this being working time. Vulnerable people in need of care therefore often receive only 15 minutes of a care workers' time when they should be receiving 30 minutes. This impacts on the dignity and mental health of the care recipient and the worker. This is no way to run a public service and it is failing the needs of our communities and workforce.

52. As part of the Westminster squeeze on public spending, the wages of public sector workers across the UK have been deliberately suppressed over more than a decade with pay freezes and pay caps. Thousands of Welsh workers and their families have seen their quality of life shrink as a consequence and the lowest paid

amongst them are really struggling to make ends meet. This is a scandal and Welsh government is on record saying it is powerless to do anything about it.

53. Most recently, Health Minister Eluned Morgan said this about the below-inflation 2022 pay award she was introducing for healthcare workers,

“I hope this pay award goes some way to recognise their hard work but without additional funding from the UK Government, there are inevitably limits to how far we can go in Wales. We continue to press them to pass on the full funding necessary for fair pay rises for public sector workers” (Ministerial written statement 22 July 2022).

54. It can't be right for a Welsh government to be hostage to a Westminster austerity dogma it says it opposes. Austerity was not in the interests of the Welsh people. The Welsh government accepted this, but it did not have the fiscal powers to do redress it, aside from some limited measures of protection.

55. Funding is key to Welsh government autonomy on paying public service workers. Teachers' pay is devolved in Wales, but the Welsh government is still completely reliant on Westminster to fund any award.

56. We would like the rates of pay and employment conditions of the biggest group in schools, teaching assistants, to be nationally agreed too. At present they are determined by each Welsh local authority, so there are 22 different pay grades and no common job description for this mainly female workforce.

57. UNISON is participating in a Welsh government task and finish group for teaching assistants, which we hope will result in consistent career grading structures and minimum rates of pay. However, we would like Welsh government to also drive change so that teaching assistants are employed on full contracts, not term-time only, to have parity with teachers, including non-contact and preparation time. Bringing their pay under national control, as for teachers, will need to be matched by additional funding.

58. Proportionally, more Welsh workers are employed in public services than in England. In fact, it comprises the largest section of the Welsh workforce. This means when there are cuts to public service spending, they have a disproportionately greater impact on the Welsh economy and remove money from local Welsh high streets, making us all poorer.

59. This underlines the need for the Welsh government to have more fiscal powers to intervene where necessary to ensure its citizens welfare. Receiving consequential money only when the UK government decides to act is not sufficient. Too much is dictated by Westminster and Wales is in effect shackled by stealth.

60. A Welsh government with these powers, backed by a Welsh investment bank could direct more funds at deprived areas and invest in the massive social house and affordable house building programme Wales needs.

61. It would allow the government to forge a deeper economic strategy which prioritises developing manufacturing so there is less reliance on the service sector. Money would remain in the Welsh economy through jobs, rents and purchases.

62. If Westminster refuses to deal effectively with the big issues of the day such as combatting climate change or the cost-of-living crisis and show UK leadership, Wales and the other nations can be hamstrung in how they might want to individually respond, because they lack the necessary funds.

63. We have talked about how successive Welsh governments have acknowledged the importance of worker and trade union voices in policy making and public life. The government of Carwyn Jones disapplied key parts of the UK Trade Union Act with the Wales Trade Union Act, 2017, to protect public services in Wales and because it undermined the legitimate role of unions in Welsh workplaces.

64. However, the Welsh government did not have the power to completely throw out the UK Act (which it would have liked to do) and there are concerns it will be powerless to respond as the UK government amends the Conduct of Employment Agencies and Employment Business Regulations, 2003, to allow companies to bring in temporary agency labour to break strikes. This runs contrary to Welsh government's promotion of social partnership and would amend legislation passed by the Senedd.

65. UNISON at a UK level has advised the UK business secretary Kwasi Kwarteng, it will seek a judicial review of the new regulations and that the Westminster government is in breach of Article 11 of the European Convention on Human Rights, which protects the right to strike, and international labour standards.

66. There's no doubt people feel let down by the dishonesty of the current Conservative government and personified in the prime minister. From 'Partygate' to financially lucrative PPE contracts going to Tory donors and friends bypassing parliamentary scrutiny, there is a real danger the behaviour has damaged people's trust in democracy.

67. Wider than present irritations, people have been turned off politics by the squabbling of Westminster and the adversarial, often macho nature of how government business is done at a UK level. People lose patience with politicians when policies such as the limited windfall tax on energy companies presented by Labour, is condemned for months by the Conservatives, only for them to introduce the measure, called by another name.

68. The covid pandemic highlighted the different priorities of the governments when Mark Drakeford was firmly focused on public health, but the Westminster Conservatives prioritised opening up the economy. According to the first minister, Wales was frequently left out of covid planning decisions by a prime minister willing to repeatedly undermine the devolution settlement and his Welsh Labour opposite number for party political reasons.

69. One recent example was how the UK government unilaterally determined money that would be given to the Ukrainian cause, without consulting home nation partners.

Welsh government was told that it would be contributing £30m from existing funds and already allocated spending. This is not a mature functioning devolution settlement.

70. There is a general perception that Wales is getting a raw deal. People have been frustrated as the UK government has assumed greater powers at the expense of Welsh government in controlling the distribution of what was formerly EU funding for deprived areas, as well as the disparity between money promised and that received.

71. Westminster has unjustly determined there is no High Speed 2 consequential for Welsh public transport, despite the billions of pounds being spent and no benefit to Welsh people travelling in Wales.

5. Thinking about the UK government, the Welsh Government and Welsh local government (your local council), what do you think about the balance of power and responsibility between these 3 types of government – is it about right or should it change and if so, how? For example, who should have more power, or less?

72. We have discussed why it is important for more key powers to be devolved to Welsh government and why they must be followed by enough money and funding to allow them to be properly utilised.

73. Local government was asked to do much more through the covid pandemic and its services should be at the heart of our communities. However, council service provision has been so hollowed out through outsourcing and austerity there is a democratic deficit.

74. Outsourcing services gives a council very limited control if service quality decreases and it is UNISON's experience that it leads to lower paid jobs and increased charges for the public over time.

75. Insourcing of services is an absolute priority, particularly in social care. This is fundamental to democracy. If the local council is not providing what the local community needs, you can vote it out.

76. UNISON is campaigning for a National Care Service as the only way to solve the current care crisis. This Service would set industry standards, ensure consistency in the quantity and quality of social care across Wales. It could provide a framework for monitoring and scrutiny and could help to more closely integrate social care with health care.

77. Industry standards would be best implemented and monitored under the democratic control and scrutiny of local councils and most social care should rest within local government and come under the local government budget. Creating statutory minimum standards for care, professional development and employment would organically return social care to where it should be: under local government's direct control.

78. Given that council service provision has been so hollowed out, Welsh government should work with councils to conduct a thorough review of what services should be delivered by authorities (as well as by town and community councils), and how they should be funded which goes beyond simply providing certain services just to the level of statutory duty. For example, the duty on a council to provide library services could consist of just one library, which would obviously not be sufficient. We need to clearly identify how best local government can meet people's needs.

79. Local government desperately needs the assurance longer term funding can provide. So many council employees, such as the thousands of school support staff, are employed on 12-month contracts, because of the short-term nature of how councils are funded by Welsh government. These hard-working staff start to receive redundancy notices with three months of the year remaining. That is not fair.

80. We have talked elsewhere of the need for a Barnett formula which takes full account of our deprived communities and the same is true when Welsh government funds our local councils.

81. Reinvigorating local councils needs councillors of calibre who are prepared to intervene. We know of authorities, which lacking councillors who are active, are instead run by the chief executive. Concentration of power in an unelected chief executive is not democratic and it is essential the priorities in local government are set by local councillors.

6. As a distinct country and political unit, how should Wales be governed in the future? Should we:

- broadly keep the current arrangements where Wales is governed as part of the UK, and the Westminster Parliament delegates some responsibilities to the Senedd and Welsh Government, with those responsibilities adjusted as in Q5, OR
- move towards Wales having more autonomy to decide for itself within a more federal UK, with most matters decided by the Senedd and Welsh Government, and the Westminster Parliament decides UK-wide matters on behalf of Wales (and other parts of the UK) OR
- move towards Wales having full control to govern itself and be independent from the UK OR
- pursue any other governance model you would like to suggest
- alongside any of these options, should more responsibilities be given to local councils bringing decision making closer to people across Wales and if so, please provide examples.

82. UNISON supports the second listed option: a move towards Wales having more autonomy to decide for itself within a more federal UK, with most matters decided by the Senedd and Welsh government, and the Westminster Parliament decides UK-wide matters on behalf of Wales (and the other parts of the UK).

83. We have discussed there is an appetite for more decisions to be taken in Wales and for the Welsh government to be able to raise more income. Wales should be a

federal partner of sister nations and not have things imposed on us by a bigger neighbour.

84. In this new structure, we see a key role for a revitalised local government delivering the high-quality community services our population desperately needs. However, more money needs to flow as well, otherwise service delivery will be inhibited.

7. Overall, what is most important to you in about the way in which Wales should be governed in the future? Is there anything else you want to tell us?

85. As we have set out in our first answer, building a fairer country starts by ensuring decisions are made at the lowest possible level and better engage the communities they affect.

86. We want a Wales that protects the equal rights of its citizens, actively working to combat racism and all forms of discrimination.

87. To better intervene and improve the lives of its citizens, not least through sustained investment in public services, Welsh government needs increased powers and tax raising powers.

88. The government is to be commended for actively promoting and encouraging the Welsh language and we don't envisage any adverse impact through these changes. Welsh language rights are in a strong position, equal to English and are well protected for whatever happens in future.

In responding to these questions, we would welcome views on how the current forms of governance, and any proposals to change governance in the future, might impact on the Welsh language.

Responses to consultations may be made public. To keep your response anonymous (including email addresses) tick the box.

Submit your comments by 31 August 2022

email to: ConstitutionCommission@gov.wales

or post to:

The Independent Commission on the Constitutional Future of Wales

Cathays Park

Cardiff

CF10 3NQ



The Constitutional Future of Wales

A RESPONSE FROM WCVA

1. [Wales Council for Voluntary Action](#) (WCVA) is the national membership body for voluntary organisations in Wales. Our purpose is to enable voluntary organisations to make a bigger difference together.
2. This consultation response follows engagement with the voluntary sector. This included a well-attended joint event for members of WCVA and Public Affairs Cymru, as well as wider-ranging cross-sector digital engagement. We thank Public Affairs Cymru, as well as all the people that attended the event or fed back their thoughts on the constitution in other ways.
3. WCVA knows that a large number of voluntary sector organisations feel strongly about the constitution, even though this is not usually their primary focus. Academic research tentatively shows that devolution has been positive for civic society, and there is certainly a perception within the sector that Welsh Government is more accessible than Westminster. Indeed, the Government of Wales Act placed a statutory duty on Welsh Government to maintain a Third Sector Scheme, setting out how government will engage with the sector, at the time hailing Wales as the first country in the world to contain such a duty in its constitution.
4. Our response is also informed by our work enabling voluntary organisations to engage with both the government and legislature at UK and Wales levels over many years. This includes the successful campaign for a partnership approach between government and the voluntary sector to be embedded in the founding legislation for devolution in Wales. WCVA has facilitated voluntary sector engagement under the Third Sector Scheme since devolution. We have lobbied for structures that support more effective voluntary sector participation in successive amendments to the devolution settlement. We also work in partnership with others promoting similar principles at Wales, UK and international levels.
5. The importance of this relationship is reflected in [our strategic goals](#). We want to see voluntary organisations recognised as equal partners in achieving well-being in Wales. We are working towards more collaboration across all sectors and for a democracy that better supports participation by voluntary organisations.
6. Achieving the Wellbeing Goals for Wales – and the Sustainable Development Goals – requires all hands on deck. It needs models of governance that enable all stakeholders to collaborate, pooling resources, knowledge and expertise. The active participation of the voluntary sector

is core to this. This Commission is an opportunity to consider how these forms of governance that support the Wellbeing of Future Generations are reflected in our constitution.

WHAT WORKS ABOUT OUR CURRENT CONSTITUTION?

7. People generally praised engagement with the voluntary sector by both the Welsh Government and the Senedd.
8. We welcome the statutory duty in the Government of Wales Act for Welsh Ministers to make a [Third Sector Scheme](#) setting out how they propose to promote interests of voluntary organisations. This is the first constitutional requirement of this kind in the world.
9. Key pieces of legislation have defined a process for policy-making in Wales which support participation and which are broadly supported by the sector. Most notably this includes provisions in the Wellbeing of Future Generations Act. There are also a number of duties in more specific policy areas, not least under the Social Services and Well-being Act. Whilst not all have been fully implemented across the whole of the public sector, the broad principles behind embedding these attitudes was welcomed.
10. Generally, it was felt that Welsh Government put Wales first in its decision-making. Devolved government has meant more possibility for innovation, with the plastic bag charge and removal of No Fault evictions cited, as well as potentially a more focused approach to issues. Voluntary organisations have often been at the forefront campaigning for these innovations in policy and legislation.
11. Organisations who we engaged with in developing this response did not generally take a position on whether there should be more or less devolution. People commented from an individual perspective informed by their professional experience. Devolved power was welcomed by a large proportion of people we engaged with. Many would like to see further devolution. However, a small minority would like to see devolution ended.

WHAT DOESN'T WORK ABOUT OUR CURRENT CONSTITUTION?

12. The constitution enables different governments at UK and Wales levels to take very different policy positions. The results can be jarring where there are overlapping responsibilities and levers. For example, one person cited the firebreak lockdown imposed by Welsh Government during the pandemic. Welsh Government did not have the ability to pay costs for furlough, and UK Government refused to offer it. Welsh Government has a lot of powers and responsibilities, but this situation highlighted that there are areas beyond their control which limit their options.
13. Tensions have emerged in the operation of devolution settlement that the constitution isn't well equipped to deal with. Respondents reported a sense that legislation is being passed that impacts Wales, despite consent not being given by Wales, and divergence in areas where there should be shared competence. An example given was UK Government's bid to introduce a Bill of Rights to replace the Human Rights Act, which is in 'stark opposition' to the

way the legislative landscape in Wales is moving. Another example would be the Internal Markets Act, which restricts some areas Welsh Government can operate in that were previously devolved.

14. Similarly, there are issues about how Welsh and UK Governments navigate space where there is Welsh activity, but where UK Government can intervene – for example, international affairs. Welsh Government has responsibility in Wales to implement international agreements, but Wales has no constitutional guarantees of being able to feed into the process of developing such agreements at UK level. Wales should surely have a reliable mechanism to feed into these agreements, but currently it does not.
15. Food and farming was highlighted as problematic under the current devolution settlement, with some aspects devolved to Wales and others not. For example, Welsh Government can pass laws governing what happens on farms, but UK Government passes laws on trade, meaning there is no Welsh influence on what happens to its food once it leaves the farms. Similarly, UK Government may be about to pass legislation around genetically-edited food, and Welsh Government has stated it is opposed to this.
16. This is an example of an area where voluntary organisations in Wales have been actively campaigning over for many years. There are routes to engagement with the Senedd and Welsh Government which are relatively open. It is more difficult for voluntary organisations based in Wales to get their voices heard at a UK level. There is no Third Sector Scheme equivalent for engagement with UK Ministers or departments.
17. Respondents felt Wales lacks control in areas such as benefits, taxes, equality, diversity and human rights. There can also be confusion over who is responsible for what, with too much bureaucracy and too many organisational units.
18. Fundamentally, the voluntary sector is concerned that there is not a consistent approach to collaboration and resolving tensions between the Welsh and UK Governments. There have been successes, such as the vaccine rollout, but often there is tension rather than cooperation, even if unintentionally. The structures that support inter-governmental relationships are not well understood. The decision-making does not feel transparent and there is little scope for wider civil society engagement.
19. How well our constitution and democracy functions are impacted by factors beyond the constitutional settlement itself. For example, the media plays an important role in a healthy democracy – sharing information and enabling people to engage in the policy and legislative debates. The weakness of the Welsh media is a concern. Much of Wales relies on English media for its information. This means that people are less aware of policy in Wales and can be unaware that it is different from policy and legislation in England. One respondent highlighted how this results in situations such as during the pandemic, when many people living in Wales heard more from the media based in England about UK Government policy than from Welsh media explaining Welsh Government policy and the rules in Wales. One proposal to address this was a Welsh Government campaign reminding people exactly what its powers are.
20. Government communications itself can also be a barrier to participation. There can be a lack of Plain English/Cymraeg Clir in Welsh Government information and consultations, limiting

public involvement and engagement. The Welsh Government endorsed [National Principles for Public Engagement](#) offer a benchmark as to how engagement should be conducted.

21. The policies of individual governments also make a difference to voluntary sector engagement. Sometimes these are reflected in legislation. Recent governments have taken very different approaches at the UK and Wales levels. The current and recent Welsh Governments have emphasised the unique role voluntary organisations play within wider governance in Wales. This has been reflected in the legislation mentioned above as well as in public statements.
22. In contrast, UK voluntary sector networks are extremely concerned about policy, practice and legislation from recent UK governments which restrict voluntary sector voice in our democratic processes, threaten our independence and shrink the civil space for taking action. Examples include the Lobbying Act, the Police Act, and inappropriate political pressure on the Charity Commission, including during the appointment of its Chair. These are threatening the extent to which voluntary organisations are able to fully participate and play their role in a healthy democracy.
23. We are also aware that the voluntary sector in Wales has relatively less income than the voluntary sector in other parts of the UK (see [WCVA Data Hub](#)). Most of the voluntary sector consists of very small organisations with little or no funding. There is limited capacity to engage in developing policy and legislation. This is also a concern if the voluntary sector is to play its full role within our democracy in Wales. Infrastructure and membership bodies like WCVA have a role to play here. We have been pleased to [work in partnership with the Wales Governance Centre](#) to help increase capacity for our sector to engage in complex areas of policy and legislation.

WHAT SHOULD THE CONSTITUTION LOOK LIKE IN FUTURE?

24. Co-production should be enshrined in the constitution to ensure it is always more than just a box-ticking exercise. WCVA is a member of the [Open Government Network](#) in Wales. We support open principles of participation, accountability and transparency in government and would like the Commission to explore how these can be embedded in our constitution.
25. On a similar note, the constitution should foster a much more cooperative environment through governmental procurement and grant-giving practices, rather than the competitiveness that many processes force upon those bidding to provide services at the moment. This would allow for more innovation and less siloed working. Commitment to the sort of legislation outlined above would be a useful starting place for this. The sector notes with interest the Social Partnership and Procurement (Wales) Bill and anticipates this could help in regard to the points above.
26. A commitment to inclusive governance and in particular the Third Sector Scheme within the Government of Wales Act has been extremely important and we want to see this continuing. We would like to explore similar commitments to support participation with the Senedd. We would also like to see such an arrangement developed between the voluntary sector and the UK Government.

27. A structured mechanism should be put in place to allow all parliaments and governments in the UK to learn from each other and share best practice. UK and Welsh Government should be working in partnership rather than conflict, with the council with devolved governments, set up following the Intergovernmental Relations Review, playing a key role. These inter-governmental relationships should also be more transparent and open to partnership with other sectors. Currently they are hard to engage with.
28. The constitution should ensure all voluntary sector organisations, including small organisations at grassroots level, are given equal opportunity to have their voices heard by Welsh Government. Again, we highlight the National Principles for Public Engagement here, as well as other mechanisms to require engagement by public bodies.
29. The idea of a written constitution should be explored, via engagement with the voluntary sector. Within it could be contained a best practice approach on how UK and Welsh Government should work together. It could also set out a space to show how the sector can engage with both governments, and help guard against regular ad-hoc changes of the type we have been seeing recently – for example, the Common Frameworks, which, while perhaps beneficial to both countries, lack transparency. All changes in legislation or regulations, and new legislation and regulations, should be debated effectively, with opportunity for the voluntary sector to engage.
30. A new or revised constitution should ensure that sustainable development is one of its guiding principles. To make sustainable development a continued success, participation and collaboration is essential for cross-sector working. Sustainable development already features in the Government of Wales Act; it should be retained and strengthened in any new constitution.
31. Whether a written constitution is adopted or not, cross-border relationships, both now and in the future, are hugely important. Many Welsh and English towns and cities are in very close proximity to each other, and cooperation and conversation between decision-makers in these areas will continue to be vital, no matter what the future holds.
32. Many European countries have bodies that bring together the voluntary sector, businesses and trade unions to have a voice into policy-making. There is nothing like that in the UK, although the upcoming Social Partnership and Public Procurement Bill has some of these elements. We would support such an idea being explored more fully in Wales.
33. Some countries – Australia was cited as an example in its approach to managing its internal market – use cooperative intergovernmental mechanisms, where central and non-central governments collaborate in policy areas that lend themselves to cross-border tensions and solutions. Entrenching this type of collaborative and transparent body has the added benefit of creating fora that makes engagement and workload management easier for stakeholders like voluntary sector organisations, who otherwise may have to split their capacity between central and non-central actors. We would support exploring this idea further to see if it might be suitable in Wales and at the UK level.
34. Any future constitution, written or otherwise, should feature the Wellbeing of Future Generations Act at its heart. We are all working towards achieving the seven wellbeing goals,

and it would be a huge oversight for any future constitution to not place this work at its centre.

FURTHER DISCUSSION

35. WCVA is happy to meet with the Committee, Welsh Government or Members of the Senedd to further discuss the issues raised in this response.

Policy Officer, WCVA

July 2022

Wales Green Party response to Commission on the Constitutional Future of Wales

Wales Green Party / Plaid Werdd Cymru is a semi-autonomous political party within the Green Party of England and Wales (GPEW). Wales Green Party (WGP) has a leadership team, elected by members and holds an annual conference. WGP is a membership led organisation and policy is proposed and shaped by members and then voted on by conference. The party's policy statement, 'Policies for a Sustainable Society in Wales' was recently redrafted to take into account changes in the political and legislative landscape in Wales. Wales Green Party is an internationalist party that believes in localism. The party is also part of the wider European Greens and Global Greens.

Wales Green Party stands candidates in elections at every level of government in Wales. Current membership of WGP is approximately 1900 and recent months have seen a steady increase of new members.

This response was developed on the basis of the policies of the Wales Green Party (WGP) which are developed by members and voted upon by the membership, and a specially convened members' meeting which considered the range of questions below.

1. What matters to you about the way Wales is run?

Our perspective is informed by the dependence of all our societies upon the living biosphere and climate of Earth, now critically endangered by destructive forms of development and economy. This highlights the need for governance to pay attention to the worsening and linked, climate, biodiversity and inequality crises that beset Wales. These will get worse in the foreseeable future, and indeed are of global concern. What matters to WGP is that Welsh governance should help support and enable communities, individuals, organisations and businesses to respond in informed and effective ways to these crises, in order to increase local, regional and national resilience and wellbeing. Equally important is that as a society we are enabled to take measures that help towards future improvements, and are not hollowing out future options and betraying future generations. To try to ensure this we support the stress-testing of measures and policies using our best available science and involving the systems sciences. Future security is the first duty of governance and expectation of citizens, currently the major risks are being ignored in ways which are irresponsible.

In addition to government setting the legal frameworks of regulation, the WGP supports **enabling** governance, that helps make the goals of subsidiarity (decisions made at the level nearest the grassroots) more of a reality. Practically, in this time of increasing social stresses, we will need to enable our communities through innovative law and legislation to help ourselves. Governmental agencies will not be

able to be effective without extensive citizen engagement. We would like to see discussion of our constitution include a real national conversation about climate change, informed by updated assessments of risks. This should involve extensions of democracy such as citizens' assemblies and juries and the involvement of Welsh civil society organisations such as NGOs, Voluntary Organisations, Trades Unions and the Third Sector; Social Business, and for-profit Business Organisations in addition to the various levels of Local Government, Caring and Public Service networks and organisations including the NHS. This should be carried on a model of 'Deliberative Democracy' where input from science on climate and on the links with biodiversity, and our dependence upon functioning life-support systems are made clear.

Effects on housing, energy, food, transport and care systems need to be understood and mapped as a whole, including their interactions. Solutions and measures for a national response would need to be as cross-party as possible and at a scale to really respond to the challenges of both adaptation and mitigation. As these issues are a matter of national and community survival, we believe that they are priorities to consideration when thinking about constitutional arrangements. These should be designed to readily mobilise all sectors of society for the necessary social and economic transformations. This is what Climate and Biodiversity Emergency means. Below we outline why this also means more ambitious, collaborative and learning forms of governance.

2. What do you think the priorities for the commission should be?

As constitutions set out the basis and rule-book for governance we interpret this question as asking about the constitutional commitments which we believe need to be in place to support and enable governance for Wales for the 21st Century. The kinds of constitutional commitments we would like to see the commission consider include:

- | | |
|--|--|
| a) Commitment to and/or legal status for nature and life-support systems (as for example in Chile and Costa Rica) | b) Statements about values/commitments to rights for human social equality enshrined in International Law |
|--|--|

We see these as totally interlinked as we know that extreme climate change effects and biodiversity loss affect the poorest and most vulnerable. Further WGP policies are based on the need for a new social contract that provides security for all whilst just transitions are in place to try to secure a liveable future for ourselves and for future generations.

- c) Statements and structures that set **enabling frameworks for governance and democracy** including: a re-balancing of powers towards more localised agency; greater transparency and accountability in Welsh governance; clear relationships between different elements of governance including law, institutions, and research; the enabling of channels for information flows between nested scales of governance

– from local to national and international. In order to progress WGP believe that we have to reinvigorate local citizen democracy and learn from other countries.

- d) Commitments to a **cosmopolitan model of Welsh citizenship** which recognises and celebrates Wales' diversity and commits to a civil model of citizenship. This should be linked to a wide debate and consultation on the form of a **written constitution** (for reasons outlined further below).
 - e) Speaks to the question of legitimacy which asks 'what processes have resulted in the Constitution?' **What makes a Constitution politically legitimate?** WGP believes that it is time for updated standards of political legitimacy including: much more extensive participatory processes of constitution building; together with commitments to informing governance by the best available knowledge and science. With regard to the latter, WGP recognise that the most important sciences are complex and develop (as we see in the Earth systems sciences and have seen recently with the development of the epidemiology of the Covid 19, and modelling etc). This would also need to operate at local and intermediate levels of governance, with processes of Co-creation of policy bringing together stakeholders and experts. To support this means that any constitution should mandate governments to support independent research and to include scientific advice on any policies, together with stakeholder input.
 - f) Respect for evidence and testing, means that **Learning Governance** is needed alongside our changing understanding and really listening to the evidence from local communities and organisations about the effects of policies, with transparent review processes, leading to policy updates and adjustments in a timely manner.
 - g) These issues also link the question of '**what are the processes for updating the Constitution?**' We need processes that find a balance between providing stability for social progress and enabling daily life and the need for change and participatory forms of re-assessment which is likely to become more acute as the century progresses.
 - h) **Doing politics and governance differently:** WGP would like to see constitutional arrangements that encourage extension of democracy by bringing in real proportional representation to ensure that every vote counts. Further we believe that cross-party cooperation will become even more essential as we try to find ways to maintain our societies civility and avoid violence in the face of extreme challenges of dangerous climate change, social dislocation, industrial transition and political change.
3. Thinking about how Wales is governed, by the Welsh Government and the UK government, what are the strengths of the current system, what aspects do you most value and wish to protect? Can you provide examples?

WGP supports the many progressive policy advances of Welsh Government including:

- the Future Generations Act
- the Constitutional Commitment to ESDGC (Education for Sustainability and Global Citizenship)
- innovative work on Equality and the recognition and support of ACES (Adverse Childhood Experiences) as key for policy guidance for wellbeing
- taking a stand for the Welsh Language as of equal status to English in Wales being a goal linked to recognising Wales' distinctive cultural heritage and history as part of a wide recognition of diversity.
- Recent commitments to the Wellbeing Economy and membership of WEGo, together with Scotland, Iceland and New Zealand.

WGP also welcome the way in which the Senedd has been able to encourage (albeit limited) cross-party working for the wellbeing of all in Wales.

WGP sees many strengths in work so far and we believe that the Senedd has proved its worth in many respects to the people of Wales, even though much more needs to be done to improve information flows across Welsh society and government. As has been noted widely, Welsh Government also suffers from an attitude of risk avoidance and a compliance mentality which need to be surmounted. However, we also see the potential of these worthwhile policy measures as limited by the current constitutional arrangements. See below.

4. Are there any problems with the current system, and if so, how could they be addressed? Again, please provide examples.

We have seen recently that Constitutions that are not formally written down and which rely a lot on precedent and informal agreements are ripe for exploitation by populist politicians who will not respect such, to them, flimsy norms. Where precedent for relations between different parts of the UK are concerned, the norms of governance that developed whilst in the EU are now being ignored by a newly centralising Westminster that sees Brexit as a primarily English power project. Many people in Wales and other parts of the UK see the current British state as in a serious crisis and likely to further destroy liveable futures for citizens, undermining democracy and living standards. Equally, the British state seems totally incapable of taking necessary measures to protect our futures and transition to sustainable forms of business and economy.

The model of UK governance over the past 30 years has been progressive devolution and Welsh capacity for self-directed political change has greatly increased. However, as the implications of Brexit become more apparent, it is clear that the developing Welsh and Scottish devolution settlements, and the Northern Ireland Peace Agreement, have grown up within the frameworks of EU membership.

During this period much has been achieved in Wales and innovative policy has been put in place. As has been noted by many, the delivery of this policy has been less successful and this is partly down to the lack of powers and finance of the Welsh Government. In addition, the centralised model of Westminster has not been fully challenged in Wales by the inclusion of new forms of democracy and communications, needed in the 21st Century.

WGP supports the recommendations of the McAllister Commission to extend the Assembly and to extend the powers of the Senedd to Law and Policing. However, the ongoing political and constitutional crises brought about by hard Brexit are still unfolding and the progress of devolution in this way is now under threat.

For some forces in the UK Brexit presents an opportunity to recentralise the UK and re-establish a greater degree of control. The recent Brexit bill was used to make provision for an extraordinary re-balancing of power towards the centre and consequent damage to the internal settlement of the UK. The provisions for the 'internal market' contained in the Brexit bill were couched in 'neutral' economic language but the implications for the power of the Welsh and Scottish governments to work with society to shape the economy are profound. It has been stated in the Welsh Assembly that these measures 'drive a coach and horses' through the Wellbeing of Future Generations Act and the Welsh Government's commitment to the Wellbeing Economy (Senedd 21).

One clear example of the effect on the prospects for the Wellbeing Economy is the question of the replacement for the EU structural funds. During the Brexit debate, it was promised that Wales would not miss out on the EU funds it used to gain, which were under the control of the Welsh Government. What was not said was that these replacement funds would be centrally controlled by Westminster and based in the old neoliberal market logics now presented as 'Global Britain.' The Welsh Government's commitments to progressive environmental and social policies are thus under threat as these will mean nothing if any measures can be over-ruled by Westminster in the name of 'neo-liberal UK market logics. More recently, this slow-motion political crisis has developed further with various measures being prevented or over-ruled.

5. Thinking about the UK government, the Welsh Government and Welsh local government (your local council), what do you think about the balance of power and responsibility between these three types of government – is it about right or should it change and if so, how? For example, who should have more power, or less?

WGP supports much greater power and responsibility devolved to the local level, together with appropriate support for informed governance. 'Power' comes in different forms and WGP supports executive powers to bring in legislation and frameworks that enable responsible exercise of powers (to do things) at the local level.

WGP supports the right of the people of Wales to decide on their own form of government through national debate and referendum processes. In this WGP would advocate for full independence for Wales. Our vision of independence is we would be freed to engage in many agreements with our neighbouring nations and to play our part in working for recognition of our global interdependence, and the need for global peace and cooperation

to solve our urgent common problems. We all share the global commons of Earth and our ecosystems cross human boundaries as do our economies.

6. As a distinct country and political unit, how should Wales be governed in the future?

Should we:

- broadly keep the current arrangements where Wales is governed as part of the UK, and the Westminster Parliament delegates some responsibilities to the Senedd and Welsh Government, with those responsibilities adjusted as in Q5, OR
- move towards Wales having more autonomy to decide for itself within a more federal UK, with most matters decided by the Senedd and Welsh Government, and the Westminster Parliament decides UK-wide matters on behalf of Wales (and other parts of the UK) OR
- move towards Wales having full control to govern itself and be independent from the UK OR

Wales Green Party supports moving towards Wales having full control to govern itself and be independent from the UK.

- pursue any other governance model you would like to suggest
- alongside any of these options, should more responsibilities be given to local councils bringing decision making closer to people across Wales and if so, please provide examples.

Yes, WGP supports a much greater devolution of powers to communities and local councils in Wales. For example, WGP supports revision of the planning system to allow Third party objections in cases of local concern. This cannot be supported by the current arrangements where Westminster can still control planning frameworks, preventing engaged local place-making. The current situation is weakening the ability of local people in Wales to put in place legislation ensuring environmental protection without being overruled by Westminster.

7. Overall, what is most important to you in about the way in which Wales should be governed in the future? Is there anything else you want to tell us?

We recognise that all Constitutions (including written Constitutions) are limited, they are inevitably influenced by the concerns of the time in which they are formulated and are to that extent embedded in political processes. What they can never do is to keep everything 'safe' and 'acceptable' for all time. Therefore, they need processes of updating.

Furthermore, all general language and statements are in need of **interpretation** which determines what they should be taken to mean in specific contexts. This is why Constitutional Law is needed in some form. This fluidity means that what Constitutions CANNOT DO is to guard against every eventuality. The price of democracy is democratic processes of evolution, balancing the need for change against the need for stable rules for social flourishing and law. Whilst recognising these limitations WGP advocates for a new Constitution for Wales that is suited to the challenges of our times, that can help society in Wales survive and flourish in difficult times for Wales and the world.

To this end we think that innovative approaches need to be urgently brought into wider political and social debate, such as the 'stress-testing' approach. This can bring in a dose of realism. Below is an example of 3 key 'stress tests' based on priorities for WGP policies.

Green Stress Tests

1. Is the Constitution fit to answer/help responses to the Climate and Biodiversity crises?
2. Is the Constitution fit to answer/help responses to the linked crises of social inequality, social dislocation and disruptions which we know will worsen as a consequence of 1. above?
3. Can the Constitution provide some mechanisms or commitments that can help keep society civil and minimise violence as many transitions will be happening at once?

We believe these questions or something like them would be a good basis from which to challenge and refine proposals.

We look forward to further debate and interchange on these important topics.



The Independent Commission on the Constitutional Future of Wales
Cathays Park
Cardiff
CF10 3NQ

By email:
ConstitutionCommission@gov.wales

28/07/22

Dear Commission,

The constitutional future of Wales

Thank you for the opportunity to present comments as you look at and consider options for how Wales might be governed in the future. The Welsh Language Commissioner's main statutory aim is to promote and facilitate the use of the Welsh language. The Commissioner's vision is for a Wales where people can use Welsh in their everyday lives. Our comments will therefore focus specifically on how the current forms of governance, and any proposals to change governance in the future, affect or are likely to impact the Welsh language in this context.

Our response is attached in the form of a paper in two parts. Firstly, views on the regulation of linguistic duties under the current devolved regime are discussed. The second part discusses some of those policy areas reserved by the UK Government according to the Wales Act 2017 and their impact on the Welsh language.

The main points are:

- The Welsh Language (Wales) Measure 2011 and the resulting standards have been a huge step forward from the Welsh Language Act 1993 and the associated language schemes regime. People now have legal rights to use the Welsh language in a wide range of situations in their daily lives and the Commissioner has wide enforcement powers to ensure that those duties are implemented.
- However, the current devolution regime limits the Commissioner's powers as a number of large, UK national organisations are not subject to the standards and instead continue to operate under the language schemes regime, where the

Comisiynydd y Gymraeg
Siambrau'r Farchnad
5-7 Heol Eglwys Fair
Caerdydd CF10 1AT

0345 6033 221
post@comisiynyddygyymraeg.cymru
Croesewir gohebiaeth yn y Gymraeg a'r Saesneg

comisiynyddygyymraeg.cymru

Welsh Language Commissioner
Market Chambers
5-7 St Mary Street
Cardiff CF10 1AT

0345 6033 221
post@welshlanguagecommissioner.wales
Correspondence welcomed in Welsh and English

welshlanguagecommissioner.wales



Comisiynydd y
Gymraeg
Welsh Language
Commissioner

Commissioner's powers to ensure that those schemes are implemented are very limited.

- The Commissioner's view is that more organisations, including these UK national organisations, need to be brought under standards. It is already possible to do so within the current legal framework, but boundaries within the devolution system are a barrier to this as it is dependent on political will or on obtaining the consent of the Secretary of State.
- Further legislation appears to be the main way of addressing these issues but there is a risk of losing the ability to bring these organisations under standards should the Senedd decide to legislate on the Welsh language in the future because of their competence to legislate. The Commissioner would not want that power to be compromised.
- Policy decision about reserved matters made on a UK level can impact the Welsh language. In theory, as a result of the requirements of relevant Welsh language schemes, the expectation is that the effect of policy decisions on the Welsh language will be considered. However, in practice this does not always happen. These matters include, but are not limited to justice, the economy and trade, immigration and broadcasting. Decisions about broadcasting are particularly important to the Welsh language in terms of its prominence and opportunities for people to hear and use the Welsh language on a daily basis.
- The fact that many of these UK Government departments making these policy decisions are not subject to the Welsh Language Standards significantly limits the Commissioner's ability to regulate them and to ensure that they consider the Welsh language in making their policy decisions.

I hope that the comments will be useful as you prepare your work plan and I look forward to our meeting to discuss and expand on the contents of the paper with you in September 2022.

Yours sincerely,

Gwenith Price
Deputy Welsh Language Commissioner



The Welsh Language Commissioner's response to the consultation of the Independent Commission on the Constitutional Future of Wales from the perspective of regulating linguistic duties and reserved policy matters

This paper is in two parts. Firstly, views on the regulation of linguistic duties under the current devolved regime are discussed. The second part discusses some of those policy areas reserved by the UK Government according to the Wales Act 2017 and their impact on the Welsh language.

The main points are:

- The Welsh Language (Wales) Measure 2011 and the resulting standards have been a huge step forward from the Welsh Language Act 1993 and the associated language schemes regime. People now have legal rights to use the Welsh language in a wide range of situations in their daily lives and the Commissioner has wide enforcement powers to ensure that those duties are implemented.
- However, the current devolution regime limits the Commissioner's powers as a number of large, UK national organisations are not subject to the standards and instead continue to operate under the language schemes regime, where the Commissioner's powers to ensure that those schemes are implemented are very limited.
- The Commissioner's view is that more organisations, including these UK national organisations, need to be brought under standards. It is already possible to do so within the current legal framework, but boundaries within the devolution system are a barrier to this as it is dependent on political will or on obtaining the consent of the Secretary of State.
- Further legislation appears to be the main way of addressing these issues but there is a risk of losing the ability to bring these organisations under standards should the Senedd decide to legislate on the Welsh language in the future because of their competence to legislate. The Commissioner would not want that power to be compromised.
- Policy decision about reserved matters made on a UK level can impact the Welsh language. In theory, as a result of the requirements of relevant Welsh language schemes, the expectation is that the effect of policy decisions on the Welsh language will be considered. However, in practice this does not always happen. These matters include, but are not limited to justice, the economy and trade, immigration and broadcasting. Decisions about broadcasting are particularly important to the Welsh language in terms of its prominence and opportunities for people to hear and use the Welsh language on a daily basis.
- The fact that many of these UK Government departments making these policy decisions are not subject to the Welsh Language Standards significantly limits the Commissioner's ability to regulate them and to ensure that they consider the Welsh language in making their policy decisions.



Part 1: Regulation of linguistic duties

1. In responding to the Commission, it is important to consider the legislative background in order to understand the current situation in its full context. Two main statutes contain provision relating to the Welsh language, namely the Welsh Language Act 1993 and the Welsh Language (Wales) Measure 2011.

Welsh Language Act 1993

2. The Welsh Language Act 1993 established the principle that the Welsh and English languages should be treated on a basis of equality in the conduct of public business and in the administration of justice in Wales (so far as is appropriate in the circumstances and reasonably practicable). The right to use the Welsh language in the courts was upheld and strengthened, noting that anyone who wishes to use the Welsh language can do so. As that provision was not repeated in later legislation, this part of the 1993 act remains operational today, as are other parts of it.
3. The Welsh Language Act 1993 established a system whereby public bodies prepared language schemes explaining how they would provide services in Welsh. It also established a Welsh Language Board to oversee these language schemes, to advise on Welsh language issues, and to promote and facilitate its use. However, the 1993 Act was still a Westminster law and the 15 members of the Welsh Language Board were appointed by the Secretary of State for Wales. The Secretary of State also had the last word when a body failed to comply with its language scheme until the responsibility was transferred to Welsh Ministers as a result of devolution.
4. The effect of this was that the Welsh Language Board, the body that worked with the organisations in the first instance in order to agree their linguistic duties, and by now the Commissioner, had no powers to force organisations to use the Welsh language. Therefore, although the law substantially changed the legal status of the Welsh language, it remained tightly within the grasp of Westminster at the time of its creation.
5. To this day, a number of public bodies continue to implement Welsh language schemes that were prepared under this act. Further detail on the impact of this is given below.

Welsh Language (Wales) Measure 2011

6. This Measure established the role of the Welsh Language Commissioner and abolished the Welsh Language Board. This Measure was also the first language act to be created for Wales in Wales and which gives official status to the Welsh language in Wales. It also made provision in relation to promoting and facilitating use of the Welsh language and treating the Welsh language no less favourably than the English language. It introduced the system of imposing and enforcing standards where the Commissioner is responsible for investigating the compliance of public



organisations with the standards imposed upon them. The Commissioner was also given the power to investigate interference with an individual's freedom to use the Welsh language.

7. By imposing and enforcing legal duties relating to the Welsh language on public organisations, the Welsh Language Measure created rights for Welsh speakers to use the Welsh language in their dealings with those organisations. The Measure also provided for the Welsh Language Tribunal which was established in 2015 to ensure that those linguistic rights were protected and to deal with appeals against decisions by the Welsh Language Commissioner in relation to Welsh language standards. This is the first tribunal established by the Assembly (as it was then).
8. All of this means that the Welsh language is now a core part of the administrative justice system in Wales. There are legal processes in place to ensure that individuals can exercise their right to use the Welsh language, and robust processes to be followed if an individual is deprived of that right. In such cases, access to the justice system is easy and cheap as an individual is able to submit a complaint to the Welsh Language Commissioner or the President of the Tribunal and there are enforcement powers available to ensure that duties are fulfilled.
9. The Welsh Language Measure was the last legislation to receive royal approval before the 2011 referendum was held on devolving further powers to Wales. Therefore, whilst members of the devolved Welsh assembly were responsible for drawing up the Welsh Language Measure, the legislative process was being driven (and restricted) to some extent by the legal regime of the Legislative Competence Order (LCO).¹ Therefore, the legislature did not have unbridled freedom and the limitations of this procedure are visible in the Measure itself.
10. Despite the revolutionary nature of the Welsh Language Measure in terms of ensuring the legal status of the Welsh language, it is not without its shortcomings, as the report of the Culture, Welsh Language and Communications Committee, Supporting and promoting the Welsh Language, concluded in 2019. Reference is made there to the 'complexity and detail of the Measure' and to the common finding 'that the Welsh language standards framework is complex and bureaucratic'.² The slow process of introducing and implementing standards is also criticised.
11. However, there is no denying that the Measure is an important milestone in the history of the status of the language as it confirms the official status of the Welsh language for the first time and establishes legal rights for people to use the Welsh

¹ For a comprehensive introduction to the history of drawing up the Measure and the impact of the system that existed at the time on the Bill, see Thomas Glyn Watkin, 'Competence and Complexity: The Role of the Welsh Language Commissioner', pp. 125–46.

² National Assembly for Wales Culture, Welsh Language and Communications Committee, [Supporting and promoting the Welsh language](#) (July 2019), p. 12, p. 7.



Comisiynydd y
Gymraeg
Welsh Language
Commissioner

language. The standards have provided a level of assurance to organisations and users alike, creating new opportunities to use the Welsh language and further strengthening the status of the language. Indeed, the results of an opinion poll published by the Commissioner in his [‘Stepping Forward’](#) report in September 2021 shows that the experiences of Welsh speakers have improved as a result of the Welsh language standards.

12. The Commissioner believes that more organisations need to be brought under the Welsh language standards and has already emphasised the importance of continuing the same momentum that has existed over the five years since standards came into force for the first time, using the Measure to its full effect. There are currently many more organisations named in the Measure than the Commissioner has been able to impose standards upon them and are therefore not required to implement standards as there are constraints and difficulties in enabling this to happen because of the boundaries of devolution³. For example, the Measure allows for making Welsh language standards specifically applicable to Ministers of the Crown only if the Secretary of State has consented to that. See attachment 1 for further details.
13. The Commissioner has also stated that it is vital that the Government undertakes to give stability to the structures and rights already in place, with a commitment to reconciling and improving the experiences of Welsh speakers within the current legislative framework. The Commissioner welcomes the Government's recent commitment to resume the process of imposing standards, bringing new organisations and sectors under that system. An action that would not only further establish the status of the language and the rights of users but also provide opportunities and contexts to use the language on a daily basis. Although 124 organisations now implement standards, we are still waiting for the Welsh Government to draw up regulations for a number of key sectors so that the Commissioner can impose standards on them. They include sectors with which the public has considerable day-to-day contact, such as housing associations, non-ministerial UK Government organisations such as Revenue and Customs, gas and electricity suppliers, and rail services and bus companies.

UK Government organisations and Crown bodies

14. The result of not imposing standards on the UK Government non-ministerial organisations and Crown bodies' is that two statutory regimes are in operation in Wales today. This is confusing for the public as they have the right to approach us immediately to complain about organisations that are subject to standards (where the Commissioner has been able to give a compliance notice to the body in question) but

³ This restriction follows the boundaries of the Government of Wales Act 2006 (as revised by the Wales Act 2017).



do not have the same right to complain directly about failures in the context of key and high profile services of the Welfare State, for example as it isn't possible for the Commissioner to impose standards without the consent of the Secretary of State. This is because the Commissioner's powers are much more limited under the language schemes system than the Welsh language standards.

15. As well as requiring a complainant to refer a complaint to the organisation in question first, before turning to the Commissioner, it is not possible to require Crown bodies to implement the Commissioner's recommendations (following an investigation) because sections 17 to 19 of the language act are not fully functional in the case of Crown departments and agencies. The effect of this is that some issues have been causing frustration for a long time. Here are some examples of matters that have come to our attention about Crown bodies:

| Name of body | Issue(s) arising |
|--------------------------------------|---|
| Disclosure and Barring Service (DBS) | Organisation has refused to prepare a Welsh language scheme. Receive regular complaints that the process of applying fully for a check in Welsh cannot be made online. Long delays in some cases in order to complete a paper form in Welsh, which can mean problems with recruitment for some local authorities in particular. Regular complaints also regarding the lack of Welsh/bilingual DBS certificates. |
| Cabinet Office | Problems have arisen with gov.uk's website since it became operational. There have been discussions for many years to get to the current point, namely that some organisations are able to input Welsh language material into the website themselves. The Civil Service Jobs website has also been the subject of discussion for a number of years and has prevented UK Government organisations from being able to recruit in Welsh effectively. However, changes are at a turn with the possibility of a new platform in the future. |
| Home Office | Births, deaths and marriages in Wales cannot be registered in Welsh only. Legislation needs to be passed to do so although this has been a recommendation in the Silk report (Part 2). 'Prevent' counter terrorism training course that is a requirement for some staff/students to undertake is not available in Welsh. |

16. One recent, specific case that highlights the shortcomings that arise with the system of language schemes compared to the Welsh language standards is the injustice faced by Welsh speakers if they wish to take their driving tests through the medium of Welsh. The Commissioner published a report on the basis of an investigation into the implementation of the Driver and Vehicle Standards Agency's (DVSA – who is an agent of the Crown) Welsh Language Scheme, in which he concluded that the



agency was acting contrary to its commitment to treat the Welsh and English languages on the basis of equality. DVSA failed on the following three issues:

- The percentage of Welsh medium driving tests cancelled was almost three times higher than the percentage of English medium tests cancelled.
- It was necessary to wait five to six weeks longer before taking a practical driving test in Welsh compared to in English.
- If an individual wishes to apply to take a practical driving test through the medium of Welsh, they must state that they have 'special requirements'.

17. The DVSA's Welsh Language Scheme, drawn up under the Welsh Language Act 1993, states that it 'will treat the Welsh and English languages on a basis of equality', and that 'driving tests in Welsh are available at all test centres [...] in Wales', and that 'the standard and quality of our services are consistent across Wales'. It also states that 'applicants will be able to opt to take a practical test in Welsh at the time of booking and we will provide a Welsh speaking examiner.'
18. Although ten years have elapsed since the Welsh Senedd passed a law giving official status to the Welsh language in Wales and established the principle of rights to use the language, this case proves that there are still far too many exclusions that undermine these objectives. In conducting the investigation, it became apparent that the practices of the DVSA do not come close to meeting the commitment it has made to the people of Wales in its Welsh Language Scheme.
19. Recommendations were made to the DVSA but there was also a wider message that, in the Commissioner's view, the only way to remedy this injustice was to bring the DVSA under the Welsh language standards regime, and to protect the right of applicants to take their driving tests in Welsh without suffering unfavourable treatment. That would also enable the Commissioner to enforce improvement rather than simply recommend it.
20. Therefore, there is a great need for the Government to re-examine the schedules to the Measure to identify further sectors on which standards could be introduced, and to be proactive in identifying new entities which could be brought under the system as they are created. As the Welsh language loses its status and protection within the European Union, it is more important than ever for Westminster to consider the Welsh language in non-devolved matters and in legislation introduced as a result of leaving the European Union.
21. The need to consider the Welsh language at a UK level – and ensure its status – was highlighted very clearly in the context of the COVID-19 pandemic when it was decided to procure and organise a number of key responses to the pandemic centrally by the Westminster Health and Social Care Department. The impact of centralising these efforts by a non-devolved department and unfamiliar with operating under the requirements of the standards was that not all of the services provided were designed with the Welsh language as a central consideration. Lessons must be learnt from this



and ensure that the Welsh language has adequate constitutional and political status at a UK level to ensure the provision of necessary services to the citizens of Wales, particularly in times of crisis.

22. More generally, the Commissioner's, and the former Board's, experience in dealing with Crown bodies under the Welsh Language Act can be summarised as follows. Many of the agencies have been very innovative in preparing and implementing their scheme from the outset. Others have been less willing to co-operate fully. The result of this is that the schemes of Crown bodies have on average taken considerably longer to reach a standard that could be approved than some public bodies. Some recent examples include discussions on the language schemes of DEFRA, the Department for Health and Social Care together with the Department for Levelling Up, Housing and Communities.
23. In terms of implementing the schemes, the experience is similar. Some agencies take their responsibility seriously, while others are complacent, or ignore their scheme in delivering or reorganising their services. It is not entirely true to say that due to legal status or grasp the performance of UK departmental bodies would pose difficulties. While this is sometimes entirely deliberate, it is often a lack of awareness and understanding that is to blame. For example, their headquarters are usually outside Wales, and the nature of the workforce is less aware of the linguistic pattern of Wales. This inevitably affects compliance compared to devolved bodies. At the same time, it is possible to bear witness that some departments have established quality Welsh language services and that those have become embedded.

To summarise

24. The arrival of the Welsh language standards through the Welsh Language Measure has meant that people now have legal rights to use Welsh in their daily lives. The powers given through the Measure to the Commissioner to regulate the duties arising from the standards mean that they can be enforced, when necessary and a huge step forward from the language scheme regime established under the Welsh Language Act 1993.
25. Also, not all Crown bodies are set out in the Welsh Language Act 1993, as organisations that have to prepare a Welsh Language Scheme although some, such as the Home Office and the Ministry of Justice have done so despite this. Even where a language scheme exists, the Commissioner's powers are limited compared to the standards regime. The Commissioner's view therefore is that more organisations need to be brought out of the language schemes system and into the standards regime using the Measure to its full potential.
26. However, the current devolution system limits the Commissioner's powers under the Welsh Language Measure mainly for two reasons. Firstly, while some UK Government departments and organisations exercising functions on behalf of the Crown can be brought under standards within the current framework without the need for further consent, that depends heavily on political will. Secondly, in order to



bring other organisations within the scope of the standards regime under the 2011 Measure, the consent of the Secretary of State would need to be obtained.

Competence to legislate

27. We note that the Wales Act 2017 has already affected the Welsh Senedd's competence to legislate as the consent of UK Ministers is now required in order to include provisions in the Senedd's Bills relating to reserved authorities. However, we are satisfied that the Wales Act does not affect the Welsh Language Measure or the standards regulations made under that Measure because the Act clearly states that it would not affect the continued operation of the Measures already in place.
28. The Wales Act is not retrospective and therefore only applies to Bills made since the Act was passed and to the subordinate legislation made under them. Therefore, UK Ministers' consent is not required in the same way for regulations arising from the Welsh Language Measure relating to reserved authorities (other than Ministers of the Crown).
29. Should the Senedd decide to legislate for the Welsh language in the future, the effect of the Wales Act is that provision for the imposition, enforcement, alteration or removal of a function relating to the Welsh language on that entire range of persons could not be included in that Act without the consent of the Minister.⁴
30. The effect of all this is that there is a case for continuing with the current framework or the Senedd could not legislate for the Welsh language without doing so within a context where its powers are substantially limited in terms of government departments and non-devolved authorities. We would therefore like this issue and the likely knock-on effects to be fully considered before any change is made. Any change to this effect would be of serious concern given that government departments and non-devolved authorities provide a very wide range of services to people in Wales.

⁴ Paragraph 11, part 1, schedule 7B of the Government of Wales Act 2006 (as amended by the Wales Act 2017) states that no Act of the Senedd Cymru may remove or modify any of the following unless the appropriate Minister consents to the provision: (a) the functions of a Minister of the Crown relating to a qualified devolved function (b) any function of a Minister of the Crown exercisable in relation to the Welsh language (c) any function a Minister of the Crown exercisable in relation to water supply, water quality, water resource management, pollution control water resources, sewerage, rivers and other watercourses, land drainage, flood risk management or coastal defence (d) has any function of a Minister of the Crown under Chapter 1 of Part 3, or section 58, of the Marine and Coastal Access Act 2009 (e) any power of the Secretary of State under section 6 of the Railways Act 2005 (financial assistance relating to railway services etc.), or (f) any function of the Treasury under section 138(2) or 141(4).



Part 2: Reserved Policy Issues of importance to the Welsh language

The matters reserved by schedule 7A to the Government of Wales Act 2006 include a number which directly or indirectly affect the position of the Welsh language. They are detailed below.

Broadcasting

31. Media, Culture and Sport are matters which appear in schedule 7A of the Wales Act as reserved matters. Broadcasting in particular is vitally important to the Welsh language in terms of its prominence and opportunities for people to hear and use the Welsh language on a daily basis. Ensuring that the Welsh language is given prominence on digital services is a huge challenge and it is vital that the Welsh language is part of this movement.
32. In the [licence fee settlement for 2022-27](#) the UK Government decided to freeze the fee for two years and then it would increase in line with inflation for the period until 2027.. S4C like the BBC now receives all its funding from the licence fee. DCMS [announced a settlement](#) of £88.85 million a year for 2022-23 and 2023-24. That will increase in line with inflation for the following four years. Essentially, it can therefore be summarised at this stage that broadcasting in Welsh receives all of the following funding from the licence fee in 2022-23:

| | |
|--------------------------------|--------------------------------|
| S4C | £88.85 million |
| 520 hours for S4C from the BBC | Approx. £20 million |
| Radio Cymru | Approx. £14 million |
| Cymru Fyw and digital services | Approx. £2 million |
| | Approx. £124.85 million |

33. According to the BBC's annual report for 2021/22 the current licence fee collected in Wales was £190 million. The total expenditure in Wales (covering S4C, Radio Cymru Radio Wales etc) was £188 million; but BBC expenditure on network programmes is additional to this. Of course, viewers/consumers in Wales also use the BBC's network services. The UK Government will shortly be conducting a review of the licence fee funding model as there is a perception that collecting the licence fee as it stands is no longer sustainable. Therefore, beyond 2027 it is currently unclear how the BBC (and therefore its Welsh language services) and S4C will be funded. It is absolutely essential that Welsh language broadcasting receives the support it needs to thrive from 2027 onwards.
34. Although the summary below from the 5-year report predates the recent decision in early 2022 on the licence fee, the points remain relevant. They also summarise our position on devolving broadcasting, namely that broadcasting in Wales needs to reflect Welsh culture that includes the Welsh language, and it must be ensured that



there is an adequate budget to enable broadcasting in the Welsh language to flourish:

The COVID-19 crisis highlighted a serious and misleading lack of understanding by the British media of the difference in public policy between Wales and the rest of the United Kingdom, which has already led to further discussion about devolving broadcasting to Wales. The discussion will be bound to continue following the publication of the Culture, Welsh Language and Communications Committee's report, and broadcasting to meet the requirements of Wales in Welsh and English will certainly be subject to discussion during the next Senedd period.

There is no doubt that there are real risks to Welsh culture due to the current reliance on publicly funded broadcasting services, and specifically the BBC. A number of key decisions are made about broadcasting at a British level and it must be ensured that the views and priorities of the Welsh Government and the Welsh Parliament are fully respected in such decisions. It is essential that S4C's final financial settlement enables the channel to adapt and thrive in the future and to continue the work of supporting the Cymraeg 2050 vision to which it has already been a contributor. Sufficient support and funding must be made available in the future to ensure that S4C, the BBC and others are able to provide suitable provision in Welsh to coincide with the changes in the digital world and to contribute fully to the vision of Cymraeg 2050.

35. An Expert Panel on the Devolution of Broadcasting has recently been published by the Welsh Government (in line with the Collaboration Agreement between the Welsh Government and Plaid Cymru) to pave the way for the devolution of broadcasting and communications powers to Wales. The Commissioner welcomes this step forward.⁵

Justice

36. Schedule 7A of the Government of Wales Act indicates that Senedd Cymru cannot legislate on the individual legal Jurisdiction of England and Wales. In 2018 we gave evidence to the Commission on Justice in Wales⁶ explaining that the Welsh language was established as one of the two languages of law and the administration of justice in Wales because:

- In accordance with the Government of Wales Act 2006⁷, the English and Welsh texts of any Assembly Measure or Act of the Assembly which is in both English and Welsh when it is enacted, and any subordinate legislation which is in both

⁵ [Expert panel on the devolution of broadcasting announced | GOV.WALES](#)

⁶ Unfortunately, there is no copy of the response on the Website of the Commission on Justice. A copy can be provided if necessary.

⁷<http://www.legislation.gov.uk/ukpga/2006/32/section/156>



English and Welsh when it is made, are to be treated for all purposes as being of equal standing.

- The Welsh Courts Act 1942 gave any party or witness the right to use the Welsh language in court proceedings in Wales if not doing so would put them at a disadvantage. The Welsh Language Act 1993 established the principle that 'in the conduct of public business and in the administration of justice in Wales the Welsh and English languages should be treated on a basis of equality...' and the Act went on to say that any party, witness or other person wishing to use the Welsh language has the right to speak Welsh in any legal proceedings in Wales.⁸
- Article 6 of the European Convention on Human Rights⁹ gives any person accused of a crime the right to a fair trial which includes being informed promptly, in a language which they understand and in detail, of the nature and basis of the accusation against them.
- The Welsh Language (Wales) Measure 2011 makes the Welsh language an official language in Wales. The standards regime builds on the success of language schemes by raising expectations with regard to organisations' use of the Welsh language. Since the end of March 2017, Welsh police forces and five tribunals have been required to comply with standards in four areas, namely service delivery, policy making, operational and record keeping standards.

37. It is therefore absolutely essential that the justice system and the law are able to operate in both Welsh and English to ensure the rights of citizens. Inevitably the position of the Welsh language within justice has developed significantly. It should be noted, however, that it has not been easy over the years to ensure that the whole sphere of justice in Wales complies with Welsh language duties as the sector as a whole is not subject to Welsh language standards. It is also crucial that different parts of the administration of justice system, from top to bottom, work together to facilitate the implementation of the duties imposed on all relevant organisations and, in doing so, ensure the rights of Welsh speakers to access justice through the medium of Welsh. One of the relevant bodies is discussed below.

Prisons

38. Her Majesty's Prison and Probation Service (HMPPS) operates in accordance with the Ministry of Justice's Welsh language scheme. At the end of 2018 the Commissioner published a report on the Welsh language in prisons¹⁰. Key prison services (e.g. health, care, education, libraries) are provided by other organisations such as health boards and local authorities. In Wales, these services are subject to Welsh language standards or Welsh language schemes, but not in England, of course. It is likely therefore that the Welsh language provision for prisoners is better

⁸<https://www.legislation.gov.uk/ukpga/1993/38/contents>

⁹https://www.echr.coe.int/Documents/Convention_ENG.pdf

¹⁰ [the-welsh-language-in-prisons.pdf \(welshlanguagecommissioner.wales\)](#)



in prisons in Wales for staffing reasons and because specific rights are created by legislation which is only relevant to Wales. However, there are no women's prisons or prisons for young adults between the ages of 18 and 20 in Wales. The lack of provision for women and young people in Wales is a cause for concern. The report found that there was a mixed picture of the availability of services and opportunities to speak Welsh in prisons and that:

- there was no certainty that HMPPS had data indicating the exact numbers of Welsh speaking prisoners in its estate, which makes it difficult to plan for needs and campaigns to promote the use of Welsh e.g. in January 2018, HMPPS's Annual Monitoring Report stated that Welsh is the preferred language of 2 individuals in HMP Berwyn, but it also referred to a focus group of 12 Welsh speakers;
- there was no certainty that HMPPS has detailed data about the Welsh language skills of its staff, which would enable it to plan for the linguistic needs of the workforce;
- there was no certainty regarding the consistency of Welsh language services offered across the estate;
- S4C was not available in prisons in England;
- the Commissioner had not seen evidence that the Welsh language was considered when deciding to which prison prisoners are sent.

39. The Welsh Affairs Committee echoed the concerns expressed in the report by the Commissioner in its report on [Prison Provision in Wales](#) published in 2019 noting that:

We recommend that the UK Government ensure that HMPPS collect accurate data about Welsh-speaking prisoners regularly, both in Welsh and English prisons, and provide Welsh-language services accordingly. Detailed data about Welsh speakers should be published and made available to inform service planning. HMPPS should also collaborate fully with the Welsh Government in creating and implementing its new Welsh-language scheme. The Welsh language should also be strongly considered in decision-making about the placement of prisoners.

The legal profession and legal technology

40. Given that any party has the right to use the Welsh language in court proceedings in Wales, it is essential to ensure that enough members of the legal profession are able to speak Welsh in order to facilitate public access to justice. Senedd Cymru creates legislation in both English and Welsh and the texts of both languages are equal. Whether their headquarters are located in Wales or England, solicitors, barristers and



judges may therefore be required to deal with cases relating specifically to bilingual Welsh law, as well as the laws of England and Wales. Beyond interpreting the law itself in the case of bilingual legislation¹¹, situations may arise where Welsh language only text would need to be interpreted and read with regard to cases relating to Welsh law and the laws of England and Wales. Solicitors, barristers and judges need to be aware of these considerations and understand their implications. Increasingly, therefore, we would expect that legal professionals in Wales need to be able to work with and interpret both languages used in legislation and justice in Wales. The need for Welsh speaking staff with an understanding of the legal position of Wales should be reflected in organisations' employment and professional development policies. The entire justice system should ensure that these needs are reflected in higher education and further education academic courses in England and Wales and that students are fully aware of the opportunities available to them in the field of justice if they are able to work through the medium of Welsh.

41. However, it was only after considerable discussion and persuasion by the Welsh Language Commissioner, the former Counsel General, Jeremy Miles MS and others that the Solicitors Regulation Authority (SRA) agreed to move towards a situation over time where the Qualifying Examination for Solicitors would be available in Welsh and enable candidates to prove that they were qualified in English or Welsh (and not solely in English). In this respect, we should note that barristers' standards and competences, as stated in the Professional Statement for Barristers¹², refer to high level English language skills, however, there is no reference to Welsh language skills, and the document "Future Bar Training: Curriculum and Assessment Strategy"¹³ states:

"The language of assessment is English. Written assessments may be provided in Welsh if requested. The requirements of the Welsh Language Act 1993 are recognised, but candidates who can only satisfy the assessment requirements in Welsh will not be competent to practise at the Bar of England and Wales".

42. Increasingly there is a move towards greater use of technology in the justice process, with the Covid crisis having contributed to that. Given that parties in court proceedings in Wales have the right to use the Welsh language, it is essential that any new digital methods developed for the purpose of administering justice support rather than prevent the use of the Welsh language. Previous efforts to adopt digital methods of administering justice have led to the loss of Welsh language services and prevented individuals in Wales from using the language in their dealings with the

¹¹ See *Driver v Rhondda* 2020 [Driver -v- Rhondda Cynon Taf County Borough Council - Welsh Language Summary \(judiciary.uk\)](#) as an example of such a case.

¹²https://www.barstandardsboard.org.uk/media/1787559/bsb_professional_statement_and_competences_2016.pdf

¹³ <https://www.barstandardsboard.org.uk/uploads/assets/0426fe70-72e5-48be-8618f7af3a28f1b0/curriculumandassessmentstrategy1april2019.pdf>



justice system. This was highlighted in the Commissioner's response to the Ministry of Justice's consultation on the provision of court and tribunal services in Wales and the response to Lord Justice Briggs' review of the Civil Courts Structure. If the aim is to develop legal technology such as online courts using methods such as video-conferencing, careful and detailed planning will be required to ensure that parties can use any part of that court system through the medium of Welsh. Court proceedings in Wales may need to be conducted in Welsh, English or bilingually, and this will need to be carefully considered before and during the development of online courts.

Economy and Trade

43. There is general recognition that economic viability is vital to ensuring the prosperity of the Welsh language. [Cymraeg 2050](#) notes the importance of economic development to the vitality of the Welsh language:

The economy is vital to creating the social conditions where Welsh speakers can stay in Welsh-speaking communities, or return to those communities. Although we are unable to control all factors that influence economic growth, there are things that we can influence. These include skills, the importance placed on the Welsh language, the location of public sector jobs, clusters, ensuring that the Welsh language is seen as a valuable skill in major developments, and opportunities to use these skills.

44. Financial and Economic Affairs; Trade and Industry are reserved matters in Annex 7A of the Wales Act so the Senedd cannot legislate on these matters. However, the Welsh Government has policies in the area of the economy, business and innovation specifically [Prosperity for All: the economic action plan](#) which includes a regional economic development model which means regional frameworks are designed to meet the needs of each region. Specifically in terms of the Welsh language during the 2016–20 Senedd, the Welsh Government introduced the Arfor experimental fund, which is a fund of £2m for creating more, and better, jobs in the Welsh-speaking heartlands and supporting the growth of the language in Anglesey, Gwynedd, Ceredigion and Carmarthen. Following an evaluation of the project, a new £11million Arfor scheme over a three-year period is now underway with the above local authorities currently developing their plans. The Welsh Government also established an Economy and Language Roundtable during the last Senedd.
45. Following Britain's departure from the European Union the UK Government introduced the Internal Market Act 2020 which amongst other things enables the UK Government to provide funding in devolved areas that would sit alongside any funding provided by the devolved administrations in those areas. Its 'levelling up' agenda and economic plans such as the [Shared Prosperity Fund](#) and the [Levelling Up](#) white paper aim to reduce inequality economically and widely across the UK. Substantial areas of north and west Wales received Objective 1 funding from Europe because they were so poor. These are the areas where there are a number of communities where the Welsh language continues to be spoken by high percentages



of the population. It must be ensured that the economic policies of the UK and Wales together ensure the economic prosperity of these communities in order to contribute to the viability of the Welsh language and that the expenditure coming directly from the UK Government specifically does so. There is evidence that in the past European funding has set targets specifically relating to the Welsh language.

46. The UK Government's trade policies and more recently Free Trade Agreements negotiated by the UK Government following Brexit have the potential to affect the viability of small, family farms in Wales. Family farms are central to the rural economy, the culture of Wales and the vitality of the Welsh language. Welsh farms are on average substantially smaller than farms in England and Scotland. According to the National Census figures 43% of agricultural workers speak Welsh, compared to 19% of the population as a whole. This is the employment sector with the highest proportion of Welsh speakers. It is possible that agreements without tariffs or quotas could mean that British meat prices fall over time, with high standards of food production in Britain making it difficult for farmers to compete with foreign producers with lower standards. There is no guarantee that buyers would support Welsh farmers. Lower prices may be much more important than higher production standards, particularly for customers who do not receive high wages. In addition, if free trade agreements allowed the sale of food in Britain produced to a lower standard, the EU could block British exports to protect the Union's food standards. This would mean that not only are Welsh farmers competing with increasing imports into this country, but would lose access to other countries' markets. In this respect in its report on the [Economic and cultural impact of trade and environmental policies on family farms in Wales](#) the Committee noted the following:

As we concluded in our report on the implications for Wales of the UK/Australia FTA, we are acutely aware of the concerns held by Welsh farmers of the potential competitive threat posed by FTAs. However, while it is far from certain that the UK will be flooded with produce from countries that the UK Government is negotiating FTAs with, it is important that due thought is given to the impact of FTAs on the agricultural sector, food and drink production in Wales. One particular concern is negotiating tactics which will have a disproportionate impact on Wales, because of the greater reliance on agriculture and food production sectors—for example, subverting the interests and protections on agricultural and food production sectors in order to secure preferential access for larger domestic markets, such as, say, financial services.

47. This example highlights that decisions at a UK level can be made without considering their impact on the Welsh language even in areas that are not directly associated with the Welsh language.

Benefits

48. Social Security, Child Support, Pensions and Compensation are also reserved matters. A recent report by the [Welsh Affairs Committee on benefits](#) notes important



data on issues relating to the economic condition of Wales covering issues such as employment levels; poverty and deprivation; in-work poverty etc. ONS data on 17 May 2022 noted that between 1 January 2022 and 31 March 2022 that the unemployment rate was 3% (3.75% is the British rate) amongst people aged 16+ but that the rate of 16–64-year-olds who were economically inactive was 23.6% (the British rate is 21.4%). The Welsh Affairs Committee report also refers to the fact that a number of areas in Wales are very dependent on tourism including Gwynedd (17.7%), Conwy (17.1%) and Pembrokeshire (16.2%). It also notes that 'Wales' has the highest poverty rates among all UK nations, with 31% of children living in poverty and 71% of those children living in working households. More generally, average hourly earnings are lower in Wales than across the UK.

49. We are not aware of data and research looking specifically at deprivation and reliance on benefits in communities where there are high percentages of Welsh speakers or amongst Welsh speakers in general. However, given the fact from section 4 that so many of those areas where the Welsh language is spoken are eligible for Objective 1 funding because of their poverty it can be imagined that benefit take-up rates in many post-industrial areas such as the north-western quarrying areas and the anthracite areas of the west are relatively high. It must be ensured that the UK and Welsh governments are aware of the impact of poverty on the Welsh language and communities where it is spoken and that their policies on benefits and economic development contribute to the viability of those communities where the Welsh language is spoken by a large percentage of the population.

Immigration

50. In early 2020 the British Government outlined its intentions for a points-based immigration system for the UK. Those applying for a visa for a skilled worker will have to be able to speak English to qualify, and will receive points to reflect this as part of their application. The policy did not reflect the fact that Welsh was an official language in Wales and that it was a requirement for a number of posts. Following correspondence from the Commissioner and Welsh Government Ministers, the Home Office is considering introducing a method that would recognise the Welsh language skills of visa applicants. This example highlights that decisions at a British level can be made without considering their impact on the Welsh language even in areas that are seemingly unconnected with the Welsh language.

Welsh place names

51. There is no statutory naming authority, or legislation specifying official forms in the United Kingdom. It is somewhat misleading, therefore, to consider the place-names policy field as a reserved one. However, it is a field where specific challenges arise in relation to the Welsh language – and as a result of the bilingual nature of the place-



Comisiynydd y
Gymraeg
Welsh Language
Commissioner

names of Wales – which are further compounded by the current relationship with British institutions. The lack of awareness, or priority given, to the specific needs of the Welsh language and its speakers is a cause of constant obstacles in this field.

52. For example, Ordnance Survey is the UK's leading mapping agency. Since 2015 it has been a private company wholly-owned by the UK Government and accountable to the Secretary of State for Business, Energy and Industrial Strategy. Ordnance Survey has [a Welsh Language Scheme](#) under the Welsh Language Act 1993 dating back to 2006, but the [Welsh Names Policy](#) (updated 2016) is the key document in relation to Welsh names as it sets out how Ordnance Survey will deal with Welsh and bilingual names. This policy does not commit Ordnance Survey to recording forms in both languages and explicit priority is given to English forms as highlighted in the following quote: 'However, where for cartographic reasons space is limited, map preference will be given to the English only depiction.' It is easy to understand how this approach has led to a situation where the Welsh public feels that Welsh names are not given sufficient prominence or status in Ordnance Survey products as highlighted by [recent stories in the press](#).
53. It must be recognised that the Welsh place names data field is a complex and multi-faceted one and it is not possible to attribute all the failings of the current situation to one agency. Organisations in Wales have their part to play and we welcome the Welsh Government's recent commitment in its [Collaboration Agreement](#) to: 'Ensure Welsh language place names in the built and natural environments are safeguarded and promoted.' However, without further powers to legislate and influence over British organisations, it is difficult to see how this commitment can be fully realised.

Welsh Language Infrastructure

54. Devolution has driven major development in the translation profession in Wales, not least in the professional translation services that directly support the work of the Senedd and Welsh Government. The Welsh Government's Translation Service and the Senedd's Translation and Reporting Service have developed considerable expertise in their fields and have pioneered innovation that has led directly to strengthening the position of the Welsh language, for example the collaboration with Microsoft to create [Microsoft Translate for the Welsh language](#). Another of the spin-offs to this development is the [BydTermCymru](#) resource which shares terminology standardised by the Welsh Government's Translation Service and other linguistic resources with external translators and the public. It is an indispensable resource for those who wish to use Welsh in professional contexts. There will be a need to plan investment in this service should there be further amendments to the constitution of Wales to ensure that the necessary linguistic infrastructure is in place to support working through the medium of Welsh in this new context.

To summarise



55. The examples above highlight a situation where decisions made at a UK level have an impact on Welsh speakers. Decisions made are not always seen to give full consideration to their impact on the Welsh language. As noted in Part 1 of this paper, the fact that many of these UK Government departments making these policy decisions are not subject to the Welsh Language Standards significantly limits the Commissioner's ability to regulate them and to ensure that they consider the Welsh language in making their policy decisions.

Appendix 1 – List of UK bodies that could be made subject to Welsh language standards without the consent of the Secretary of State

| Name of body | Status of body |
|-------------------------------------|--|
| Welsh Revenue Authority | Welsh Government non-Ministerial Department |
| HM Revenue and Customs | UK Government non-Ministerial Department |
| HM Courts and Tribunals Service | Executive agency (Ministry of Justice) |
| HM Prison and Probation Service | Executive agency (Ministry of Justice) |
| Money and Pensions Service | Executive non-departmental public body (DWP) |
| Office of the Public Guardian | Executive agency (Ministry of Justice) |
| Companies House | Executive agency (Department for Business, Energy & Industrial Strategy) |
| Financial Conduct Authority | Other body (HM Treasury) |
| Animal and Plant Health Agency | Executive agency (DEFRA & Welsh Government) |
| Food Standards Agency | Non-Ministerial Department |
| Driver and Vehicle Licensing Agency | Executive agency (Department for Transport) |
| Valuation Office Agency | Executive agency (HMRC) |
| Health and Safety Executive | Executive non-departmental public body (DWP) |
| HM Land Registry | Non-Ministerial Department (Department for Business, Energy & Industrial Strategy) |
| National Heritage Memorial Fund | Executive non-departmental public body (DCMS) |
| Meat Promotion Wales | Public body |
| Intellectual Property Office | Executive agency (Department for Business, Energy & Industrial Strategy) |
| Office for National Statistics | Public body |
| Disclosure and Barring Service | Executive non-departmental public body (Home Office) |
| Driver & Vehicle Standards Agency | Executive agency (Department for Transport) |

The Commissioner's understanding is that [paragraph 1 of Schedule 6 of the Welsh Language \(Wales\) Measure 2011](#) states that the entry relating to government departments or persons exercising functions on behalf of the Crown is to be treated separately to Ministers of the Crown. It therefore appears that the consent of the Secretary of State is only



Comisiynydd y
Gymraeg
Welsh Language
Commissioner

required to make a Minister of the Crown subject to Welsh language standards, and that the consent is not required for government departments or those who exercise functions on behalf of the Crown.

Appendix 2 – List of UK organisations that could be made subject to standards with the consent of the Secretary of State

| Minister of the crown | Ministerial department |
|---|---|
| Prime Minister | Prime Minister's Office, 10 Downing Street |
| Attorney General | Attorney General's Office |
| Minister for the Civil Service | Cabinet Office |
| Secretary of state for Business, Energy & Industrial Strategy | Department for Business, Energy & Industrial Strategy |
| Secretary of state for Digital, Culture, Media & Sport | Department for Digital, Culture, Media & Sport |
| Secretary of state for Education | Department for Education |
| Secretary of state for Environment, Food & Rural Affairs | Department for Environment, Food & Rural Affairs |
| Secretary of state for International Trade | Department for International Trade |
| Secretary of state for Levelling Up, Housing & Communities | Department for Levelling Up, Housing & Communities |
| Secretary of state for Transport | Department for Transport |
| Secretary of state for Work & Pensions | Department for Work & Pensions |



Comisiynydd y
Gymraeg
Welsh Language
Commissioner

| | |
|---|---|
| Secretary of state for Health & Social Care | Department of Health & Social Care |
| Secretary of State for Foreign and Commonwealth Affairs | Foreign, Commonwealth & Development Office |
| Chancellor of the Exchequer | HM Treasury |
| Secretary of State for the Home Office | Home Office |
| Secretary of state for Defence | Ministry of Defence |
| Secretary of state for Justice | Ministry of Justice |
| Secretary of State for Northern Ireland | Northern Ireland Office |
| Advocate General for Scotland | Office of the Advocate General for Scotland |
| Leader of the House of Commons | Office of the Leader of the House of Commons |
| Leader of the House of Lords | Office of the Leader of the House of Lords |
| Secretary of State for Scotland | Office of the Secretary of State for Scotland |
| Secretary of State for Wales | Office of the Secretary of State for Wales |
| | UK Export Finance |

Initial Welsh Liberal Democrat response to the Independent Commission on the Constitutional Future of Wales

Introduction and Welsh Liberal Democrat policy position

1. The Independent Commission on the Constitutional Future of Wales wrote to the Welsh Liberal Democrats on 2nd February, inviting the Party to submit its views. We welcome the opportunity to do so, and this paper provides our high-level response to that invitation. We will look to develop our response in more detail.
2. We set out, at a high level, our principled position on the future constitution of Wales in our manifesto for the 2021 Senedd elections, as follows:

“Liberal Democrats have long argued for a federal United Kingdom. This means far more than devolution; it means that the constituent parts of the UK have power over their own affairs as a matter of enforceable legal right, as part of a wider written constitution for the UK.

Under such a system there could be no question of Westminster rolling back or circumventing the devolution settlement - as the Conservative Government in Westminster is currently trying to do.

Decisions on the future of Wales within a federal UK would be taken in Wales, with the consent of Welsh people, and with an absolute constitutional veto over any change in the relationship between the reformed United Kingdom and its constituent parts.

We are not defending the status quo. We are the only party that believes in reform both in Wales and the United Kingdom as a whole.

The Liberal Democrat vision is therefore one that creates an autonomous Wales, in which decisions are taken by democratic Welsh institutions; it is also one that avoids creating new barriers.

Since leaving the EU, Wales has seen the problems that arise when new borders are created. We believe in taking down borders, not erecting them; a federal UK is how we achieve aspirations for home rule while ensuring that people are able to continue their lives without facing border controls: after all, tens of thousands of people cross the border between England and Wales every day, in both directions, to work and carry on businesses, or just to visit family and friends on the other side of the border.”

3. We also made it clear that, within the current devolution framework, we would seek the transfer of further powers to the Senedd and Government. These include powers over policing and criminal justice, in line with the report of the Silk Commission in 2011; Welsh broadcasting; some responsibility for benefits

and welfare, to bring Wales' powers into line with those in Scotland; and a greater degree of fiscal autonomy for Wales, including greater borrowing powers and the creation of a Bank of Wales, to ensure that policy decisions in areas already devolved to Wales were not unduly constrained by HM Treasury fiscal rules and to allow the Welsh Government to take fiscal decisions for an economy whose structure and character is in many respects different from that of the UK as a whole.

4. We strongly support proposals to increase the size of the Senedd to make it more effective and better representative of the people of Wales.
5. But we have long argued in favour of constitutional change across the whole of the United Kingdom. Our support for electoral reform is long-standing and well-known. But that is only one aspect of a wider conviction that the United Kingdom needs far-reaching constitutional change, including a written constitution in which the rights and powers of the state are codified in a way that is legally enforceable. As we argue below, developments since 2016 have made that reform more urgent and more important.
6. We also seek to conduct the discourse about the constitutional future of Wales in a way that avoids simple binaries – between, most of all, concepts of independence or defending the Union. We prefer to conduct a debate about outcomes – about the way in which a renewed Welsh democracy might operate, rather than shoe-horning our views into pre-existing and often emotionally-loaded categories that we believe do not do justice to the complexities of the tasks we face. If we have learned one thing from the process of Brexit, it is that sovereignty is not a straightforward issue and the use of simplistic language to describe complex processes does not serve democracy well.

Liberal Democrats and federalism

7. Welsh Liberal Democrats define ourselves as a **federalist** party. It means that we believe that political legitimacy flows from the governed to government, and that overarching political institutions must rest on consent, and on clear enforceable rules. As a matter of principle centralised political institutions should only take decisions where they cannot be taken at a local level.
8. That statement reflects a number of key Liberal Democrat positions:
 - a. We are a **democratic** party – we believe in values of open, democratic, responsive decision-making, in which structures empower rather than restrict decision-making and in which all members of society, without exception, are able to participate fully.

- b. We are a **decentralist** party – we believe as a matter of principle that decisions should be taken as close as possible to the people that they affect, with those people being as fully involved in those decisions as possible. As a matter of principle, we believe in subsidiarity: the principle that it is not appropriate for higher levels of Government to direct local decisions.
- c. We are a **constitutional** party – we believe that democracies work best when there is a clear constitutional statement of the rights of individuals and the powers of government at all levels; a written constitution that is enforceable at law. We believe that politics work best in a rules-based environment, based on a commitment to the rule of law, equality before the law and the impartial administration of justice.
- d. We are an **internationalist** party – we believe that modern democracies must be outward-looking, understanding that the most pressing issues facing the modern world – climate change above all – can only be dealt with through concerted international action, through a rules-based institutional framework. We are a party that believes in breaking down barriers between states and nations, not erecting them.
- e. We are a party of **self-determination** – we believe that people have the right to self-determination and that has been a central liberal principle throughout the three centuries that Liberalism has existed as a distinctive political force. We understand that many of the ways in which people express their political and social identity are based on their sense of belonging to, for example, a nation or an ethnic group, or through expressions of faith. But we reject nationalism in the sense of the belief that the occupation of a particular area of land, or a particular historical tradition, conveys on a group of people a unique and discernible set of characteristics that defines the nature of the political rights that they, and they alone, should enjoy – and the political system within which they should enjoy those rights. As Liberals we believe that political rights are universal and indivisible.

9. Those principles shape our approach to the constitutional future of Wales.

10. We believe that that future should enshrine the following principles:

- a. That the existence of a political authority in Westminster exercising any sovereignty over the different constituent nations of the United Kingdom should do so by the explicit consent of the people and Parliaments of those nations, from which it draws its legitimacy.

- b. That there should be no internal borders within the British Isles, allowing freedom of movement and a single market;
 - c. That Wales should be self-governing, with all political decisions taken within Wales – at Government or local level, except where the people of Wales have explicitly agreed voluntarily to cede sovereignty – and with the right to do so enshrined in a legally-enforceable written constitution;
 - d. That democracy in Wales should operate on the basis of subsidiarity, i.e. decisions are taken as close to, and as far as possible, by the people the people they affect, and that as a matter of principle higher tiers of Government should not overrule the lower (while recognising that the powers of all powers should be set out in a framework of rules).
 - e. That same principle of subsidiarity should exist across the United Kingdom – that while the different constituent parts of the UK may choose to pool sovereignty, that is a matter of agreement and choice.
11. It will be clear that this vision has profound constitutional implications, not just for Wales, but for the United Kingdom as a whole. This vision is incompatible with the preservation of the existing institutions at Westminster, and requires fundamental political change not just in the relationships between Wales and Westminster, but much more generally across the United Kingdom.

Politics and Welsh identity

12. National identity is not a straightforward concept, especially in understanding the complexities around Welshness and Britishness.
13. Wales has a distinct national, cultural and political identity. It exists within historically long-established borders. Above all, it has its own language and literary traditions, which shape our national identity to a significantly greater extent than the other non-English languages of the United Kingdom. And, unlike most minority languages, its use is growing. It adds a uniquely Welsh cultural dimension to issues that other parts of the United Kingdom face – like the crisis over second homes. On that basis, Wales fulfils the criteria for a self-contained political entity, within the Liberal tradition of self-determination.
14. But our history as part of the United Kingdom provides an extra layer of identity. Many – perhaps a majority – are happy to define themselves as both Welsh and British. Many Welsh people identify strongly with British institutions like the Monarchy. And about a quarter of the population of Wales was born in England. Tens of thousands of people cross the border every

day – in both directions – to work, or simply to go about their daily lives. North Wales and South-East Wales are tightly integrated into economic zones that cross the border.

15. The constitutional future of Wales must respect those complexities – reflecting both our distinctive Welsh identity but also our history as part of the United Kingdom; it must allow all those who live in Wales to feel a sense of belonging. There must be no hierarchy of Welshness; our Welsh democracy must be a place that respects the identities and stories of everyone living within its borders.

The challenges facing Welsh democracy

16. The history of devolution in Wales since the first Assembly was convened in 1999 is one of a fledgeling democracy that has grown in powers, legitimacy and confidence. Although the people of Wales only voted for devolution by the narrowest of margins, the institution of the Senedd and of Welsh Government now commands general support; the only political party advocating the end of devolution at the 2021 Senedd election suffered a crushing electoral defeat. The Senedd has gained in respect, authority and legitimacy during its more than two decades of existence and is now looking to expand its capacity to act as a full and functioning Parliament.
17. Moreover, Welsh democracy, although it conducts political debate robustly, has been conducted in a less confrontational and more consensual way than politics at Westminster, with working across political parties the norm. And it has been largely free of the kind of scandal that has come to characterise Westminster.
18. With more than two decades of devolved Government, with steadily increasing power devolved in Cardiff Bay and a track record of delivery - and in particular following the greater awareness of devolved power that the Welsh Government's role in responding to the Covid pandemic has allowed - the terms of the debate around devolution have changed. Whereas in the early days of devolution the question might have been one of what might possibly be devolved, the question now is one of justifying those powers that are retained at Westminster. Democracy in Wales is vibrant and functioning – and in many ways shows a purposefulness and integrity that Westminster's political discourse increasingly lacks.
19. By contrast, the Westminster system is in a state of crisis. Centralised and inflexible, it seems increasingly incapable of holding an overweening executive to account. And the roots of that crisis lie, not just in the decisions being taken by the present Government, but in the inadequacies in the Westminster system that have been exposed when Westminster politicians no

longer comply with the informal conventions that lie at the heart of how Government has been conducted.

20. Welsh democracy has now reached a crucial moment. As the devolved Parliaments and administrations across the UK become increasingly confident and more politically divergent, key challenges are emerging for the Welsh constitution.
21. The Covid pandemic revealed both the strengths and the weaknesses of our Welsh democracy. It illustrated a confident polity, able to take its own decisions over the key public health issues, and demonstrated to many people for the first time, not just that the Welsh government took decisions on the big issues that matter to them, but that it could do so with confidence and competence. We as a party did not always agree with those decisions – for example over vaccine passports – but we always respected the fact that those decisions were rightly made by Welsh politicians, elected by Welsh people.
22. At the same time, it was clear that Westminster's control of Welsh Government funding was a weakness. We saw, for example, the conflict between the Welsh Government's and Westminster, which refused to provide the funding that Wales needed to extend furlough provisions to support our Government's public health decisions.
23. The aftermath of Brexit, too, raises fundamental questions over the current devolution settlement. While Wales voted narrowly to leave the European Union – and we do not therefore face the same kind of constitutional questions as Northern Ireland and Scotland, forcibly removed from the EU against their will, we are like those nations still facing forced constitutional change, without consent, although of a more subtle nature.
24. There is no doubt that the way in which Brexit has been implemented has undermined the devolution settlement, and it appears quite deliberately so. The United Kingdom's Internal Market Act has given Westminster powers over a wide range of issues, previously devolved but within EU competence. These include fundamentally important issues to Wales like agricultural policy, environmental policy and food standards. The Westminster Government's pledge to replace EU funding in its entirety has not only been dishonoured, but such funding as has been made available for "levelling-up" purposes has been allocated in a way that by-passes Wales' democratic institutions.
25. Moreover, the tenor and tone of Westminster politics has changed, and done so in a way that is fundamentally inimical to the devolution settlement. While the powers of the Senedd and the Welsh Government have been expanded through a series of Acts of Parliament in Westminster, much of the relationship between Westminster and Wales is managed through

conventions – like the Sewell and Barnett conventions – which do not have legal force.

26. More generally, there has been an explicit acceptance by Westminster that the position of devolved Governments should be protected, and that the legislation that underpins devolution should have a privileged and protected status within the terms of the unwritten Westminster constitution.
27. In other words, much of the devolved relationship with a Parliament that cannot bind its successors rests on trust, respect and convention. But since 2019, Westminster has acted in a way that shows disrespect for constitutional precedent – for example the unlawful prorogation of Parliament in order to pass Brexit legislation in 2019 – and has sought to pass legislation that contravenes international law. It has sought to undermine the Belfast Agreement on the constitutional status of Northern Ireland, taking unilateral action which conflicts with that agreement, against the will of Northern Ireland electors as expressed in the May 2022 Assembly elections. It is moving away from democratic norms and, with Parliament supreme, there is no check to prevent that move.
28. Moreover, given the principle that the Westminster Parliament cannot bind its successors, the existence of legislation on the Westminster statute book offers, in principle, no protection for devolution. There is nothing in theory to prevent the Westminster Parliament from passing legislation for roll back or even abolish devolution. The conventions on which Welsh devolution rests could be rewritten or removed at the stroke of a Westminster pen; our democratic institutions could be fundamentally changed or even abolished by a Westminster process in which Wales would have no more than a minority voice.
29. In short, the Westminster Government's record in recent years has demonstrated that a devolution settlement relying on convention and precedent is no longer safe
30. For those reasons we believe that the bedrock of any future federal arrangement with the other nations of the United Kingdom must be legally enforceable. As a matter of principle, a federal arrangement in the United Kingdom means that the Westminster Parliament must renounce its inability to bind its successors – in other words, requires fundamental change in one of the most important principles of the Westminster Parliamentary system. It raises a question of whether, however close Wales' relationships with the other nations of the United Kingdom might in practice be, it is actually possible to deliver a federal United Kingdom without a form of *de jure* independence – one that, for example, includes the right to withdraw the consent on which the federation is based, and to leave it.

31. While it is not possible to give an answer to that question, it is possible to say definitively, first, that a genuinely federal structure for the United Kingdom would require fundamental constitutional change at Westminster; and, second, that the process of setting up a federal arrangement within the United Kingdom will be a legally complex and time-consuming process, at the end of which the outcomes would bear very little relation to the nature of the constitutional arrangements that currently obtain on this island.

Conclusions

32. On the basis of the assumptions set out above, we therefore conclude that:

- a. The status quo is not an option. Wales has reached a constitutional watershed, a point at which the existing devolution settlement is no longer able to reflect our nation's democratic aspirations or to provide the democratic government that it now requires.
- b. By the same token, it is not credible simply to cut loose from the UK. If Brexit has demonstrated one fact, it is that the future of Wales will be determined by the relationship we have with our neighbours on these islands. Wales must, we believe, be outward looking: but you cannot be global if you do not maintain close links to your neighbours.
- c. Moreover, whatever the formal constitutional status of Wales, a close relationship with England and the other nations of the United Kingdom is essential. There must be no closing of borders; there must be freedom of movement and seamless economic links. Those links are as much a part of our history and identity as they are economically necessary.
- d. Our concept of a federal Wales is best described, not in terms of the binaries that have bedevilled constitutional debate, but in terms principles and outcomes.
- e. Wales requires a written constitution. It requires the powers of political institutions, and the rights that people enjoy within them, to be codified and legally enforceable. We believe that there is a need for a federal body to exercise powers across the current United Kingdom, in particular to allow freedom of movement and to create a single market, but that its powers should be ceded by national Parliaments on the basis of consent and the right to withdraw. Whatever its formal status, it will need to be very different from the centralised – and obviously failing - Westminster model.

- f. We do not believe that it is right to draw up a shopping-list of which powers should be exercised by the federal body – not least because such a debate will need to involve all parts of the United Kingdom. But we believe in the principle that powers should default Welsh political institutions and sovereignty should only be ceded where there is a demonstrable need and benefit from doing so, and with the explicit consent of Welsh political institutions.

Consultation response: Women's Equality Network Wales

July 2022

Background

This consultation response was drafted following a meeting of the Cross-Party Group on Women, which considered constitutional reform and received a presentation from Professor Laura McAllister. It reflects the points raised by a number of third sector representatives, academics and MPs at that meeting. The draft response was also circulated to our Gender Network, an intersectional policy forum of 47 organisations, activists and academics working across Wales, who added further comments.

While the meeting did not discuss the merits of different governance models in detail, there was a strong feeling that Wales' current constitutional set-up does not readily support or reflect the democratic will of Wales. Our efforts to protect and strengthen gender equality and women's right in Wales – including the rights of women experiencing intersecting discrimination – are often hampered by a lack of devolved powers, most notably with regard to equality/equal opportunities, justice, welfare, employment, policing and immigration. It is important that the powers of the Welsh Government and the capacities of the Senedd are considered simultaneously to ensure good scrutiny and accountability, which are crucial for effective governance that delivers for the people of Wales.

Equality/equal opportunities

As organisations and individuals working in the equalities sector, our aspirations for progressive policies in Wales are bound by the reserved power for equal opportunities and relevant UK legislation such as the Equality Act 2010. This has complicated or limited our work on many occasions:

- *Equity vs equal opportunities:* As an overarching point, current UK legislation is based around delivering equal opportunities, an approach which is focussed on eliminating discrimination and treating everyone equally. This is at odds with the reality of deeply embedded structural inequalities, and as long as these remain unaddressed, treating everyone the same will only reproduce entrenched inequalities. The [Gender Equality Review](#) recommended a more far-reaching equity or equalities mainstreaming approach to equality and the Welsh Government accepted this recommendation, but Wales needs the regulatory power to introduce this.

- *Diversity and gender quotas:* Concerns around devolved competency were a major obstacle in securing Senedd and Welsh Government support for legislative gender quotas, despite wide support among the Welsh public and sound international evidence that quotas are the best way to fast-track women's representation. Globally, [intersectionally embedded quotas](#) are emerging as best practice to ensure diverse representation across different protected characteristics and ultimately the Welsh Government should work towards these as the gold standard. But a distinction in the Equality Act between sex/gender and other protected characteristics and the resulting legal complications meant that regrettably legislative quotas for other protected characteristics could not be pursued at the same time even though they were much needed, as can be seen, for instance, from the fact that it took 20 years for the first woman from a racialised background to be elected to the Senedd. The limitation in the Equality Act also means that parties are unable to use voluntary initiatives that could boost diverse representation, such as All Black Shortlists while they can use All Women Shortlists.
- *Job-sharing in the Senedd:* [Recent research by WEN](#) shows that introducing job-sharing could be an important lever to improve diversity in Welsh politics. The Expert Panel recommended that candidates should be allowed to stand for election on the basis of job-sharing, but concerns about the devolved competence to legislate on executive (Minister/Cabinet) job-sharing were a key factor in the [Assembly Commission's decision](#) to not implement this recommendation.
- *Diversity data:* Also on the point of representation, we currently lack robust data on how well candidates with different protected characteristics are represented in Welsh elections and in elected office at all levels of government. Mandatory collection and publication of diversity data would be an important mechanism to ensure transparency and accountability. The Equality Act 2010 contains a provision to introduce such a duty. The power to commence this section resides with the UK Government but despite calls from both the Expert Panel and the Bowden Committee the UK Government has not brought it into force. The [Special Purpose Committee](#) has now recommended that the Welsh Government take the initiative on this by placing a requirement on returning officers to collect and publish this data. Again this will require careful drafting to ensure legislation is within devolved competence and it is regrettable that we have lost many years waiting in vain for the UK Government to commence this legislation due to a lack of devolved power over equality legislation.
- *Disabled people's rights:* Gathering robust diversity data about disability poses particular challenges because many people living with invisible/long-term health conditions or impairments are not aware that they might be justified in describing themselves as 'disabled' because there remains an entrenched view of what disability 'looks like.' Again, lack of devolved power over equality

legislation is a key factor behind this. The Equality Act 2010, uses a [medical model of disability](#) which defines a disability as a “physical or mental impairment that has a 'substantial' and 'long-term' negative effect on a person’s ability to do normal daily activities.” The medical model is rejected by disability organisations in Wales as well as the Welsh Government in favour of a [social model of disability](#), which has been developed by disabled people themselves. The social model recognises that most of the barriers that disabled people experience are not a direct or inevitable consequence of their impairment, but are caused by the way society is organised, including people’s attitudes to disability, and physical and organisational barriers. The medical model is negative, stigmatising and exclusionary and the fact that it is entrenched in society contributes to ableism and disability discrimination, including in employment. The Welsh Government is looking for ways to further embed the social model in policy-making, but the difference causes significant uncertainty regarding what constitutes a “disability” that impacts on people's self-perception. The lack of devolved authority to fully enshrine the social model in equality, employment and social security legislation makes it impossible to fully eradicate the medical model from policy, law and society so that disabled people in Wales can participate equally.

- *Trans and non-binary people’s rights:* We are concerned over an increase in hostile rhetoric towards trans and non-binary people in the UK Government. Despite the Welsh Government’s commitment to LGBTQ+ rights, this is also threatening trans and non-binary people this side of the border, where we are seeing an increase in hate crimes. The UK Government has let trans people down in its decision to not introduce self-determination in the reform of the Gender Recognition Act and its recent U-turn on a ban of conversion therapy for trans and non-binary people. Gender recognition is reserved under the reserved power for justice. The Welsh Government committed to seeking devolved powers in relation to gender recognition and is taking legal advice for unilateral action on a conversion therapy ban. Currently, neither the Equality Act 2010 nor the Gender Recognition Act 2004 explicitly cover non-binary people, limiting Wales’ ability to legally recognise non-binary identities, as already done in countries like Australia, New Zealand, Germany and India. Devolved competence for equality and justice is needed so that Wales can uphold the rights of gender minorities in line with its commitment to being the most LGBTQ+ friendly nation in Europe

Social security and employment

Lack of devolved competence for welfare and employment legislation are major barriers to making progress on women’s equality in Wales.

- Positive legislation like the *public sector equality duty*, the equality impact assessment and new economic impact assessments lack enforcement in workplaces. The duty is meant to require public bodies to have due regard to the need to eliminate discrimination and advance equality through considering actions before they are taken. However, there is strong evidence that the public sector equality duty is not working due to a lack of enforcement and accountability. It needs to be strengthened and have consequences.
- *Poverty and Universal credit*: The UK Government's decision to cut the £20 Universal Credit uplift in autumn 2021 has had disastrous consequences for many people who were already struggling and are now facing the increasing challenges from rising cost of living. Women are more likely to be [in work and claiming social security benefits](#) such as Universal Credit. 55% of Universal Credit claimants in Wales are women, with 43% of women claimants being in work. The fact that Universal Credit is paid to only one household member's bank account makes women vulnerable to financial and domestic abuse and traps many women, especially racialised, disabled and trans women in dangerous situations. Wales already had the highest poverty rates of all the UK nations before the pandemic, including child poverty which is linked to women's inequality. This is a major problem and Wales urgently needs the legislative and fiscal powers to address this effectively. Compared to England, a higher proportion of the Welsh population is disabled. Many of them experience poverty and receive legacy benefits, such as Income Support or Income Based Jobseekers allowance, which were not subject to the Universal Credit Uplift. It also disproportionately impacts women from racialised communities, who face much greater rates of unemployment compared to other groups of women and compared to men from the same communities. Employment rates for white men and women are higher than for racialised men and women, with statistics showing racialised women are most disadvantaged. In 2021, 75% of white men [were in employment](#) compared with 73% racialised men and 70% white women compared with 56% racialised women. Poverty is also a huge issue for trans women who may have to pay for medication and surgeries that the NHS does not always cover. While we lack specific data on Wales or the UK, past reports for Ireland have shown that [51% of trans people were unemployed](#) in 2016. With power, as the saying goes, comes responsibility. The UK Government has power over social security benefits, but it is not living up to its responsibility to provide even the bare minimum to many people who experience poverty. The Welsh Government has called for retaining the £20 uplift, an extension of the uplift to legacy benefits has been recommended by the [Locked Out report](#), whose findings were accepted by the Welsh Government, and both issues have been raised by the [Welsh Affairs Committee](#), all to no avail. The Welsh Government is resorting to devolved powers to try to address the shortfall in Wales through a [range of targeted measures](#), including payments to families in

receipt of free school meals, one-off payments to people receiving council tax relief and the discretionary assistance fund. Given that some of the poorest people in Wales, including single mothers, racialised, disabled and trans women, already partly rely on the Welsh Government for the most basic level of social security, devolution of this area and the associated fiscal powers is a natural and necessary step.

Justice and policing

- *Human Rights:* We are very concerned about recent legislative developments at the UK Government level that significantly undermine human rights and access to justice in Wales, such as the Nationality and Borders Act, the Police, Crime, Sentencing and Courts Act, and the Bill of Rights which seeks to replace the Human Rights Act. The Welsh Government refused to give legislative consent to the [Nationality and Borders Bill](#), as it directly contradicts the vision to be a Nation of Sanctuary and due to its impact on devolved areas of competence such as [care for unaccompanied asylum seeking children](#). But the Bill became an Act of Parliament in April 2022, with the UK Government being of the view that the UK-wide measures relate to reserved matters. Despite widespread opposition from the Welsh Government, immigration specialists, human rights law specialists and the third sector in Wales, asylum seekers and refugees in this country are now subject to the damaging implications of this legislation.

The proposed changes set out in the [Bill of Rights](#) raise significant issues regarding accessibility to the courts, the rule of law and the role of the courts in the application of the law relating to human rights. This is because they seek to reduce the expectation that UK courts follow the case law of the European Court of Human Rights in Strasbourg. The proposed legislation could therefore considerably weaken human rights protections in Wales and put the UK at risk of breaching its international obligations if it is not upholding Convention rights to the standard that Strasbourg has deemed necessary.

The Welsh Government opposes the reform of the Human Rights Act, which is in direct conflict with its own efforts to strengthen and advance human rights in Wales. The Bill and the consultation leading up to it have faced immense criticism from human rights law specialists and the third sector in Wales. The consultation did not explicitly state how the specific legislative and socio-economic interests of the devolved governments will be impacted. For instance, the Welsh Government has committed to incorporate the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of Disabled People (CRPD) into Welsh law. These would be key advancements for the rights of women and disabled people in

Wales, and something we have long campaigned for, but it is not clear how the commitments will be affected by the proposed bill of rights.

In light of this friction and the evolving threat to the rights of all people in Wales, the reservation over justice is untenable and powers over justice need to be devolved to Wales as a matter of urgency. As part of that, Wales needs to key into global instruments like CEDAW, CRPD and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). An equality dimension needs to be built into the justice system in Wales if it is devolved and this must ensure the Welsh population in all its diversity is properly represented in every aspect of Wales' judicial system.

- *Policing and immigration:* Wales has its own police forces but has limited discretion over how they are run as the ultimate responsibility lies with the Home Office who are also in charge of immigration and the 'hostile environment' approach. This significantly limits Wales' ability to live up to its commitment as a Nation of Sanctuary and especially impacts women with an insecure immigration status, or whose migration status is dependent on a spouse or employer. These women are at an increased risk of violence and exploitation, yet the perceived or real threat of being detained and deported, together with the policy of 'no recourse to public funds' (NRPF), has a devastating impact on their ability to report abuse and access protection, support and specialist services. The Welsh Government is seeking legal advice on providing a last-resort fund to survivors with NRPF, as recently done by the [Scottish Government](#). Efforts to put in place this desperately needed support are complicated by a legislative landscape that prevents devolved governments from lifting or amending NRPF conditions. The UK Government's recent announcement to ratify the Istanbul Convention with reservations on the rights of migrant women reiterates this hostile approach and demonstrates that Wales needs power over policing and immigration to be able to provide sanctuary and safety for migrant women.

Connection between Senedd Reform and Constitutional Reform

- While the current Senedd and Welsh Government are committed to protecting and advancing equality and human rights in Wales, we recognise that there is no guarantee that this will remain so in the long-term timescales that we need to consider if we are thinking about constitutional reform. Wales' electoral arrangements, that are currently under review as part of the Senedd Reform process, have a crucial role to play in future-proofing any constitutional changes. Only by having diverse and equal representation at the heart of Senedd Reform, through legislative gender quotas and strong measures to encourage the election of people from other underrepresented groups, can we ensure that future elected representatives come from all parts of the Welsh

population and understand the importance of equality and the rights of all people in Wales. This needs to include better support for those for whom financial barriers are often the biggest hindrance to elected office, including disabled and racialised women. We also urgently need appropriate protection from harassment and abuse that disproportionately impacts underrepresented candidates. Abuse and harassment of Senedd Members and candidates must be recognised as a workplace issue that the Senedd as an employer has the responsibility to address.

- It is important to ensure that the processes of constitutional reform and electoral reform feed into and strengthen each other over time. We have seen that a lack of devolved powers over equality currently limits our efforts to improve diverse and equal representation. As further powers are devolved, it will be important to review Senedd electoral arrangements to ensure that we make maximum use of the powers we have at any given point to encourage the election of a more diverse Senedd, as this so crucial to effective scrutiny.
- We know that diversity leads to better scrutiny and decision making, but capacity is also a key factor. It is important that the recommendation to increase the number of MSs is taken forward, to ensure better scrutiny of the powers already in the Welsh Government's remit, as well as those additional powers that we strongly believe need to be devolved in order to progress our work for a fairer and more equal Wales.

The practical examples that we have encountered in seeking positive change in Wales point to a major problem: despite wide support among the Welsh population as well as the Senedd and the Welsh Government, commitments to protect and strengthen equality and human rights in Wales could either not be pursued at all or faced major difficulties due to a lack of devolved competence in critical areas. This is wrong. Intergovernmental arrangements should function as a safeguard to prevent devolved nations from falling below UK and international human rights standards, they should not stand in the way of devolved nations going beyond these standards or prevent Wales from being a trailblazer on equality and human rights.

Our concerns are further aggravated by a deterioration of intergovernmental relations, evident in the recently announced UK Government plans to repeal Welsh law so that agency workers can cover for public workers on strike or the recent £30m cuts to the Welsh Government's budget to finance military aid for Ukraine without appropriate consultation. These developments make our work in Wales increasingly difficult as it suggests we cannot rely on the fact that those powers already devolved will always be respected. We believe that any constitutional reform going forward will need to strongly enshrine scrutiny, cooperation and consultation as principles of good intergovernmental relations and ensure accountability and enforcement of these principles.

For these reasons, we believe that Wales cannot be a feminist nation, an anti-racist nation, a nation where disabled people have equal rights, a nation of sanctuary, the most LGBTQ+ friendly nation in Europe or the safest place in Europe to be a woman until it has autonomy over the policy areas discussed above, and until its powers are duly respected in intergovernmental relations.

Yours sincerely,

Catherine Fookes, Director, WEN Wales

Frances Beecher, Chief Executive, Llamau

Nancy Lidubwi, VAW Policy Manager, Bawso

Nkechi Allen Dawson, Lead Policy Officer, Race Council Cymru

Rhian Davies, Chief Executive, Disability Wales

Fair Treatment for the Women of Wales (FTWW)

Jane Fenton-May, Wales Assembly of Women

Abi Thomas, Women's Officer, Plaid Cymru Carmarthen West and South Pembrokeshire Constituency Committee

Christina Tanti, Research and Evaluation Manager, Race Equality First

Cerys Furlong, Chief Executive, Chwarae Teg

About the Women's Equality Network (WEN) Wales

Our vision is of a Wales free from gender discrimination where all women and men have equal authority and opportunity to shape society and their own lives. We work with our vibrant coalition of organisational and individual members to transform society. Our work sits under three pillars. We will Connect, Campaign and Champion women so our vision is realised.

Thank you for the opportunity to contribute to this consultation. If you have any further comments or queries, please get in touch.

Have your say: Welsh Justice Union Groups

1. What matters to you about the way Wales is run?

As Trade Unionists working in the Criminal Justice system in Wales we are committed to principles of fraternity, solidarity and integrity. What matters the most to us is a Criminal Justice System in Wales that protects the public and reduce offending while protecting our members and their interests and integral rights as Welsh workers.

We are also ordinary working people living in our communities with the expectation that we are rewarded for our hard work protecting the public in Wales.

2. What do you think the priorities for the commission should be?

Devolution of Justice is the natural first step to further Devolution powers and wider constitutional changes.

The Commission should focus on the mechanics and process where this can be achieved both politically and practically.

3. Thinking about how Wales is governed, by the Welsh Government and the UK government, what are the strengths of the current system, what aspects do you most value and wish to protect? Can you provide examples?

Welsh Government already provides particularly robust support to the criminal justice system through Education and Healthcare provision. There has also been significant partnership progress to address housing needs for those involved with the Criminal Justice System and specifically prepare for the potential early release of prisoners.

4. Are there any problems with the current system, and if so, how could they be addressed? Again, please provide examples.

The lack of Devolution of Justice to Wales has created a disjointed and fragmented Service both for the public but also for those of us working within the Criminal Justice System in Wales. A lack of devolved accountability and purpose means the Justice System has served the narrower interests of the British State without considered the key needs of Wales. The issues had sat alongside the devastating effects of Austerity, cuts to budgets, staff and staff pay, which has significantly reduced the function and delivery of Service.

The most profound example of this is setting of HMP Berwyn in Wrexham. Berwyn currently hold up to 1600 Category C prisoners. Statistics provided by HMPPS in Wales to the Prisoner Officers Association in 2021 showed that if these only 4% of prisoners were Welsh prisoners. Built entirely to serve the needs of the Criminal Justice system outside Wales Berwyn is now an establishment in Crisis with endemic violence, substance abuse; and an almost total inability to retain staff. These Crisis spill over into the wider Welsh Criminal Justice system with resources and staff diverted to Berwyn further weakening the ability of the Service to protect the public in Wales and rehabilitate and resettle offenders. Wider issues within the prison include Education provision. at HMP Which from foundation has been privatised and the provider while absorbing Welsh government funding was able to divert funding to projects in England.

This is just one example but others exist throughout the Probation, Court and Police services. The omission of devolution of Justice in Wales, which was devolved in Scotland, continues to sit as a millstone on the people of Wales. Both draining resources and diverting accountability for Welsh Services from Welsh Democracy.

5. Thinking about the UK government, the Welsh Government and Welsh local government (your local council), what do you think about the balance of power and responsibility between these 3 types of government – is it about right or should it change and if so, how? For example, who should have more power, or less?

Greater Powers to the Welsh Government in particular the devolution of Justice would rebalance and address the deficits in the Devolution settlement.

6. As a distinct country and political unit, how should Wales be governed in the future? Should we: broadly keep the current arrangements where Wales is governed as part of the UK, and the Westminster Parliament delegates some responsibilities to the Senedd and Welsh Government, with those responsibilities adjusted as in Q5, OR move towards Wales having more autonomy to decide for itself within a more federal UK, with most matters decided by the Senedd and Welsh Government, and the Westminster Parliament decides UK-wide matters on behalf of Wales (and other parts of the UK) OR move towards Wales having full control to govern itself and be independent from the UK OR pursue any other governance model you would like to suggest alongside any of these options, should more responsibilities be given to local councils bringing decision making closer to people across Wales and if so, please provide examples.

We can only comment on the urgency with which Devolution of Justice should be considered and implemented. However ultimately this would function best within a federal UK political setting with Justice devolved in other polities like Northern Ireland or England.

7. Overall, what is most important to you about the way in which Wales should be governed in the future? Is there anything else you want to tell us?

The Criminal Justice System to be effective, efficient and to deliver for the people of Wales needs to be fully devolved. including youth Justice, probation, Courts, Prisons and Policing. This would provide greater accountability to the public and remove the jagged edge obstacles that have resulting from Justice not being devolved as it was in Scotland.

8. In responding to these questions, we would welcome views on how the current forms of governance, and any proposals to change governance in the future, might impact on the Welsh language.

further Devolution in the Justice system would foster and promote the Welsh Language and further retain Welsh speaking staff.

Information to include: Please let the commission know if you are writing in a personal capacity or on behalf of an organisation. If you are writing on behalf of an organisation, it would be helpful if you could confirm its purpose, size and membership.

I am submitting on behalf of the Welsh Justice Unions Group (WJUG) which comprises representatives from Public and Commercial Services Union (PCS) representing civilian workers within the Prison Service within Her Majesty's Prison and Probation Service in Wales (HMPPS in Wales) , National Association of Probation Officers Cymru (NAPO Cymru) representing Probation Officers and other workers within Probation, Prison Officers Association (POA) representing Prison Officers, Unison Trade Union representing workers in the justice system including police civilian workers, and GMB Union representing various justice service workers including solicitors.

The WJUG was established to represent and give voice to our members working within the Criminal Justice System in Wales. We have met and engaged with senior management, Members of Parliament, Senedd Members as well as Welsh Government Ministers. We are currently working with other to form a Senedd Cross-Party Justice Group.

It is disappointing that the Commission has spoken directly to the Chair of the Commission on Justice in Wales (the Thomas Commission), and Richard Wynn Jones from Cardiff University's Wales Governance Centre but not to the Welsh Justice Unions and their members who work on the frontline of the Criminal Justice System in Wales.

| |
|--|
| |
| |

Welsh Government

Evidence to the Independent Commission on the Constitutional Future of Wales – A list of Welsh laws passed since power to make legislation was devolved to the National Assembly for Wales / Senedd Cymru

Date: September 2022

Contents

| | |
|--|---|
| Welsh laws passed since 1999 | 3 |
| Table 1: Acts of Senedd Cymru | 3 |
| Table 2: Acts of the National Assembly for Wales..... | 4 |
| Table 3: Measures of the National Assembly for Wales | 5 |

Welsh laws passed since 1999

1. Despite their only brief existence as a legislature and government in Wales,
 - the National Assembly for Wales/Senedd Cymru has passed 72 Measures or Acts since 2007. This figure represents 22 Measures of the National Assembly for Wales; 44 Acts of the National Assembly for Wales and six Acts of Senedd Cymru to date; and
 - nearly 6,000 Welsh Statutory Instruments have been made including those made by the National Assembly for Wales from 1999 to 2007 and the Welsh Ministers since 2007. This figure includes both local and general Welsh Statutory Instruments, and approximately 36% of Welsh Statutory Instruments are local in nature which include temporary road traffic orders.
2. The Acts and Measures of Senedd Cymru and the National Assembly for Wales are detailed in the tables below (**Tables 1-3**). The hyperlinks to the Acts and Measures of Senedd Cymru and the National Assembly for Wales include links to explanatory memoranda and explanatory notes which provide summaries of the legislation, their policy intent and legislative purpose and effect. Should it be helpful to the Commission for the Welsh Government to provide any further explanatory detail on any specific pieces of Welsh legalisation we would be happy to do so.

Table 1: Acts of Senedd Cymru

| Acts of the Senedd Cymru |
|--|
| Curriculum and Assessment (Wales) Act 2021 |
| Renting Homes (Amendment) (Wales) Act 2021 |
| Welsh Elections (Coronavirus) Act 2021 |
| Local Government and Elections (Wales) Act 2021 |
| Wild Animals and Circuses (Wales) Act 2020 |
| Health and Social Care (Quality and Engagement) (Wales) Act 2020 |

Table 2: Acts of the National Assembly for Wales

| Acts of the National Assembly for Wales |
|---|
| Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020 |
| National Health Service (Indemnities) (Wales) Act 2020 |
| Senedd and Elections (Wales) Act 2020 |
| Legislation (Wales) Act 2019 |
| Public Services Ombudsman (Wales) Act 2019 |
| Renting Homes (Fees etc.) (Wales) Act 2019 |
| Childcare Funding (Wales) Act 2019 |
| Public Health (Minimum Price for Alcohol) (Wales) Act 2018 |
| Regulation of Registered Social Landlords (Wales) Act 2018 |
| Law Derived from the European Union (Wales) Act 2018 (repealed) |
| Additional Learning Needs and Education Tribunal (Wales) Act 2018 |
| Abolition of the Right to Buy and Associated Rights (Wales) Act 2018 |
| Trade Union (Wales) Act 2017 |
| Landfill Disposals Tax (Wales) Act 2017 |
| Public Health (Wales) Act 2017 |
| Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 |
| Tax Collection and Management (Wales) Act 2016 |
| Nurse Staffing Levels (Wales) Act 2016 |
| Historic Environment (Wales) Act 2016 |
| Environment (Wales) Act 2016 |
| Regulation and Inspection of Social Care (Wales) Act 2016 |
| Renting Homes (Wales) Act 2016 |
| Local Government (Wales) Act 2015 |
| Qualifications Wales Act 2015 |
| Planning (Wales) Act 2015 |
| Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 |
| Well-being of Future Generations (Wales) Act 2015 |
| Higher Education (Wales) Act 2015 |
| Housing (Wales) Act 2014 |
| Agricultural Sector (Wales) Act 2014 |
| Education (Wales) Act 2014 |
| Social Services and Well-being (Wales) Act 2014 |
| Control of Horses (Wales) Act 2014 |
| National Health Service Finance (Wales) Act 2014 |
| Further and Higher Education (Governance and Information) (Wales) Act 2014 |
| Active Travel (Wales) Act 2013 |
| Mobile Homes (Wales) Act 2013 |
| Human Transplantation (Wales) Act 2013 |
| Local Government (Democracy) (Wales) Act 2013 |
| Public Audit (Wales) Act 2013 |
| Food Hygiene Rating (Wales) Act 2013 |
| School Standards and Organisation (Wales) Act 2013 |
| Local Government Byelaws (Wales) Act 2012 |
| National Assembly for Wales (Official Languages) Act 2012 |

Table 3: Measures of the National Assembly for Wales

| Measures of the National Assembly for Wales |
|---|
| Education (Wales) Measure 2011 |
| Safety on Learner Transport (Wales) Measure 2011 |
| Housing (Wales) Measure 2011 |
| Local Government (Wales) Measure 2011 |
| Domestic Fire Safety (Wales) Measure 2011 |
| Rights of Children and Young Persons (Wales) Measure 2011 |
| Welsh Language (Wales) Measure 2011 |
| Waste (Wales) Measure 2010 |
| Mental Health (Wales) Measure 2010 |
| Playing Fields (Community Involvement in Disposal Decisions) (Wales) Measure 2010 |
| Carers Strategies (Wales) Measure 2010 (repealed) |
| National Assembly for Wales (Remuneration) Measure 2010 |
| Red Meat Industry (Wales) Measure 2010 |
| Social Care Charges (Wales) Measure 2010 (repealed) |
| Children and Families (Wales) Measure 2010 |
| Education (Wales) Measure 2009 |
| National Assembly for Wales Commissioner for Standards Measure 2009 |
| Healthy Eating in Schools (Wales) Measure 2009 |
| Local Government (Wales) Measure 2009 |
| Learning and Skills (Wales) Measure 2009 |
| Learner Travel (Wales) Measure 2008 |
| NHS Redress (Wales) Measure 2008 |

Welsh Government

**Evidence to the Independent Commission on the Constitutional Future of
Wales – A note on the legal constraints on the settlement and the case for
change**

Date: 17 October 2022

Contents

| | |
|--|----|
| 1. Introduction | 3 |
| 2. Summary | 4 |
| 3. Constitutional relationship between the Senedd and the UK Parliament..... | 6 |
| 4. Constraints on the Senedd's legislative competence | 11 |
| 5. Constraints on the Welsh Ministers' executive competence | 35 |
| 6. Conclusion..... | 39 |

| | |
|--|----|
| Table: Summary of requirements for Minister of the Crown consent | 29 |
|--|----|

Annex A: Overview of competence tests in s.108A, Government of Wales Act 2006

1. Introduction

- 1.1 The Wales Act 2017 introduced a new, reserved powers model of devolution for Wales which came into effect on 31 March 2017. The Command Paper which preceded it, *Powers for a Purpose: Towards a Lasting Devolution Settlement for Wales*, said that:

“It is in the best interests of the people of Wales that we have a clear devolution settlement which gives them a stronger voice over their own affairs within a strong and successful United Kingdom.”¹

- 1.2 Unfortunately, however, our firm view is that the 2017 Act did not achieve this, and note that even the Minister who was responsible for the Act later admitted that “it was not the end of the story”². This paper will highlight the unnecessary constraints on the settlement and demonstrate how those constraints impact upon on the democratically elected legislature in making laws for Wales; and how this in turn inhibits the Welsh Government in delivering its democratically mandated Programme for Government.
- 1.3 The paper will first examine the “big picture” constitutional relationship between the Senedd and the UK Parliament, and the recent weakening of the Sewel convention (Part 3). In doing so, it will argue that the current state of this relationship is constitutionally dysfunctional, and does not afford appropriate respect to the democratic mandate of the Senedd as the elected law-making body for devolved matters in Wales.
- 1.4 Part 4 details the technical legal landscape of legislative competence (an overview of which is set out in the flowchart at **Annex A**). In particular, it explains that while the reserved powers *model* of the settlement is now similar to that in Scotland, the list of reservations is considerably longer than in Scotland and is not organised around any coherent constitutional principle as to what should be reserved. Further, there are a number of legislative “land mines” buried in Schedule 7B to the Government of Wales Act 2006 (“GoWA 2006”), which mean that even where a matter appears to be devolved, the UK Government can prevent the Senedd from legislating about it.
- 1.5 Finally, Part 5 explains the position on executive powers; in particular, how the way in which executive powers are conferred on the Welsh Ministers is inaccessible, reactive and again lacking in constitutional coherence (and contrasts with the wholesale transfer of executive functions within devolved competence to the Scottish Ministers under the Scotland Act 1998).

¹ UK Government (2015) *Powers for a Purpose: Towards a Lasting Devolution Settlement for Wales*, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/408587/47683_CM9020_ENGLISH.pdf

² <https://www.bbc.co.uk/news/uk-wales-politics-38748801>

- 1.6 The overall picture is a settlement which is narrow and complex. The effect of the additional constraints in the Welsh settlement, in particular the Minister of the Crown consent regime, is exacerbated by the much greater number of reserved matters when compared to the Scottish settlement.
- 1.7 While we agree with the UK Government that the line between what is, and is not, devolved needs to be clearly drawn, the Wales Act 2017 does not achieve this; nor does it draw the line in the right place. The paper contains suggestions for changes to make the settlement clearer and to achieve a better constitutional balance. However these suggestions need to be considered within a broader review of the constitutional structures underpinning the United Kingdom, as per the Commission's remit.

2. Summary

- 2.1 Devolution to Wales has developed incrementally, rather than through an initial "big bang" of legislative and executive powers like in Scotland. We believe that hangovers from the pre-devolution constitutional status of Wales and the initial, executive-only phase of devolution under the Government of Wales Act 1998 remain. This is manifested in the overly restrictive constraints on the Senedd's legislative competence, the piecemeal way in which functions are transferred to the Welsh Ministers, and in the grudging attitude of the current and recent UK Governments to Welsh devolution.
- 2.2 The current relationship between the UK Government, the UK Parliament and the devolved institutions (whether in Wales, Scotland or Northern Ireland) is dysfunctional. This puts a strain on convention and shines a light on the fact that Wales' governance is underpinned not by the formality of a written constitution but by the much more fluid notion of parliamentary sovereignty as it is understood by the UK Government (essentially the right of the UK Parliament to make or unmake any law it chooses). The increasing, post-Brexit, tendency of the UK Government to disregard the Sewel convention and rely on parliamentary sovereignty to legislate without the consent of the devolved legislatures in relation to devolved matters, and to changing their powers, overrides the democratic mandate of those institutions and undermines trust between governments.
- 2.3 For the United Kingdom to function effectively it needs to be a partnership of equals, with each part voluntarily pooling their sovereignty, and co-operating on the basis of mutual respect. By contrast, the Senedd currently operates at risk of its legislation being reversed or overruled by the UK Parliament – despite its Members being accountable to the Welsh electorate in respect of all devolved matters.

- 2.4 The powers that are devolved to the Senedd are narrow and are further diluted by a range of complex restrictions on its legislative competence. This includes, most significantly, the reservation of powers in relation to justice, which inevitably closely interact with devolved matters. This makes it difficult for the Senedd to achieve coherent and comprehensive reform.
- 2.5 Many of the constraints imposed on the Senedd seem to stem from the UK Government's (ultimately futile) desire to preserve the joint jurisdiction of England and Wales. The joint jurisdiction is an outdated constitutional anomaly that cannot survive the fundamental truth of devolution: that Welsh law is increasingly diverging from English law. A Welsh legal jurisdiction must be established and responsibility for the wider justice system must transfer to Senedd Cymru and the Welsh Government.
- 2.6 There are many restrictions on the Senedd's powers that are unique to the Welsh settlement, in particular, the labyrinthine rules in Schedule 7B to the GoWA 2006). These mean that the requirements for consent of a UK Minister can obstruct the Senedd from legislating – even in relation to matters which appear to be devolved as they are not reserved to the UK Parliament by Schedule 7A to GoWA 2006. This hamstring the legislature; obscures lines of democratic accountability; and makes the settlement harder to understand for the people of Wales. They also create further potential for disputes, and litigation.
- 2.7 Functions conferred upon the Welsh Ministers are scattered across myriad sources. The mechanism for transferring further functions lacks the consistency and clarity of the Scottish settlement, in which executive functions within the Scottish Parliament's legislative competence were all (bar a handful of exceptions) automatically transferred to the Scottish Ministers at the outset of devolution. In Wales, we instead have a patchwork of powers whose boundaries are not coterminous with the Senedd's legislative competence, and which in some cases remain subject to qualifications and restrictions. This betrays an irrational, short-termist approach to devolution on the part of UK Government, through which powers are considered on a case by case basis rather than by reference to a bigger picture based on coherence and clarity.
- 2.8 All of this demonstrates that while the Wales Act 2017 introduced some improvements to the devolution settlement, it failed to deliver what the UK Government promised: a clearer settlement, in which the people of Wales had a stronger voice. It did not have to be like this, and it does not have to be like this: the Scottish settlement contains fewer reserved matters (there are 70 specific reservations in the Scottish settlement, compared to 101 in the Welsh settlement), fewer restrictions on the Scottish Parliament's ability to legislate about non-reserved matters; and a much clearer scheme of executive powers.

- 2.9 Even where restrictions in the Scottish settlement were mapped across to the Welsh settlement, such as the restriction on modifying the law on reserved matters³, insufficient consideration was given to the differences in the two settlements (e.g. the fact that Scotland has its own jurisdiction; and has a much smaller number of reserved matters). Restrictions that are relatively minor and logical in the Scottish context have far greater effect in relation to Wales. This is another reason why the two settlements, while being superficially similar, are fundamentally unequal.
- 2.10 This belies a further truth: that the United Kingdom requires fundamental reform, and a reset in attitude from the UK Government, in order to function effectively as a partnership of nations, and to flourish and prosper in the interests of all of its people.

3. Constitutional relationship between the Senedd and the UK Parliament

Constitutional status and democratic legitimacy

- 3.1 As a matter of constitutional theory at least, the Senedd is not “sovereign” because its existence, and its powers, are subject to the will of the UK Parliament. In the same way as the Senedd was created by an Act of Parliament (namely, GoWA 2006) it can also be abolished (though see paragraphs 3.4-3.5 below).
- 3.2 The Senedd shares with the UK Parliament, however, the democratic legitimacy conferred by the sovereign people upon an elected legislature. This quality has been recognised and respected by the Supreme Court. Lord Hope, giving the lead judgment in the case of *AXA v Lord Advocate*, said:

“The dominant characteristic of the Scottish Parliament is its firm rooting in the traditions of a universal democracy. It draws its strength from the electorate. While the judges, who are not elected, are best placed to protect the rights of the individual, including those who are ignored or despised by the majority, the elected members of a legislature of this kind are best placed to judge what is in the country’s best interests as a whole. A sovereign Parliament is, according to the traditional view, immune from judicial scrutiny because it is protected by the principle of sovereignty. But it shares with the devolved legislatures, which are not sovereign, the advantages that flow from the depth and width of the experience of its elected members and the mandate that has been given

³ Paragraphs 1 and 2, Schedule 7B to GoWA 2006 (considered below)

*to them by the electorate. This suggests that the judges should intervene, if at all, only in the most exceptional circumstances.”*⁴

- 3.3 The Welsh Government’s democratic legitimacy derives from that of the Senedd. The First Minister is appointed by Her Majesty only following nomination by the Senedd. The Welsh Ministers and Deputy Welsh Ministers are appointed by the First Minister, with Her Majesty’s approval. The Counsel General is appointed by the Queen, on the recommendation of the First Minister.⁵

Permanence of the Senedd, and the Welsh Government

- 3.4 Both GoWA 2006 and the Scotland Act 1998 provide that the devolved institutions for each country “are a permanent part of the United Kingdom’s constitutional arrangements”.⁶ The legislation further declares that the devolved institutions “are not to be abolished except on the basis of a decision of the people of Wales/Scotland voting in a referendum”⁷.
- 3.5 Parliamentary sovereignty, however, means that this may not provide the permanent protection for the Senedd and the Welsh Government (nor the Scottish Parliament and Scottish Government) that a simple reading of the provision might imply. The effect of the Parliament Acts 1911 and 1949 is that, at least as a matter of law, the so-called “permanence” provisions in the devolution settlements could ultimately be repealed by a simple majority of MPs voting in the House of Commons.
- 3.6 The current Welsh Government was returned to office on a policy of strong, entrenched devolution in a reformed and truly united United Kingdom. As we set out in *Reforming our Union*⁸, the principles underpinning devolution should be recognised as fundamental to the UK constitution. The devolved institutions must properly be regarded as permanent features of the UK’s constitutional arrangements; any proposals for the abolition of such institutions should be subject to not only to the consent of the relevant electorate, but also to the consent of the institutions themselves.

⁴ *AXA General Insurance Limited and others (Appellants) v The Lord Advocate and others (Respondents) (Scotland)* [2011] UKSC 46, paragraph 49

⁵ Sections 45-50, GoWA 2006

⁶ For Wales, see s.A1 GoWA 2006, inserted by Wales Act 2017, s.1

⁷ *Ibid*

⁸ Welsh Government (2021) *Reforming our Union: Shared Governance in the UK*, Proposition 2, available at <https://gov.wales/reforming-our-union-shared-governance-in-the-uk-2nd-edition>

The Sewel convention

- 3.7 Devolution to Scotland, Wales, and Northern Ireland does not legally alter the principle of Parliamentary sovereignty, meaning that the UK Parliament is able to pass legislation for all parts of the UK, including in relation to devolved policy areas. Its ability to do so is expressly preserved by section 107(5) of GoWA 2006:

This Part [Part 4 of GoWA 2006, which confers primary legislative competence on the Senedd] does not affect the power of the Parliament United Kingdom to make laws for Wales.

- 3.8 This means that, despite the democratic legitimacy of the Senedd, the UK Parliament retains an absolute legal right to override or “unmake” the laws that the Senedd makes. Rather than fully transferring power to the Senedd, the UK Parliament retained an unlimited, overlapping legislative competence. This requires it to adopt a self-denying ordinance if it is to afford appropriate constitutional respect to the Senedd as the democratically elected legislature for Wales in relation to devolved matters.
- 3.9 The Welsh Government considers that this traditional, absolutist view of the sovereignty of the Westminster Parliament is no longer an appropriate organising principle for the United Kingdom’s constitution. When there was just one legislature in the United Kingdom it was clear where sovereignty lay, but now we have four elected parliaments with legislative powers. If we truly consider (as we should) that sovereignty lies with the people of the United Kingdom, then sovereignty is now shared between its four parliaments; and in Wales, the exercise of the Senedd’s sovereignty is based on its electoral mandate from the people of Wales.
- 3.10 The mechanism that the UK Parliament adopted at the outset of devolution in respect of legislating for Scotland and Wales in devolved areas became known as the Sewel convention, following a policy articulated by Lord Sewel in the House of Lords during the passage of the Scotland Act 1998 (with emphasis added):

*“...the devolution of legislative competence to the Scottish parliament does not affect the ability of Westminster to legislate for Scotland even in relation to devolved matters. Indeed... we envisage that there could be instances where it would be more convenient for legislation on devolved matters to be passed by the United Kingdom Parliament. However ... **we would expect a convention to be established that Westminster would not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish***

Parliament.⁹

- 3.11 The same convention applies to the Welsh devolution settlement. The understanding between the UK Parliament and the devolved legislatures has been that the UK Parliament will “not normally” legislate (a) in devolved areas, nor (b) so as to modify devolved competence, without the consent of the devolved legislature. This was initially reflected in a Memorandum of Understanding¹⁰ between the UK Government and the devolved governments, and subsequently in the UK Government’s own Devolution Guidance Notes¹¹ (which do not have legal force but provide internal guidance for civil servants on the operation of the settlement).
- 3.12 A procedure evolved under which the UK Government would seek the Senedd’s consent to UK Bill provisions which engaged either aspect of the Sewel convention via a Legislative Consent Motion (LCM). The Senedd’s Standing Orders¹² require the Welsh Government to table a Legislative Consent Memorandum for a UK Bill which contains such provisions. In voting on an LCM, the Senedd can then express its consent, or otherwise, to the UK Bill.
- 3.13 Until recently¹³, where there has been disagreement between the Senedd and the UK Parliament about whether UK legislation engages the Sewel convention and therefore requires the Senedd’s consent, it has generally been about whether the proposed legislation is in a devolved area rather than whether the circumstances are “*normal*” or not. Taking this approach has side-stepped the issue of the meaning of “*not normally*”, a term which has no defined parameters so that there is no clear understanding as to what manner of circumstances may lead to the UK Parliament passing legislation in devolved areas, or legislation which modifies legislative competence, without the Senedd’s consent.
- 3.14 The Wales Act 2017 preserved, rather than resolved, this constitutional ambiguity. It inserted section 107(6) into GoWA 2006:

⁹ Hansard, HL Deb 21 Jul 1998 Vol 592 c 791

¹⁰ Command Paper Cm 5240 (December 2001), superseded by Memorandum of Understanding between the UK Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee (October 2013), available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/316157/MoU_between_the_UK_and_the_Devolved_Administrations.pdf

¹¹ UK Government (2018) Devolution Guidance Note: Parliamentary and Assembly Primary Legislation Affecting Wales, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/701462/DGN_-_Parliamentary_and_Assembly_Primary_Legislation_Affecting_Wales.pdf

¹² Standing Orders of the Welsh Parliament / Senedd Cymru (December 2021), Standing Order 29, available at https://senedd.wales/media/hz1fc2rf/clean_sos-eng.pdf

¹³ See the example of the United Kingdom and Internal Market 2020, below: this is the first example of the UK Government inviting Parliament to enact a Bill which they accept engages the Sewel convention, but to which the Senedd refused consent.

But it is recognised that the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Senedd.

- 3.15 It did not, however, take the opportunity to clarify the scope of the convention by defining what is meant by “*not normally*”. And in *Miller No. 1*¹⁴, the Supreme Court said that questions about compliance with the Sewel convention are, despite now being set out by the UK Parliament in statute, not currently justiciable. The failure to define the question of what is meant by “*not normally*” remains a major flaw, weakness and cause of unnecessary conflict in the constitutional framework, leaving the UK Government and UK Parliament considerable discretion in deciding what circumstances are “*not normal*”. That enables them to proceed with legislation on matters within devolved competence – or even legislation which purports radically to alter the Senedd’s competence - notwithstanding the Senedd’s refusal of its consent.
- 3.16 We have called for a more meaningful statutory incorporation of the Sewel convention, which provides clarity for the respective governments, and respects the Senedd’s democratic mandate:

*The ‘not normally’ requirement should be entrenched and codified by proper definition and criteria governing its application, giving it real rather than symbolic acknowledgement in our constitutional arrangements. Alternatively, a new constitutional settlement could simply provide that the UK Parliament will not legislate on matters within devolved competence, or seek to modify legislative competence or the functions of the devolved governments, without the consent of the relevant devolved legislature.*¹⁵

- 3.17 Recent procedural steps taken by the House of Lords to strengthen the convention are welcome, but insufficient. UK Government Ministers are now required to inform the Lords if legislative consent has been refused, or not granted, by the third reading of a Bill; and to set out what efforts have been made to obtain consent. While that provides some level of UK Ministerial accountability to the UK Parliament, it does not leave scope for further dialogue between the legislatures – something which underpins the Sewel convention and is fundamental to the operation of the UK’s uncodified constitution, as noted by the Supreme Court in *Miller No. 1*¹⁶. We note the comments of the House of Lords Select Committee on the Constitution in its 2022 Report *Respect and Co-operation: Building a Stronger Union for the 21st Century*, that even the updated

¹⁴ *R (Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5, paragraphs 146-149

¹⁵ Welsh Government (2021) *Reforming our Union: Shared Governance in the UK*, Proposition 5

¹⁶ *R (Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5, paragraph 151

practice “limits opportunities for meaningful parliamentary scrutiny at an earlier stage in the bill’s consideration and lacks transparency”¹⁷.

- 3.18 There is, as yet, no equivalent procedure in the House of Commons, whose Procedure Committee concluded taking evidence for its inquiry into the procedure of the House of Commons and the territorial constitution in August 2021 but has not yet reported¹⁸.
- 3.19 A new Memorandum of Understanding between the UK Government and the devolved Governments, setting out agreed circumstances in which the UK Government may - *in extremis* - invite the UK Parliament to legislate in the absence of consent from the devolved legislatures, could go some way towards rebuilding the trust, clarity and certainty which has been eroded under the current UK Government.
- 3.20 Ultimately, though, we consider that clear, statutory criteria, capable of review and application by the Courts, are required to safeguard the constitutional and democratic mandate given by the people of Wales to the elected Members of the Senedd to make their own laws. We agree with the Institute for Government that “*the future of the Union could be put at risk without reforms to the principle of legislative consent which lies at the heart of the devolution settlement.*”¹⁹
- 3.21 In the meantime, the relationship between the Senedd and the UK Parliament (and between the respective governments) should proceed on the basis of mutual respect, and a recognition of the democratic legitimacy underpinning each institution.

4. Constraints on the Senedd’s legislative competence

Overview

- 4.1 Section 107(1) of GoWA 2006 provides that:

The Senedd may make laws, to be known as Acts of Senedd Cymru or Deddfau Senedd Cymru (referred to in this Act as “Acts of the Senedd”).

- 4.2 But the Senedd’s legislative competence is then limited by section 108A of GoWA 2006. Section 108A essentially subjects each provision of a Senedd Bill to five separate tests or legislative hurdles, each of which must be cleared in order for it to fall within competence.

¹⁷ [Respect and Co-operation: Building a Stronger Union for the 21st century \(parliament.uk\)](https://www.parliament.uk/about/offices/committees/procurement/procurement-report)

¹⁸ <https://committees.parliament.uk/work/618/the-procedure-of-the-house-of-commons-and-the-territorial-constitution/>

¹⁹ Institute for Government (2020) *Legislating by Consent: how to revive the Sewel Convention*, available at <https://www.instituteforgovernment.org.uk/publications/sewel-convention>

- 4.3 Where a provision falls outside competence, by reason of it failing any one of the five tests in Section 108A of GoWA 2006, it is not law.²⁰ An overview of the complex relationship between these five competence tests is set out in the flowchart at **Annex A** to this paper.
- 4.4 Several of these tests (particularly the restrictions set out in Schedule 7B; and the requirement that legislation have no greater effect otherwise than in relation to Wales than necessary to give effect to a devolved purpose) were introduced by the Wales Act 2017, seemingly in the interests of making the system clearer. However the additional complexity which the Wales Act added to the competence matrix has, in our view, the opposite effect.
- 4.5 Further, the new tests exacerbate the constitutional imbalance in the settlement. While Parliament is free to legislate for Wales on any matter (including devolved matters); the Senedd is constrained (even in relation to devolved matters) by a complex web of reservations and restrictions which cloud lines of democratic accountability, and inhibit the delivery of our Programme for Government.

Section 108A(2)(a) GoWA: extent

- 4.6 The Senedd has no power to pass legislation that extends beyond the legal jurisdiction of England and Wales, even in consequence of a devolved matter.
- 4.7 An amendment to a UK Act made by a Senedd Bill will form part of the statute book in England and Wales only. For Scotland and Northern Ireland, the current law for those jurisdictions is unaffected, unless the UK Parliament make provision for the amendment to 'extend to' (i.e. form part of the law of) Scotland and/or Northern Ireland.
- 4.8 Where we consider that provision for Scotland and Northern Ireland is required in order to make the Act of the Senedd effective, we may approach the UK Government to make the necessary changes. Section 150 of GoWA 2006 permits the Secretary of State to make provision in consequence of Senedd legislation; and this could include an Order extending Senedd provisions to Scotland or Northern Ireland (but not if they fall within the competence of the Scottish Parliament, in which case it falls to that legislature to decide whether, and when, to change Scottish law – there is no similar provision for Northern Ireland).
- 4.9 The process by which necessary adjustments to the law are made in consequence of an Act of the Senedd relating to a purely devolved matter is

²⁰ Section 108A(1) GoWA 2006

therefore cumbersome and disjointed. It depends on UK Government resources, and UK (and/or Scottish) Parliamentary time (since the Order needs to be approved by each House of Parliament) being made available to deal with them. This is unlikely to be a priority for the UK Government; and so there is the potential both for Acts of the Senedd not to be completely effective; and for the law to be left in an unclear, inaccessible state, even on uncontentious matters.

- 4.10 We are of the view that the Welsh Ministers should be able to deal with these issues directly with the respective devolved nations, in consultation with the UK Government. For example, provision could be made for the Senedd to change the law of Scotland and/or Northern Ireland in consequence of a provision within the Senedd's competence, subject to the consent of the Secretary of State, Scottish Ministers and/or Northern Ireland Ministers.

Section 108A(2)(b) and (3) GoWA 2006: application

- 4.11 The combined effect of section 108A(2)(b) and (3) of GoWA 2006 is that:

(a) the Senedd cannot make law that applies otherwise than in relation to Wales; unless

(b) the provision in question is both;

(i) ancillary²¹ to another provision in an Act of the Senedd; and

(ii) has no greater effect otherwise than in relation to Wales than is necessary to give effect to the purpose of the provision to which it is ancillary.

- 4.12 These are complex tests to apply in the context of a porous border, which residents of England and Wales regularly cross in order to access public services such as education, health and social care, etc.

Section 108A(2)(c), and Schedule 7A GoWA 2006: reserved matters

- 4.13 A provision in an Act of the Senedd is outside competence if it relates to a reserved matter. The list of reserved matters is set out at Schedule 7A to GoWA

²¹ A provision is ancillary to another provision if it "provides for the enforcement of the other provision or is otherwise appropriate for making that provision effective" or if it "is otherwise incidental to, or consequential on, that provision".

2006. This list of reservations is far longer, and far more complex, than the corresponding lists for Scotland and Northern Ireland.

Subsidiarity

- 4.14 The fundamental organising principle for the devolved settlements should be subsidiarity.
- 4.15 When the Wales Act 2017 (which inserted Schedule 7A into GoWA 2006) was drafted, no such organising principle was adopted. While that Act created a reserved powers model for Wales (which many thought meant wider powers being devolved, akin to the position in Scotland), the UK Government thinking that informed the approach to reserving powers appears to have been simply to invert the conferred powers settlement, in which the starting presumption was that everything was reserved unless expressly conferred.
- 4.16 This approach has resulted in a far greater number of reservations in the Welsh settlement; and perpetuated a patchwork of asymmetrical devolution of powers across the UK. Rather than considering what is logical and coherent, the content of each settlement has derived mainly from the history and particular (short term) political and practical circumstances of the nation to which it relates. There is an illusion of uniformity in the *model* but this is not reflected in the substantive *content* of each settlement.
- 4.17 For example; paragraph 94 of Schedule 7A to GoWA 2006 reserves to the UK Parliament:

The subject-matter of Part 4 of the Small Business, Enterprise and Employment Act 2015.

Part 4 of that Act deals with the Pubs Code for England and Wales, which imposes obligations on pub-owning businesses in their dealings with their tied pub tenants. It establishes an independent Pubs Code Adjudicator to enforce the Code. The purpose is to ensure equity and fairness in the industry; and in the respective rights of tied and free pub tenants. These matters closely integrate with issues of housing, fair rent, and communities which are non-reserved and are therefore devolved. More fundamentally, there is, in our submission, no good constitutional reason why they should be reserved. They are not reserved in the Scottish, nor the Northern Irish, settlement; which in itself demonstrates that they are not matters which need to be dealt with at a UK-wide level. The reality is that the reason something as comparatively trivial as the Pubs Code is reserved is because alcohol licensing is reserved. And alcohol licensing is reserved because policing and justice is reserved. But there is no good constitutional reason why *any* of those matters should be reserved.

- 4.18 Our view is that:

*“The powers of the devolved institutions should be founded on a coherent set of responsibilities allocated in accordance with the subsidiarity principle. Those powers should be defined by the listing of the specific matters which it is agreed should be reserved to Westminster in respect of each territory, all other matters (in the case of Wales) being or becoming the responsibility of Senedd Cymru and/or the Welsh Government”.*²²

Justice

- 4.19 Justice and the single legal jurisdiction, including the courts, judges, civil and criminal proceedings are matters reserved to the UK Parliament by Schedule 7A (with some limited exceptions). This can be contrasted with Scotland, and Northern Ireland, where the devolved institutions are responsible for the administration of justice in their own territories.
- 4.20 This presents a unique set of challenges to the Senedd, and Welsh Government. As referred to above, as a matter of principle there is no good reason why the justice system should not be devolved. Furthermore, the division in responsibility between the UK and Welsh Government has a detrimental effect both on the non-devolved justice system and the closely associated matters that *are* devolved. As we explained in *Delivering Justice for Wales*:

We work closely with devolved and non-devolved partners as part of a whole-system, person-centred approach to justice. Devolved areas such as housing, substance misuse and mental health are crucial in allowing Welsh citizens to live healthy, crime-free lives. We play an active role in the current system, working with partners to deliver the best possible outcomes. This is particularly exemplified by work on the Youth Justice and Women’s Justice Blueprints, as well as our joint working on Violence Against Women, Domestic Abuse and Sexual Violence.

Despite this, we know that our justice system could be so much better.

*Our successful partnerships happen in the broader context of a disjointed system, where services which should be tied together are instead split across devolved and non-devolved bodies. The effectiveness of these partnership arrangements and their ability to improve are therefore fundamentally limited — which impacts on our collective ability to deliver the best possible outcomes for people in Wales.*²³

²² Welsh Government (2021) Reforming our Union: Shared Governance in the UK, Proposition 3

²³ Welsh Government (2022) *Delivering Justice for Wales*, available at <https://gov.wales/sites/default/files/publications/2022-06/delivering-justice-for-wales-may-2022-v2.pdf>

- 4.21 That publication was a response to the report of the independent Commission on Justice in Wales, chaired by the former Lord Chief Justice of England and Wales, Lord Thomas of Cwmgiedd. In the words of the Commission, “*the people of Wales are being let down by the [justice] system in its present state.*”²⁴
- 4.22 The Commission concluded – unanimously - that in order to achieve true reform of the justice system, policies and decisions about justice need to be determined and delivered in Wales. This is partly because they need to align with the distinct and developing social, health, social justice and education policy and services in Wales and the growing body of Welsh law. Justice policy should be developed to serve the needs of, and provide greater benefits for, the people of Wales – with funding allocated accordingly. There is no rational basis for treating Wales differently from England, Scotland and Northern Ireland.
- 4.23 As the Commission noted, cuts to the justice budget by the UK Government have had a disproportionately acute impact in Wales, where access to justice is affected by unique geographical and socio-economic factors. We have tried to plug the gaps, in an attempt to mitigate this impact, but in the Commission’s words this is “... *unsustainable when the Welsh Government has so little say in justice policy and overall spending.*”²⁵
- 4.24 We agree with the Commission’s recommendation that justice should now be devolved to Wales. We are committed to pursuing the case for the devolution of justice and policing. We are not alone: that proposition featured in several party manifestos prior to the 2021 Senedd election, so it has a clear democratic mandate from the people of Wales.
- 4.25 Our proposals are set out in further detail in *Delivering Justice for Wales*, where we consider the impact on education, families, equality and justice, community safety and the economy.
- 4.26 In addition, in 2016 we published a draft Government and Laws in Wales Bill²⁶, setting out specific legislative proposals for a distinct and separate Welsh jurisdiction and (among other matters) devolving the justice system. In doing so, we accepted that this would necessitate some logical, corresponding, limitations to the Senedd’s competence in respect of territorial application and extent, in the interests of clarity, stability and the strategic interests of the UK. These again reflect the position as respects the separate legal jurisdictions in Scotland and Northern Ireland.

²⁴ The Commission for Justice in Wales (2019) *Justice in Wales for the People of Wales*, available at https://gov.wales/sites/default/files/publications/2019-10/Justice%20Commission%20ENG%20DIGITAL_2.pdf

²⁵ Ibid, Executive Summary, paragraph 3

²⁶ Welsh Government (2016) *Draft Government and Laws in Wales Bill*, available at <https://gov.wales/draft-government-and-laws-wales-bill>

- 4.27 So far, the UK Government has resisted calls to devolve justice and policing; despite the clear and unanimous recommendation of the Commission, and the democratic mandate for change. It has failed even to consider properly and respond to the various papers and representations made. It has not provided a reasoned response to the Thomas Commission's report, nor to the Welsh Government's *Reforming Our Union* paper. The failure to engage in discussion about how policing and justice can be improved and modernised is all too typical, and forms part of a broader picture of the UK Government's lack of engagement with policy proposals from the Welsh Government. This is symptomatic of a wider disregard for the Welsh Government's democratic mandate, and is not conducive to a healthy, functioning United Kingdom.
- 4.28 A UK Government justice minister, responding to the Commission's report in a Westminster Hall debate in 2020, argued that the devolution of justice would "*exacerbate or worsen the jagged edge*" of the interface between justice, and matters already devolved to Wales. Despite that argument being without any supporting evidence, the response does at least - in itself - acknowledge that the current boundaries of the devolution are unclear, incoherent and fail to deliver on the stated aims of the Wales Act 2017.
- 4.29 It is a natural, and inevitable, consequence of devolution that the law in Wales will continue to diverge from the law in England. This divergence is a two-way street, occurring both as a result of laws enacted by the Senedd and Welsh Ministers in relation to Wales; and by Parliament and the UK Government enacting England-only laws. Our experience during the Covid-19 pandemic, in which the legislative response in Wales differed considerably from that in England, is an obvious example of this.
- 4.30 The UK Government is in denial of the constitutional reality and clinging to the joint jurisdiction is like attempting to put the genie back in the bottle. The single jurisdiction of England and Wales is an anomaly because its basis was that the law across the territory of England and Wales was the same, and its purpose was to embody uniformity – in other words to signal that the law is the same. Pretending that there is a single body of law is confusing to the reader and serves no benefit. As a result the joint jurisdiction is clearly no longer fit for purpose.
- 4.31 The natural approach, which would reflect the position in Scotland and Northern Ireland, would be to recognise that the law which applies in Wales should be known as Welsh law, and that this should then be applied in Welsh courts by judges appointed to Welsh courts. Such an approach would incidentally also benefit English citizens, as it would also create a concept of English law. There is no reason in practice why the same set of judges (and lawyers) could not serve in both Welsh and English courts. This was the approach taken in the draft Government and Laws in Wales Bill.

- 4.32 We will continue to pursue principled, reasoned and detailed proposals for the devolution of justice and policing

Particular authorities

- 4.33 Paragraph 197 of Schedule 7A to GoWA 2006 reserves the constitution and functions of “particular authorities”. In summary these are defined²⁷ as any Post Office (or related) company; Research Councils; Police and Crime Commissioners; the Commission for Equality and Human Rights; and any other body reserved by name in Part 2 of Schedule 7A (e.g. the Health and Safety Executive²⁸; and the British Broadcasting Corporation²⁹).
- 4.34 The effect is to give these bodies a special status, distinct from the restriction in respect of a “reserved authority” as set out in Schedule 7B to GoWA 2006 (see below). Whilst the Senedd is restricted in terms of how it can legislate with respect to reserved authorities, it is able to legislate, (for example to confer functions upon a reserved authority) with the appropriate UK Government Minister’s consent.
- 4.35 However, there is no such exception to the rule against legislating in respect of a “particular authority”. As such, even where the UK Government has said that it would have had no objection to the Senedd legislating with respect to a particular authority, it has concluded that there is no scope to give consent for the Senedd to do so. This reservation has caused complications even in respect of uncontentious issues; and has made recent reforms brought forward by Senedd legislation unnecessarily bureaucratic and complicated.
- 4.36 By way of an example, the UK Government considered itself unable to consent to a provision which we wished to include in the Local Government and Elections (Wales) Act 2021, amending the Welsh Ministers’ power to make regulations relating to the accounts of “local government bodies”, including police and crime commissioners, chief constables, local probation boards and Welsh probation trusts. The UK Government’s response to our request for consent indicated that they had no policy objection to the proposals, but that they considered that the restriction on the Senedd legislating in respect of particular authorities represent an absolute bar, and that they were therefore unable to consent to the provision. As a result, the provision was not included. It is clear that one of the key motivators for the insertion of the new restrictions into the settlement by the Wales Act 2017 was the UK Government’s desire to retain control over bodies for which it is fiscally and politically responsible; but, for other authorities, that control is provided by the Minister of the Crown consent regime in Schedule 7B to GoWA 2006 (see below). It is not clear to us why it would not be sufficient for

²⁷ By paragraph 197, Schedule 7A to GoWA

²⁸ Paragraph 156, Schedule 7A to GoWA

²⁹ Paragraph 159, Schedule 7A to GoWA

the UK Government simply to have a discretion to permit changes to the functions of particular authorities, as it does for other reserved authorities.

- 4.37 In the meantime, this absolute veto on changing the functions of particular authorities is unnecessary, and obstructive. The relationship between particular authorities and reserved authorities is unclear. This is a further example of the Wales Act 2017 failing to deliver on its promises to make the settlement clearer, and to give the people of Wales (and their elected representative) a stronger voice over their own affairs.

Inconsistency

- 4.38 There is a lack of internal consistency in how the reservations contained in Schedule 7A to GoWA 2006 are drafted and delineated.
- 4.39 Some matters are described plainly, with clear exceptions, and cause little controversy, e.g. paragraph 70:

Section C4

C4 Intellectual property

70 Intellectual property.

Exception

Plant varieties and seeds.

- 4.40 Other reserved matters are described by reference to existing legislation, e.g. paragraph 43:

Section B6

B6 Anti-social behaviour

43 The subject-matter of Parts 1 to 4 and 6 of the Anti-social Behaviour, Crime and Policing Act 2014.

- 4.41 This is a much less accessible form of drafting, which requires cross-reference to other legislation. It is further complicated by the fact that it requires³⁰ reference to that legislation as it stood on 1 April 2018³¹, when Schedule 7A to GoWA 2006 came into force, in order to unpick the knot of the Senedd's legislative competence in relation to a particular matter.

³⁰ By virtue of paragraph 200, Schedule 7A to GoWA 2006

³¹ This being the "principal appointed day" under section 71(3) of the Wales Act 2017, by virtue of Regulation 2 of SI 2017/1179, the Wales Act (Commencement No. 4) Regulations 2017

- 4.42 It is difficult enough for government lawyers to access historic law in order to establish the boundaries of competence; it is practically impossible for citizens and stakeholders. Even if they are aware of the need to access historic law in order to understand whether a current proposal is within competence,, most will not have access to the high-cost legal databases which make this information more easily available.
- 4.43 The inconsistencies in the drafting of the reservations betray a wider truth about Schedule 7A, and the approach taken by the UK Government in the preparation of the Wales Act 2017. It represents a piecemeal, illogical gathering of issues submitted by officials across different UK Government departments during the preparation of the Bill; and the absence of an organising constitutional principle. This has in itself led to an increase in the number of matters that are reserved, which in turn increases the potential for dispute at the margins of competence; contrary to the stated aims of the Wales Act 2017.
- 4.44 This style hampers the accessibility and clarity of Welsh law for the people of Wales: to put it simply - it does not produce good law that people can readily find.

Making Welsh law more accessible: classification, consolidation and codification

- 4.45 We have embarked upon an ambitious programme to make Welsh law more accessible by classifying, consolidating and codifying devolved legislation.
- 4.46 It is clear that the people of Wales experience problems in understanding their rights and obligations. There is a cross-party consensus in the Senedd that the law for which we are responsible needs to become easier to find, and easier to read. *The future of Welsh law: classification, consolidation and codification*³² and *The future of Welsh law: A programme for 2021 to 2026*³³ sets out a route map to a future legal landscape in which all laws within the legislative competence of the Senedd are in order, easy to navigate, available in up-to-date form and as understandable as the complexity of the content allows. This in turn helps the citizens of Wales to understand both their legal rights and their legal obligations.
- 4.47 Achieving this requires a revamp of the statute book. This will be done by instigating a system of classifying existing law so that it can be organised by reference to its subject matter; through subsequent consolidation of that law in accordance with the subject classification; and, once order is achieved in this

³² Welsh Government (2019), available at https://gov.wales/sites/default/files/consultations/2019-10/the-future-of-welsh-law-consultation-document_1.pdf

³³ Welsh Government (2021), available at <https://gov.wales/the-future-of-welsh-law-accessibility-programme-2021-to-2026-html>

way, a process of codification intended to keep the law in order. It also means improving our communication about the law both by better publishing and providing more explanatory material about legislation.

- 4.48 The first area identified for consolidation is the law on the historic environment in Wales; and the Historic Environment (Wales) Bill, currently before the Senedd³⁴. The Bill gives effect to a number of recommendations made by the Law Commission in its final report on *Planning Law in Wales*³⁵. Its purpose is not to change the substance of the existing law, which is currently found across a range of Senedd and UK Parliamentary Acts, but to bring it together into a single source; and to modernise the form and drafting so that it is easier to find and apply.
- 4.49 Our experience has been that this has been a much more complex project than anyone envisaged – an example of the competence issues that have arisen in the Historic Environment (Wales) Bill is set out above (under the *Extent* heading).
- 4.50 A further complication is that, while paragraph 13 of Schedule 7B to GoWA 2006 provides an exemption from the various restrictions in that Schedule for provisions which simply restate the existing law, there is no similar exemption from the reservations in Schedule 7A.
- 4.51 We believe that this could be drafted in such a way as to respect constitutional boundaries, e.g. so that a provision which restates the existing law on reserved matters in a way which is incidental to, consequential on, or appropriate for enforcing or making effective a devolved provision is exempt from the restriction in section 108A(2)(c) GoWA 2006.
- 4.52 Better still, if a provision akin to the former section 108(5) GoWA 2006 were included, then there would be no doubt about the Senedd's competence to enact coherent, effective provisions consolidating and codifying Welsh law on devolved matters.
- 4.53 More generally, prior to the enactment of the Wales Act 2017, section 108(5) GoWA 2006 provided important flexibility such that:

A provision of an Act of the Assembly falls [is within the Assembly's competence] if—

³⁴ The Historic Environment (Wales) Bill was introduced into the Senedd on 4 July 2022. The Bill, together with accompanying explanatory materials, is available at <https://business.senedd.wales/mgIssueHistoryHome.aspx?lId=39698>

³⁵ Law Commission of England and Wales (2018) *Planning Law in Wales* (Law Com 383)

- (a) *it provides for the enforcement of a provision (of that or any other Act of the Assembly) which falls within [competence] or... it is otherwise appropriate for making such a provision effective, or*
- (b) *it is otherwise incidental to, or consequential on, such a provision.*

4.53 This statutory acknowledgment that the lines around the settlement were blurred, and that the Assembly would occasionally need to touch on reserved matters in order to make coherent law about devolved matters, was helpful, realistic and regularly relied upon.

Section 108A(2)(d), and Schedule 7B GoWA 2006: restrictions

4.54 As already referred to, consideration of whether the subject matter of proposed Welsh legislation relates to a reserved matter is a complex undertaking due to the number of reservations contained in Schedule 7A to GOWA 2006. However, this is far from the end of the story. A provision in an Act of the Senedd is also outside competence if it breaches any of the restrictions in Part 1 of Schedule 7B to GoWA 2006. Part 2 of that Schedule sets out some exceptions from those restrictions.

4.55 Our experience has been that the restrictions in Schedule 7B present an even more complex, more frequent and more frustrating obstacle to the Senedd legislating on devolved matters. The move to a reserved powers model gives the impression that everything which is not listed in Schedule 7A is within the Senedd's competence. As will be demonstrated below, this is not the case.

Paragraphs 1 and 2, Schedule 7B: the law on reserved matters

4.56 The combined effect of paragraphs 1 and 2 of Schedule 7B to GoWA 2006 is that the Senedd cannot change the "law on reserved matters"³⁶ unless (a) the change is ancillary to a devolved provision (i.e. one which does not relate to reserved matters), and (b) it has no greater effect on reserved matters than is necessary to give effect to the devolved provision.

4.57 This is a complex, multi-layered test: the concepts of what is "*ancillary*" and "*necessary*" are capable of broad interpretation, lack clarity and create the potential for litigation which the Wales Act 2017 was intended to avoid.

4.58 Further, the test is wholly unnecessary. We think that it was inserted into GoWA (via the Wales Act 2017) to replicate a similar provision in the Scottish

³⁶ Whether statute law, or the common law: paragraph 1(2), Schedule 7B to GoWA 2006

settlement³⁷. But that is to import a restriction from a wholly different constitutional context (Scotland having its own jurisdiction and having far fewer reserved matters). It also did not take into account developments in the case law on the “relates to” test over the two decades which elapsed between the passage of the Scotland Act 1998 and the coming into force of the Wales Act 2017.

4.59 The UK Government’s explanation for the inclusion of this test is that:

Whilst Schedule 7A is intended to set the parameters of future Assembly Acts in terms of reserved matters about which it cannot legislate, the restrictions in paragraphs 1 and 2 of Schedule 7B are intended to provide a separate form of protection for the existing legislation and common law which has a reserved matter as its subject matter.

Whilst the purpose of an Assembly Act provision may not be reserved (meaning such provision does not fall foul of section 108A(2)(c) and Schedule 7A), it may nevertheless modify the law on reserved matters, for example to enforce or otherwise give effect to that provision.³⁸

4.60 We consider that the law on reserved matters is adequately protected by the reservation of those matters in Schedule 7A to GoWA 2006. It is difficult to foresee circumstances in which the application of the test in paragraphs 1 and 2 of Schedule 7B would produce a different outcome to the (“relates to a reserved matter”) test in section 108A(2)(c) and (6) of GoWA 2006.

4.61 The addition of this further competence hurdle has not, so far, proved to be a significant obstacle to Senedd legislation. But it is unnecessary, it clouds the picture; and its existence has on occasions caused confusion in discussions with UK Government. We think that its removal would make the settlement clearer and more efficient, while respecting constitutional and democratic boundaries.

Paragraph 3, Schedule 7B: the private law

4.62 The Senedd cannot modify the private law, except for a devolved purpose. “*The private law*” means the law of contract, agency, bailment, tort, unjust enrichment and restitution, property, trusts and succession³⁹.

4.63 The restriction acknowledges that, in order to legislate coherently about a devolved matter, the Senedd may need to engage with the private law.

³⁷ Section 29(2)(c), and paragraphs 2 and 3 of Schedule 4 to the Scotland Act 1998

³⁸ UK Government (2017) *Wales Act 2017: Explanatory Notes*, available at https://www.legislation.gov.uk/ukpga/2017/4/pdfs/ukpgaen_20170004_en.pdf

³⁹ Paragraph 3(2), Schedule 7B to GoWA 2006

- 4.64 In practice, this restriction causes confusion, adds a further layer of complexity, obscuring the clarity of the settlement.
- 4.65 The restriction is again inspired by the constitutional anomaly of operating a reserved powers model of devolution within a joint jurisdiction of England and Wales. If Wales were to have its own jurisdiction, as we have argued for, it would be unnecessary and the private law in both Wales and England could be developed to suit each nation's particular circumstances and needs.

Paragraph 4, Schedule 7B: criminal law

- 4.66 The Senedd cannot modify (nor create) certain criminal offences relating to treason, homicide, serious offences against the person, sexual offences and perjury⁴⁰.
- 4.67 The restriction on modifying “*offences of a kind dealt with the Perjury Act 1911*” poses particular problems. Section 5(b) of the Perjury Act 1911 provides that:

If any person knowingly and wilfully makes (otherwise than on oath) a statement false in a material particular, and the statement is made—

...(b) in an abstract, account, balance sheet, book, certificate, declaration, entry, estimate, inventory, notice, report, return, or other document which he is authorised or required to make, attest, or verify, by any public general Act of Parliament for the time being in force;

...

he shall be guilty of a misdemeanour and shall be liable on conviction thereof on indictment to imprisonment, with or without hard labour, for any term not exceeding two years, or to a fine or to both such imprisonment and fine.

- 4.68 Broadly, that offence appears to have been designed to ensure that information required for an official reason (“statutory declarations”) is given honestly. Acts of the Senedd frequently need to include provisions about the supply of information to devolved Welsh authorities - for example, where information is required in order to assess eligibility for public funding; liability to a devolved tax; or qualification to stand as a candidate in a devolved election. In order for the Senedd to legislate coherently, effectively and to protect the interests of the people of Wales, difficult distinctions have had to be drawn so that these provisions may be included.

- 4.69 The reason for the inclusion of the restriction on modifying perjury offences is again the joint jurisdiction, and the reservation of justice. Were Wales to have its own jurisdiction, and were justice to be devolved (see above), the restriction would be unnecessary. In the meantime, an exception to make it clear that the Senedd can legislate about false statutory declarations would provide legal certainty about these provisions, which are essential tools in protecting public services and finances.
- 4.70 The Senedd can legislate to create new offences in relation to devolved matters. In doing so, however, it cannot modify certain fundamental aspects of criminal law. They include criminal responsibility and capacity; intention, dishonesty and the mental element of offences; inchoate and secondary criminal liability (e.g. the law on attempts to commit an offence); and sentencing.
- 4.71 So, when the Senedd creates an offence it can choose from the menu of existing criminal sentences and disposals. But it cannot create new types of sentence. Again, this has inhibited policy development in some devolved areas; for example, in considering alternatives to custodial sentences for non-payment of Council Tax.
- 4.72 Again, the restriction is a consequence of the joint jurisdiction of England and Wales and would be unnecessary if Wales had its own jurisdiction in which justice was devolved. The issue here is not about creating barriers or restrictions on the operation of the courts, judiciary and legal profession but enabling justice to be improved and to be delivered differently in Wales by joining up the justice system with the rest of Welsh policy making so that we can find truly effective ways of reducing crime, as we propose in *Delivering Justice for Wales*.⁴¹

Paragraphs 5-7, Schedule 7B: protected enactments

- 4.73 Paragraphs 5-7 of Schedule 7B restrict the Senedd from modifying certain “*protected enactments*”. They include the Human Rights Act 1998; the United Kingdom Internal Market Act 2020 (“UKIMA”); most of the provisions of the European Union (Withdrawal) Act 2018; and various other provisions⁴², including many provisions of GoWA 2006 itself.⁴³
- 4.74 As with the other restrictions in Schedule 7B, this constraint on the Senedd’s power operates in addition to the other restraints on competence in section 108A(2)(a)-(e) of GoWA 2006. The effect is to confer on these protected

⁴¹ Welsh Government (2022) *Delivering Justice for Wales*, available at <https://gov.wales/sites/default/files/publications/2022-06/delivering-justice-for-wales-may-2022-v2.pdf>

⁴² As set out in paragraph 5 of Schedule 7B to GoWA 2006

⁴³ As set out in paragraph 7 of Schedule 7B to GoWA 2006

enactments a special status: even where the Senedd is legislating for a devolved purpose, in relation to a devolved matter, these provisions are sacrosanct and cannot be modified.

Paragraphs 8-11, Schedule 7B: Minister of the Crown consent

- 4.75 These paragraphs contain another complex set of rules for determining whether a provision in a Senedd Bill requires the consent of a UK Government Minister – even though the provision relates to a devolved matter, and is otherwise within competence.
- 4.76 The constitutional motive behind the inclusion of these restrictions is the desire of the UK Government to protect “*reserved authorities*”, i.e. bodies for which UK Government is fiscally, and politically, responsible. Under the previous settlement, the UK Government had expressed concern about resource burdens placed by Senedd legislation on reserved authorities; for example, requiring the police to be members of Safeguarding Children Boards and Safeguarding Adult Boards⁴⁴, in order to mitigate the risk of harm to vulnerable individuals through a multi-agency approach. The rules were imposed despite there being no equivalent prohibiting this from being done the other way around i.e. when the UK Parliament is legislating in respect of a reserved matter (and even within devolved areas the only thing preventing the UK Parliament legislating in a way that impacts upon the Welsh Government is the convention that it would “*not normally*” legislate).
- 4.77 Broadly, paragraphs 8-11 of Schedule 7B require the UK Government’s consent in order for the Senedd to change the functions of reserved authorities. This is, however, a labyrinthine set of rules which are unclear; have proved difficult to operate in practice; and so represent a hidden impediment to the Senedd legislation in relation to policy areas universally understood to be devolved.

Reserved authorities / devolved Welsh authorities

- 4.78 In order to establish whether consent is required in order for the Senedd to change the functions of a particular body (whether by creating new functions; modifying existing ones; or removing functions), it is first necessary to work out whether the body is a devolved Welsh authority, or a reserved authority.

Definitions: reserved authorities, public authorities and devolved Welsh authorities

⁴⁴ Section 134, Social Services and Well-being (Wales) Act 2014

Paragraph 8(3) of Schedule 7B to GoWA 2006 provides that a “reserved authority” is:

- (a) a Minister of the Crown or government department;
- (b) any other public authority apart from a devolved Welsh authority.

Paragraph 8(4) of Schedule 7B defines “public authority” as:

... a body, office or holder of an office that has functions of a public nature.

Section 157A of GoWA defines a “devolved Welsh authority”:

(1) In this Act “devolved Welsh authority” means—

- (a) a public authority that meets the conditions in subsection (2),
- (b) a public authority that is specified, or is of a description specified, in Schedule 9A (whether or not it meets those conditions), or

(c) the governing body of an institution within the higher education sector (within the meaning of section 91(5) of the Further and Higher Education Act 1992) whose activities are carried on, or principally carried on, in Wales.

(2) A public authority meets the conditions in this section if its functions—

- (a) are exercisable only in relation to Wales, and
- (b) are wholly or mainly functions that do not relate to reserved matters.

(3) In determining for the purposes of this section whether functions of a public authority are exercisable only in relation to Wales, no account is taken of any function that—

- (a) is exercisable otherwise than in relation to Wales, and
- (b) could (apart from this paragraph) be conferred or imposed by provision falling within the Senedd's legislative competence (by virtue of section 108A(3))...

...

(8) In this section ““public authority”” means a body, office or holder of an office that has functions of a public nature.

- 4.79 This is a complex, cross-referential definition; and it is unclear whether certain bodies fall within its scope.
- 4.80 For example, the definition of “*public authority*” in section 157A GoWA is different from that in section 6 of the Human Rights Act 1998, which itself has been the subject of much judicial consideration, particularly in relation to “hybrid” authorities, i.e. those who possess some private, and some public functions. There is a question as to the range and type of bodies who are caught by the definition. This is significant, since those bodies who *are* public authorities will also be reserved authorities, unless their functions are exercisable only in relation to Wales, and are mainly non-reserved; and, if so, they are subject to the consent restrictions. This creates doubt, and the potential for litigation.
- 4.81 It is also unfortunate that Schedule 9A to GoWA 2006, which lists some (but not all) devolved Welsh authorities is not comprehensive. Neither the Senedd, nor the Welsh Ministers, have the power to amend Schedule 9A⁴⁵, which is a protected enactment (see above)⁴⁶. So, when the Senedd creates a new public body for Wales, even where that body meets the definition of a devolved Welsh authority under section 157A(2), it cannot update Schedule 9A (which is therefore incomplete and out of date). This makes the law less accessible than it could be.
- 4.82 There is no good reason why the Senedd could not have been given the power to amend Schedule 9A to remove, modify and add references to a devolved Welsh authority; provided that the body in question meets the definition in section 157A(2). Schedule 9A could then serve a useful function as an up-to-date, accessible catalogue of devolved Welsh authorities; and the burden on UK Government and UK Parliamentary time would be avoided.
- 4.83 This restriction on modifying Schedule 9A is a further example of a grudging approach to devolution, which leaves the Senedd dependent upon the co-operation of the UK Government – even in relation to matters entirely consequential on devolved provisions.

Minister of the Crown consent: changing the functions of reserved authorities

- 4.84 It is very difficult to navigate the intricacies of paragraphs 8-11 of Schedule 7B.

⁴⁵ Section 157A(5) gives the power to amend Schedule 7A to Her Majesty to exercise by Order in Council, subject to the approval of each House of Parliament, and the Senedd.

⁴⁶ By virtue of paragraph 7(1) of Schedule 7B to GoWA 2006

4.85 A summary of the changes in functions for which the consent of a Minister of the Crown⁴⁷ is required is set out below:

Table: summary of requirements for Minister of the Crown consent

| Type of body | Type of function change | | |
|--------------------------------------|---|---|--|
| | Confer new function | Modify function | Remove function |
| Minister of the Crown (“MoC”) | Consent required | No consent required; <u>but</u> must consult MoC | No consent required; <u>but</u> must consult MoC |
| | | <u>Unless</u> : the function is of a type listed in paragraph 11(2), in which case consent <u>is</u> required | |
| Other reserved authorities | Consent required | Consent required | Consent required |
| Exceptions | No consent required for the Electoral Commission; the Food Standards Agency; the Water Services Regulation Authority; the Joint Committee on Vaccination and Immunisation; the Human Tissue Authority; the NHS Business Services Authority; NHS Blood and Transplant; the Open University; the Controller of Plant Variety Rights functions of the traffic commissioners in relation to local bus services; devolved functions of courts and tribunals; funding of police & crime commissioners through council tax precepts; water or sewage undertakers; the Consumer Council for Water; the Chief Inspector of Drinking Water for Wales; or an electoral registration officer. | | |

4.86 It is apparent that there is an absence of constitutional logic underpinning these rules. The Senedd need only *consult* a Minister of the Crown in order to change the functions of such a Minister, or the UK Government department which they

⁴⁷ Paragraph 8(5), Schedule 7B to GoWA 2006: where the consent of (or consultation with) a Minister of the Crown is required, the appropriate Minister is the Secretary of State (or, if the body whose functions are affected is Her Majesty’s Revenue and Customs, HM Treasury)

head. But in order to change the functions of other reserved authorities⁴⁸, *consent* is required. And our experience has been that this is not readily obtained. Not only does the UK Government have an absolute discretion over whether to grant consent; but significant delay has been experienced in obtaining a response to consent requests. This impedes the democratic process in the Senedd.

- 4.87 The consent regime is unique to the Welsh settlement and has not yet been tested in the Courts. That there is room for doubt, which will likely require litigation to resolve it, demonstrates that the Wales Act 2017 has singularly failed to deliver on the UK Government’s stated aims: to make the settlement clearer, and to give the devolved institutions a stronger voice over their own affairs.

Qualified devolved functions

- 4.88 The problem has been exacerbated in recent years in direct contradiction to the UK Government stated intention at the time of the Wales Act 2017, with a post-Brexit tendency of the UK Government to frame new functions conferred on the Welsh Ministers in UK Parliamentary Bills as “*qualified devolved functions*”, i.e. functions which are:

... *to any extent exercisable—*

- (i) *concurrently or jointly with a Minister of the Crown, or*
- (ii) *only with the consent or agreement of, or after consultation with, a Minister of the Crown.*⁴⁹

Definitions: concurrent functions and joint functions

A “*concurrent*” function is conferred on both the Welsh Ministers and a Minister of the Crown in relation to Wales, and either of them can exercise it independently of the other.

A “*joint*” function is exercisable in relation to Wales by the Welsh Ministers and a Minister of the Crown acting together, i.e. they both need to agree in order to exercise the function.

⁴⁸ Subject to the exceptions set out in paragraphs 8-11, Schedule 7B to GoWA 2006, as summarised above

⁴⁹ Paragraph 11(3), Schedule 7B to GoWA 2006

- 4.89 This goes to the heart of the question about how the United Kingdom should function. Our position is that relations between the four governments should proceed on the basis of a partnership of equals, fairly, and in a spirit of mutual respect. This in turn requires that (unless other arrangements have been agreed and legislated for) Ministers in each government should have exclusive authority, and be fully accountable to their own legislature and electorate, for the exercise of statutory functions in their territories in accordance with their legal powers, without challenge, review or oversight by Ministers of another government.
- 4.90 Joint and concurrent functions run entirely contrary to this: they give the UK Government either a degree of control (in the case of joint functions), or a power to interfere (in the case of concurrent functions), in devolved matters which is undemocratic, and contradicts the stated aim of the Wales Act 2017 to give the people of Wales a stronger voice over their own affairs. As indicated above at the time of passage of the Wales Act 2017, the UK Government stated that they had no intention of creating any new qualified devolved functions.
- 4.91 There is a further difficulty. Once created, qualified devolved functions cannot be modified or removed by the Senedd without the consent of a Minister of the Crown⁵⁰. This pollution of devolved areas with joint and concurrent functions therefore restricts the Senedd's ability to legislate coherently about such matters in future.
- 4.92 A practice has emerged under which, as a condition of recommending to the Senedd that they consent to the relevant UK Parliamentary Bill making provision with regard to devolved matters in this way, we seek from the UK Government a carve-out from the restriction in paragraph 11 of Schedule 7B to GoWA 2006; so that the relevant concurrent function can, in future, be modified or removed by the Senedd without the need to seek the UK Government's consent. There is now a growing list of concurrent functions carved out from this restriction at paragraph 11(6) of Schedule 7B.
- 4.93 This is, in our view, an inaccessible and constitutionally inappropriate way to approach the demarcation of the respective governments' powers. The Welsh Government should have exclusivity over the exercise of executive functions within the Senedd's legislative competence.

Paragraph 8(1)(c): functions specifically exercisable in relation to reserved authorities

- 4.94 It is not only the functions of reserved authorities that are restricted. Even where the Senedd confers functions on the Welsh Ministers, or on another devolved Welsh authority and even where those functions relate entirely to devolved

⁵⁰ Paragraph 11(1)(a), Schedule 7B to GoWA 2006

matters – Minister of the Crown consent is required if those functions are “*specifically exercisable*” in relation to a reserved authority.

- 4.95 This means that, even where the Senedd wishes to confer upon the Welsh Ministers (or another devolved Welsh authority for which the UK Government is neither fiscally nor politically responsible) a function as innocuous as sending a report to a reserved authority, it cannot do so without first obtaining the consent of a Minister of the Crown.
- 4.96 It is a further example of the devolution-suspicious approach which pervades the Wales Act 2017; creating unnecessary, bureaucratic and undemocratic restrictions on the Senedd’s competence, while simultaneously sowing uncertainty around the margins of the settlement.

Paragraph 12: definition of “legislative competence”

- 4.97 Paragraph 12 of Schedule 7B to GoWA 2006 provides that references in other legislation to the Senedd’s legislative competence do not include provisions which could be made by the Senedd only with the consent of a Minister of the Crown.
- 4.98 This exacerbates the constitutional deception at the heart of the current settlement: things which appear to be devolved are not. The concurrent function conferred upon the Welsh Ministers by section 52 of the Environment Act 2021 illustrates the point: the Welsh Ministers can exercise that function only within the Senedd’s legislative competence, which in turn is narrowly defined so as to exclude measures which the Senedd could have imposed only with UK Ministerial consent (i.e. those which would change the functions of reserved authorities).
- 4.99 These hidden constraints upon powers obstruct the kind of cross-governmental co-operation often required to achieve coherent regulatory reform across a porous border.

Minister of the Crown consents: conclusion

- 4.100 The Minister of the Crown consent regime in Schedule 7B to GoWA 2006 is unique to the Welsh settlement: there are no equivalent provisions in the Scottish, nor the Northern Irish settlements. It is an opaque and undemocratic clog on the Senedd’s powers. The UK Government retains control over matters which are otherwise presented as devolved, and UK Ministers are not democratically accountable (at least, in Wales) for decisions as to whether or not they grant consent.

- 4.101 Further, the labyrinthine set of rules, restrictions and exceptions in paragraphs 8-11 of Schedule 7B is difficult to understand and operate. It impedes both the accessibility of the law to citizens; and the operation of the settlement. Reasonable, skilled and experienced government lawyers take different views about how the provisions work, and this creates the potential for disputes and litigation – which is what the Wales Act 2017 was intended to avoid.
- 4.102 We believe that, in a functional United Kingdom with proper respect afforded by the UK Government to the democratic mandate of the devolved governments, such restrictions should not be necessary. Rather than impose legislative restraints on the elected Senedd, we believe that the legitimate interest of UK Government in protecting the functions and resources of bodies for which they are financially and politically responsible could be met by a Memorandum of Understanding, in which all the governments of the UK's constituent nations recognised and respected democratic and fiscal lines of accountability when creating new devolved functions.
- 4.103 Unfortunately, over recent years, intergovernmental relations have deteriorated. Recent announcements and actions by the UK Government have demonstrated hostility towards devolution by pursuing a centralising agenda. These announcements suggest a determination to undermine and marginalise the role of both the devolved governments and legislatures, and to put in place UK Government structures designed directly to challenge, duplicate and compete with those of the devolved parliaments and governments in areas of devolved competence. The restrictions in Schedule 7B facilitate this centralising approach.

Section 114 GoWA: Secretary of State's power to intervene

- 4.104 Even where a Senedd Act is entirely within its legislative competence, the Secretary of State can make an Order preventing it from being submitted for Royal Assent (and therefore preventing it from becoming law) where he reasonably believes that it contains provisions which would have an adverse effect on a reserved matter; would have an adverse effect on the operation of the law as it applies in England; or would be incompatible with the UK's international obligations, or the interests of defence or national security.⁵¹
- 4.105 While we understand the common need to maintain the UK's defence and national security interests, the web of other constraints on the Senedd's powers, and in particular the fact that both defence and national security are reserved matters⁵², there would appear to be little scope for the Senedd to compromise them. In those very rare cases where Senedd legislation engaged such matters,

⁵¹ Section 114(1) GoWA 2006

⁵² By paragraphs 11 and 32, Schedule 7A to GoWA 2006

we consider that – in a functional UK, built on principles of mutual respect – those matters could be adequately protected by inter-governmental dialogue, perhaps based on procedures set out in a Memorandum of Understanding.

- 4.106 We also understand the need to ensure that the UK is not in breach of its international obligations. Unlike the UK Government⁵³, however, we have not sought (and would not seek) to legislate in breach of international obligations. Again, we consider that they could be safeguarded through respectful dialogue within effective inter-governmental mechanisms.
- 4.107 The other grounds on which the Secretary of State can intervene are ill-defined and, in our view, unjustifiable. Whether a Senedd Bill has an “*adverse effect*” on a reserved matter, or upon English law, seems to us an entirely subjective judgment for the Secretary of State to make. Worse, the Secretary of State is completely unaccountable to the Senedd, and barely accountable to the UK Parliament or the Courts for making such a judgment. While he is required to give reasons for making an Order under section 114, that Order is subject only to the negative procedure in Parliament. We think that this is constitutionally extraordinary, given that this is a Henry VIII power (i.e. a power for a member of the executive – worse still, a member of an executive of a different Government – to set aside legislation passed by the democratically elected legislature).
- 4.108 Nor does the requirement that the Secretary of State must have “*reasonable grounds*” for his belief that the Senedd Bill will have such an adverse effect enable adequate judicial scrutiny of such an Order. The common law interpretation of “*reasonableness*” is that a decision is not unreasonable, unless no reasonable authority could ever have come to it.⁵⁴ This affords the Secretary of State such latitude that it makes a successful challenge to such an Order unlikely.
- 4.109 The section 114 power is, in constitutional terms, a nuclear option; it gives the Secretary of State a unilateral right of veto over legislation which has been passed by the democratically elected Senedd, and which is within the legal limits set by Parliament. While this power has not yet been exercised, its shadow looms over Senedd legislation. This is unacceptable, and has no place in a proper constitutional settlement, founded on mutual respect between democratically elected legislatures and governments.

⁵³ The Northern Ireland Protocol Bill, currently before Parliament and available at <https://bills.parliament.uk/bills/3182> is widely considered to breach international law. See, for example, Dr Ronan Cormacain, Bingham Centre for the Rule of Law (2022) *Northern Ireland Protocol Bill: A Rule of Law Analysis of its Compliance with International Law*, available at <https://binghamcentre.biicl.org/publications/northern-ireland-protocol-bill-a-rule-of-law-analysis-of-its-compliance-with-international-law>

⁵⁴ *Associated Provincial Picture Houses v Wednesbury Corporation* [1948] 1 KB 223

5. Constraints on the Welsh Ministers' executive competence

- 5.1 The manner in which executive powers (i.e. powers transferred from the legislature to the government) have been devolved to the Welsh Ministers is, in our view, unnecessarily complicated. It is once again piecemeal, complex and incoherent; and lacks the clarity found in the Scottish model. This makes the settlement harder to understand, and clouds lines of democratic accountability.

Section 58 GoWA: transfers of functions

- 5.2 Section 53 of the Scotland Act 1998 effected a general transfer of functions in devolved areas from the UK Government to the Scottish Ministers. This means that, generally speaking, the legislative competence of the Scottish Parliament (the matters upon which it to pass laws) and the executive competence of the Scottish Government (the matters in relation to which they exercise powers) match:

(1) The functions mentioned in subsection (2) shall, so far as they are exercisable within devolved competence, be exercisable by the Scottish Ministers instead of by a Minister of the Crown.

(2) Those functions are—

(a) those of Her Majesty's prerogative and other executive functions which are exercisable on behalf of Her Majesty by a Minister of the Crown,

(b) other functions conferred on a Minister of the Crown by a prerogative instrument, and

(c) functions conferred on a Minister of the Crown by any pre-commencement enactment...

- 5.3 The Wales Act 2017 contains no such wholesale transfer. Instead of the “big bang” approach in the Scotland Act 1998, the mechanism by which functions are transferred from the Welsh Government is incremental. There is no automatic transfer of functions; instead, it is for His/Her Majesty, by an Order in Council under section 58 of GoWA 2006, to transfer Minister of the Crown functions exercisable in relation to Wales, or the Welsh zone to the Welsh Ministers, First Minister or Counsel General on a piecemeal basis.

- 5.4 The result is that the Welsh Government's powers are set out in myriad different sources: Acts of Parliament (whether enacted before or after GoWA 2006, and the Wales Act 2017); Acts of the Senedd which confer functions on the Welsh Ministers in relation to matters within the Senedd's legislative competence; Transfer of Functions Orders ("TFOs"); and within GoWA 2006 itself (see below).
- 5.5 When compared with the relatively elegant transfer of powers in the Scotland Act 1998, this makes the law harder to find than it needs to be. There is neither a single list of Welsh Ministers' functions; nor a provision comparable to section 53 of the Scotland Act 1998 to create a presumption that functions in relation to devolved matters have been transferred.
- 5.6 Unlike the Scottish mechanism, the reliance on TFOs requires the positive identification of powers to be transferred. This risks powers which fall within the Senedd's legislative competence and ought therefore to be transferred to the Welsh Ministers, being omitted from TFOs and remaining with UK Government Ministers. It creates, in turn, a democratic deficit: UK Ministers are not accountable to the Senedd for the exercise of these powers.
- 5.7 The history of TFOs demonstrates this. The initial TFO, in 1999⁵⁵, transferred to the (then) National Assembly for Wales various functions, previously exercised by the Secretary of State for Wales. At the time, the National Assembly was constituted as a single corporate body exercising functions formerly belonging to the Secretary of State for Wales, this approach made constitutional sense. The functions transferred fell within 20 subject areas listed in Schedule 2 to the Government of Wales Act 1998.
- 5.8 However, not all functions were transferred (as an example, most functions relating to schools were transferred but not those about teachers' pay). And further, piecemeal TFOs followed; for example, transferring functions formerly exercised by the Secretary of State in relation to water or sewerage undertakers;⁵⁶ and the non-statutory functions with which the Intervention Board for Agricultural Produce was charged prior to its abolition⁵⁷.
- 5.9 GoWA 2006 created a formal, legal separation of the Welsh Government from the National Assembly; and, as a consequence, executive powers which *had already been* transferred to the National Assembly were transferred to the Welsh Ministers⁵⁸. But those functions which, although within the legislative competence now conferred upon the National Assembly, had been retained by the UK Government continued to be withheld – including teachers' pay.

⁵⁵ SI 1999/672, National Assembly for Wales (Transfer of Functions) Order 1999

⁵⁶ SI 1999/287, National Assembly for Wales (Transfer of Functions) (No.2) Order 1999

⁵⁷ SI 2001/3679, National Assembly for Wales (Transfer of Functions) Order 2001

⁵⁸ By paragraph 30 of Schedule 11 to GoWA 2006

- 5.10 The function of setting teachers' pay and conditions in Wales was eventually transferred to the Welsh Ministers in 2018⁵⁹, some 20 years after the majority of executive functions relating to education in Wales were initially transferred. That it took so long for this function to be transferred betrays a grudging, overly centralising approach to devolution; which in turn exacerbates the jagged edges of the settlement.
- 5.11 The 2018 TFO⁶⁰, which transferred another large group of executive functions to the Welsh Ministers, was made after the Wales Act 2017 had been brought into force. There is no good constitutional reason why this piecemeal approach, designed for the initial "executive phase" of devolution under the Government of Wales Act 1998 should have survived into the subsequent phases of devolution, in which the Senedd has been given primary legislative powers in relation to devolved matters, and the responsibility for scrutinising the Welsh Government in respect of them.
- 5.12 The transferral of functions by TFOs is inefficient, relying upon resource intensive cross-government trawls to identify functions within devolved competence; and Parliamentary time. It is undemocratic; because it precludes proper scrutiny of executive actions retained by UK Government by members of the legislature accountable to the people of Wales for those matters. And it is inaccessible: even apart from the difficulties of tracing the incremental devolution of functions through the various TFOs and the Government of Wales Acts, the transfer provisions themselves are sometimes qualified and complex – for example, the exercise of certain functions by the Welsh Ministers requires the consent of HM Treasury⁶¹; whereas for other functions, this restriction has been removed⁶². Each power needs to be identified and analysed in its own terms.
- 5.13 We requested that a provision equivalent to section 53 of the Scotland Act 1998 be included in the Wales Act 2017; this request was declined by the UK Government without adequate explanation. Worse still, section 21(1) of the Wales Act 2017 modified section 58 and inserted section 59 and Schedule 3A to GoWA 2006, to enable functions to be transferred to the Welsh Ministers on the basis that they are exercisable jointly or concurrently with a Minister of the Crown. As set out above (see *Qualified devolved functions*), this entrenches UK Government control over powers in devolved areas, as the Senedd requires the consent of a Minister of the Crown in order to modify or remove those functions.

⁵⁹ By Article 39 of the SI 2018/644, Welsh Ministers (Transfer of Functions) Order 2018

⁶⁰ Ibid

⁶¹ E.g. pursuant to section 56(1) of the Finance Act 1963, which requires HM Treasury consent for fees charged in relation to services provided pursuant to an international agreement or arrangement.

⁶² E.g. Article 44(3) of SI 2018/644, the Welsh Ministers (Transfer of Functions) Order 2018, removed the requirement for HM Treasury consent in relation to the Welsh Ministers' imposition of a Community Infrastructure Levy under section 205 of the Planning Act 2008.

- 5.14 The result is a patchwork of powers, scattered across multiple sources, whose boundaries are not coterminous with the Senedd's legislative competence; and which in some cases remain subject to qualifications and restrictions. This betrays a grudging, paternalistic approach to devolution on the part of UK Government.

Section 82 GoWA 2006: Secretary of State's power to intervene

- 5.15 Just as the Secretary of State has the power to intervene in Senedd legislation on the grounds of a reasonable belief that it would be incompatible with the UK's international obligations⁶³, so there is a power for the Secretary of State:
- (a) to restrain the Welsh Ministers from taking action which he considers would breach international obligations;
 - (b) to direct the Welsh Ministers to take action would he considers necessary to give effect to an international obligation; and/or
 - (c) to revoke any subordinate legislation (that the Welsh Ministers could revoke) which is incompatible with an international obligation.
- 5.16 As with the restriction on the Senedd's powers, we consider that a unilateral right of veto (or direction, or revocation) of this kind is constitutionally inappropriate, and unnecessary. The implementation of international obligations is devolved⁶⁴ (in so far as it relates to devolved matters), and the Secretary of State is not accountable to the Senedd for the use of this power, which is exercisable by an Order subject only to the negative procedure in the UK Parliament.
- 5.17 As such, Parliamentary oversight of this power is limited; as is judicial oversight – while the Secretary of State's Order must set out his reasons for making it, the threshold for challenging the reasonableness of such an Order is high, and the discretion which the Court is likely to afford the Secretary of State is considerable.
- 5.18 We recognise that it is in the interests of all four of the UK's constituent nations to adhere to our collective international obligations, and we would not seek to act incompatibly with them. We consider that, in a functioning UK built on principles of mutual respect, provision in a Memorandum of Understanding for dialogue within an effective inter-governmental mechanism would provide a sufficient level of assurance on this point to all the governments within the UK.

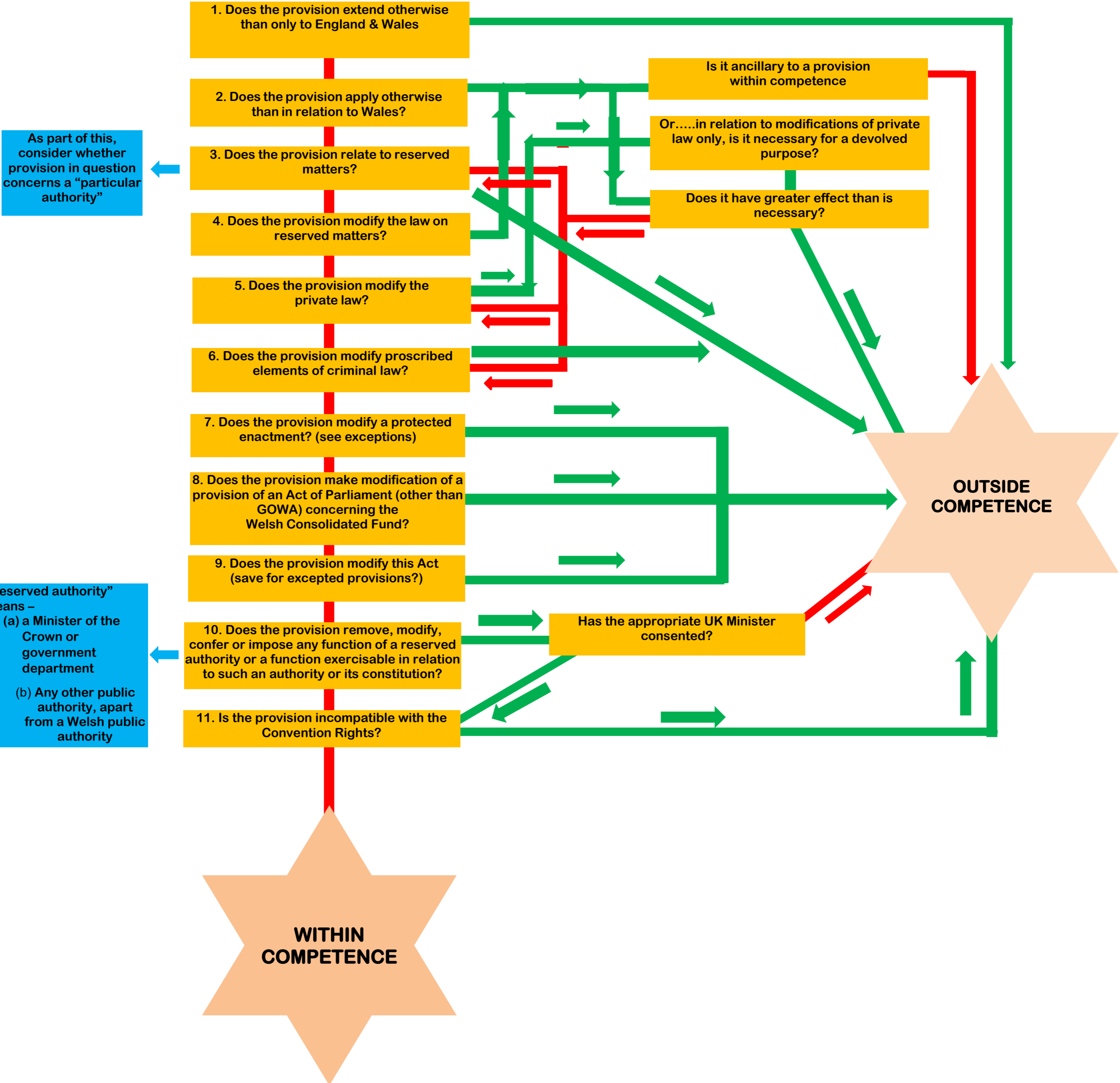
⁶³ Section 114 GoWA 2006: see above

⁶⁴ Paragraph 10 of Schedule 7A to GoWA 2006

6. Conclusion

- 6.1 The move to a reserved powers model further to the Wales Act 2017 did not achieve parity with the Scottish settlement. Not only are there considerably more matters reserved in the Welsh settlement; but even in relation to matters which appear to be devolved, the Senedd is subject to a labyrinthine matrix of restrictions, some of which (like the Minister of the Crown consent regime) are unique to the Welsh settlement. Further, the lack of a wholesale transfer to the Welsh Ministers of executive functions within devolved competence makes the settlement unnecessarily inaccessible and unclear.
- 6.2 As a result, the devolution settlement in Wales is unnecessarily narrow and complex. While this paper contains some specific suggestions for how it could be improved, we think that these proposals merit consideration within the context of a wider review of the United Kingdom's constitution; and we welcome the Commission's consideration of these issues.
- 6.3 At the level of individual reservations, some of these ultimately derive from the joint England and Wales jurisdiction. Likewise, the restrictions on modifying private and criminal law. There is, we say, no reason why the UK Government should continue to cling to the constitutional anomaly of a joint jurisdiction in a context of inevitable and increasing divergence between Welsh and English law. Our reasoned arguments in that regard have yet to receive a substantive response.
- 6.4 At a broader level, we consider that the doctrine of parliamentary sovereignty, as it is traditionally understood (i.e. the absolute right of the Westminster Parliament to override legislation enacted by the devolved Parliaments, and to change their powers unilaterally) ought no longer to be the central organising constitutional principle of a United Kingdom which now consists of four legislatures, each with its own democratic mandate.
- 6.5 We believe that sovereignty, in each case, derives from the electorate; and that the United Kingdom should operate on the basis of a voluntary pooling of sovereignty in relation to those matters which all four nations agree are best dealt with jointly. Beneath this, the underlying principle should be one of subsidiarity, and respect for the mandate of the elected institutions in the devolved nations.

Competence tests under section 108A and Schedules 7A & 7B GoWA 2006



Welsh Government

**Evidence to the Independent Commission on the Constitutional Future of
Wales – Examples of the Most Significant Policies Made Possible by
Devolution**

Date: September 2022

Background

1. The establishment of devolution in Wales followed 18 years of government by a party which never achieved more than a third of Welsh votes or seats in a UK General election. Consequently, policies implemented in Wales did not enjoy the support of a significant majority of the Welsh electorate.
2. Whilst, since the creation of the Welsh Office in 1965, the Secretary of State implemented subordinate legislation specific to Wales across a range of domestic policy areas, the overarching legislative framework was set by Acts developed by lead Whitehall departments and reflecting wider UK Government policy. The constraints imposed by the parent legislation, together with doctrine of collective responsibility, meant there was limited scope for divergence - the implementation of most policy in Wales was little more than a Welsh version of what was implemented in England. Additionally, between 1987 and 1997, the Secretaries of State for Wales did not represent Welsh constituencies, making them less accountable and responsive.
3. In the UK Government's white paper on devolution, *A Voice for Wales*, in 1997, the then Secretary of State set out the aims of devolution and the role of the National Assembly. The Assembly would provide a democratically elected voice for the people of Wales and hold executive government in Wales to account. Decisions on schools, healthcare, and other key services would be taken by people directly elected by and accountable to Welsh voters and therefore be responsive to their views. The Assembly was to be equipped to set a new economic agenda for Wales, focussed on Welsh needs and priorities.
4. The first Assembly was also designed to be a new kind of elected body, working in partnership with central and local government, business and industry, and the voluntary sector – a unique foundation. Statutory responsibilities were placed upon the Assembly and, following the separation between the legislature and executive in 2007, transferred to the Welsh Ministers. A more detailed account of the distinctive system of governance created by devolution in Wales can be found in paper 6.
5. The powers of the initial Assembly were initially limited to the executive functions transferred from the Secretary of State. Although a small number of Wales specific Acts were taken forward by the UK Parliament at the request of the Assembly, policy making was still largely limited to working within the frameworks set by Westminster legislation. The move to a separation between the executive and legislature, and the conferral of legislative powers on the Assembly in 2007 followed the report of the Richard Commission in 2004 and was partly driven by the limited nature of the Assembly's powers. Given the legislative framework was still largely set by the UK Government, concerns were also raised during the Commission's work about the likely difficulties arising from a future UK Government of a different political persuasion to that in the Assembly.
6. Although the legislative powers initially devolved to the Assembly in 2007 were limited, the devolution of full primary law-making powers following the

referendum in 2011 and the move to a reserved powers model in 2017 increased the scope for policy divergence.

Significant policies

7. Early examples of policies made possible by the first phases of devolution include the provision of **free prescriptions** and a specific Welsh system of **student financial support**. The **delivery of EU Structural Funds** in Wales also reflected the partnership approach to government embedded in the settlement itself.
8. The establishment of the **Children's Commissioner for Wales**, the first such position in the United Kingdom, and the **prohibition on smoking in public places** are examples of policies pioneered by the Assembly Government. Requiring Westminster legislation, they also reflected the inadequacy of the early devolution settlement and the Assembly's reliance on the UK Parliament and an amenable UK Government to make legislative provision.
9. Although made by regulations under Westminster legislation, Wales was also the first part of the United Kingdom to impose a **charge on single use plastic carrier bags**. Wales has also become a **world leader in recycling**, achieved through a combination of setting statutory recycling targets for local authorities, funding to improve recycling services, encouraging greater recycling, and a range of other measures including the promotion of a circular economy. Both policies contribute to the Welsh Government's **commitment to achieving a carbon neutral public sector** by 2030.
10. The rights of children have featured heavily in Welsh policy making. Following on from the Children's Commissioner, Children's rights were enshrined in Welsh law under the **Rights of Children and Young Persons (Wales) Measure 2011**, placing a duty on Ministers to have due regard to the UNCRC when developing or reviewing legislation and policy. A further significant policy in this area, impacting directly on the lives of children, was the **Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020**, which came into force in March this year.
11. The **Foundation Phase** introduced from 2011 an innovative statutory new curriculum for all 3 to 7 year olds in Wales, which places an emphasis on "learning by doing" encouraging children to use their imaginations and to be creative, making learning fun and more effective. The Welsh Government has also embarked on a long-term transformative approach to education with the new **Curriculum for Wales**, which provides a modern and progressive approach to teaching and learning from 2022. This has been legislated for in the Senedd through the Curriculum and Assessment (Wales) Act 2021.
12. A major piece of innovative legislation, affecting all subsequent policy making, was the **Well-being of Future Generations Act 2015**. The aim of the Act is about improving the social, economic, environmental and cultural well-being of Wales and requires the public bodies listed in the act to think more about the long term, work better with people and communities and each other, look to

prevent problems and take a more joined-up approach. As well as reflecting the requirements for inclusivity and sustainability imposed by the Government of Wales Act, the Act also reflects the Welsh Government's distinctive collaborative and citizen focused approach to the delivery of public services.

13. Indeed, the delivery of public services in Wales has followed a markedly different approach to that of England, where services such as health and education have increasingly been exposed to marketisation with service users treated as consumers. As well as enabling the **abolition of the internal market with the NHS**, devolution has also enabled **resistance to the introduction of market principles within the education system** and a commitment to non-selective, inclusive community focused schools.
14. **The Social Services and Well-being (Wales) Act 2014** (the 2014 Act) brought together local authorities' duties and functions in relation to improving the well-being of *people* – adults, children and carers – who need care and support, enabling us to deliver a statutory framework which, as far as possible, integrates/aligns social services to support people of all ages, and as part of families and communities. This is distinct from the approach taken in the Care Act 2014 which makes provision in relation to adult social care only.
15. Through the 2014 Act we have also placed duties to have “due regard” to the United Nations Principles for Older Persons and Part 1 of the United Nations Convention on the Rights of the Child directly, on persons who carry out functions in relation to adults, children and carers who have care and support needs. In addition, the Part 2 Code of Practice (General Functions), issued under the 2014 Act, requires those exercising social services functions in relation to disabled people who need care and support, and disabled carers who need support, to have “due regard” to the United Nations Convention on the Rights of Persons with Disabilities.
16. In June 2022 the Welsh Government launched its innovative £20 million **Basic Income pilot scheme**. The scheme will support people leaving care in Wales, offering them £1600 each month (before tax) for two years to support them as they make the transition to adult life.
17. The **Abolition of the Right to Buy and Associated Rights (Wales) Act 2018** reversed a flagship UK Government policy which remains in place in England. Together with the Renting Homes (Wales) Act 2016 and the **Welsh Housing Quality Standard**, the legislation has enabled a markedly different approach to the provision and maintenance of both social and private housing in Wales. Through the **Housing (Wales) Act 2014** Wales became the first UK nation to shift the focus to prevention of homelessness as well as leading the way in protecting tenants by requiring registration and training for all private landlords.
18. The **Agricultural Sector (Wales) Act 2014** and the **Trade Union (Wales) Act 2017** are further examples of the devolution settlement protecting Welsh interests, as well as reflecting the Welsh Government's partnership approach.

Both Acts reversed aspects of legislation passed by the UK Parliament (though the UK Government's public commitment to repealing the Trade Union (Wales) Act also highlights the fragility of the current settlement).

19. The devolution of elections policy for Senedd and local government elections has enabled the development of a wide-ranging Welsh agenda for electoral reform. So far, through **Senedd and Elections (Wales) Act 2020**, we have reduced the voting age to 16 and enfranchised everyone who is legally resident in Wales. This came into effect in May 2021 and May 2022 for Senedd and local government elections respectively. Devolution also enabled the piloting of early voting and voting in places other than polling stations in May 2022. These reforms support our aims to make Wales an inclusive country where everyone feels able and wants to participate in democracy.
20. Also in line with the inclusive approach to the delivery of functions set out in the Government of Wales Act 2006, the Welsh Government has worked closely with local authorities to develop and test a package of **Local Government reform**. This culminated in the **Local Government and Elections (Wales) Act 2021** (the 2021 Act) which focused on improving performance and governance; enabling more structured regional working; and creating wider and more diverse democratic engagement.
21. Devolved powers in relation to local government finance and local taxation have made a distinct Welsh approach possible which supports localism while tackling poverty and instilling fairness. Significant policies include sustaining funding for vital local services, a national Council Tax Reduction Scheme to support 275,000 low-income households, and numerous taxation changes to support the economy. The future reform of council tax and non-domestic rates will stretch ambitions in this area further, with radical ideas such as a local land value tax being considered. The Welsh Government published a suite of research and has recently outlined proposals for a fairer council tax.
22. The 2021 Act cited above also made permanent the arrangements put in place at the height of the Covid response to enable councils to meet remotely. Feedback is hugely positive, noting benefits for diversity of membership, efficiencies, and better public access. Councils in England are lobbying UK Government heavily to make this a permanent arrangement there, too.
23. The increased legislative divergence made possible by devolution has resulted in the creation of a separate Welsh body of law. Because of the complexity of the existing 'statute book', the **Legislation (Wales) Act 2019** was passed to make Welsh law more accessible, clear and straightforward to use.
24. The **Human Transplantation (Wales) Act 2013** marked a bold departure from organ donation consenting approaches in the wider UK. This prompted change in Scotland and England in turn, where they have since adopted a 'deemed consent' policy similar to that so successfully taken forward in Wales. Northern Ireland are also in the process of implementing a similar change. In this instance,

early divergence in Wales ultimately led to improved consent rates and all 3 nations modernising their approaches, to the benefit of all.

25. Recognising new fiscal responsibilities, the Welsh Government has brought forward **the first Welsh tax legislation for 800 years**. Two fully devolved taxes, the land transaction tax and the landfill disposals tax, were payable in Wales from 1 April 2018. From April 2019, Welsh Rates of Income Tax came within the control of the Senedd. The Welsh Government, through legislation approved by the Assembly and Senedd, has made policy decisions that differ from the predecessor taxes. In total the devolved and partially devolved taxes contribute over £2.5 billion to the Welsh Government's budget. Devolution permitted the creation of the Welsh Revenue Authority (Wales' first non-ministerial government department) who have developed a distinctive approach to collecting and managing the devolved taxes that has been greatly appreciated and complemented by tax professionals.
26. In particular, landfill disposals tax includes an unauthorised disposals charge to ensure that those who dispose of waste at a site not authorised for landfill disposal are still liable to a tax charge. The Welsh Government has set different rates and thresholds of tax for land transaction tax, resulting in some people incurring no tax charge compared to other parts of the UK. Furthermore, when the UK Government reduced the amounts of stamp duty land tax payable in response to the Covid-19 pandemic, the Welsh Government's response differed, as the temporary reduction in land transaction tax did not apply to buyers of second homes and buy to let properties unlike elsewhere. The Welsh Government is now seeking to provide local rates of land transaction tax that will apply to dwellings purchased to use as second homes or for holiday letting, thereby using devolved tax to help address wider policy issues.
27. The Welsh Government is also seeking to create other taxes to help assist other policy aims; a devolved tax that would charge vacant land that has permission for development but is not being developed, and also to provide local authorities with a power to introduce a visitor levy, to support additional investment in local communities.
28. Whilst the Welsh Government has led ambitious legislative development, the back benches of the Senedd have also pushed forward change – the **Nurse Staffing Levels (Wales) Act 2016** is one such example. After successfully being drawn in a ballot for private members bills, Kirsty Williams – then leader of the Welsh Liberal Democrats – developed the early iterations of what would become the 2016 Act. The Act was the first legislation in Europe concerned with nurse staffing levels.
29. The Covid-19 pandemic and the Welsh Government's response has arguably brought the operation of devolution and its impact on people's lives into sharper focus than any other area of policy since devolution began. Despite the uniform approach initially taken by the four governments of the United Kingdom, the direct impact of the more cautious approach to relaxing the lockdown in Wales on people's everyday lives and the increased publicity as a result, made the distinction between the Welsh and UK Governments' responsibilities more

evident to the public. Opinion polling throughout the pandemic suggested high levels of public approval for the Welsh Government's approach.

Welsh Government

**Evidence to the Independent Commission on the Constitutional Future of
Wales – Her Majesty's Treasury (HM Treasury) financial management
constraints and Welsh Government proposals for change**

Date: September 2022

Contents

| | |
|-----------------------------------|---------------|
| 1. Introduction / overview | page 3 |
| 2. Issue | page 4 |
| 3. Background | page 4 |
| 4. Current situation | page 7 |
| 5. Proposals for change | page 7 |
| 6. Final implications | page 8 |
| 7. Conclusions | page 9 |

1. Introduction / Overview

- 1.1 This paper sets out the current framework around financial management for the Welsh Government, the issues this raises, and ways in which the arrangements could be improved.
- 1.2 The paper does not cover the Welsh Government's views on wider reforms to the funding arrangements for the Devolved Governments. Its long-term aim remains for there to be a single UK needs-based fiscal framework, agreed by all Governments and independently operated and assured. This is set out in more detail in Welsh Government (2021) *Reforming our Union: Shared governance in the UK June 2021*, available at <https://gov.wales/reforming-our-union-shared-governance-in-the-uk-2nd-edition-html>.
- 1.3 The Welsh Government is mainly funded through a block grant from the UK Government (Departmental Expenditure Limit in table 1). In addition, it receives devolved tax revenues from the Welsh rates of income tax, land transaction tax, and landfill disposals tax. Non-domestic rates collected in Wales are also included in the Welsh Government's budgetary arithmetic.

Table 1: Final Budget for 2022-23, sources of finance

| | £ million |
|--|---------------|
| Resource Departmental Expenditure Limit* | 15,245 |
| Capital Departmental Expenditure Limit | 2,643 |
| Welsh rates of income tax | 2,478 |
| Non domestic rates | 1,030 |
| Land transaction tax | 381 |
| Landfill disposals tax | 35 |
| Drawdown from cash reserve | 34 |
| Capital borrowing | 150 |
| Principal repayment of borrowing | -6 |
| TOTAL FINANCING | 21,990 |

* excluding depreciation

- 1.4 Changes to block grant funding are determined by the Barnett formula. The Welsh Government receives the same changes per head of the population as in England for programmes that are devolved in Wales. (There is also now an additional needs-based factor.) The details of how this works are set out in HM Treasury (2021) *Statement of Funding Policy: Funding the Scottish Government, Welsh Government and Northern Ireland Executive*, available at: [Autumn Budget and Spending Review 2021: documents - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/971227/2021-22-statement-of-funding-policy-scotland-wales-northern-ireland-executive.pdf). The block grant is usually set as part of UK Government spending reviews. These generally cover 3 or 4 forward years, but there have recently been a number of single year reviews.
- 1.5 There is a block grant adjustment mechanism which reduces the grant in recognition of the devolved tax revenue streams. Broadly speaking, the reductions grow in line with the equivalent revenues elsewhere in the UK. The

arrangements are set out in detail in *The agreement between the Welsh Government and the United Kingdom Government on the Welsh Government's fiscal framework* (2016) available at: [Agreement on the Welsh Government's fiscal framework | GOV.WALES](#).

- 1.6 The Welsh Government is also bound by *HM Treasury (2022) Consolidated Budgeting Guidance: 2022-23* available here: [HM Treasury Consolidated Budgeting Guidance \(CBG\)](#). This is part of the public spending framework, setting out principles and standards underpinning the budgeting system mandated for use by all bodies classified as central government, including Devolved Governments.

2. Issue

- 2.1. As shown in Table 1, the Welsh Government's funding position is dominated by the block grant, accounting for over 80% per cent of financing in 2022-23. Year-to-year changes in the Welsh Government's budget are therefore driven by UK Government funding decisions, designed to meet public spending requirements in England. There can also be changes to the block grant in-year, again driven by English circumstances, which can require adjustments to the Welsh Government's budget plans at very short notice.
- 2.2. The Welsh Government has some tools to help it manage in-year changes and provide some inter-year flexibility. The devolved taxes, a cash reserve, and borrowing powers provide some capacity for the Welsh Government to manage volatility and depart from the overall level and annual profile of spending imposed by the block grant. (Details of the budget management tools are provided in the next section.)
- 2.3. However, the restricted nature of these tools means that there is limited capacity to adjust the budgetary profile to make it fit better with Welsh circumstances. This has been exacerbated by the scale of in-year changes to the block grant in recent years, leading to short term budget management issues and making it difficult to maximise the effectiveness and efficiency of devolved public spending in Wales.

3. Background

- 3.1. In many respects, the Consolidated Budgeting Guidance (CBG) treats the Devolved Governments in the same way as it treats UK government departments. It sets out certain budgetary rules which limit the autonomy Devolved Governments have over their budgets. For example, under the CBG, capital budgets may not be switched to revenue budgets, and the treatment for breaches of the revenue and capital control totals does not recognise the unique arrangements for Devolved Governments to carry forward unspent resources through a specific reserve which combines both revenue and capital. In the case of the Devolved Governments, budgets are exposed to more risk than UK government departments as a result of tax

devolution and the functioning of the block grant. As such there are limited additional tools available for budget management.

- 3.2. The fiscal framework agreement sets out the tools available to the Welsh Government to manage its budget. These are:
- **Capital borrowing** with an overall cap of £1billion and annual limit of £150million.
 - **Resource borrowing** if tax revenues are lower than forecast, with an overall cap of £500million and an annual limit of £200million. (Repayments have to be made within four years.)
 - A **cash reserve** where the Welsh Government can save surplus revenues which can be drawn down as required in future years. The overall size of the reserve is capped at £350million, with annual draw down limits of £125million for resource and £50million for capital.
- 3.3. These tools can be used by the Welsh Government to vary the profile of annual spending imposed by the block grant arrangements. However, they may also be required to deal with unexpected in-year changes to the block grant and volatility in devolved tax revenues.
- 3.4. In-year changes to the block grant arise through the UK Supplementary Estimates process. This reflects changes in the allocation of new funding and re-deployment of existing funding to new activity by the UK Government. It is complex, with multiple moving pieces, a number of which are only finalised at the end of the process – usually near the end of the financial year.

Table 2: Changes at Supplementary Estimates (£m)

| | 2018-19 | 2019-20 | 2020-21* |
|---------------------------------|---------|---------|----------|
| Resource DEL (exc depreciation) | 125.4 | 37.8 | 126.7 |
| Capital DEL | 14.7 | -31.2 | 81.6 |
| Total | 140.2 | 6.6 | 208.3 |

* Excludes COVID-19 changes

- 3.5. In recent years, there have been a number of large in-year block grant changes (table 2). Increases in the Welsh Government’s Resource Departmental Expenditure Limit at UK Supplementary Estimates exceeded £125million in 2018-19 and £126m in 2020-21. Welsh Government capital budgets have also been subject to large, late, unexpected changes with an additional £82million in 2020-21 and a reduction in 2019-20 of £31million. These changes are large compared to the cash reserve limits detailed above.
- 3.6. By the second half of the financial year, plans may already have been made to carry forward some funding via the cash reserve so large, unexpected increases in funding can risk breaching reserve limits – which would result in resources being returned to the UK Government. To avoid this, extra funding has to be deployed quickly. Conversely, in the event of a substantial reduction in funding, the strict rules on reserve levels and drawdowns, and the

circumstances in which borrowing can take place, mean the Welsh Government has only limited tools to address any funding shortfalls.

- 3.7. In no way do these issues with in-year management indicate that any additional funding via late announcements is not required. The Welsh Government will have set its plans on the basis of available funding, balancing competing priorities. Any increases in funding can always be deployed to improve public services and support the Welsh population, but such changes are bound to be more effective if there is time to adjust plans in an orderly fashion.
- 3.8. Volatility in tax revenues also has to be accommodated by the in-year budget management system and can put a strain on the limits available. The revenues from the fully devolved taxes, land transaction tax and landfill disposal tax, have a direct and immediate impact on Welsh Government finances. The associated block grant adjustments are set in advance of the year in question and then revised half-way through the year, after the UK Government's Autumn budget. Table 3 shows the change in the net budgetary position between final budget for each year and the end of year position.

Table 3: Change in fully devolved tax revenues and block grant adjustments in-year (£m)

| | 2018-19 | 2019-20 | 2020-21 | 2021-22 |
|--------------------------------------|-----------|-----------|-----------|------------|
| <u>Final Budget</u> | | | | |
| Devolved revenues* | 276 | 299 | 285 | 264 |
| Block grant adjustments | 269 | 275 | 271 | 254 |
| <i>Net position</i> | 7 | 24 | 14 | 10 |
| <u>End of year</u> | | | | |
| Devolved revenues* | 272 | 297 | 242 | 448 |
| Block grant adjustments | 268 | 260 | 196 | 300 |
| <i>Net position</i> | 3 | 38 | 46 | 147 |
| <i>change in net position</i> | -3 | 13 | 32 | 137 |

* Land transaction tax and landfill disposals tax

- 3.9. The in-year change in the net position has increased in recent years because of the uncertain impacts of COVID-19 on the economy and policy changes introduced in response to the pandemic. The change in 2021-22 was nearly 40% of the overall cash reserve limit. The block grant adjustments have always moved in the same direction as the devolved revenues, lessening the net impact of change, but often by quite different amounts.
- 3.10. Changes in revenues (and block grant adjustments) become apparent as the year progresses, through monitoring information and as policies are altered. This helps with in-year budget management – but the devolved taxes still represent significant additional moving parts in the Welsh Government's budget which put additional strain on the tools available.

- 3.11. The revenue from the Welsh rates of income tax, and the associated block grant adjustment are set in advance of the budget year in question. They are not revisited until outturn information is available 18 months later, so do not affect in-year budget management.
- 3.12. There is a reconciliation process for all the block grant adjustments and also the revenues from the Welsh rates of income tax once outturn information is available. Any difference between outturn and the forecasts used in budgets is applied to the block grant in the year following the outturn information.
- 3.13. Changes to fully devolved tax revenues impact the Welsh Government's budget immediately, as noted above, whereas outturn information in relation to the block grant adjustments is not applied until two years later through the reconciliation process. This means that changes which are often driven by the same economic factors, affect the Welsh Government budget at different times. There may not be a better way to manage the reconciliation process, but it is worth noting these timing differences must also be managed using the limited tools available to the Welsh Government.

4. Current position

- 4.1 The Welsh Government budget in 2022-23 is around 40 per cent bigger in cash terms than in 2016-17, when the cash reserve and borrowing limits were set in the fiscal framework agreement. The capacity for the Welsh Government to adjust its annual budgetary profile and manage the in-year position is therefore significantly lower now in relative terms and will continue to decline unless those limits are increased.

5. Proposals for change

- 5.1 The Welsh Government, together with the other Devolved Governments, has been pressing the UK Government for greater flexibilities to manage its budget.
- 5.2 Modest proposals include the automatic ability to carry forward late in-year block grant changes into the following financial year. This would provide more time for Devolved Governments to adapt plans to accommodate those changes. Such arrangements have been agreed with the UK Government in the past, but only on a case-by-case basis. An automatic facility to be able to carry late changes forward would reduce uncertainty and the amount of time spent negotiating end-year arrangements.
- 5.3 Devolved Governments have also called for increases to limits on borrowing and cash reserves. Ideally, this would be accompanied by some form of indexation which would change limits in line with budgets and avoid the need for future negotiation.
- 5.4 Central to these proposals is an agreed rule-based approach, ideally with independent arbitration. This would remove the case-by-case, and at times

arbitrary, basis on which the current system operates and would ensure more predictable outcomes - enabling better budget management. In this context, it is worth bearing in mind that across the whole system of funding for the Devolved Governments, HM Treasury has had until recently a dominant role in the interpretation of the existing rules and in resolving any disputes that arise. The new Inter-Governmental Relations arrangements set out a new dispute resolution and avoidance procedure which includes for the first time an element of independent advice.

- 5.5 Devolved Governments face different risks to UK government departments and require more autonomy to act as controllers of public spending. The CBG should recognise those differences more fully and align better with the separate arrangements for Devolved Governments under the fiscal framework agreements. In particular the rules around capital to revenue switches, timing, and breaches of control totals should take account of those agreements.
- 5.6 An alternative, more radical approach would be to remove all limits on the size of the cash reserve and the amount that can be drawn down each year. Borrowing limits, particularly for capital purposes, could also be removed or greatly relaxed, with a focus on the cost of servicing the debt rather than the level of borrowing. This would provide the Welsh Government with greater scope to align annual budgets with circumstances in Wales. In effect, the Welsh Government would take full responsibility for managing its finances over time, within the overall constraints imposed by block grant funding.
- 5.7 This approach would involve risks as well as opportunities. The Welsh Government would have to manage the possibility of late in-year reductions to the block grant, arising from the UK Government supplementary estimates process. It would also be likely to lose access to the UK reserve in all but the most extreme circumstances. (Devolved Governments already have very limited access to the UK reserve to deal with exceptional unforeseen circumstances which cannot be managed with the tools currently available.) The Welsh Government would however have a more comprehensive set of tools to manage those risks.

6. Final implications

- 6.1 The Welsh Government should be enabled to take greater control of its finances. In particular the annual constraints imposed by the block grant arrangements and the limits on the budget management tools should be relaxed.
- 6.2 The current arrangements can lead to very late changes in budget allocations to accommodate changes in funding driven by circumstances in England rather than in Wales. This carries the risk that public resources are not deployed in the most effective way for Wales, or much needed funds have to be returned to the UK Government.

7. Conclusion

- 7.1 The reforms outlined above would improve the Welsh Government's ability to efficiently manage its resources and effectively fund public services in Wales.

Welsh Government

Evidence to the Independent Commission on the Constitutional Future of Wales – An account of partnership working with the UK Government, for example Growth Deals, Mersey-Dee Alliance, cross-border protocols on health and education services, etc

Date: September 2022

Contents

| | |
|--|----|
| 1. Overview | 4 |
| 2. Mersey Dee Alliance (MDA) | 4 |
| Key Achievements | 5 |
| Energy and Clean Growth Summit..... | 5 |
| Investment and Delivery Programme | 5 |
| Transport..... | 6 |
| Business and Skills | 6 |
| Challenges | 6 |
| Engagement Case Study: Growth Track 360..... | 7 |
| Conclusion | 8 |
| 3. Health and Social Services | 8 |
| Introduction | 8 |
| Issue: Payment for Treatment (2019) | 9 |
| Welsh Government current position | 9 |
| The England/Wales NHS Cross-border Healthcare Services: Statement of Values and Principles (SVP) | 10 |
| The NHS Cross Border Network | 10 |
| The Responsible Body Guidance for the NHS in Wales | 10 |
| NHS England Tariff Advisory Group..... | 11 |
| International Healthcare Arrangements..... | 11 |
| COVID-19 pandemic | 12 |
| COVID-19 pandemic experience in relation to Personal Protective Equipment (PPE) | 12 |
| COVID-19 pandemic experience in relation to Testing | 13 |
| COVID-19 pandemic experience in relation to Vaccinations | 13 |
| Future aspirations | 14 |

| | |
|--|----|
| Final implications | 14 |
| Conclusion | 14 |
| 4. Education | 15 |
| Overview | 15 |
| Engagement – Formal | 15 |
| UK Education Ministers Council (UK EMC)..... | 15 |
| Student Finance | 15 |
| Engagement - Informal | 17 |
| Reciprocal funding for cross border learners | 17 |
| Qualifications | 17 |
| Apprenticeships and Apprenticeship Framework Development | 18 |
| Challenges | 18 |
| Levelling up – UK National Academy | 18 |
| Levelling up – Multiply..... | 19 |
| Erasmus+ and the Turing Scheme..... | 19 |
| 5. City and Growth Deals | 20 |
| Cardiff City Deal..... | 20 |
| Swansea Bay City Deal | 21 |
| North Wales Growth Deal | 21 |
| Mid Wales Growth Deal | 22 |

1. Overview

- 1.1. Working in partnership with central government has always been a feature of devolution. In the early days of devolution, the limited executive powers of the first institution and the nature of the Assembly's funding made co-operation with the UK Government essential. Although the Senedd's increased legislative powers and the changes to the funding settlement have resulted in greater autonomy and less of a reliance on central government, the reservation of many of the legislative and financial levers to central government and a porous border between Wales and England necessitate strong partnership working between government at all levels.
- 1.2. The paper sets out examples of the Welsh Government working closely with the UK Government in the fields of the economy, health, and education. Whilst relations with the UK Government may not always be harmonious, as noted in some of the examples (**and see, in particular, evidence paper 10**), they also demonstrate the importance of partnership working in delivering successful outcomes to improve peoples' lives.
- 1.3. This paper touches on a number of areas. In general, we have provided examples of the mechanisms in place and factual accounts of our experiences, rather than a commentary on the effectiveness of these mechanisms (though in some cases, the challenges faced are outlined in more detail to give fuller context, particularly in relation to education).

2. Mersey Dee Alliance (MDA)

- 2.1. Welsh Government is one of the founder members of the Mersey Dee Alliance (MDA), a successful informal partnership that supports strategic economic growth across North East Wales, West Cheshire and the Wirral.
- 2.2. Recognised as a single economic sub-region and having a population close to 1 million, the Mersey Dee area is a pivotal location in the UK.

| Key Facts |
|--|
| <ul style="list-style-type: none">• 78% of the regional population live and work in the MDA areas• £22bn GVA• 380,000 jobs• 700 companies with turnover of £1m+ per annum,• Enterprise Zones – Cheshire Science Corridor, Wirral Waters and Deeside. |

- 2.3. The Mersey Dee has five main centres, with different histories, that are complementary in their economic roles to each other despite being either side of the England – Wales national border.
- 2.4. The MDA aspires to bring together neighbouring economic partnerships and provide governments with a vehicle to work together constructively for mutual advantage and better economic and social outcomes for cross border communities.
- 2.5. The MDA works with a wide range partners and stakeholders, with a membership that brings together Flintshire and Wrexham in Wales and Cheshire West and Chester and the Wirral in Northwest England. This requires the MDA to have close links with the local economic partnerships in which the partner authorities sit:
 - Ambition North Wales (ANW) – North Wales
 - The Cheshire and Warrington Local Enterprise Partnership (C&W LEP) – Cheshire and Warrington.¹
 - The Liverpool City Region Combined Authority (LCR CA) – Liverpool City Region Combined Authority

Key Achievements

- 2.6. The Welsh Government has used the MDA for engaging, facilitating, and communicating effectively with stakeholders across the area. This informal relationship has worked well historically and continues to work well to this date. Furthermore, the MDA have utilised its platform to influence and inform the policy and delivery of both governments.

Energy and Clean Growth Summit

- 2.7. The MDA, in partnership with the Ambition North Wales Board and the Cheshire and Warrington LEAs, held an Energy and Clean Growth Summit in 2018. The overwhelming outcome of the Summit was the recognition of the need and the will to work together on both sides of the border to support the growth of the energy sector.
- 2.8. The Energy and Clean Growth Summit led to collaboration with the energy sector to produce an energy prospectus for north Wales and the Mersey Dee area, published in March 2020.

Investment and Delivery Programme

- 2.9. The MDA has produced an Investment and Delivery programme which sets out the investment required in transport connectivity, skills development, digital connectivity and low carbon and clean growth over the next 5 to 20

¹ UK Government are currently reviewing LEAs across the UK to question their value and whether a mayor and combined authority approach is more suited

years. This will unlock the economic growth potential at strategic development sites and better link the Mersey Dee area to wider economy of the Northern Powerhouse, Ireland and Europe.

Transport

- 2.10. The MDA has supported the North Wales Metro working group and continues to support Growth Track 360 (GT360). The MDA continues to lobby for investment to improve rail connectivity within and around the MDA area.
- 2.11. The MDA worked closely with North Wales and Mersey Dee Rail Task Force to promote the transport priorities for the Mersey Dee area to be included in the TfN Strategic Transport Plan. Chester Station capacity improvements and Wrexham Bidston service and line improvement have subsequently been included.
- 2.12. The MDA supported the working group in the first phase of the Chester Broughton Growth Corridor project, formerly known as the Chester Western Relief Road
- 2.13. GT360 worked with the Welsh Government to establish a cross border transport forum supported by Transport for the North (TfN) to bring together the Welsh and UK Government Transport Ministries, and the Wales Office. It also advocated a joint government (Welsh Government and UK Government) rail board in response to the Union Connectivity Review. This has been endorsed by the UK House of Commons Welsh Select Committee but has not yet been set up.

Business and Skills

- 2.14. Up to six MDA Business Breakfast networking events are held each year at various locations in MDA area. Businesses are invited to “get involved” and pitch with over 150 delegates in attendance.
- 2.15. The MDA and North Wales Regional Skills Partnership sponsored the north Wales and Mersey Dee skills and innovation symposium with Wrexham Glyndwr University, Bangor University and University of Chester.

Challenges

- 2.16. The MDA has put together an Economic Recovery Package requesting financial support from both UK and Welsh Government. This request forms part of the region’s recovery from Brexit and COVID which have impacted the region’s manufacturing industry and supply chains.
- 2.17. The UK and Welsh Governments asked the MDA for a priority list of projects. Seven priorities were subsequently identified in Transport/Active Travel, Business, Skills, Innovation and Digital, Low Carbon Energy and Place.
- 2.18. The Welsh Government has provided additional funding of circa £110,000 to the MDA to develop the business cases for individual priority projects.

- 2.19. While there appears to be a consensus amongst MDA members and stakeholders that these items could deliver both governments' policies, there is no routine mechanism to fund such activity on a cross-border basis.
- 2.20. As the MDA is constituted as an informal partnership, it does not deliver investment activity. Instead, the lead partners and joint partners within the MDA deliver on its behalf. Recent discussions between Welsh Government officials and MDA partner officers indicate that this will continue to be the case, particularly in relation to the Levelling Up Fund and Shared Prosperity Fund. They have however agreed to investigate opportunities for joint procurement and delivery of projects, where appropriate. The Welsh Government believe this to be the correct and appropriate course of action at this time.

Engagement Case Study: Growth Track 360

- 2.21. In this regard, the MDA works closely with GT360 (the North Wales and Mersey Dee Rail Task). GT360 operates as a sub-committee of the MDA, advising the MDA on Transport Policy issues (services and infrastructure enhancements) for rail, bus and active travel. GT360 engages with the transport leads for Ambition North Wales, the C&WLEP, and the LCR CA. The Chair of the LCR CA Transport Committee serves on the Board of GT360.
- 2.22. The MDA and GT360 also have attendees representing business from both sides of the border. The North Wales Mersey Dee Business Council and the West Cheshire and North Wales Chamber of Commerce work with both bodies, attending board meetings and reporting cross-border economic and transport issues to their wider business membership.
- 2.23. The MDA and GT360 prioritise engagement with elected representatives. The MDA supports a Westminster based All Party Parliamentary Group, the Mersey Dee and North Wales APPG. The APPG is a cross party group open to all Members of Parliament from North Wales, Cheshire West and Chester and the Wirral.
- 2.24. The MDA and GT360 plays a role in bringing together Members of Parliament and Members of the Senedd together through the North Wales Cross Party Group (CPG) in the Senedd. This group is open to all Members of the Senedd from North. Currently the CPG invites North Wales Members of Parliament and Council Leaders to join their meetings. Regular written updates are issued by the MDA and GT360 to Members of Parliament and Members of the Senedd.
- 2.25. The two organisations seek to engage with Welsh Government and UK Government Ministers, including Welsh Government Ministers for Economy and Climate Change, and UK Ministers from the Department for Levelling Up, Housing and Communities, Department for Transport, BEIS and the Office of the Secretary of State for Wales.

Conclusion

- 2.26. The Mersey Dee Alliance's success has been achieved through communication across different political and national boundaries, bringing people together to collaborate on a range of issues. This has been especially true for transport which remains a key success.
- 2.27. Welsh Government and UK Government officials continue to support the Mersey Dee Alliance in developing its recovery proposals. The MDA has the potential to support much needed skills development, active travel proposals, and the decarbonisation of industry with a real place-based approach.
- 2.28. There remain several key ambitions for the MDA:
 - 2.28.1. The MDA works well as an informal body. Returning to business as usual would include returning to in-person meetings and breakfast networking events.
 - 2.28.2. Achieve UK Government funding support for the MDA Recovery Projects. Currently no recognised route for support has been identified beyond existing allocations.
 - 2.28.3. As cross-border activity is not routinely recognised within existing funding structures, the Board has agreed that it will consider whether the MDA needs to become a legal entity to deliver future projects. Should this be taken forward, the Welsh Government would need to carefully consider how it would align and add value to existing regional bodies and partnerships in North Wales.

3. Health and Social Services

Introduction

- 3.1. The range and number of cross border health and social care flows between Wales and England is complex and there are many operational areas where divergences in policy between England and Wales have led to challenges including communication for people on the differences in services within health and social care. These include the areas of:
 - Payments from/to Wales to/from England and the tariff system
 - NHS transport systems (e.g. Ambulances and non-emergency transport)
 - Looked after children placements
 - Wales Eye Care Services
 - Free Prescriptions
 - New Treatment Fund
 - Recommended Medicines
 - Individual Patient Funding Requests

- Out of area service referral
- Sexual Health Services (including HIV care)
- Screening
- Regulation and Inspection of Healthcare providers
- Registration of frontline social care workforce
- Mutual Recognition of Professional Qualifications
- Charging for Social Care and Support
- NHS Dentistry
- Infected Blood Support Scheme
- Unpaid Carers - right to carers needs assessment under the SSWB Act 2014
- NHS data
- Welsh language rights when receiving health and care services in Wales
- GP Out of Hours 111 service
- Mental Health
- Referral Waiting Times
- People accessing different healthcare or social care systems including GP registration/referral
- Differences in treatment policy thresholds

3.2. The UK has a number of Healthcare Agreements in place which provide for different levels of reciprocal healthcare provision between the UK and the 3rd party country. These include arrangements with the European Union (via the Trade and Cooperation Agreement) and British Overseas Territories. The UK Government is currently in different stages of negotiating agreements with a number of countries.

Issue: Payment for Treatment (2019)

3.3. In some areas these have caused operational difficulties, for example, a dispute over funding in early 2019, now resolved, whereby the Countess of Chester NHS Foundation Trust (CoCh) ceased accepting elective referrals from Wales. The issue was due to an expectation by CoCh that Betsi Cadwaladr University Health Board paid for treatment of Welsh residents using the English National Tariff, although the Tariff is limited in statute to operation within England. Whilst this was a dispute between two NHS bodies, it required intervention by Welsh Government and the Department of Health and Social Care to resolve.

Welsh Government current position

3.4. **Four key mechanisms**, described below in 3.5 to 3.14, are in place to specifically deal with cross border health issues.

The England/Wales NHS Cross-border Healthcare Services: Statement of Values and Principles (SVP)

- 3.5. The SVP (<https://www.england.nhs.uk/wp-content/uploads/2018/11/cross-border-statement-of-values-and-principles.pdf>) has been agreed between the NHS in Wales and NHS in England to ensure smooth and efficient interaction between NHS bodies for patients along and across the England-Wales border, in the interest of supporting better patient outcomes and avoiding fragmentation of care.
- 3.6. One of its key principles is that 'both countries will act in the best interest of patients at all times, and there will be no delay in accessing healthcare services whilst commissioning responsibilities are clarified'.
- 3.7. The SVP also provides a resolution process for issues, intended to prevent escalation of issues to the point at which patient care is affected. However, the Welsh Government is not aware of any instances of the process being used.
- 3.8. The SVP also provides a resolution process for issues, intended to prevent escalation of issues to the point at which patient care is affected.
- 3.9. The SVP has been subject to a review led by NHS England which is currently awaiting publication. The scope of the review was agreed in advance with the Welsh Government and undertaken in conjunction with all members of the Cross Border Network (below), including the Welsh Government.

The NHS Cross Border Network

- 3.10. The Cross Border Network has existed for a number of years as a forum to discuss and seek/facilitate resolution of matters specific to healthcare arrangements for patients living along the border between England and Wales.
- 3.11. The Network meetings are attended by Welsh Government officials, and representatives from NHS England and representatives of NHS organisations on both sides of the England/Wales border.
- 3.12. The group considers issues both pertinent to the immediate England/Wales border and wider cross border issues impacting across England and Wales. The group has oversight both of wider policy matters, as well as specific operational issues, to the level of individual patients, as required.

The Responsible Body Guidance for the NHS in Wales

- 3.13. This sets out the framework and responsibilities regarding treatment and charging for the bodies responsible for securing secondary and tertiary health care for individuals in Wales. It includes guidance on residency rules regarding healthcare provision in relation to internal UK borders and changes in responsibility when people move residence across these borders (for

example students). A link to this guidance can be found here: <https://gov.wales/sites/default/files/publications/2019-04/responsible-body-guidance-for-the-nhs-in-wales.pdf>. Similar guidance, *Who Pays*, is in place in England and can be found here: <https://www.england.nhs.uk/publication/who-pays-determining-which-nhs-commissioner-is-responsible-for-commissioning-healthcare-services-and-making-payments-to-providers/>

NHS England Tariff Advisory Group

- 3.14. Following the cross-border dispute with the Countess of Chester NHS Foundation Trust, the Welsh Government was allocated a seat on the NHS England Tariff Advisory Group to enable more active engagement in the development of tariff policy in England. In addition, Welsh Government officials and NHS Wales representatives now meet regularly with DHSC and NHS England representatives to address any cross-border funding issues.

International Healthcare Arrangements

- 3.15. Though "international relations" including International Agreements, are a reserved matter (not devolved to Wales), the observing and implementing of international obligations and the delivery of healthcare within Wales (therefore including the treatment of incoming patients and the consideration of applications by Welsh residents for treatment abroad) are devolved matters.
- 3.16. The Healthcare (European Economic Area and Switzerland Arrangements) Act 2019 ("HEEASAA") (to be renamed the Healthcare (International Arrangements) Act 2019 ("HIAA") following the commencement of section 162 of the Health and Care Act 2022) places a statutory obligation on the UK Government Secretary of State to consult the Devolved Governments before making regulations relating to reciprocal healthcare agreements under the Act, where those regulations contain provision within the legislative competence of the devolved legislatures.
- 3.17. To support the statutory requirement to consult the Devolved Governments, a Memorandum of Understanding ("MOU") has been agreed between the UK Government and the Welsh and Scottish Governments.
- 3.18. The MOU goes further than just consultation on regulations to be made under the HEEASAA/HIAA to implement reciprocal healthcare agreements. UK Government has recognised the role that the Devolved Governments and their health bodies play in implementing and observing the healthcare agreements and therefore the Memorandum includes the involvement of the Devolved Governments in the policy development process on the nature and content of the healthcare agreements as well as on the regulations to implement them in law. The MOU therefore sets out overarching principles, and describes how the consultation process should be carried out, including sections on:
- Policy Mandate and Formation
 - Negotiations and Drafting of International Agreements
 - Ministerial Engagement

- Dispute Resolution
- Confidentiality
- Operational Implementation – Regulations under the HIAA

3.19. Regular consultation under the terms of the MOU between the UK Government officials and the Devolved Governments regarding both Regulations to be made under the HEEASAA/HIAA and International Agreements with third party counties are already being undertaken.

COVID-19 pandemic

3.20. The COVID-19 pandemic has been a clear example where the decisions on health and health services in Wales, a devolved area, were heavily impacted by decisions made by the UK Government. This was the case with controls on international travel. As Wales shares an open border with England there would have been very little impact of unilateral action in Wales so we needed to work and exert influence at the UK level. There were a number of times when we advocated for stricter controls on international travel, for instance, to prevent the ingress of the Delta variant into the UK. However, this would have required UK level alignment and in cases where we could not secure this agreement we continued to put our disagreements on the record and to set out the public health evidence for maintaining greater controls on travel while nevertheless reluctantly aligning.

COVID-19 pandemic experience in relation to Personal Protective Equipment (PPE)

- 3.21. During all phases of the COVID-19 pandemic, health and social care providers in Wales have been asked to adhere to the UK COVID-19 Infection Prevention and Control (IPC) guidance including that on Personal Protective Equipment (PPE).
- 3.22. The guidance was based on a continuous review of the international evidence base and was issued jointly by the Department of Health and Social Care (DHSC), Public Health Wales (PHW), Public Health Agency (PHA) Northern Ireland, NHS National Services Scotland, UK Health Security Agency (UKHSA) and NHS England as official guidance.
- 3.23. Wales has played an active part in the development and continued evaluation of this guidance via senior representation on the UK IPC group and chairing of the group by Dr Eleri Davies of PHW.
- 3.24. It is a measure of the speed and responsiveness of the work of the UK IPC group that new evidence was assimilated in five hundred iterations of the guidance over two years. The UK IPC guidance has been consistent with recommendations from the World Health Organisation (WHO) throughout and was endorsed by the Health and Safety Executive (HSE).
- 3.25. This four-nation approach has been very effective in ensuring a consistent UK response to issues such as staff and union demands for widespread use of enhanced Respiratory Protective Equipment (RPE).

COVID-19 pandemic experience in relation to Testing

- 3.26. Welsh Government have worked closely with UK Government and the other UK nations to introduce the National Testing Programme in responding to Covid-19. UK Health Security Agency (UKHSA) entered into contracts to expand testing provision on behalf of all four nations and a Memorandum of Understanding (MoU) was put in place with Welsh Ministers to ensure adequate governance arrangements. These governance arrangements evolved over time and were strengthened under the agreed MoU.
- 3.27. Welsh Government officials worked closely with DHSC (latterly UKHSA) officials to deliver testing in Wales via physical test sites, care home testing, workplace testing and home test kits, including associated laboratory facilities. There were weekly operational and policy meetings with UK Government to discuss issues arising or differences in approach across the four nations and a strategic UK Government and Devolved Governments Board chaired by the UKHSA Chief Executive. Significant issues were also discussed at the weekly Ministerial meetings during the height of the pandemic. UK systems, including digital systems for testing, worked well overall and provided additional capacity and capability but there were challenges, particularly when there was a divergence in policy in Wales as compared with England. As a result of the fast pace of work, there were also challenges relating to UK Government's adherence to Welsh Language Standards requirements.
- 3.28. Welsh Government officials continue to work with UKHSA to deliver the testing services that remain and to ensure contingency plans are in place for any future Covid waves, particularly in the event of a variant of concern. Governance arrangements are also evolving further and a UKHSA / Devolved Governments Board has been established which will meet on a six weekly basis to consider strategic matters of importance affecting all four nations.

COVID-19 pandemic experience in relation to Vaccinations

- 3.29. During the COVID-19 pandemic, the roll out of the universal COVID-19 vaccination programme saw agreement between all four UK nations to follow the prescribed joint Committee of Vaccination and Immunisation (JCVI) advice.
- 3.30. Whilst operational and delivery mechanisms of the programme often differed across the four nations, regular meetings at both official and Ministerial level helped foster co-operative relations, including sharing intelligence and lessons learned.
- 3.31. On cross-border matters, data sharing arrangements were put in place so vaccinations received in a different nation could be recorded on home nation general practitioner (GP) records.

Future aspirations

- 3.32. The NHS England review of the Cross Border Statement of Values and Principles has now been completed and awaiting publication. The review is to make recommendations intended to strengthen the SVP and the Cross Border Network.
- 3.33. There are currently no proposals for change with regard to international health care arrangements, though the MOU is to be reviewed within 24 months of its agreement (by 2024). The expectation is that the Welsh Ministers will continue to be consulted under the terms of the MOU with regard to Regulations developed under the HEEASAA/HIAA and with regard to future international healthcare agreements between the UK Government and 3rd party countries.

Final implications

- 3.34. There is a recognition from Health Authorities and Governments on both sides of the border that different policies have the potential to cause issues in the delivery of cross-border health and care and mechanisms (set out above) are in place to seek to prevent, mitigate and resolve issues where they occur. The recommendations in the SVP review, when implemented, are expected to further strengthen these mechanisms.
- 3.35. Welsh Ministers are able to influence matters regarding International Healthcare Agreements under the MOU.

Conclusion

- 3.36. The range and number of cross border health and social care flows between Wales and England is complex and there are many operational areas where divergences in policy between England and Wales that can bring challenges including confusion for the public accessing services. As a result, mechanisms to prevent, mitigate and resolve issues have been put in place between Health Authorities and Governments on both sides of the border.
- 3.37. Welsh Ministers are consulted on matters within devolved competence regarding International Healthcare Agreements by the UK Government, as required by the provisions of HEEASAA/HIAA. The terms of this consultation are set out within an MOU agreed between the UK Secretary of State for Health and Social Care and the Welsh Government Minister for Health and Social Services. The MOU goes further than requiring consultation on devolved matters and provides for consultation between the UK Government and the Devolved Governments regarding the scope and content of the International Agreements themselves. UK Government officials and officials from the Devolved Governments meet regularly under the term of the MOU.

4. Education

Overview

- 4.1. We engage with our UK Government education counterparts across a range of areas on both a formal and an informal basis. The information in this section provides some examples of this engagement.

Engagement – Formal

UK Education Ministers Council (UK EMC)

- 4.2. On 27 January 2022 the then UK Government's Secretary of State for Education, Nadhim Zahawi MP chaired the first meeting of the UK Education Ministers Council. The UK Education Ministers Council (EMC) is a policy Interministerial Group (IMG) equivalent and intends to provide central co-ordination and promotion of greater collaboration in areas of shared interest between Education Ministers leading on these issues on behalf of the four administrations of the UK. While ministerial portfolios differ in scope across the four administrations, the areas of shared interest cover the full range of education services, from Early Years through to Adult Education. These include the policy, delivery, technical and legislative matters where the administrations have determined to engage on a multilateral basis.
- 4.3. The Terms of Reference set out that it will:
- i. make sure that effective governance is in place to support engagement including through knowledge exchange, cooperation and collaboration in areas agreed as being of shared interest;
 - ii. share information with wider intergovernmental forums as required, and with external stakeholders if it is agreed to do so;
 - iii. set, direct and oversee delivery of any agreed joint activities; and
 - iv. convene to provide a dispute resolution mechanism prior to escalation of any disputes.
- 4.4. The Group met for the second time in person on 17 June in Edinburgh. The intention is for the Group to meet on a quarterly basis. There is also an officials four nations group which meets separately.

Student Finance

- 4.5. The Welsh Government, Scottish Government, Northern Ireland Assembly and UK Government are joint shareholders of the Student Loan Company (SLC). We engage with them in terms of the governance of the SLC, sitting on the Main Board, along with various other groups.

- 4.6. In terms of wider engagement, we engage on a regular basis with officials in the UK Government's Department for Education (DfE) and the other Devolved Governments, to work together in policy development (e.g. changes relating to Ukraine, COVID and repayments).
- 4.7. Student finance repayment policy is based on joint English and Welsh regulations, but this has proven problematic in recent months. There have been several occurrences of English repayment plans being made with no engagement with Welsh Government in advance, and realistically no alternative course of action available to Welsh Government without incurring a disproportionate cost in relation to SLC and HMRC systems. This has been the case for the repayment thresholds for Plan 2 in 2022-23 and 2023-24, and for the Plan 3 threshold in 2023-24.
- 4.8. This has broader implications, as the UK Government introduced its response to the Augar review of student finance earlier this year. The planned repayments reform (Plan 5) is based on the English context and addresses concerns from HM Treasury that the RAB charge in England is too high (the RAB charge relates to the level of loan which is not repaid and eventually written off by Government). In Wales the RAB charge is lower, and so the same justification for the regressive repayment changes is not present. If Wales was to introduce an alternative repayment system, this would take several years to implement, at a significant up front and ongoing cost. Policy work on this is delayed because we are also reliant on HM Treasury to identify a target RAB charge for Wales, without which we cannot properly assess options for future repayment policy.
- 4.9. Engagement and working practices have however improved over time. The formal governance groups provide the foundation for maintaining the relationship with DfE, however key to this has been to build relationships with all key counterparts, so we can have open and constructive discussions to ensure all parts are engaged and able to respond where necessary.
- 4.10. The challenges in this area relate to the breadth of policy development across the Department for Education. There are separate teams for Student Loan Company sponsorship, policy development, student finance modelling, student loan repayments, etc, with a Deputy Director often heading up each area. The formal SLC shareholder engagement mechanisms rely on the DfE sponsorship team being aware and engaged on all related policy development, which is sometimes taking place concurrently. This has resulted in Welsh Government officials being notified of policy changes at very short notice, with no time to consider alternatives.
- 4.11. In areas like student finance, with very specific budgetary arrangements and closely linked administrative systems, policy announcements in England are highly likely to have an impact elsewhere in the UK. It would therefore be helpful for the devolved governments to be kept informed of policy development in England in these areas. If, for whatever reason, that is not possible then there should be adequate grace periods built into the budgetary arrangements to allow time for the orderly development of policy.

Engagement - Informal

Reciprocal funding for cross border learners

- 4.12. There is a cross border flow of learners from Wales into England and vice versa. Where a learner crosses the border in Chepstow to undertake post-16 learning in an English college or sixth form, UK Government provide funding to the delivering institution. Likewise, where a learner domiciled in England crosses the border into a Welsh college the Welsh Government provides funding for this learner.
- 4.13. This arrangement also operates for specialist provision that may be more than just across the border. An example of this that has arisen in recent years is a jockey licence undertaken by Welsh learners. As there is no provision in Wales, learners can travel to England to undertake courses with costs covered by UK Government funding mechanisms.
- 4.14. For a small number of learners with specific additional needs which require high-cost interventions we do work with the UK Government to ensure a fair contribution is made.
- 4.15. By way of example, the additional learning needs of a very small number of Welsh domiciled learners that live near the border are better supported by specialist provision in England. Some of the costs associated with these learners can be large. This year, for example, the cost of one learner is £28k. In these circumstances, England agree to pay the first £6k and the college involved then needs to seek additional 'top-up' funding from Welsh Government. In 2022/23 to date, we will be seeking approval for circa £120k top up funding. (However, it's worth noting the new Additional Learning Needs and Education Tribunal (Wales) Act 2018 will shortly place this responsibility onto the local authority, at which point the Welsh Government will cease the 'top-up' process).

Qualifications

- 4.16. The pandemic created a need for closer collaborative working across the four nations in all areas of education. This position evolved from a situation where, during the first year of the pandemic, many decisions by UK Government were made or shared with little time for the Welsh Government to account for these appropriately in decision making (an example of this would be the adaptations to 2020 qualifications).
- 4.17. The situation has improved since then, where all nations now recognise the interdependencies. We have had quite in-depth policy discussions (e.g., the scope of the appeals process in summer 2021 and differences across the UK) and different approaches have been recognised and respected. There was good, early (often confidential) information sharing to help prepare various

governments for upcoming publications. Our regulators are also working together, resulting in the equivalent policy join up, which is helpful.

- 4.18. Vocational Qualification officials from Wales, England, Northern Ireland and Scotland meet monthly. The meetings are well attended and have increased the visibility and influence the devolved nations. However, much of the vocational qualification offer in Wales is dependent on the decisions made by UK Government. The planned reduction in the number of vocational awards available in England to support the introduction of T-Levels, is likely to affect Wales as the cost effectiveness and commercial viability of some specific awards will be reduced if they are only available in one or more of the smaller nations of the U.K.

Apprenticeships and Apprenticeship Framework Development

- 4.19. An informal four nations group meets every two months to share policy thinking. Most recently the group shared insights into different approaches to tackling the impact of Covid-19 which helps to inform our thinking about how we might adapt our programme in Wales.
- 4.20. In denying the Welsh Government access to replacement European Union (EU) funding through the UK Shared Prosperity Fund, or a decision-making role in the allocation of funds, the UK Government has created significant funding gaps for pan-Wales programmes, including apprenticeships, that were previously part-EU funded.
- 4.21. Funding levels for apprenticeships will be maintained through the core Welsh Government budget when EU funding ceases. This prioritisation impacts on other forms of activity or investments that would have been possible if the UK Government had made replacement EU funding available to the Welsh Government.
- 4.22. Directing replacement EU funding exclusively through local authorities for local and regional projects is causing significant disruption to devolved provision of business support and skills that have been integrated into the funding landscape in Wales over several years. This approach also carries significant risks of duplication, fragmentation of provision, and poor value for money.

Challenges

Levelling up – UK National Academy

- 4.23. Whilst the pandemic has improved partnership working across a number of areas, there are concerns over how the Levelling Up agenda risks undermining the devolved nature of education.
- 4.24. In February/March 2022 we were informed by DfE about the imminent announcement of the new English curriculum body/national academy and, specifically, what was said in the Levelling Up white paper:

*In addition, we will create the **UK National Academy**. Just as the UK pioneered the Open University, this new digital education service will support pupils from all backgrounds and areas of the UK to succeed at the very highest levels. The UK National Academy will be free and made available online to support the work of schools up and down the country. It will allow students to acquire additional advanced knowledge and skills, offering even more opportunities for every child to thrive.*

- 4.25. In particular, this included the development of resources designed to provide pupils 'stretch' beyond the formal curriculum. We (and the Scottish Government) flagged strong concerns about any aspect of the new English curriculum body/national academy being badged as 'UK,' given the entirely devolved nature of education. Officials were clear there should be no assumption that any resources created by the new English curriculum body would extend to Wales. However, we have received further correspondence from DfE reiterating their aim to provide an offer for pupils across UK and that their policy of such resources was in its early stages.
- 4.26. We also understand that DfE have received Levelling Up funding for this purpose but there's been no consequential flow through despite education being devolved.

Levelling up – Multiply

- 4.27. It is for Welsh Government to decide how education activities are provisioned. The continued development of the Multiply programme disregards that. Its development contradicts and undermines the devolved settlement.
- 4.28. In early March, a short deadline was issued for Devolved Governments to confirm whether we would adopt the menu of options that the UK Government had developed, or whether we would provide a menu of options specific to our countries. This level and nature of engagement is unacceptable. It has not been conducive to ensuring that Multiply respects devolution and, crucially, benefits the adult learners in Wales who need learning interventions the most.
- 4.29. Multiply has 'top sliced' SPF funding, its restrictive criteria does not align to the needs of Wales which makes it difficult to spend the Multiply allocation within the limited SPF time period.

Erasmus+ and the Turing Scheme

- 4.30. The UK Government declined future participation for the United Kingdom in the Erasmus+ Programme. This decision went against the clearly expressed wishes of the Welsh Government and had a direct impact on a fully devolved area.
- 4.31. The UK Government elected instead to launch the 'Turing Scheme' on a UK-wide basis using the Internal Market Act powers to bypass devolution. Without the need for devolved government consent, the UK Government abandoned Erasmus+ in favour of a cut-price alternative that fails to replace either its

scope or funding levels. The result is a greatly watered-down mobility programme that fails to include key elements of Erasmus+, including inward mobility, staff, or youth settings.

- 4.32. The Welsh Government have been superficially engaged by the Department for Education, but decisions on the Turing Scheme policy and delivery have been and continue to be made by UK Government ministers without regard to devolution or devolved consent.

5. City and Growth Deals

- 5.1. There are two operational City Deals in Wales (Cardiff and Swansea) and Growth Deals in North Wales and Mid Wales.
- 5.2. Deals are ultimately led by the ambition of our Regional Delivery Partners (local authorities) who identify their priorities for intervention to drive sustainable economic growth. The Welsh and UK Governments are co-signatories in the Deals, but the key principle is that the Regional Delivery Partners are responsible for the vision, objectives, regional governance and assurance arrangements, development of Portfolios of Programmes and Projects and importantly the delivery of outputs, outcomes and benefits for each City and Growth Deal.
- 5.3. The UK and Welsh Government are joint chairs of the Welsh Cities and Growth Implementation Board. A joint government Co-ordinating Officials Group has been established to provide support to the Board. The Group meets in advance of the main Board. In recognition that City and Growth Deals are ultimately developed and delivered by regional partners, the Welsh Government and UK Government are classed as joint Sponsor Bodies.

Cardiff City Deal

- 5.4. The Cardiff City Deal is a £1.229bn investment over 20 years made up of £734m ring-fenced for delivery of the South East Wales Metro, managed by Welsh Government, and a £495m investment fund (WIF) distributed by the Cardiff Capital Region (CCR) Joint Cabinet via the City Deal programme office.
- 5.5. Welsh Government officials work closely with the Cardiff Capital Region to explore co-investment opportunities across the region.
- 5.6. Welsh Government officials have developed a close working relationship with UK Government officials to ensure a coordinated and consistent approach to monitoring progress of the deal. This includes:
 - Joint Ministerial meetings with the CCR Leaders on a 6 monthly basis;
 - Observing CCR Cabinet and review of papers;
 - Joint quarterly performance monitoring meetings; and
 - Monthly project meetings to discuss the Deal pipeline.

Swansea Bay City Deal

- 5.7. Over the 15-year term, the Swansea Bay Region City Deal have pledged to work together to achieve the following three Swansea Bay Region City Deal strategic investment objectives to significantly contribute to the Swansea Bay City Region Economic Regeneration Strategy 2013 to 2030:
- i. To create over 9,000 skilled jobs aligned to economic acceleration, energy, life sciences and smart manufacturing across the region within 15 years (2017-33).
 - ii. To increase the Swansea Bay City Region GVA by £1.8-2.4 billion through the SBCD by 2033 and contribute to the region achieving 90% of UK productivity levels by 2033.
 - iii. To deliver a total investment in the region of £1.15-1.3 billion in the South West Wales Regional economy by 2033.
- 5.8. The three investment objectives will be delivered with an anticipated £1.15 – 1.3bn investment, which currently stands at: City Deal £241m; Public Sector £330m; Private Sector £592m.
- 5.9. Welsh Government officials have developed a close working relationship with UK Government officials to ensure a coordinated and consistent approach to supporting the Swansea Bay City Deal.
- Officials from both Governments attend regular meetings with regional partners to observe the development and delivery of the Deal in the region.
 - Observing Programme Board meetings.
 - At an intergovernmental level there is the Joint Board established on which both Governments are represented.
- 5.10. All nine projects have now been approved.

North Wales Growth Deal

- 5.11. The North Wales Growth Deal (NWGD), signed in December 2020, offers the opportunity for nearly £1bn of investment over 15 years, including £120 million each from Welsh Government and UK Government.
- 5.12. The NWGD is owned and delivered by the North Wales Economic Ambition Board, made up of the six North Wales Local Authorities and academic partners. The Final Deal Agreement was signed by Welsh Government, UK Government and the Ambition Board in December 2020 and the first tranche of Government funding, at £16m, was paid to the Ambition Board in March 21, with a further award of funding made in March 2022 for £20.445m, comprising £8m from the Welsh Government and £12.445m from the UK Government. The Ambition Board is accountable to both Governments for the delivery of the Deal.

- 5.13. Welsh Government and UK Government Ministers and officials work together to promote the NWGD.

Mid Wales Growth Deal

- 5.14. The Welsh Government has committed £55m towards the Growth Deal in Mid Wales, which is matched by £55m of UK Government funding, under the Final Deal Agreement signed earlier this year.
- 5.15. The Agreement was signed by all three parties on 13 January 2022, setting out a Welsh Government, UK Government and Growing Mid Wales Board framework for how the Deal will be delivered including the critical underpinning arrangements such as governance and assurance, monitoring & evaluation and communications.
- 5.16. Deals are ultimately led by the ambition of our Regional Delivery Partners (local authorities) who identify their priorities for intervention to drive sustainable economic growth. The Welsh and UK Governments are co-signatories in the Deals, but the key principle is that the Regional Delivery Partners are responsible for the vision, objectives, regional governance and assurance arrangements, development of Portfolios of Programmes and Projects and importantly the delivery of outputs, outcomes and benefits for each City and Growth Deal.
- 5.17. Welsh Government officials have developed a close working relationship with UK Government officials to ensure a coordinated and consistent approach to supporting the Mid Wales Growth Deal.
- Officials from both Governments attend regular meetings with regional partners to observe the development of the Deal in the region.
 - At an intergovernmental level there is the Joint Board established on which both Governments are represented

Welsh Government

**Evidence to the Independent Commission on the Constitutional
Future of Wales – An account of devolution as a distinctive system
of governance in Wales**

Date: September 2022

Contents

| | | |
|-----------|--|-----------|
| 1 | Overview | 3 |
| 2 | The Well-being of Future Generations (Wales) Act 2015 | 3 |
| 3 | The Well-being of Future Generations (Wales) Act - National Indicators, National Milestones and Future Trends | 6 |
| 4 | The Well-being of Future Generations (Wales) Act – Auditor General for Wales | 7 |
| 5 | The Well-being of Future Generations (Wales) Act – Future Generations Commissioner for Wales | 7 |
| 6 | The Well-being of Future Generations (Wales) Act – Future expectations | 10 |
| 7 | The Well-being of Future Generations (Wales) Act – Further information | 11 |
| 8 | Public Services Boards | 11 |
| 9 | The Role of Commissioners in Wales | 15 |
| 10 | The Role of Partnerships | 19 |
| 11 | Social Partnership in Wales | 21 |
| 12 | The Voluntary Sector Scheme (Third Sector Scheme) | 25 |

1 Overview

- 1.1 This paper sets out an account of devolution as a distinctive system of governance in Wales. In so doing, the paper considers the Welsh model of public service reform, role of Commissioners, role of partnerships (national, regional and local), trade unions, the Wellbeing of Future Generations Act 2015 and Public Services Boards.
- 1.2 The Government of Wales Act 2006 places the governance of Wales on a unique footing. Under the cross heading “*Inclusive*” approach to exercise of functions in Part 2 of that Act, the Welsh Ministers are required to take various steps and considerations forward – including duties to (amongst other things) maintain the Partnership Council for Wales; to make a Local Government Scheme to sustain and promote local governments; to promote the interests of voluntary organisations via a Voluntary Sector Scheme; and to make a Business Scheme to take accounts the interests of Business. These elements are ‘baked in’ to the devolution settlement itself.
- 1.3 The delivery of public services in Wales has followed a markedly different approach to that of England, where services such as health and education have increasingly been exposed to marketisation with service users treated as consumers. In a country the size of Wales, it is both impractical and undesirable to attempt to create such a distance between political responsibility and service delivery. The model of governance adopted in Wales, which includes recognition of the statutory requirements noted above alongside others relating to sustainability, equality of opportunity and the Welsh language, both reflect the Welsh circumstances and influences the way services are delivered. Consequently, we have developed a distinctive collaborative and citizen focused approach to the delivery of public services. We consider the primary driver for improved public services in Wales is working collaboratively with partners: the public sector, voluntary/third sector and where appropriate the private sector, and placing the Welsh public at the heart. The democratically elected Welsh Ministers represent the people of Wales at the national level in the big decisions and are held accountable for their actions.

2 The Well-being of Future Generations (Wales) Act 2015

- 2.1 The Well-being of Future Generations (Wales) Act 2015 (the WFG Act) is a major piece of innovative legislation in Wales. The WFG Act originates from the sustainable development duty established in the Government of Wales Act 1998 (and 2006). It is a mechanism to deliver on sustainable development policy and aspirations. The aim of the WFG Act is about improving the social, economic, environmental and cultural well-being of Wales and requires the public bodies listed in the WFG Act to think more about the long term, work better with people and communities and each other, look to prevent problems and take a more joined-up approach. As well as reflecting the requirements for inclusivity and sustainability imposed by the Government of Wales Act, the

WFG Act also reflects the Welsh Government's distinctive collaborative and citizen-focused approach to the delivery of public services. As such, the WFG Act underpins Welsh Government policies for driving improvement in the delivery of public services for the people of Wales. This fundamental piece of legislation was only made possible through devolution.

- 2.2 The WFG Act gives a legally-binding shared purpose – the seven well-being goals for national government, local government, local health boards and other specified public bodies across Wales (currently 48 in total).
- 2.3 It details the ways in which these bodies must work, and work together, to improve the well-being of Wales. The WFG Act also puts a duty on specified public bodies to act jointly via public services boards to improve their area and contribute to the seven well-being goals.
- 2.4 The WFG Act is designed to place sustainable development as the central organising principle of Government and public bodies in Wales.
- 2.5 The 44 Public Bodies in Wales covered by the WFG Act, include: Welsh Ministers, 22 Local Authorities, seven Local Health Boards, Public Health Wales NHS Trust, Velindre NHS Trust, three National Park Authorities, three Fire and Rescue Authorities, Natural Resources Wales, The Higher Education Funding Council for Wales, The Arts Council of Wales, Sports Wales, National Library of Wales, National Museum of Wales. In addition, four Corporate Joint Committees are covered by the WFG Act.
- 2.6 The key features of the WFG Act are:
 - a. **Well-being goals for Wales** – For a prosperous, resilient, healthier, more equal and globally responsible Wales, with a vibrant culture and thriving Welsh language (detail below).
 - b. **Well-being duty** – A well-being duty on 44 public bodies across Wales to carry out sustainable development. This must include the setting of well-being objectives that are designed to maximise their contribution to the well-being goals and taking action to deliver.
 - c. **Defining Sustainable development** – Sustainable development means the process of improving the economic, social, environmental, and cultural well-being of Wales by taking action, in accordance with the sustainable development principle, aimed at achieving the well-being goals.
 - d. **Sustainable Development Principle** – The ‘sustainable development principle’ as defined in the Act means that Welsh Ministers and public bodies ‘*must act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.*’. And in order to act in that manner a public body must take account of five ways of working. These are:

- i. **Long-term** - “balancing short term needs with the need to safeguard the ability to meet long term needs”.
 - ii. **Integration** - “the need to take an integrated approach”.
 - iii. **Involvement** - “involving other persons with an interest in achieving the wellbeing goals and of ensuring those persons reflect the diversity of the population”.
 - iv. **Collaboration** - “acting in collaboration”.
 - v. **Prevention** - “deploying resources to prevent problems occurring or getting worse”.
- 2.7 **National Indicators and Milestones** – 50 national indicators measure Wales’ progress under the seven well-being goals and the *Well-being of Wales* Report is published every year by the Chief Statistician.
- 2.8 **Auditor General** – has a duty to carry out examinations of public bodies listed in the Act, and report to Senedd Cymru every 5 years.
- 2.9 **Future Generations Commissioner for Wales** - The WFG Act establishes a statutory office of the Future Generations Commissioner for Wales (the Commissioner), whose role is to act as a guardian for the interests of future generations in Wales, and to support the public bodies listed in the WFG Act to work towards achieving the well-being goals. The Commissioner has powers to undertake review and make recommendations to public bodies.
- 2.10 **Local partnership working (Public Services Boards)** - The WFG Act also establishes Public Services Boards (PSBs) for each local authority area in Wales. Each PSB must improve the economic, social, environmental, and cultural well-being of its area by working to the well-being goals. They will assess the well-being of the area before publishing a joint local well-being plan.
- 2.11 **Future Trends Report** –Future Trends Report must be produced within a year of the Senedd election by Welsh Ministers. This will look at the likely future social, economic, environmental, and cultural well-being trends of Wales. This first was published in 2016 and most recently in December 2021.
- 2.12 **National well-being goals** – These are the seven well-being goals and their descriptors (outcomes) which are written into the legislation following a pilot national conversation under the banner of ‘The Wales We Want’ (2014/15). These well-being goals include:
- a. **A prosperous Wales:** An innovative, productive, and low carbon society which recognises the limits of the global environment and therefore uses resources efficiently and proportionately (including acting on climate change); and which develops a skilled and well-educated population in an economy which generates wealth and provides employment opportunities, allowing people to take advantage of the wealth generated through securing decent work.
 - b. **A resilient Wales:** A nation which maintains and enhances a biodiverse natural environment with healthy functioning ecosystems

that support social, economic, and ecological resilience and the capacity to adapt to change (for example climate change).

- c. **A healthier Wales:** A society in which people's physical and mental well-being is maximised and in which choices and behaviours that benefit future health are understood.
- d. **A more equal Wales:** A society that enables people to fulfil their potential no matter what their background or circumstances (including their socio-economic background and circumstances).
- e. **A Wales of cohesive communities:** Attractive, viable, safe, and well-connected communities.
- f. **A Wales of vibrant culture and thriving Welsh language:** A society that promotes and protects culture, heritage, and the Welsh language, and which encourages people to participate in the arts, and sports and recreation.
- g. **A globally responsible Wales:** A nation which, when doing anything to improve the economic, social, environmental, and cultural well-being of Wales, takes account of whether doing such a thing may make a positive contribution to global well-being.

3 The Well-being of Future Generations (Wales) Act - National Indicators, National Milestones and Future Trends

- 3.1 The national indicators, national milestones, and future trends duties play an important role in understanding Wales and providing evidence and insight that can assist long term decision making.
- 3.2 On 14 December 2021, under the Shaping Wales' Future programme, the Welsh Government published the first wave of Wales' national milestones, an updated suite of national indicators to reflect the impact of the COVID-19 pandemic, and the Future Trends Report Wales 2021.

National Indicators

- 3.3 The WFG Act required Welsh Ministers to set national indicators to assess progress towards achieving the well-being goals. Following consultation 50 national indicators were laid before the National Assembly for Wales (now Senedd Cymru) in March 2016. The indicators are an integrated suite of measures to help understand the progress Wales as a whole is making towards achieving the seven well-being goals in the WFG Act. They are a combination of quantitative and qualitative measures reflecting Wales' economy, society, environment, and culture. They are not designed to measure the performance of individual organisations.

'Well-being of Wales' Report

- 3.4 Each year a 'Well-being of Wales' report is published which provides an update on progress being made in Wales towards the achievement of the 7 well-being goals using the 50 national indicators, and other contextual data. The latest report was published in September 2021. The report has been

produced by Welsh Government statisticians under the responsibility of the Welsh Government's Chief Statistician. It has been produced in line with the Code of Practice for Statistics and is therefore produced independently of political influence.

National Milestones

- 3.5 The WFG Act 2015 requires Welsh Ministers to set national milestones. The Act stipulates that these should be in areas that, "Welsh Ministers consider would assist in measuring whether progress is being made towards the achievement of the well-being goals".
- 3.6 The milestones are collective goals for Wales rather than targets for Welsh Government or individual public bodies. They will relate to the National Indicators, a set of 50 Wales-level indicators, which reflect the combined contribution that all public bodies, individuals and organisations make towards the goals.

Future Trends

- 3.7 Welsh Ministers must produce a Future Trends Report within a year of the Senedd election. The report looks at the likely future social, economic, environmental, and cultural well-being trends of Wales. This first was published in 2016, and the latest version was published in December 2021.

4 The Well-being of Future Generations (Wales) Act – Auditor General for Wales

- 4.1 The WFG Act requires the Auditor General (AGW) to examine public bodies to assess the extent to which they have acted in accordance with the 'sustainable development principle' when (a) setting their well-being objectives; and (b) taking steps to meet them.
- 4.2 The AGW must examine each public body (including Welsh Government) at least once between Senedd elections, and also provide a report on their examinations of to the Senedd at least a year before each Senedd election.
- 4.3 The AGW published individual reports for each public body, and in May 2020 published an overarching report, summarising his general findings on the application of the sustainable development principle from all the individual examinations.

5 The Well-being of Future Generations (Wales) Act – Future Generations Commissioner for Wales

- 5.1 The Well-being of the Future Generations (Wales) Act 2015 (the WFG Act) (Section 17) establishes the statutory office of the Future Generations Commissioner for Wales (the Commissioner), an individual appointed by the Welsh Ministers after consultation with the responsible committee of the Senedd (7-year term). The Commissioner's role is to act as a guardian for the interests of future generations in Wales, and to support the public bodies listed in the WFG Act to work towards achieving the well-being goals. This

means helping public bodies and those who make policy in Wales to think about the long-term impact their decisions have. The Commissioner has powers to undertake review and make recommendations to public bodies. The first Commissioner took up their role on 1 February 2016. The recruitment process for the next Future Generations Commissioner for Wales is underway, with a public appointment planned for early 2023.

5.2

5.3 Built into the cycle of the WFG Act are the publication of two 5-yearly reports, one from the Commissioner and other from the Auditor General for Wales (AGW). These are required by law to be published one day and one year before a general election and together they give a periodic stock-take of the implementation of the WFG Act.

5.4 **General duty** – Section 18 of the WFG Act establishes that the general duty of the Commissioner is to promote the sustainable development principle, in particular to act as a guardian of the ability of future generations to meet their needs and to encourage public bodies to take greater account of the long-term impact of their activities. For this purpose, the Commissioner must also monitor and assess the meeting of the well-being objectives set by public bodies.

5.5 **Advice or assistance** – Section 19 of the WFG Act provides that in carrying out her or his general duty, the Commissioner may provide advice or assistance (excluding financial assistance) to a public body or any other person that she or he believes is taking, or is seeking to take, action that may contribute to the well-being goals. This includes providing advice on climate change.

5.6 **Best practice** – the Commissioner may also encourage best practice and promote awareness amongst public bodies as regards meeting their well-being objectives in a manner that is consistent with the sustainable development principle; and encourage public bodies to work with each other and with other persons if this could assist them in meeting their well-being objectives.

5.7 **Research** – the Commissioner has the power under section 19(2) of the WFG Act to undertake research or other study in relation to the sustainable development principle, the extent to which the well-being goals and national indicators are consistent with the sustainable development principle, and anything related to these things that impacts upon the economic, social, environmental and cultural well-being of Wales or any part of Wales

Reviews and recommendations made by the Commissioner

5.8 Section 20 of the WFG Act provides for the Commissioner to conduct a review of the extent a public body, though this can relate to more than one public body, is safeguarding the ability of future generations to meet their needs by taking account of the long-term impact what that body does. The Commissioner may review the steps taken by a body or which it proposes to

take to meet its well-being objectives, the extent those well-being objectives are being met and whether in taking those steps it has acted in accordance with the sustainable development principle.

- 5.9 The Commissioner may make recommendations as a result of any review; this means the Commissioner may recommend a course of action that a public body should take in order to address a specific matter. These recommendations may be about the steps a public body has taken to meet its well-being objectives and how to set well-being objectives and take steps to meet them in line with the sustainable development principle. In respect of the Welsh Ministers, these recommendations may also be about the well-being goals or the national indicators.
- 5.10 The Commissioner must publish any review she or he makes, and a copy of the review and its recommendations must be sent to the Welsh Ministers.
- 5.11 The Commissioner may require a public body to provide any information the Commissioner considers she or he needs to conduct the review. The Commissioner may only request the information if the body is not prohibited from disclosing the information by any other enactment or rule of law.
- 5.12 The Commissioner must publish any recommendations she or he makes, and a copy of the recommendations must be sent to the Welsh Ministers.

Responding to the recommendations of the Commissioner

- 5.13 Section 22 of the WFG Act requires public bodies to follow the course of action set out in any recommendation the Commissioner makes under section 20(4) of the WFG Act. However, the body may disregard all or part of the recommendation should they be satisfied that there is good reason to do so. The body may also decide to follow an alternative course of action in respect of the matter to which the recommendation refers, but where it decides not follow the recommendation it must explain its response and the alternative action it intends to do instead.

Annual Report

- 5.14 The Commissioner is required (Schedule 2 paragraph 17 of the WFG Act) to produce an annual report covering each financial year; this report must be published no later than 31 August following the end of the financial year that it covers. The Commissioner must send the report to the Welsh Ministers who must lay it before the Senedd.

Advisory Panel

- 5.15 Section 26 of the WFG Act establishes an advisory panel. This is a panel of advisors who provide the Commissioner with advice on the exercise of her or his functions.

- 5.16 The statutory members of the panel are listed at section 26(2). The Welsh Ministers may appoint additional members to the advisory panel, these will be known as ‘appointed members’.

Relationship with the Auditor General for Wales

- 5.17 The Commissioner may provide advice or assistance to the Auditor General for Wales in respect of the sustainable development principle and public services boards about the preparation of their local well-being plan.

Reports from Future Generations Commissioner and Auditor General

- 5.18 Built into the cycle of the WFG Act are the publication of two 5-yearly reports, one from the Commissioner and other from the Auditor General. These are required by law to be published one day and one year before a general election of the Senedd, and together they give a periodic independent stock-take of the collective efforts across Wales to create a sustainable Wales.

Future Generations Report (Future Generations Commissioner)

- 5.19 Section 23 requires the Commissioner to prepare a report detailing the improvements public bodies should make in order to set and meet their well-being objectives in a manner that is consistent with the sustainable development principle.
- 5.20 The Commissioner must publish this report before the end of the reporting period. The ‘reporting period’ runs from the day after the Welsh Ministers publish their future trends report under section 11 of the Act until the day one year and one day before the planned date of the next ordinary general election of the Senedd. The Welsh Ministers may, by regulations, amend the definition of the reporting period.
- 5.21 This report must include an assessment of how public bodies should better safeguard the ability of future generations to meet their needs and better consider the long-term impact of what they do. The report must also provide a summary of the evidence gathered and the activities undertaken by the Commissioner during the reporting period, a summary of reviews conducted in the reporting period, as well as the actions the Commissioner has undertaken in exercising their functions.
- 5.22 The Commissioner must send a copy of the report to the Welsh Ministers who must lay a copy before the Senedd.
- 5.23 The Commissioner published the Future Generations Report on 4 May 2020 and the Auditor General published his 2020 report on the same day.

6 The Well-being of Future Generations (Wales) Act – Future expectations

- 6.1 The Welsh Government have launched a public consultation on the second wave of national milestones, that will assist Welsh Ministers in assessing

progress towards achieving the seven national well-being goals. The consultation concludes in September, with the aim of laying the second wave of milestones before the Senedd by the end of 2022.

- 6.2 The Welsh Government have also launched a public consultation seeking views on extending the well-being duty (Part 2) of the Act to a list of 8 additional public bodies. The consultation concludes in October 2022.
- 6.3 The Commissioner is currently conducting a Section 20 into how the machinery of Welsh Government is carrying out sustainable development and safeguarding the ability of future generations to meet their needs.
- 6.4 The recruitment process for the next Future Generations Commissioner for Wales is underway, with a public appointment planned for early 2023.

7 The Well-being of Future Generations (Wales) Act – Further information

7.1 General background:

- a. [Well-being of Future Generations \(Wales\) Act 2015](#) (legislation)
- b. [Explanatory Memorandum](#)
- c. [Well-being of Future Generations \(Wales\) Act 2015](#)
- d. [Well-being of future generations act: the essentials](#)

7.2 Key Welsh Government publications:

- a. [Well-being of Wales Report](#)
- b. [National milestones and updated national indicators](#)
- c. [Future Trends Report](#)

7.3 Reports on the Act:

- a. Future Generations Commissioner's [Future Generations Report](#)
- b. Auditor General for Wales' report [So, what's different?](#)
- c. Public Accounts Committee's (fifth Senedd) report [Delivering for Future Generations – the story so far](#)
- d. Equality and Social Justice Committee's report [Annual scrutiny of the Future Generations Commissioner: An update](#)

8 Public Services Boards

8.1 This section explores the role and function of Public Services Boards (PSBs) in supporting well-being in Wales.

8.2 As explained above, the WFG Act established Public Services Boards (PSBs) on a statutory basis for each local authority area in Wales from April 2016, replacing the Local Service Boards which operated on a voluntary basis.

- 8.3 The purpose of PSBs is to bring together key public bodies in a geographical area to collectively improve the economic, social, environmental and cultural well-being of that area.
- 8.4 The statutory members of a PSB are the local authority; the local health board for the area; the fire and rescue authority for the area; and the Natural Resources Body for Wales. It is on these bodies that the statutory duties of the Board fall (i.e. a function of the Board is a function of each member of the Board that may only be exercised by acting jointly with the other members).
- 8.5 In addition to these statutory members, each PSB must invite the following to participate: Welsh Ministers, chief constables, the police and crime commissioner for their area, certain probation services, national park authority (if applicable), and at least one body representing relevant local voluntary organisations. PSBs can also invite other public service organisations to participate, for example, education providers such as colleges and universities and housing associations, and private bodies such as business forums.
- 8.6 In each local government electoral cycle, PSBs are required to:
- Develop an assessment of local well-being (published in May 2017 and May 2022)
 - Develop a local well-being plan (last published in May 2018, next due in May 2023)
 - Produce an annual report (previous reports published in July 2019, 2020, 2021, 2022)
- 8.7 There are 15 PSBs, which mostly operate on the local authority footprint, although some have merged onto a larger footprint. Conwy & Denbighshire PSB, and Cwm Taf (Merthyr Tydfil and Rhondda Cynon Taf) PSB were established as merged PSBs from their inception. In October 2021, the five PSBs in Blaenau Gwent, Caerphilly, Monmouthshire, Newport and Torfaen merged to form a single Gwent PSB. Anglesey and Gwynedd are not merged but have a formal collaboration agreement.
- 8.8 PSBs are led by, and accountable to, local leadership. Unlike other boards such as Regional Partnership Boards or Regional Housing Support Collaborative Groups, PSBs do not carry out activity on behalf of the Welsh Government. However, the Welsh Government must be consulted on draft assessments of local well-being and draft local well-being plans, and this opportunity is used to provide feedback and ensure the process of determining their priorities is robust.
- 8.9 PSBs are not legal entities, but statutory partnerships, with local democratic processes providing appropriate challenge and support. It is for each local authority to determine what form these scrutiny arrangements take. The success of each PSB is assessed locally.

- 8.10 The local authority(ies) must make administrative support available to the PSB, ensuring the board meets regularly and supporting those meetings. It is for the PSB to determine how it will resource the functions it has to undertake, such as preparing the assessment and plan, which are a responsibility of all the statutory members equally. They must consider what actions are appropriate and proportionate. The PSB members may pool their resources to deliver agreed objectives.

The Role of the Welsh Government

- 8.11 Welsh Government provides a package of general, nationally provided, support to PSBs as well as regional targeted funding to support collaboration across PSBs and reduce duplication of effort e.g. in building capacity to engage communities. The Welsh Government does not provide general funding to deliver actions in the local well-being plan. However, PSBs can, and have, drawn on various Welsh Government policy funding streams to support specific strands of work.
- 8.12 On 17 March 2021, the Senedd Public Accounts Committee Public Accounts Committee published Delivering for Future Generations – the story so far. It contained a recommendation for the Welsh Government to “...carry out a review of how the work of Public Service Boards is funded. The review should begin no later than six months after the next Senedd election, with its conclusions implemented in time for them to inform funding allocations for the 2023-24 financial year. The review should be undertaken with the following principles in mind:
- *PSBs should be able to access pooled funds, drawn from the resources of their statutory members, which they could either hold as formal corporate entities, or via informal arrangements.*
 - *PSB budgets should be determined by clear, consistent guidelines set out by the Welsh Government.*
 - *PSB budgets should be informed by the role that the Welsh Government has set out for them.*
 - *The contributions that each organisation is required to make to finance PSBs should recognise wider commitments that they have to other partnerships (including to other PSBs).”*
- 8.13 The Welsh Government progress response noted that,

“The Welsh Government has taken the view to date that it is for the PSBs to decide how they collectively resource their work – including pooling funding. However, we recognise partners have had varying degrees of success with this and there may be scope to support the development of a common approach to pooling resources. Some partners may also value additional guidance on the existing flexibilities regarding funding available from other sources.

“We will work with PSBs to get a better understanding of where they have pooled – or attempted to pool – resources and identify and share good practice. Alongside this we consider, on an annual basis, the package of

funding and support we make available directly to PSBs and will be looking at how we can raise awareness of the range of funding sources available to them.” This review has not yet completed.

Future aspirations/expectations / Proposals for change

- 8.14 There are no significant policy changes proposed for PSBs. The PSBs are developing their next local well-being plans and will be delivering on those plans from May 2023.
- 8.15 In respect of funding, the policy to date has been that the ethos of PSBs relates to partnership working on shared local priorities and not a delivery mechanism for the Welsh Government. The emphasis in the Well-being of Future Generations Act is about changing how existing resources are used – through collaboration and avoiding duplication of activities. However, it is hoped the review of funding outlined above in response to the Senedd Public Accounts Committee Public Accounts Committee report will enable and support PSBs to access broader funding streams to support delivery of their plans.

9 The Role of Commissioners in Wales

- 9.1 The advent of devolution in Wales has led to the establishment of the offices of the Children's Commissioner for Wales (the first such position in the United Kingdom), the Older People's Commissioner for Wales, the Welsh Language Commissioner, and the Future Generations Commissioner for Wales (detailed in [section 5](#) above). These independent Commissioners look at how the decisions made by public bodies in Wales, including Welsh Government, affect the citizens of Wales, holding those bodies accountable and providing a framework for improving the delivery of public services in Wales.

Children's Commissioner for Wales

- 9.2 Wales was the first country in the UK to establish an office of the Children's Commissioner as an independent champion of children's rights. It was one of the key recommendations of Sir Ronald Waterhouse following his inquiry into abuse in children's homes in North Wales.
- 9.3 The first Children's Commissioner for Wales (CCfW) was appointed in March 2001.
- 9.4 Established by the Care Standards Act 2000, the CCfW is an independent children's human rights institution. The Commissioner's remit is laid down in the [Children's Commissioner for Wales Act 2001](#), which amended the [Care Standards Act 2000](#).
- 9.5 The principal aim of the Children's Commissioner is to safeguard and promote the rights and welfare of all children and young people in Wales. The Commissioner must have regard to the United Nations Convention on the Rights of the Child.

- 9.6 The CCfW's remit covers all areas of the devolved powers of the Senedd Cymru insofar as they affect children's rights and welfare. The budget is agreed on an annual basis and for 2022-23 is £1.69 million.
- 9.7 The Commissioner has the following powers:
- The power to review the effect on children of exercise of functions or proposed exercise of functions of defined public bodies including Welsh Government.
 - The power to review and monitor how effective are the arrangements for complaints, whistleblowing and advocacy of defined public bodies in safeguarding and promoting the rights and welfare of children.
 - The power to examine cases in respect of individual children in certain circumstances.
 - The power to provide assistance to a child in certain circumstances.
 - The power to make representations to the Welsh Government about any matters affecting the rights and welfare of children which concerns the Commissioner and for which they do not have the power to act.
- 9.8 The Commissioner holds the Welsh Government to account by publishing an [Annual Report](#). The Annual report contains a series of recommendations for the Welsh Government, a summary of actions taken by her Office, and a review of issues relevant to the rights and welfare of children and young people in Wales. Further information on CCfW's legal powers and how they have been used to promote change for children since 2001 can be found [here](#).
- 9.9 The role of the Children's Commissioner was particularly important during the Coronavirus (COVID-19) pandemic. The Commissioner led the development of the *Coronavirus and me*¹ on-line surveys, in partnership with the Welsh Government, to provide children and young people with an opportunity to share their views on the impact of the pandemic on their lives. More than 43,000 young people took part in two surveys; the findings were used widely to influence decision-making.
- 9.10 Investment in the role of the independent CCfW is a public demonstration of the Welsh Government's commitment to children's rights. It shows that the Welsh Government welcomes independent scrutiny and partnership working to meet the needs of all children.

Older People's Commissioner for Wales

- 9.11 The Commissioner for Older People (Wales) Act 2006 ("the Act") received Royal Assent on 25 July 2006. It gives effect to the Welsh Government's commitment to establish an independent Commissioner for Older People in Wales, to safeguard and promote the interests of older people in Wales.

¹ [Coronavirus and Me Results - Children's Commissioner for Wales \(childcomwales.org.uk\)](#) and [Coronavirus and Me - Results of our January 2021 survey - Children's Commissioner for Wales \(childcomwales.org.uk\)](#)

- 9.12 The establishment of an Older People’s Commissioner was an important element of the Welsh Government’s commitment to drive up the standards of public-sector service delivery for older people in Wales. The Act established the Commissioner for Older People in Wales (“OPC”) and conferred on the OPC powers of review and investigation. It also made provision about matters including the authorities and types of complaint which may be reviewed or investigated.
- 9.13 The first appointment was made in 2008 as the first Older People’s Commissioner in the World. The OPC budget 2022-23 is £1.89million. The primary functions are to:
- Promote awareness of the rights and interests of older people in Wales
 - Challenge discrimination against older people in Wales
 - Encourage best practice in the treatment of older people in Wales
 - Review the law affecting the interests of older people in Wales
- 9.14 From the outset the OPC has focussed on engagement with older people and ensuring a full understanding of the issues being faced. Amongst the priorities have been dignity and respect in hospitals, protecting older people from abuse, and ensuring older people can make their voices heard.
- 9.15 The role of the OPC as an advocate was of particular importance during the Covid-19 pandemic in protecting the rights of older people in Wales.
- 9.16 The OPC has conducted several key reviews into the experiences of older people. A review into the experiences of older people living in care homes was the biggest of its kind ever undertaken in Wales. The recommendations led to a range of action and improvements.
- 9.17 The OPC also provides direct advice and assistance to older people which has proved particularly important with the rising costs of living.
- 9.18 The OPC is an [Affiliate of the World Health Organisation’s Global Network of Age-Friendly Cities and Communities](#) and works to promote age-friendly progress at the local, regional, national and international levels.
- 9.19 Investment in the role of the Older People’s Commissioner for Wales is a public demonstration of our commitment to ensuring older people are well placed to influence policy development and implementation. It also shows that Welsh Government welcomes independent scrutiny and partnership working to achieve a Wales that supports people of all ages to live and age well.

Welsh Language Commissioner

- 9.20 The Welsh Language Commissioner was established by the Welsh Language (Wales) Measure 2011. The Measure was passed by the National Assembly

for Wales on 7 December 2010, and received Royal Assent on 9 February 2011. The Measure modernised the existing legal framework regarding the use of the Welsh language in the delivery of public services. The Measure declared that the Welsh language has official status in Wales and established the office of Welsh Language Commissioner (the Commissioner).

- 9.21 The Commissioner's main functions are to promote and facilitate the use of the Welsh language, implement the Welsh language standards system, and investigate interferences with the freedom to use the Welsh language. The Commissioner must also uphold the principle that the Welsh language should be treated no less favourably than the English language in Wales.
- 9.22 The Commissioner's principle vision is of a Wales where people can live their life in Welsh. It has four overarching strategic objectives that contribute towards achieving that vision:
- Ensure fairness, justice and rights for Welsh speakers
 - Ensure that the Welsh language is a central consideration in policy and legislation
 - Maintain and increase organisations' compliance with their statutory duties
 - Increase the use of Welsh by organisations across all sectors
- 9.23 The Commissioner has imposed Welsh language standards on over 120 bodies to date. These standards place duties on bodies with regards to the provision of services to the public, the provision of services to their own staff, and also require bodies to consider the Welsh language when formulating new policies. The standards contribute to a greater awareness of the Welsh language in the public sector in Wales, and work towards improving services.
- 9.24 Since being established the Commissioner has also conducted investigations into specific policy areas such as Welsh language services in prisons, dementia care services available for Welsh speakers, and into the statutory education workforce in Wales. The Commissioner also has a statutory duty to publish a 5-year report on the position of the Welsh language. The last 5-year report was published in 2021 and covers the period from 1 January 2016 to 31 December 2020.
- 9.25 Investment in the role of the Commissioner is a public demonstration of Welsh Government's commitment to the Welsh language; and demonstrates the Welsh Government's commitment towards implementing the Welsh language standards system which is designed to improve the provision of Welsh language services. The Welsh Government has an ambitious strategy for the Welsh language – Cymraeg 2050, This strategy works towards two main targets: to have a million Welsh speakers by 2050, and to double the daily use of the Welsh language. The Commissioner is a key delivery partner as the Welsh Government implements its strategy for the language.

10 The Role of Partnerships

- 10.1 This section of the paper explores the role of partnership working in supporting delivery of the Welsh Government's objectives across public services, with private and third sector partners.
- 10.2 Partnership working has been part of the Welsh Government's approach since devolution. The Government of Wales Act 2006 formalised the national approach to partnership working through establishing the statutory Partnership Council for Wales and creating duties to publish schemes for how the Welsh Government would promote, and work with, local government, business and the third sector.
- 10.3 [*Beyond Boundaries: Citizen-Centred Local Services for Wales*](#) (Beecham et al, 2006) noted that two critical success factors to more effective public services were partnership and citizen engagement. It noted that partnership is difficult and needs the investment of time, resources and leadership.
- 10.4 In November 2006, the Welsh Government published [*Making the Connections – Delivering Beyond Boundaries: Transforming Public Services in Wales*](#). It included proposals to set up Local Services Boards and Local Services Agreements to promote joint working between public bodies.
- 10.5 [*Local, Regional, National: What services are best delivered where?*](#) (Simpson et al, 2011) made 21 recommendations on how local government services could best be delivered, with a heavy focus on collaboration between councils. The report provided several examples of successful operational collaborations and partnerships – formal and informal.
- 10.6 The [*Commission on Public Service Governance and Delivery*](#) (Williams et al, 2014) came to the view that that governance of partnerships needed to be clearer and stronger, with a sharper set of priorities, plans and outcomes. It concluded that local partnership structures must be radically streamlined and made more effective. Their conclusion was that the-then local service boards should take responsibility for maintaining a single register of local partnerships and local partnership structures.
- 10.7 In April 2016, [*the Well-being of Future Generations \(Wales\) Act 2015*](#) came into force, which established statutory Public Services Boards (PSBs), which succeeded the local service boards. [*The Social Services and Well-being \(Wales\) Act 2014*](#) also came into force in April 2016 and established Regional Partnership Boards to drive the strategic regional delivery of social services in close collaboration with health.
- 10.8 In January 2019, the Working Group on Local Government reported that the number of strategic partnerships – often apparently including the same member bodies – creates a feeling that existing resources are required to be stretched even more thinly. Subsequently, the Welsh Government, WLGA and Welsh NHS Confederation undertook a [*Review of Strategic Partnerships*](#),

which reported in June 2020. It concluded that efforts to simplify the work and relationships between partnerships is best developed locally.

Welsh Government current position

- 10.9 There is no comprehensive list of formal and/or informal partnerships in Wales. However, mapping work undertaken as part of the Working Group on Local Government Reform showed a significant amount of collaborative partnership working on both a voluntary and statutory basis throughout Wales. These partnerships are driven and managed at local, regional and national levels.
- 10.10 The Review of Strategic Partnerships defined the scope and coverage of *strategic* partnerships. Single sector collaborations or joint services were considered out of scope for the review e.g. school improvement consortia or the Corporate Joint Committees. The main findings included:
- There was no consensus on how to improve or simplify the partnership landscape.
 - There was no consistent request – indeed there was resistance – for the Welsh Government to merge or abolish partnerships. The challenge is in servicing these partnerships properly, whilst maintaining resources on the organisation’s own priorities.
 - The differing partnership footprints was sometimes raised as an issue, but a culture of collaboration and collegiate working was viewed as more important and powerful than rearranging geographical boundaries. There was concern that a top-down realignment of partnerships would disrupt existing effective relationships. Despite decades of partnership working, there remains a need to develop the collegiate culture within organisations, beginning with the leaders, across public, private and third sector services.
 - In different parts of Wales, some solutions have already been sought to simplifying the partnership landscape, capitalising on the flexibilities in the requirements of these partnerships and – usually – existing productive relationships.
- 10.11 The review made eleven recommendations which were agreed by the Partnership Council for Wales. Key to these recommendations was that changes to simplify partnership working should be locally led. The Public Services Boards and Regional Partnership Boards could provide a natural leadership role in supporting this. The review also recommended that the Partnership Council for Wales periodically review the partnership landscape.
- 10.12 Following publication of the review, the then-Minister for Housing and Local Government wrote to all Chairs of strategic partnerships confirming that they had flexibilities to review their arrangements and offered support to facilitate this.

Future aspirations/expectations / Proposals for change

- 10.13 The Co-operation Agreement, published in November 2021 included a commitment to “...ensure that regional partnership working in Wales is efficient and streamlined and provide appropriate democratic accountability and control.” This has prompted joint work between the Welsh Government and Plaid Cymru to engage with Chairs of strategic partnerships to take stock of activities since the review reported. The intended outcome is to discuss findings with the Partnership Council for Wales in the new year.
- 10.14 The future policy and activity relating to partnership working will be informed by the joint work between the Welsh Government and Plaid Cymru to review partnerships arrangements.
- 10.15 The final recommendation of the Review of Strategic Partnerships proposed that Partnership Council periodically review the partnership landscape to consider whether, when and where Welsh Government policy or legislative change may be required. As such, a full options appraisal and impact assessment on would be carried out on any proposed changes to the current policy.
- 10.16 No activity is currently proposed to legislate for the other informal or local partnerships in the system.

11 Social Partnership in Wales

- 11.1 The Welsh Government has encouraged partnership working since devolution to find the best solutions to the challenges facing Wales. Social partnership is a particular form of partnership which at national level involves government, employers, and workers (represented mainly through trade unions), working together in a spirit of co-operation and collaboration.
- 11.2 To date there is no statutory underpinning to government-led social partnership in Wales, or elsewhere in the UK, and existing social partnerships have developed voluntarily and organically. There is also no established framework for social partnership in Wales and such partnerships have taken a variety of approaches, evolving over time in response to changing contexts, demands, and priorities.

Review of Social Partnership Working

- 11.3 The Social Partnership and Fair Work Directorate in Welsh Government is undertaking a phased review of social partnership structures and ways of working currently in operation across government. The results of the mapping phase of that review are shown in **Figure 1** below.
- 11.4 A number of the groups identified in Figure 1 have been instrumental in managing the Welsh response to the COVID-19 pandemic.

- 11.5 The **Shadow Social Partnership Council (SSPC)**, a tripartite cross-sector forum chaired by the First Minister of Wales, has served as a channel for Welsh Ministers to connect with social partners. The SSPC played a significant role during the emergency response to the COVID-19 pandemic. The SSPC provided a forum to share information and engage with social partners to strengthen policy development through a period of national emergency.
- 11.6 Similarly, considerations around workplace health and safety have been radically altered by the coronavirus (COVID-19) pandemic. The Welsh Government established the **National Health and Safety Forum** to provide a way for trade unions, the main employer bodies from the private and public sector and the relevant enforcement agencies to come together to share their collective experience and work together to enhance workplace health and safety in Wales.
- 11.7 Another successful example of social partnership in Wales is the **Social Care Fair Work Forum** which has been at the forefront of informing the approach to delivering our Programme for Government commitment to pay social care workers the Real Living Wage.

Social Partnership and Public Procurement (Wales) Bill

- 11.8 The Welsh Government introduced the Social Partnership and Public Procurement (Wales) Bill (the Bill) into the Senedd on 7 June 2022. The aim is to create a stronger and more consistent social partnership system which will result in more robust and effective decision-making in Wales for the purpose of improving economic, environmental, social, and cultural well-being (including by improving the delivery of public services).
- 11.9 The Bill makes provision for:
- the establishment of a statutory Social Partnership Council (SPC);
 - a statutory duty on certain public bodies to seek consensus or compromise with their recognised trade unions or (where there is no recognised trade union) other representatives of their staff, when setting their well-being objectives and delivering on those objectives under section 3(2) of the Well-being of Future Generations (Wales) Act 2015 (the WFG Act);
 - a statutory duty on Welsh Ministers to consult social partners, employers and worker representatives through the SPC when delivering on their well-being objectives under section 3(2)(b) of the WFG Act;
 - amendment of section 4 of the WFG Act, substituting 'fair work' for 'decent work' within the existing "A prosperous Wales" goal;

- a statutory duty on certain public bodies to consider socially responsible public procurement when carrying out procurement, to set objectives in relation to well-being goals, and to publish a procurement strategy;
- certain public bodies to carry out contract management duties to ensure that socially responsible outcomes are pursued through supply chains; and
- reporting duties to be imposed on the public bodies and Welsh Ministers in relation to the Social Partnership Duty and Procurement duty.

11.10 The Bill is intended to complement other legislation, specifically the WFG Act.

Figure 1: Map of identified partnership groups by sector

These include standalone national-level partnerships which facilitate regular engagement between social partners (employers and/or trade unions) of which Welsh Government has some involvement. For this review, partnerships in blue represent formally constituted social partnerships and those in black are considered wider engagement groups.



1. Notable engagement mechanism but outside the scope of this review or insufficient data obtained.

12 The Voluntary Sector Scheme (Third Sector Scheme)

- 12.1 Under Section 74 of the Government of Wales Act 2006 Welsh Ministers are required to make a scheme setting out how they propose, in the exercise of their functions, to promote the interests of relevant voluntary organisations.
- 12.2 The Third Sector Scheme is a statement of Welsh Ministers' intent in taking forward their relationship with the Third Sector and the 2006 Act. It does not have any binding effect and there may be circumstances where the intentions cannot be met.
- 12.3 Welsh Ministers expect all Cabinet members, Deputy Ministers and officials to promote the interests of the Third Sector in their work and decision making and will:
- maintain arrangements for meaningful engagement and consultation with the Third Sector.
 - maintain arrangements for supporting communities and volunteers.
 - maintain arrangements for supporting structures that allow the Third Sector to flourish.
 - seek to adhere to the Code of Practice for Funding the Third Sector.
- 12.4 The value of this unique approach to third sector engagement was highlighted during the Covid pandemic response. In February 2021 the Equality, Local Government and Communities Committee published a report on the 'Impact of Covid-19 on the voluntary sector'. The committee in their report commented that "One of the key themes we heard throughout the evidence was the effectiveness of these structures in responding to the pandemic". In addition they highlighted Wales Council for Voluntary Action's evidence – "The WCVA recognised the "unique third sector scheme....and unique third sector infrastructure" within Wales, and that this had led to "locally sourced ideas, local solutions to local problems" which were often the "quickest and most effective" in the early weeks of the pandemic".
- 12.5 The value of this unique approach to third sector engagement was highlighted during the Covid pandemic response. In February 2021 the Equality, Local Government and Communities Committee published a report on the ['Impact of Covid-19 on the voluntary sector'](#). The committee in their report commented that "One of the key themes we heard throughout the evidence was the effectiveness of these structures in responding to the pandemic". In addition they highlighted Wales Council for Voluntary Action's evidence – "The WCVA recognised the "unique third sector scheme....and unique third sector infrastructure" within Wales, and that this had led to "locally sourced ideas, local solutions to local problems" which were often the "quickest and most effective" in the early weeks of the pandemic".

12.6 Evidence from [Wales Institute for Social and Economic Research and Data](#) and given to the committee highlighted:

While the Welsh, Scottish, Northern Irish and Westminster governments have all recognised the significance of the voluntary and community sector in responding to the coronavirus crisis there are differences in their positions in respect to the sector and how they operationalise their support. The position in Wales is notable for the way the Welsh Government has worked with and through existing institutional systems. In furtherance of section 77 of the government of Wales Act (2006), successive Welsh Governments have invested in the third sector and supported mechanisms for joint-working. It is notable that through the pandemic, the Welsh Government has continued to work through these existing structures, strengthening but not replacing them.

Welsh Government

**Evidence to the Independent Commission on the Constitutional Future of
Wales – An Update on the Welsh Government’s Aspirations for Further
Devolution**

Date: September 2022

Background

1. The Welsh Government's overarching position on the development of the devolution settlement is set out in *Reforming our Union*¹. It is our view the powers of the legislatures and governments in Wales, Scotland and Northern Ireland should be founded on a coherent set of responsibilities determined in accordance with the subsidiarity principle.
2. Rather than consideration of the somewhat out-dated concept of what should be "devolved", the starting point should be to determine what powers are sensibly exercised by the Welsh Government and Senedd Cymru, and what powers they *need* in order to deliver the best outcomes for the citizens of Wales.
3. The devolution settlements of the United Kingdom are not currently established on this basis. In Wales, in particular, the starting point was the *status quo* followed by a series of political compromises. As a result governance in Wales, remarkably, is still heavily influenced by events that occurred 500 years or so ago (the 'Laws in Wales' Acts) and 50 years or so ago (the creation and development of the old Welsh Office)². The end result was the development of asymmetrical settlements and, in the case of Wales, far more matters being reserved to the UK Parliament. The powers of the Senedd and the Ministers, therefore, are incomplete and incoherent.
4. The paper should be considered in the context of recent actions by the UK Government to undermine or intrude into the devolution settlements – for example, the implications of the UK Internal Market Act 2020 and, in particular, the financial assistance powers the UK Government gave itself within it to spend money across a range of devolved areas.
5. As such, this paper should also be considered alongside the evidence paper covering the *process* for achieving constitutional change. In particular, there is a crucial need to ensure development of the devolution settlement happens in a strategic and sustainable way, rather than through piecemeal initiatives, and is protected from being undermined by actions of a future UK Government. This paper should also be viewed alongside the evidence papers on legal constraints and financial constraints relating to the current settlement (papers 2 and 4 respectively).

¹ <https://gov.wales/sites/default/files/pdf-versions/2021/6/2/1624957096/reforming-our-union-shared-governance-in-the-uk-2nd-edition.pdf>

² See the Welsh Government's evidence to the Commission on Justice in Wales: <https://gov.wales/sites/default/files/publications/2018-06/Submission-from-welsh-government-en.pdf>
Evidence to the Justice Commission (gov.wales)

Overview

6. There are well-rehearsed gaps, deficiencies and anomalies across the devolution settlement for Wales.
7. The Welsh Government's long established view is that further powers for the Welsh Government and the Senedd are required to support the delivery of comprehensive, joined-up policies and laws to address the problems we face in Wales. And this is essential in order to improve the lives of people across Wales. Crucially, further responsibility for new matters must be accompanied by a fair allocation of funding.
8. The single largest and most widely recognised deficit in the governance of Wales – and a key difference to the settlements for Scotland and Northern Ireland – relates to justice and policing. The independent Commission on Justice in Wales, chaired by Lord Thomas of Cwmgiedd, was the largest ever examination of the state of the justice system in Wales, based on written evidence from more than 200 individuals, institutions and organisations, and over 150 oral evidence sessions across the whole spectrum of the justice system. Its report in 2019 the Commission unanimously recommended that justice policy should be determined and delivered in Wales. The main reasons were twofold, the first based on improving the system and the second was to enable alignment with the development of related distinct policies and services that are already the responsibility of the Welsh institutions.
9. We have long argued, including in *Reforming Our Union*, that as a matter of constitutional principle, a legislature accountable to a particular territory should be responsible for policing and the administration of justice within that territory. A separate legal jurisdiction is also inherent to such arrangements. Beyond this the (Thomas) Commission on Justice's findings demonstrated that the fact that the work of the police and justice agencies is governed by a different legislature to Wales's other public services was not just wrong in principle, but can undermine the effectiveness of those services and the justice system in Wales. More detail on why we are clear that justice and policing should be responsibilities of the Senedd and Welsh Government, and the steps we are taking to pursue this, is set out in our May 2022 publication *Delivering Justice for Wales*³.
10. Responsibility for the justice system, which is the main difference between the systems of government in Scotland and in Wales, involves a wide range of matters. These include not only criminal law, the courts, the police, prisons and probation services, but also associated matters such as public order and anti-social behaviour, coroners' services, the availability of legal aid and proceedings relating to the care of children.

³ <https://gov.wales/delivering-justice-for-wales>

11. There is a range of other broad policy areas where the Welsh Government believes there is a strong case for significant further devolution. Many of these areas featured in the phases of the Silk Commission's work and subsequently in work to develop the content of what became the Wales Act 2017, as well as in ongoing public debate. Illustrations of broad policy areas where specific elements have featured in previous or recent debate on devolution include:
 - taxation (where, as an example of deficiencies in the current settlement, the situation on the vacant land tax is worth considering);
 - energy (and, linked to this, the Crown Estate);
 - administrative powers in relation to welfare (in the context of potential opportunities this could provide for joining together devolved and reserved support arrangements for vulnerable households, which is increasingly important in the context of the cost of living crisis);
 - transport (in particular in relation to railways, and aspects of ports);
 - broadcasting and telecommunications; and
 - equalities.
12. However, the Welsh Government does not wish to constrain consideration by The Independent Commission on the Constitutional Future of Wales of areas for future devolution. In this context the Welsh Government does not intend to specify or set out an exhaustive list of potential areas for further devolution.
13. It is appropriate though to draw to the Commission's attention the Welsh Government's [Programme for Government](#) and also to the [Co-operation Agreement](#) with Plaid Cymru, which reflect our commitment to pursue further devolution in a number of areas.

Welsh Government

**Evidence to the Independent Commission on the Constitutional Future of
Wales – Process for Achieving Constitutional Change**

Date: September 2022

1. The Independent Commission on the Constitutional Future of Wales (the Commission) is tasked with considering and developing options for fundamental reform of the constitutional structures of the United Kingdom, in which Wales remains an integral part, and developing all progressive principal options to strengthen Welsh democracy and deliver improvements for the people of Wales. The Welsh Government is looking forward to the outcome of the Commission's consideration and hope the recommendations the Commission make can help the Welsh Government drive the change needed to deliver those improvements.
2. Legally, the constitution of the United Kingdom is largely a reserved matter. With the exception of the composition, electoral arrangements, and operation of Senedd Cymru, and the arrangements relating to the discharge of the functions of the Welsh Ministers, most options for constitutional change would likely require the agreement of, or indeed action by, the UK Government and Parliament, in order to become a reality.
3. Any extension to the Senedd's competence would require an Act of the UK Parliament or an Order in Council under Section 109 of the Government of Wales Act 2006 (GoWA). Similarly, the transfer of functions from UK Government Ministers to the Welsh Ministers would require an Order to be made by the UK Government under Section 58 of GoWA or the conferral of new functions by an Act of Parliament.
4. Since the establishment of the first National Assembly for Wales in 1999 (Government of Wales Act 1998), major reforms to the Welsh devolution settlement have largely followed and implemented proposals arising from commissions established to consider further devolution. This signals the force such independent analyses can have, and their potential as catalysts for change. Where it was considered that reform required an electoral mandate, proposals have also been the subject of general election manifesto commitments.
5. So, GoWA implemented recommendations made by the Richard Commission, established by the Welsh Assembly Government in 2002 and reporting in 2004. Commitments to legislate to implement proposals made by the Richard Commission were included in the manifestos of Labour, the Liberal Democrats and Plaid Cymru for the 2005 general election.
6. Similarly, the Wales Acts 2014 and 2017 implemented recommendations made by the Silk Commission, established by the UK Conservative/Liberal Democrat Coalition Government in 2011. Proposals for the devolution of fiscal powers made in the Commission's first report, were implemented in the Wales Act 2014. Proposals for the devolution of further powers to the National Assembly arising from the Commission's second report were implemented by the Wales Act 2017. Commitments to implement the proposals were included in the manifestos of the Conservatives, Labour and the Liberal Democrats.
7. Some proposals involving major constitutional principle, such as the initial establishment of devolution and the move to primary law-making powers, have required a referendum to ensure sufficient public support. The Wales Act 2017 enshrined in law the principle that a referendum would be required to abolish

devolution. In *Reforming our Union*, we set out our expectation that proposals for any referendum on independence should be preceded by an electoral mandate.

8. In *Reforming our Union* we also set out our belief that **‘future constitutional developments in the United Kingdom should be considered on a holistic basis and on the basis of constitutional principle, rather than by way of ad hoc reforms to particular constitutional settlements. This should be undertaken by a constitutional convention. The Welsh Government and the other devolved administrations must have seats at the convention table, and have the opportunity to press their particular constitutional aspirations, informed by proposed developments elsewhere in the UK. Citizens across the UK should be able to participate in any convention. The case for a written constitution should form part of the convention’s deliberations.’ (Proposition 20).**
9. In the paper on the Welsh Government’s aspirations for further devolution, we set out those matters on which the Welsh Government believes the Senedd should be able to legislate and in which the Welsh Ministers should be able to exercise functions. In many areas, a clear electoral mandate for reform is already in place – parties advocating the devolution of policing and justice in their manifestos for the 2021 Senedd election received over 60% of the vote and secured more than two-thirds of seats in the Senedd. In that circumstance, the Welsh Government considers that the extension of devolution to relevant subject areas could be appropriately mandated via parliamentary and Senedd approval.
10. Whilst the Welsh Government continues to press for the devolution of powers in those and other areas, the current UK Government’s apparent dislike for the devolution settlement, its proposals to water down the Human Rights Act, and its disregard for the Sewel Convention and other established constitutional conventions, makes the case for holistic, UK wide constitutional reform more compelling than ever before. Debate on the future of the constitution is increasing. The Welsh Government notes in particular the *Review of the UK Constitution* being undertaken jointly by the Institute for Government and the Bennett Institute for Public Policy and the UK Labour Party’s UK-wide constitutional commission.
11. Pursuing UK wide constitutional reform would require an electoral mandate. The next UK general election is currently due to take place in January 2025. Given the requirement for the Commission to report by the end of 2023, unless the election were to happen sooner, it is possible for the Commission’s recommendations to be included in party manifestos for that election.
12. Where the Commission make recommendations falling within the scope of the Senedd and Welsh Ministers’ powers to implement, the Welsh Government looks forward to receiving them and we will, for our part, give them serious consideration and provide a response in due course. As shown in the publication of *Reforming our Union*, the Welsh Government has always been keen to stimulate dialogue around the constitutional future of the UK, and will be proactive in any intergovernmental discussions.

Welsh Government

Evidence to the Independent Commission on the Constitutional Future of Wales – An update on the Welsh Government's position on Intergovernmental Relations (IGR)

Date: September 2022

Contents

- 1. Introduction** **page 3**
- 2. How significant are the latest reforms?** **page 3**
- 3. How confident is the Welsh Government that IGR reforms will be delivered, in spirit and in practice?** **page 5**
- 4. Will there be joint decision making, and in what fields?** **page 7**

1. Introduction

- 1.1. In early 2019 Senedd Cymru and the Welsh Government endorsed an [Inter-Institutional relations agreement](#). The agreement comprises the following main commitments:
 - keeping the Senedd updated about the formal intergovernmental relations including ministerial forums; and formal, ministerial level inter-governmental meetings, concordats, agreements and memorandums of understanding, and
 - the provision of an annual report summarising intergovernmental relations work undertaken during the year.
- 1.2. The UK's exit from the EU has had a significant impact on intergovernmental relations. The regular meetings established to coordinate UK-wide positions on EU issues (many of the most significant of which were in devolved subject areas, such as agriculture, environment and regional funding) – meetings such as the Joint Ministerial Committee on Europe – fell away and were not directly replaced. This left a vacuum which undermined effective intergovernmental working.
- 1.3. Following years of intensive work by Ministers and officials during the joint Review of Intergovernmental Relations, the Welsh Government, along with the UK Government, the Scottish Government, and the Northern Ireland Executive, agreed to use the package of reforms that emerged from the Review as the basis for the conduct of intergovernmental relations. We hope that these arrangements will underpin systematic and regular engagement going forward.
- 1.4. The package was published in January 2022 and is available at: [Review of intergovernmental relations - GOV.UK \(www.gov.uk\)](#)

2. How significant are the latest reforms?

- 2.1. The outcome of the Intergovernmental Relations Review (“the Review”) has significant potential for improved communication and joint working between the UK Government and Devolved Governments.
- 2.2. In a written statement issued after agreement was reached¹, the First Minister summarised the developments as follows:

“Following years of intensive work by Ministers and officials during the joint Review of Intergovernmental Relations, the Welsh Government, along with the UK government, the Scottish Government, and the Northern Ireland Executive, have agreed to use the package of reforms

¹ [Written Statement: Review of Intergovernmental Relations \(13 January 2022\) | GOV.WALES](#)

which has emerged from the Review as the basis for the conduct of intergovernmental relations.....

The package makes important progress in advancing the objectives the Welsh Government set out in 'Brexit and Devolution' and 'Reforming our Union', and as such is a welcome development which can bring benefits for all 4 governments and the 4 nations.....

Overall, the package has the potential to deliver significant improvements, if the spirit and content as set out in the package is translated through into consistent approaches and actions, based on respect, parity of participation and parity of esteem, and a desire to reach agreement through discussion (and indeed compromise) not imposition. All 4 governments have a responsibility to live up to these principles."

2.3. The permanence of these arrangements has the potential to ameliorate, to some extent, the fragility of intergovernmental relationships caused by frequent Ministerial changes in UK Government. The Intergovernmental Relations Review was initiated when Theresa May was Prime Minister; it was concluded late in Boris Johnson's tenure; and it will now fall to Prime Minister Liz Truss and her new Cabinet to take forward from the UK Government side. Turbulence in the UK Government has made it difficult to form effective, long-term relationships, and a reliance on the proactivity of individual UK Ministers, as opposed to the wider UK Government machine, has undermined confidence in progress. The mechanisms we now have in place have the potential to provide greater continuity.

2.4. On 14 March 2022, the Counsel General and Minister for the Constitution appeared before the Legislation, Justice and Constitution Committee and provided his views on the outcome of the Review:

"... it was a review that was based on work that was commissioned some two or three years ago. In my view, it is a significant constitutional step forward. It has a primary weakness. The primary weakness is that it doesn't have any legal constitutional status, so it is still very much based on a convention. But the content of it, I think, is positive.

It sets a framework that is based on mutual respect and co-operation between the four Governments of the United Kingdom. It sets a framework for ministerial co-operation. It particularly sets forward a meeting to be chaired by the Prime Minister of the heads of Government of the four nations of the UK. And, very importantly, it provides a dispute mechanism."

2.5. The full transcript of this meeting can be found at: [Legislation, Justice and Constitution Committee 14/03/2022 - Welsh Parliament \(assembly.wales\)](https://www.assembly.wales/legislation-justice-and-constitution-committee-14/03/2022)

2.6. Welsh Ministers have kept the Legislation, Justice and Constitution Committee and all other relevant committees of the Senedd updated with developments relating to Intergovernmental Relations and its machinery

since the publication of the review in January 2022. Relevant letters can be found at: [Inter-Institutional Relations Agreement \(senedd.wales\)](https://www.senedd.wales/inter-institutional-relations-agreement)

3. How confident is the Welsh Government that the IGR reforms will be delivered, in spirit and in practice?

- 3.1. At his appearance before the Legislation, Justice and Constitution Committee meeting on 14 March (please see link to full transcript at paragraph 2.4. above), the Counsel General and Minister for the Constitution summarised a key challenge to delivery and the Welsh Government's commitment to it:

“Now, the proof of the pudding in all of this is going to be how it actually works in practice, bearing in mind what I said at the beginning about it not having a justiciable or constitutional legislative status in that way.

Nevertheless, it is based on, I think, principles that have been advanced by Welsh Government, by the First Minister, by the previous First Minister. As a Welsh Government, we have every intention of doing our best to make sure that it works, because that is in the collective best interest of the United Kingdom, but also, I think, in the particular interest of Wales itself.”

- 3.2. Much of the intergovernmental machinery agreed as part of the Review is already in place; in other areas, it is developing. In line with the Agreement, 11 Interministerial Groups (IMG) have been set up; six are in the process of being established and a further three areas are currently exploring options for formally establishing an IMG. A total of 20 IMG meetings have taken place across all areas. The IMSC has met twice. The Finance Interministerial Standing Committee has also met twice. Published background information on these is available at: [Communiqués from the Interministerial Standing Committee - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/interministerial-standing-committee) and [Communiqués from the Finance: Interministerial Standing Committee - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/interministerial-standing-committee).
- 3.3. In May 2022, the UK Government published the first Quarterly Report for 2022 on intergovernmental working between the UK Government, the Welsh Government, the Scottish Government and the Northern Ireland Executive for the period January 2022 to March 2022.
- 3.4. The report includes case studies of the various policy areas and can be found at: [Intergovernmental Relations Quarterly Report Quarter 1 2022 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/111111)
- 3.5. This was the first reporting period since the publication of the Intergovernmental Relations Review, during which the Welsh Government were involved in a total of 61 meetings between the UK Government, the Scottish Government, and the Northern Ireland Executive.

- 3.6. In August 2022, the UK Government published the second Quarterly Report for 2022 on intergovernmental working between the UK Government, the Welsh Government, the Scottish Government and the Northern Ireland Executive for the period April 2022 to June 2022.
- 3.7. During this period the Welsh Government were involved in a total of 26 meetings between the UK Government, the Scottish Government, and the Northern Ireland Executive
- 3.8. The report includes case studies of the various policy areas and can be found at: [Intergovernmental relations quarterly report: Quarter 2 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/112422/Intergovernmental_relations_quarterly_report_Quarter_2_2022_-_GOV.UK.pdf).
- 3.9. Whilst these statistics can be helpful, the value of the new intergovernmental machinery is not, of course, found in the number of meetings held. The true test of success will be whether the structures are used to provide a forum for genuine collaboration, open engagement, honest discussion and information sharing. The IMSC has already proved to be a useful forum for airing concerns where they arise. Following the IMSC meeting held on 29 June 2022, the Counsel General and Minister for Constitution noted the issues he had been able to raise at the meeting regarding legislation:

“Concerning the agenda item on the current UK legislative programme, whilst we welcomed the positive progress made towards agreeing improved ways of working and engagement, I once again highlighted the unacceptable previous breaches of the Sewel Convention and unacceptable engagement from the UK Government on a number of Bills in the current legislative programme including the Northern Ireland Protocol Bill, Levelling-up and Regeneration Bill and Bill of Rights. In doing so I underlined the importance of early engagement on future UK Bills and called on the UK Government to provide assurances they would respect the Sewel Convention.”

- 3.10. The full Written Statement can be found at: [Written Statement: Inter-Ministerial Standing Committee \(IMSC\) \(12 July 2022\) | GOV.WALES](https://www.gov.wales/government/written-statements/written-statement-inter-ministerial-standing-committee-imsc-12-july-2022)
- 3.11. The subsequent joint communiqué noted:
- “The Committee discussed the current UK Parliament legislative programme and followed up and progressed the discussion on approaches to UK legislation and ways of working, highlighting the importance of early engagement.”*
- 3.12. The full communiqué can be found at: [Interministerial Standing Committee Communiqué: 29 June 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/112422/Interministerial_Standing_Committee_Communique_29_June_2022_-_GOV.UK.pdf)
- 3.13. The Welsh Government remains committed to supporting the full implementation of, and adherence to, the Intergovernmental Relations

Review Agreement. Its long-term success will be reliant on the similar commitment of all parties.

4. Will there be joint decision making, and in what fields?

- 4.1. As noted above, the Intergovernmental Relations Review outlines the machinery that is in place to aid joint decision making and coordination across the UK Government and Devolved Governments.
- 4.2. This machinery includes portfolio engagement. All governments will commit to regular portfolio-level engagement on areas of mutual interest. This engagement should take place formally within Inter-Ministerial Groups (IMGs), which are expected to cover a number of policy areas and will aim to meet regularly on a quadrilateral basis with established terms of reference. The machinery established is intended, amongst other things, to facilitate collaboration and agreement on issues of mutual interest. Any intergovernmental decisions are to be made by consensus – a joint approach will not be taken in the absence of consensus.
- 4.3. The dispute resolution process outlined as part of the Review provides a formal route for all Governments to raise a disagreement:

“The UK Government and devolved administrations will seek to maintain positive and constructive relations, based on mutual respect for the responsibilities of the UK Government and devolved administrations and their shared role in the governance of the UK.

All governments are committed to promoting collaboration and the avoidance of disagreements, facilitated by the new intergovernmental machinery in which discussions will take place at the lowest level possible. The escalation of a disagreement between governments as a dispute will be considered only where due and full consideration has been given at portfolio-level. In this context, the following model should be seen as part of a much wider system of active intergovernmental relations (IGR) and dispute management, and as a process of last resort.”

- 4.4. Full details can be found at: [Review of intergovernmental relations - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/672222/Review_of_intergovernmental_relations_-_GOV.UK.pdf)
- 4.5. In conclusion, positive progress has been made in the implementation since the publication of the Intergovernmental Relations review. The Welsh Government remains committed to ensuring these reforms translate into everyday practice – we will press all involved to show similar commitment.

Welsh Government

**Evidence to the Independent Commission on the Constitutional
Future of Wales – Levelling-Up and the Shared Prosperity Fund**

Date: September 2022

Contents

| | |
|---|----------|
| 1. Overview..... | 3 |
| 2. The UK Levelling Up White Paper | 3 |
| Welsh Government’s current position | 3 |
| 3. The Shared Prosperity Fund..... | 4 |
| Financial implications for Wales | 4 |
| The development and delivery of the SPF in Wales | 5 |
| Welsh Government’s current position | 6 |
| 4. The Levelling-Up Fund | 7 |
| 5. Independent observations | 8 |

1. Overview

- 1.1 This paper provides information to the Commission on post-EU funding arrangements via the UK Government's Shared Prosperity Fund, as well as information on the UK Government's Levelling Up White paper and the Levelling Up Fund.
- 1.2 In these cases, the UK Government's approach is taking away funding in devolved areas that has been for the Welsh Government and Senedd to ultimately determine since the start of devolution.

2. The UK Levelling Up White Paper

- 2.1 The UK Government gave Levelling Up a high profile in its 2019 general election manifesto and published its Levelling Up White Paper in February 2022. At no time in this period did the UK Government offer meaningful engagement to Devolved Governments, or anything more than the minimum courtesy advance sight of drafts, in spite of repeated requests and offers on the part of Welsh Ministers.
- 2.2 The UK Government has been heavily criticised for its lack of strategic engagement with the Welsh Government on Levelling-Up by the Business, Energy, and Industrial Strategy Parliamentary Committee, the Welsh Affairs Select Committee, and the Institute for Government. All point out that the UK Government's approach will badly weaken the potential of the Levelling-Up agenda and investment programmes in Wales. Please see the section at the end of this paper on independent observations.
- 2.3 Following the publication of the Levelling Up White Paper, the UK Government introduced in May to Parliament the Levelling Up and Regeneration Bill.

Welsh Government's current position

- 2.4 Welsh Government officials are having discussions with the UK Government regarding the Bill (Part 1), and the Welsh Government's Legislative Consent Motion (LCM).
- 2.5 Part 1 of the Levelling Up and Regeneration Bill sets out duties and requirements on UK Ministers to set "Levelling Up Missions" across 11 policy areas, some of which are UK wide despite being devolved. The Bill does not reflect the devolved landscape, currently.
- 2.6 We are also concerned over how the Levelling Up agenda risks undermining devolved areas. This includes, for example, education which is entirely devolved across the UK and the different countries have distinct approaches to the design of curriculum, separate legislation, as well as a language of learning that reflects the culture and needs of our own education systems.

- 2.7 In this case, we are particularly concerned about the scope and remit of the proposed new English Curriculum Arm's Length Body / national academy, and specifically what was said in the Levelling Up White Paper:

*“In addition, we will create the **UK National Academy**...this new digital education service will support pupils from all backgrounds and areas of the UK to succeed at the very highest levels. The UK National Academy will be free and made available online to support the work of schools up and down the country...”*

- 2.8 Welsh Government officials have not been constructively engaged in the development of activities linked to proposals and have raised strong concerns about any aspect of the new English curriculum body/national academy being badged as 'UK,' given the entirely devolved nature of education and which seem likely to both undermine and duplicate our devolved responsibility for education while risking confusing our schools and learners. Officials were clear there should be no assumption that any resources created by the new English curriculum body would extend to Wales. However, we have received further correspondence from the UK Government's Department for Education (DfE) reiterating its aim to provide an offer for pupils across UK and that their policy of such resources was in its early stages.

3. The Shared Prosperity Fund

- 3.1 The UK Shared Prosperity Fund (SPF) was established by the UK Government to replace EU funding as a result of the UK leaving the EU.
- 3.2 In 2019, the UK Government's election manifesto committed to replace and “at a minimum match the size” of former EU funding in each nation of the UK. However, the UK Government has failed to honour this frequently repeated commitment, at the same time as deliberately overriding the devolution settlement.

Financial implications for Wales

- 3.3 Wales was allocated £2.1bn for the 2014-2020 EU European Regional Development (ERDF) and European Social Funds (ESF). These would have been worth £1.404bn between January 2021 and March 2025, allowing for inflation and exchange rates in the same way as the UK Government has when calculating the level of UK SPF to be allocated to Wales. This funding would be additional to ongoing payments made from the Welsh Government's commitment of funding to projects in previous years under the 2014-2020 programmes.
- 3.4 The UK Government confirmed on 13 April 2022 that Wales will receive £585m through the SPF between April 2022 and March 2025. This includes £101m which is being top-sliced by the UK Government to support an adult numeracy programme called Multiply.

- 3.5 Together with the £47m from the 2021-22 Community Renewal Fund pilot, Wales will receive £632m in replacement funds in the period, a shortfall of £772m. On top of this, the UK Government, when providing replacement EU farm funding, is deducting EU payments due to Wales for work which was part of the 2014-2020 Rural Development programme. This means Wales' rural communities are £243m worse off than had we remained in the EU. Taken together, the £243m loss in rural funding and the £772m shortfall in EU structural funds add up to just more than £1bn. Applying the same inflation adjustment to rural funding as to the structural funds, the overall shortfall to the Welsh budget is more than £1.1bn.
- 3.6 A Welsh Government Written Statement on the loss of funding to Wales (May 2022), is available [here](#).

The development and delivery of the SPF in Wales

- 3.7 The SPF was first announced in 2017. The Welsh Government had no input or role in the UK Government's 2021-22 Community Renewal Fund pilot for the SPF. We were only offered meaningful discussion and negotiation on the priorities and governance structures of the SPF in early April 2022 prior to the publication of the Fund [prospectus](#) (13 April).
- 3.8 Despite this unfeasible timetable, we sought to create a partnership approach to the Fund that respected the devolution settlement and aligned with the expressed wishes of people and organisations in Wales on how post-EU funding should be invested and delivered set out in the [Framework for Regional Investment in Wales](#) (November 2020), which was developed with Welsh partners and the OECD, and supported by a public consultation.
- 3.9 While we made some progress on investment priorities, we could not form a partnership with the UK Government on the following basis:
- the funding formula distributes funds away from those areas where poverty is most concentrated;
 - the use of the UK Internal Market Act to take decisions in devolved areas and exclude the Welsh Government from a transparent process of joint decision making for the SPF, while bypassing the scrutiny of the Senedd; and
 - the funding package for Wales is £1.1bn less than what we would have expected to receive via the EU between January 2021 and March 2025.
- 3.10 The Multiply adult numeracy scheme, which forms part of the SPF, represents an additional encroachment into a devolved policy area. We were not consulted when the UK Government announced (November 2021) that the SPF would support Multiply, and we have serious concerns that the scheme is too restrictive and will conflict with and duplicate existing provision in Wales.
- 3.11 In addition, while the UK Government is using the fund to support their own UK-wide schemes, the Welsh Government is not permitted to use SPF to fund

Wales-wide schemes – despite EU funding supporting a range of critical pan-Wales business and skills programmes.

- 3.12 Local Government was required to submit SPF investment plans by 1 August 2022; these regional plans will then be assessed by UK civil servants and decided upon by Ministers at the UK Department for Levelling-Up, Housing and Communities. As part of these plans, the UK Government also specifically requires local authorities to establish SPF partnerships with representation from various sectors, as well as MPs, but there is no requirement to include Members of the Senedd.
- 3.13 We believe the UK Government’s delivery of the fund in a devolved area with no input from the Welsh Government on its plans or delivery and minimal stakeholder engagement is not only constitutionally inappropriate, but also risks duplication of activities, poor value for money, and a confused funding landscape for stakeholders.
- 3.14 The UK Government approach also means difficult decisions will need to be made by the Welsh Government and other institutions across business, higher education (HE) and further education (FE), and the third sector who have used Structural and Investment Funds to support vital investments in research and innovation, business competitiveness, skills, employability, decarbonisation, sustainable communities, infrastructure and connectivity, and support for vulnerable people. These sectors have already raised concerns with the Welsh Government about the funding gaps they face as a result of the UK Government’s actions.
- 3.15 In contrast, the Welsh Government has had positive and constructive discussions with the UK Government on freeports. We are committed to working in a partnership of equals with the UK Government to implement its Freeport policy in Wales, on the basis of a fair deal that delivers clear benefits for our economy, respects the devolution settlement and aligns with our policies on fair work and the environment. This illustrates how we can work together and bring our different powers, levers and expertise to deliver for Wales and this needs to be applied to other areas including the Shared Prosperity Fund.

Welsh Government’s current position

- 3.16 On 1 June 2022, the Minister for the Economy wrote to the former Levelling-Up Secretary of State, Michael Gove, to confirm that we could not endorse the UK Government’s approach for the SPF and use our resources to help deliver the SPF, but that our door remains open to working with them. This would require us coming to an agreement on replacement funding in full for Wales and genuine co-decision making. We are still awaiting a reply from the UK Government. A Welsh Government Written Statement on this matter (June 2022) is available [here](#).
- 3.17 The Minister for Economy wrote (14 June 2022) to local government leaders to offer Welsh Government support in developing their SPF investment plans

for submission to the UK Government by 1 August, brokering collaboration with other sectors, and ensuring Wales gets better outcomes from the SPF by avoiding duplication and achieving alignment with the *Programme for Government*, existing regional strategies and devolved policies.

- 3.18 Regarding Multiply, the WLGA has raised concerns (July 2022) formally with the Secretary of State for Wales. The DfE has paused development of the national platform until after the summer period while it focuses its own resources on the assessment of SPF investment plans submitted by local governments. The Welsh Government is working with DfE to try and ensure greater flexibility of the Multiply scheme and complementary services.

4. The Levelling-Up Fund

- 4.1 The UK's Levelling Up Fund (LUF) is another area that the UK Government is using the UK Internal Market Act financial assistance powers to take spending decisions directly in devolved areas and is bypassing the Welsh Government and Senedd. The LUF is not a direct replacement for EU funding, but it is operating in the space that EU funds have previously occupied.
- 4.2 The LUF replaces the England Towns Fund. It was announced at the UK Spending Review in November 2020 as an England measure from which the Welsh Government would receive a Barnett consequential. However, in February 2021, the UK Government confirmed it would deliver the LUF on a UK-wide basis with no prior consultation or communication. The Welsh Government has had no role in its development or delivery.
- 4.3 The first funding round was launched in March 2021, with successful applicants announced in October 2021. In the first round, six local authorities in Wales (RCT, Powys, Carmarthenshire, Pembrokeshire, Ceredigion and Wrexham) secured funds for 10 bids worth a total of £121m. Unsuccessful bids in Wales were worth £172m. The second round was opened on 23 March 2022 with a deadline of 2 August 2022 for bids. All 22 local authorities in Wales have submitted one or more bids. Results are expected to be announced by the UK Government Department for Levelling Up, Housing, and Communities in the Autumn term this year.
- 4.4 The UK Parliament Public Accounts Committee published a report (June 2022), available [here](#), on local economic growth, with particular focus on the Levelling-Up Fund. The report is critical of many aspects of the UK Government's approach, including its engagement with devolved governments and consideration of devolved priorities. Key criticisms included:
- Ministers finalising the principles for awarding funds only after they knew the identities and scores of shortlisted bidders
 - There being no strong understanding of what works for local growth

- “Optimism bias” resulting in poor investment choices
 - Insufficient consideration of devolved government’s priorities
 - Unsatisfactory accountability for levelling-up outcomes and lack of performance monitoring
- 4.5 This follows criticism from the National Audit Office (February 2022), of the UK Government in a report, available [here](#), on implementing local growth strategies. It said:

“DLUHC has received expert advice that major physical regeneration could significantly improve local economic outcomes, but the smaller-scale infrastructure investments it is funding through the Levelling Up Fund do not usually drive significant growth.”

5. Independent observations

- 5.1 A range of cross-party committees and independent experts have criticised the approach the UK Government has taken to implementing post-EU and levelling-up funding in devolved areas.
- 5.2 The Welsh Affairs Select Committee, in a report (October 2020), available [here](#), said:

“For more than three years, we have witnessed a failure to properly engage with stakeholders, or Parliament. As a result, there is no clarity as to what the Shared Prosperity Fund will look like, how it will be administered, nor how it will be funded.”

“We call for the UK Government to develop a memorandum of understanding with the devolved administrations and local government that will underpin the operation of the Shared Prosperity Fund. This should guarantee the principles of genuine joint working and partnership between all stakeholders, including the UK and Welsh Governments, local government and the third sector.”

“However designed, the expertise gained in administering structural funds should not be lost, and Ministers must embrace a partnership approach that draws upon the expertise and resources of the devolved administrations, local government and the third sector.”

“We believe the UK Government would be ill-advised to lose or ignore the expertise that has been built up in the devolved administration’s European Funding Offices.”

5.3 The Institute for Government, in a report (July 2021), available [here](#), said:

“The UK government will be spending on policy functions that are predominantly devolved responsibilities. We have outlined the risk that this will produce unhelpful duplication of functions and fragmentation of service provision.”

5.4 The BEIS Select Committee in a report (July 2021), available [here](#), said:

“The funding available to achieve levelling up is disparate and lacking any overall coherent strategic purpose or focus.”

“The apparent absence of any meaningful strategic engagement with the devolved administrations around the levelling up agenda amplifies the lack of clarity and focus around this major policy.”

5.5 The Public Accounts Committee (June 2022) said that despite UK Government reassurances about planned collaboration, the committee is:

“not yet convinced that this collaboration will be effective in ensuring that priorities of the devolved administrations are adequately taken on board.”

5.6 The Dunlop Review (March 2021), available [here](#), notes that:

“funding by the UK government in devolved areas must not replace core funding and must be applied with the support of the devolved governments”.