

**National Assembly for Wales**  
Research paper

# Summary of consultation responses to part two of the Silk Commission on Devolution in Wales

June 2013

Cynulliad  
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National  
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# Contents

<b>1. Introduction</b>	<b>1</b>
<b>2. The Silk Commission</b>	<b>2</b>
2.1. Membership	2
2.2. Terms of Reference	2
2.3. Call for evidence	3
<b>3. The Evidence: Powers</b>	<b>4</b>
3.1. Reserved Powers	4
3.2. Policing	9
3.3. Criminal Justice and a separate jurisdiction	13
3.4. Welfare	18
3.5. Transport	19
3.6. Equalities	22
3.7. Local Government functions	23
3.8. Elections	23
3.9. Energy	24
3.10. Health and Social Care	28
3.11. Consumer Affairs	29
3.12. Broadcasting	30
3.13. Water	31
3.14. Teachers' Pay and Conditions	32
<b>4. Evidence: improving the settlement in other ways than transferring powers</b>	<b>34</b>
4.1. Intergovernmental Relations	34
4.2. Building the Welsh Legal Identity	35
4.3. Broadcasting	36
<b>5. Evidence: Size and Capacity Issues</b>	<b>38</b>
<b>6. Next Steps</b>	<b>41</b>
<b>Annexe 1: Written Evidence to the Silk Commission Part II</b>	<b>42</b>



## Headlines

- The **Welsh Government** is in favour of a move to a “**reserved powers**” model of devolution, as are **Plaid Cymru** and the **Welsh Liberal Democrats**. Submissions from the **Welsh Conservative Assembly Group** and the **Welsh Conservatives** did not express a view on this issue. The **UK Government** is content with the existing model of devolution for Wales.
- The **Welsh Government** is favour of devolving **policing**. The **UK Government** is opposed to the devolution of policing.
- The **Welsh Government** does not feel able to pursue the devolution of **criminal justice** in its entirety at this time but it remains a longer-term intention. It also considers that there should be preparation for a time when a **separate legal jurisdiction** may be necessary and beneficial. The **UK Government** is opposed to the devolution of criminal justice and the creation of a separate jurisdiction.
- The **UK Government** noted that Acts of the Assembly can create criminal offences. UK Government Departments must **obtain the approval of the Justice Secretary before creating new offences in Bills**. The UK Government suggested that the Commission might wish to consider whether this should apply to Assembly Bills and whether it is best dealt with administratively (for example, via a protocol) or in legislation.
- The **Welsh Government** wants competence extended to **speed limits, bus regulation, taxi regulation and ports**. The **UK Government** invited the Silk Commission (“the Commission”) to consider the devolution boundary in respect of ports and the regulation of local bus services and operators in Wales.
- The **Welsh Government** saw scope for change in the devolution settlement as it applies to **rail services and rail infrastructure**. The **UK Government** invited the Commission to consider the current devolution boundary for railways, and the potential for changes to those arrangements.
- The **Welsh Government** wishes to see the **administration of elections** in Wales devolved. The **UK Government** invited the Commission to consider whether electoral administration in regard to local government elections in Wales, should be devolved to Welsh Ministers.

- The **Welsh Government** wishes that Welsh Ministers to have executive functions and the Assembly legislative competence regarding consents for large-scale energy generation projects with the exception of nuclear power) and related energy infrastructure. The **UK Government** considers that the current unified development consent regime for energy projects in England and Wales provides a stable platform for investment in major infrastructure. The UK Government also suggested the Commission considers including associated development in Wales within the Planning Act regime.
- Neither the **Welsh Government** nor the **UK Government** wishes broadcasting to be devolved.
- The **Welsh Government** wants legislative competence for licensing and regulation of any licensed **water** supplier within the meaning of the *Water Industry Act 1991*; the appointment and regulation of any water undertaker whose area is not wholly or mainly in Wales; and sewerage. It also wishes to remove the Secretary of State's existing unilateral intervention power in the case of functions relating to water. The **UK Government** said that separating cross-border systems may not be technically feasible at reasonable cost and may create significant regulatory difficulties.
- The **UK Government** invited the Silk Commission to consider the devolution of **teachers' pay and conditions**. The **Welsh Government** is on record as opposing this.



# Summary of consultation responses to part two of the Silk Commission on Devolution in Wales

## 1. Introduction

On 19 July 2011 the then Secretary of State for Wales, the Rt. Hon. Cheryl Gillan MP announced that an independent Commission would be established to look at the fiscal powers of the Welsh Government and National Assembly for Wales.<sup>1</sup> Work began on this, “part one”, in autumn 2011 and the Commission reported in November 2012. The Secretary of State further stated that after the Commission had reported on fiscal powers and the UK Government had considered its proposals, the Commission would look at the constitutional settlement in Wales “in light of experience”. The Commission has now begun work on “part two” of its remit, reviewing the powers of the National Assembly for Wales, and it issued a call for evidence on 29 November 2012. It will report in spring 2014.

The Commission is chaired by Paul Silk, former Clerk to the National Assembly for Wales (2001 to 2007) and a former Clerk in the House of Commons. It has therefore come to be termed “the Silk Commission”.

Further background to the creation of the Silk Commission can be seen in the Research Service Papers [\*The Road to the Independent Commission\*](#) and [\*The Silk Commission\*](#).

The part two consultation closed on 1 March 2012, although some evidence was submitted later. This paper provides a review and summary of evidence submitted to the Silk Commission.

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<sup>1</sup>[Wales Office, \*Next Steps for Commission on Devolution in Wales outlined\*, Press Release, 19 July 2011 \[accessed 19 March 2013\]](#)

## 2. The Silk Commission

### 2.1. Membership

Apart from the Chair, Paul Silk, the Commission comprises **four members nominated by each of the political parties in the National Assembly for Wales, and three independent members.**<sup>2</sup> These are:

- Trefor Jones, a North Wales industrialist
- Helen Molyneux, Chief Executive of NewLaw Solicitors.
- Professor Noel Lloyd CBE (former Vice-Chancellor of Aberystwyth University)
- Professor Nick Bourne (Welsh Conservative nominee, former Leader of the Welsh Conservatives in the National Assembly)
- Jane Davidson (Welsh Labour nominee, former Finance Minister in the Welsh Government)
- Rob Humphreys (Welsh Liberal Democrats nominee, Director of the Open University in Wales)
- Dr Eurfyl ap Gwilym (Plaid Cymru nominee, economist)<sup>3</sup>

### 2.2. Terms of Reference

The terms of reference for part two of the Commission's work are:

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

In undertaking part two, the Commission should:

- examine the powers of the National Assembly for Wales, and in particular:
  - the boundary between what is devolved and non-devolved;
  - whether modifications to the boundary should be made at this stage; and any cross-border implications of such modifications;
- consult widely on any proposed modifications to the current boundary;
- make recommendations on any modifications to the settlement likely to have a wide degree of support; and
- consider and make recommendations on how best to resolve the legal and practical implementation issues from those modifications.<sup>4</sup>

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<sup>2</sup> Dyfrig John and Sue Essex were members of the Commission during part one. They stood down and Trefor Jones and Helen Molyneux were brought in as new independent members. Jane Davidson replaced Sue Essex as the Labour nominee.

<sup>3</sup> [Silk Commission website \[accessed 20 March 2013\]](#)

<sup>4</sup> [Silk Commission, Terms of Reference \[accessed 20 March 2013\]](#)

The Commission will not consider the structure of the National Assembly for Wales, including issues relating to the election of Assembly Members.<sup>5</sup>

### 2.3. *Call for evidence*

A call for evidence was issued on 29 November 2012. In it, Chair Paul Silk stated:

We would like to hear your suggestions for areas that the Commission should consider in particular, as well as specific ideas for how the devolution settlement should be modified to better serve the people of Wales.

If you do suggest changes to the devolution settlement, such as suggesting a power which should be devolved to Wales or returned to Westminster, we would like to learn why you are making this suggestion, and what you think the implications would be for Wales, and for the United Kingdom more generally.

You may also have views on how the current settlement works in practice, and where improvements could be made to the way it works such as, for example, better cooperation in certain areas which might benefit the people of Wales.

You may find the following questions helpful prompts to consider when preparing your submission, though your response does not need to be limited to them:

- What responsibilities, if any, do you believe should be transferred between the UK Parliament and the National Assembly for Wales (that is, powers to be devolved or restored to Westminster)? Why?
- How could the operation of the devolution settlement be improved in other ways than transferring powers?
- What general observations do you have about the nature of the current devolution settlement?
- What principles should underpin any modification of the settlement?
- What examples can you give of policy areas that are currently encumbered by the current division of responsibilities or operation of the devolution settlement? This may include cross-border problems, lack of effective policy coordination, or friction arising from the precise definition of devolved powers.<sup>6</sup>

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<sup>5</sup> [Silk Commission website \[accessed 20 March 2013\]](#)

<sup>6</sup> [Silk Commission, Second call for evidence, 29 November 2012 \[accessed 20 March 2013\]](#)

### 3. The Evidence: Powers

On 13 March 2013, the Commission published all the evidence that it had received, which included over a hundred submissions. A complete list can be seen in **Annexe 1**.

Twenty responses expressed outright opposition to devolution and do not want to see any increase in the powers of the National Assembly for Wales.

Other responses saw no case for further powers at this time. For example, **Professor Malcolm J Prowle** said:

It would be a distraction for NAW/WG to take on further devolved responsibilities in the short medium. It would be best to concentrate on improving core public services and return to the issue of further devolution of responsibilities towards the end of this decade provided the situation has improved.

The Assembly is a relatively new body and has yet to gain sufficient maturity to take on extra powers. This maturity might come over a longer period of time.<sup>7</sup>

#### 3.1. *Reserved Powers*

**The Welsh Government's** response stated:

There should be a new Government of Wales Act, establishing a devolution settlement for Wales based on a "Reserved powers" model of legislative competence for the Assembly. This would clarify accountability, and reduce the likelihood of conflict between the Welsh and UK Governments. **Under such a model, the Assembly should be able to remove or modify UK Ministers' powers in areas of devolved competence** [*RS emphasis*]. The model (i.e. the list of matters Reserved to Westminster) should be capable of adjustment from time to time without the need for primary legislation.<sup>8</sup>

However, it also noted that "we do not seek simply to replicate the Scottish devolution settlement for Wales. Instead we make proposals for the development of devolution based on a Reserved Powers model which we think best suits distinctive Welsh circumstances".<sup>9</sup>

The Welsh Government also warned that:

any improvement in terms of clarity [by moving to a reserved powers model] would be immediately undermined if the new scheme contained the same blanket restriction on removing or modifying powers of UK Ministers as currently exists (by virtue of provision in Part 2 of Schedule 7 of the 2006 Act). There are many of these powers, built up over the years, scattered widely across many areas of law, including devolved areas, such that the restriction has the potential to continue to be a major stumbling block for even the simplest Assembly legislation in respect of matters on which there can be little doubt that they should be for the devolved legislature in Wales.<sup>10</sup>

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<sup>7</sup> [Evidence from Professor Michael J Prowle \[accessed 16 May 2013\]](#)

<sup>8</sup> [Evidence from the Welsh Government \[accessed 17 May 2013\]](#)

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

It further recommended that:

under a reservation model of devolution, a mechanism is required, short of primary legislation, which would be available to keep the list of reservations up to date and, by agreement, adjust the balance of responsibilities of Parliament and the Assembly as circumstances change. The Scotland Act 1998 provides for an Order in Council procedure to deal with this; the Welsh Government would be content for a similar procedure to be provided for Wales.<sup>11</sup>

**Plaid Cymru** supports a reserved power model. Its submission states:

Whilst Schedule 7 of GOWA 2006 could be amended to transfer responsibilities to the National Assembly for Wales, a new act is needed to establish reserved powers. This should be enacted as a priority, incorporating the proposals contained in this submission.<sup>12</sup>

**The Welsh Liberal Democrats** also support the reserved powers model, favouring the Scottish settlement.<sup>13</sup> However, evidence received from neither the **Welsh Conservative Assembly Group** nor the **Welsh Conservative Party** made reference to the reserved powers model.

Former Secretary of State for Wales and Attorney-General, **Lord Morris of Aberavon** (Lord Morris) stated:

I believe the time has now come to seriously consider a similar “reservation” model to Scotland. This would be much better, more effective and have a higher degree of permanence than a bit by bit transfer of further powers year by year.<sup>14</sup>

**Cardiff Law School** said:

While the question of precisely where any new boundaries between the legislatures in Wales and the UK are to be drawn must remain a political one, it is submitted that two key principles should underpin the legal framework which will ultimately define those boundaries. The first is that they should be as clear as possible to avoid doubt and conflict as between Cardiff and Westminster. The second is that they should be based on a coherent test which would enable understanding of why particular matters may, or may not, be allocated to one legislature or the other.<sup>15</sup>

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<sup>11</sup> [Ibid.](#)

<sup>12</sup> [Evidence from Plaid Cymru \[accessed 23 May 2013\]](#)

<sup>13</sup> [Evidence from the Welsh Liberal Democrats \[accessed 24 May 2013\]](#)

<sup>14</sup> [Evidence from Lord Morris of Aberavon \[accessed 16 May 2016\]](#)

<sup>15</sup> [Cardiff Law School Evidence \[accessed 20 March 2013\]](#)

The response further states:

the list of areas in Sch 7 which are within the Assembly's legislative competence is subject to numerous exceptions. These themselves may or may not have a readily understandable justification. Immediately, then, the question of what the Assembly may legislate upon becomes complicated by the need to check for any exceptional matters, which in turn can hinder the accessibility and comprehensibility of Assembly-made law. This process is yet further complicated as the exempt matters may refer to further exclusions.

Rather than perpetuating this approach of an ad hoc and uncertain list of powers to be conferred on the Assembly, there should be a rational and coherent test to help limit doubt and provide a mechanism for determining where the boundaries should be drawn. It is proposed that the principle of subsidiarity provides an appropriate criterion.<sup>16</sup>

The **Hywel Dda Institute at Swansea Law School** says:

The advantages of a reserved powers model [...] are:

clarity and intelligibility; avoidance of built-in obsolescence; compliance with the principle of subsidiarity; consistency with Scotland and Northern Ireland. The sole disadvantage (assuming that a unified England and Wales legal jurisdiction is to be retained) is the purely technical challenge of drafting a reservation which would encompass those matters which might otherwise lead to the creation of a *de facto* separate Welsh legal jurisdiction.

It is clear that, viewed objectively, the balance comes down heavily and decisively in favour of a move to a reserved powers model when delineating the legislative competence of the National Assembly for Wales.<sup>17</sup>

The Constitutional and Legal Consultants, **Your Legal Eyes**, said:

We believe that the current way in which the Government of Wales Act 2006 is drafted and operates does not give legal certainty as to the exact scope of the devolved competence in Wales. Devolution has evolved since its inception and a new model for the devolved powers must be found that moves away from a definition by reference to individual executive powers.

The Government of Wales Act must be reformed at a minimum and a new Act could be written at best.

The Northern Ireland model of devolution set out in the Northern Ireland Act 1998 seems to us to be the best model which could be adapted to fit Wales' needs.

A less radical approach would be to amend Schedule 7 to the Government of Wales Act 2006 so that it provides a definitive list of all the exceptions to the devolved competence under the 20 Headings. Such exceptions should be precise and specific without reference to specific Acts of Parliament.<sup>18</sup>

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<sup>16</sup> Ibid.

<sup>17</sup> [Evidence from the Hywel Dda Institute at Swansea Law School \[accessed 5 June 2013\]](#)

<sup>18</sup> [Evidence from Your Legal Eyes \[accessed 5 June 2013\]](#)

## The Law Society commented:

The overriding principle should be that the law is clear and accessible, which law is applicable to those residing in the border areas should be no less clear than that for a person residing in Cardiff.

It is difficult to defend the current situation when its present effects are the confusion of powers rather than clarity of where power lies – whether for the legal practitioner or for the individual citizen simply seeking to understand and enforce their legal rights in twenty-first century Wales.

For reasons of constitutional stability, maximum clarity, public interest and cost effectiveness, the time may now be right for a move away from the “status quo” represented by the 2006 settlement.<sup>19</sup>

## It continued:

The differences between the settlements across the United Kingdom have resulted in an asymmetrical approach to devolution. There are historical reasons for this but since devolution has been accepted by all the major political parties and by the majority of the public across the United Kingdom a change in the Welsh settlement to bring it into line with the model for Scotland and Northern Ireland may be desirable.

A move to a reserved powers model would bring both an intellectual and practical coherence to the 2006 settlement, such that the division of powers between Westminster and Cardiff Bay could be readily understood by the citizen on the basis of logic rather than accident of history.<sup>20</sup>

## The UK Changing Union Partnership stated:

A reserved powers model would do away with most limbo areas. It would mean much more certainty about the basic subject-matter competence of the Assembly. It would save much work for Welsh Ministers, their staff and the Assembly Commission. It would begin to put the relationship between Cardiff Bay and Westminster on a more adult footing. It would provide clarity for the public and civil society. It is the right solution and the right moment to adopt it.

Wales should adopt the Scottish model of reserved powers, with largely the same powers reserved to the UK Parliament in both cases – with the exception of certain powers over broadcasting, policing and criminal justice, which should be devolved.<sup>21</sup>

It further called for “the switch to reserved powers should not wait until after the 2020 or 2021 Assembly elections, but be enacted not later than the first Parliamentary term following the 2016 Assembly election.”<sup>22</sup>

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<sup>19</sup> [Evidence from the Law Society \[accessed 15 May 2013\]](#)

<sup>20</sup> [Evidence from the Law Society \[accessed 15 May 2013\]](#)

<sup>21</sup> [Evidence from the UK Changing Union Partnership \[accessed 24 May 2013\]](#)

<sup>22</sup> Ibid.

Apart from legal and political opinion a range of bodies expressed support for the reserved powers model. **The Older People and Children’s Commissioners** submitted a joint response which supported the reserved powers model arguing that “such a move would bring Wales in line with Scotland and provide greater transparency to the general public on where decisions are made.” They continue:

The current arrangements do not take sufficient account of our respective organisations and our remits leading to a degree of confusion on our potential interaction with reserved policy areas. This has a particular impact on the Children’s Commissioner as its sister organisation in England is deemed to have responsibility for reserved matters throughout the UK.<sup>23</sup>

The **Wales Study Group of the Study of Parliament Group** stated:

The existing ‘conferred powers’ model of devolution in Wales effectively clouds the scope of the Assembly’s legislative powers. This means that the Assembly’s powers are unclear and subject to interpretation. We accept that it is meretricious to claim that any devolution settlement provides absolute clarity and legal certainty. Both academic research and specific case law from federal systems around the world shows that there are always legal uncertainties. However, the current ‘settlement’ in Wales is especially complex, and therefore particularly prone to challenge. Moreover, it sits uneasily with the models in operation in Scotland and Northern Ireland. We suggest a ‘reserved model’ would add greater clarity and, coupled with the changes we recommend here, reduce uncertainties.<sup>24</sup>

The **Church in Wales** notes that:

There is considerable confusion as to what is and is not within the legislative competence of the Assembly. Unlike the settlements in Northern Ireland and Scotland, where ‘everything is devolved except...’, Wales has ‘nothing devolved unless...’. Different issues within each policy area may or may not be devolved. (For example, jurisdiction over planning regulations for wind-turbines are devolved or not, depending on the size of the turbine.) This makes it difficult to operate ‘as consumers’ of the situation and requires constant reference back to legislation.<sup>25</sup>

The **Community Housing Cymru Group** (CHC Group) was of the view that “the current settlement of a ‘devolved powers model’ creates unnecessary complications and uncertainties about exactly where the legislative competence lies, as has been evidence by the referral of the first bill of the Assembly to the Supreme Court”.<sup>26</sup>

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<sup>23</sup> [Joint evidence from the Older People’s Commissioner and Children’s Commissioner \[accessed 24 May 2013\]](#)

<sup>24</sup> [Evidence from the Wales Study Group of the Study of Parliament Group \[accessed 3 June 2013\]](#)

<sup>25</sup> [Evidence from the Church in Wales \[accessed 24 May 2013\]](#)

<sup>26</sup> [Evidence from the Community Housing Wales Group \[accessed 22 May 2013\]](#)

The **Federation of Master Builders** stated:

The Assembly is not a 'reserved powers' institution as it is in Scotland and NI. This model of 'conferred powers' is detrimental to Wales as an entity and does us great harm with the system producing 'grey' areas as to what is within scope or its jurisdiction.<sup>27</sup>

Other organisations expressing support for the reserved powers model include **Citizens Advice Cymru**, **Cymdeithas yr Iaith Gymraeg**, the **Bevan Foundation**, and the **Electoral Reform Society** which also called for the "removal of the General Restriction protecting the powers of UK Ministers".<sup>28</sup>

### *3.2. Policing*

The **Welsh Government** proposes that the Assembly should have legislative responsibility for policing, by which it means the governance and administration of the police service in Wales. It is also seeking legislative powers in relation to community safety and crime prevention. It stated:

The transfer of responsibility for the policing service creates no issues of principle as to governance of and within the United Kingdom, and would be entirely consistent with the purpose of devolution, to bring public services to communities closer to, and more directly accountable to, those communities.<sup>29</sup>

The **UK Government** responded:

A range of national policing structures and arrangements involve cross boundary issues (e.g. organised crime) or provide significant economies of scale (e.g. IT procurement). The separating out of these national structures and arrangements would involve considerable initial start up and running cost for the Welsh Government. There would also be a cost to UK Government in terms of the break up of current structures and contractual implications.

Policy relating to police pay and pensions, police complaints, independent inspection of policing, national police air service, college of policing, transparency and accessibility are non devolved. If these areas were devolved, they would all need to be duplicated in respect to Wales. Value for money and delivery risk are significant issues given tight fiscal pressures and the significant change already underway as part of the police reform programme.<sup>30</sup>

It also considered that policing should not be devolved without devolution of others aspects of the criminal justice system, which it opposes (see below).

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<sup>27</sup> [Evidence from the Federation of Master Builders \[accessed 16 May 2013\]](#)

<sup>28</sup> [Evidence from the Electoral Reform Society Cymru \[accessed 22 May 2013\]](#)

<sup>29</sup> [Evidence from the Welsh Government \[accessed 17 May 2013\]](#)

<sup>30</sup> [Evidence from the UK Government \[accessed 23 May 2013\]](#)

The **Welsh Conservative Assembly Group** welcomed further exploration of policing and criminal justice as part of the Commission's deliberations. However, it stated:

following the introduction of Police & Crime Commissioners (PCCs), which will significantly enhance local involvement in the Police's decision-making and marked significant reform of the system, we believe that further wholesale reforms to the Police Service in the near future is undesirable.<sup>31</sup>

The **Welsh Liberal Democrats** believe that "it makes more sense for prisons and policing issues to be devolved to the National Assembly for Wales than to remain with the UK Parliament". They also believe that this should also cover youth justice and crime prevention. They continue:

However, we also acknowledge that the preparations for the devolution of policing and prisons will take a significant amount of time to prepare. That is why we would like to see a firm commitment to the devolution of these issues and a comprehensive timetable for preparations. This process would culminate in an Order-in-Council which would remove policing, prisons and justice from the reserved powers list.<sup>32</sup>

A number of interested organisations commented on the devolution of policing powers. The **Association of Chief Police Officers (ACPO)** said:

If policing and criminal justice is to be devolved to the Welsh Government then it is a fundamental principle that this must result in added value and improved service to the people of Wales. Policing and devolution of the Criminal Justice system are intrinsically linked and one should not be devolved without the other.

It further stated:

The Welsh Government has responsibility for devolved matters that are closely associated with policing. Local factors such as poverty, access to education and employment influence levels of crime. Similarly, devolved partners, such as public protection, youth justice and youth provision, community safety and education reduce offending and crime. If all public services were devolved Welsh Government could have better opportunity to redesign and remodel service provision. This could create single strategic Government direction for policing in Wales and improved partnership alignment. Integrated practice may also reduce demand in some areas of policing and/or the Criminal Justice System. Devolution of policing may result in additional costs for functions that are provisioned across England and Wales, for example the National Police Air Service and the College of Policing. A devolved (Welsh) police service could have less influence on the UK policing agenda. Safeguards would be necessary to ensure that police forces in Wales were able to influence future research or all England (and Wales) projects.

ACPO stressed the need for continued links with English police forces.

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<sup>31</sup> [Evidence from the Welsh Conservative Assembly Group \[accessed 24 May 2013\]](#)

<sup>32</sup> [Evidence from the Welsh Liberal Democrats \[accessed 24 May 2013\]](#)

**The Chief Constable of Gwent Police** believes that the transfer of policing from Parliament to the National Assembly for Wales should be supported subject to a full and robust option appraisal. The approach which provides the most benefit to the people of Wales and adds value to the service provision should be progressed.<sup>33</sup>

**The Police and Crime Commissioner for Dyfed-Powys Police**, Christopher Salmon said:

I believe that, broadly, the right balance exists between Westminster and Cardiff in relation to policing. I am in complete support of the principle of devolution. It is a necessary and welcome response to social, democratic and technical change. In a 21<sup>st</sup> Century democracy this should prioritise giving power to people rather than institutions. This is the rationale that underpins Police and Crime Commissioners, introduced across England and Wales in November 2012. They place accountability firmly in the hands of local electorates.

Nowhere are public ownership, control and accountability more important than in policing and criminal justice. Protecting its own citizens is the first responsibility of any state. Effective policing that provides this protection requires consent. Consent requires trust; and trust requires accountability. These are best exercised at a local level. Consent is critical to the success of the British policing model. Wales' four Police and Crime Commissioners provide this at a more accessible and local level than would control from Cardiff. This is particularly so outside of Cardiff and South Wales.<sup>34</sup>

However, the **North Wales Police and Crime Commissioner**, Winston Roddick QC CB stated:

- For the people of Wales, who should be the central consideration for the commission on devolution, the benefits of devolving the police service would be overwhelmingly positive.
- If appropriate safeguards were put in place, the quality of policing would not be diluted and the rule of law would remain the strongest of our constitutional principles.
- North Wales Police and the Police and Crime Commissioners work daily with devolved services and work streams. Devolving policing to the Welsh Government would achieve consistency of policy and it would make for more 'joined up' government which would be reflected in the services that work for the people of Wales.
- The devolution of policing would introduce greater consistency between the devolution settlements for Northern Ireland, Scotland and Wales. For that and many other reasons, it would make sound constitutional sense to devolve it.
- Although Policing is but a part of the criminal justice system and that the latter should be seen as a whole, these are not sufficient reasons for not devolving policing at this time.<sup>35</sup>

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<sup>33</sup> [Evidence from the Chief Constable of Gwent \[accessed 20 March 2013\]](#)

<sup>34</sup> [Evidence from the Police and Crime Commissioner for Dyfed-Powys \[accessed 22 May 2013\]](#)

<sup>35</sup> [Evidence from Winston Roddick, Police and Crime Commissioner for North Wales \[accessed 5 June 2013\]](#)

**The Police and Crime Commissioner for Gwent, Ian Johnson, stated:**

Policing in Wales is not devolved and both myself and the Chief Constable have a direct relationship with the Home Office and in my case the Home Secretary. Any examination of the powers of the National Assembly of Wales should include an open and transparent debate on whether the police service should be devolved. However, it is my strong belief that any such discussion must take place at the same time as a debate regarding the transfer of the whole of the Criminal Justice System, the interface between the police service, Community Safety and the wider Criminal Justice Service is critical. Any proposals to change the current arrangements must evidence what the benefits for the people of Wales would be under any revised governance arrangements. Only if any new arrangements can be shown to add value to the current position should they be considered.<sup>36</sup>

**Professor John Williams of Aberystwyth University commented that:**

Policing must be responsive to the broader social, economic and cultural context of the nation in which it operates. This expectation becomes increasingly problematic whilst political control remains in London. In addition, police powers cut across many aspects of devolved responsibilities, for example the use of police powers under the Mental Health Act 1983, the safeguarding and protection of adults at risk and children, and in relation to young offenders. The need for Whitehall approval, even for minor uses of police powers, inhibits law making in Wales.<sup>37</sup>

**The Older People and Children's Commissioners agreed that policing should be devolved to Wales, identifying instances where such a move would benefit "an integrated approach to crisis management, service planning, and delivery".<sup>38</sup>**

**The Wales TUC noted that:**

Policing remains the only emergency service that is not devolved to the National Assembly for Wales and the WTUC believes that the time has come for this situation to change. Devolution of the police service will enable them to be fully engaged in joint in joint [sic] planning and delivery with other local public services. Community safety and crime prevention are integral to the work of all public servants in Wales to improve the wellbeing of communities.<sup>39</sup>

**The Federation of Master Builders stated:**

The logical follow on from adopting Welsh legal system will necessitate devolution of the police and security to the Welsh government. The WG needs to be able to direct its own priorities for application of law and order and devise its own reforms. The public appetite in Wales for the system of police commissioners in Wales is obviously very small and this role and its inherent cost [should] be removed from the system and the WG perform the watchdog role on Police in Wales.<sup>40</sup>

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<sup>36</sup> [Evidence from Ian Johnson, Police and Crime Commissioner for Gwent \[accessed 22 May 2013\]](#)

<sup>37</sup> [Evidence from Professor John Williams \[accessed 16 May 2013\]](#)

<sup>38</sup> [Joint Evidence from the Older People's and Children's Commissioners \[accessed 24 May 2013\]](#)

<sup>39</sup> [Evidence from the Wales TUC \[accessed 5 June 2013\]](#)

<sup>40</sup> [Evidence from the Federation of Master Builders \[accessed 16 May 2013\]](#)

The **UK Changing Union Partnership** said:

Devolution of responsibility for policing would be likely to facilitate partnership working, act as a catalyst for reform of public services in related areas of community safety, and lead to Welsh Government ministers becoming fully informed about policing matters. The lines of accountability between police forces, the Police and Crime Commissioners and the WG, and, just as importantly, with the public would become clearer. The potential for the system to be fully aligned with a Welsh criminal justice system would also be of significant benefit to those involved. It would create coherence and accountability at a local level.<sup>41</sup>

**Cymdeithas yr Iaith Gymraeg, GOFAL and Plaid Cymru** all expressed support for the devolution of policing.

However, an **individual respondent** who practised as a solicitor said:

The devolution of the policing function to the Assembly is unnecessary and would be a complication in the existing ability of Welsh and English police forces to co-operate in dealing with crime which continues to grow in sophistication. The existing arrangements recognise that crime of all sorts pays no heed to the so-called border between Wales and England.<sup>42</sup>

**True Wales** opposed the devolution of crime and policing “on the grounds that it will make tackling organised crime and terrorism more difficult to coordinate”.<sup>43</sup>

### *3.3. Criminal Justice and a separate jurisdiction*

The **Welsh Government** stated:

The status quo is in the Welsh Government’s view increasingly hard to justify, and we believe that a devolved criminal justice system should form part of the long term vision for Welsh governance; we invite the Commission to agree with that conclusion. Devolution would have practical benefits in enabling the criminal justice system to respond to the evidence on crime in Wales, as well as our particular delivery challenges. There is scope to drive a concerted approach to reducing offending and re-offending, through the Welsh Government’s public service reform programme, which engages all public service partners in prevention and service integration. This would enable us to link criminal justice reform more closely with the devolved services that can have a significant impact on offending and criminality, such as health (particularly mental health and substance misuse), education, social services, housing, and employment and training.<sup>44</sup>

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<sup>41</sup> [Evidence from the UK Changing Union Partnership \[accessed 24 May 2013\]](#)

<sup>42</sup> [Evidence from J L Gardner \[accessed 22 May 2013\]](#)

<sup>43</sup> [Evidence from True Wales \[accessed 15 May 2015\]](#)

<sup>44</sup> [Evidence from the Welsh Government \[accessed 17 May 2013\]](#)

However, it felt this vision is probably not achievable in the short term. The Welsh Government explained:

The size of the criminal justice portfolio requires us to take these potential costs extremely seriously. Based on published figures, we estimate overall costs at around £1.2 billion, of which around £900 million would represent new funding responsibilities. In addition, there would be substantial associated liabilities and operational risks. Ensuring a satisfactory resource transfer would be essential - even a small variance between the negotiated settlement and the actual costs involved in running the service would impose significant additional pressure on rest of the Welsh budget.

Given these costs and risks, **the Welsh Government does not feel able to pursue the devolution of criminal justice (including, for example, prosecution and probation services, prisons, and sentencing) in its entirety at this stage, although that does remain our longer-term intention.** Provision to achieve this should be provided for in a new Government of Wales Act so that devolution can be implemented on an agreed basis at some future time without the need for further primary legislation.<sup>45</sup> [RS emphasis]

It also stated that it would not seek immediate responsibility for the whole of the administration of justice (i.e. the organisation and operation of courts and most tribunals in Wales), before the Welsh Government assumes responsibility for criminal justice policy. More information on how it wishes to proceed in the short term can be seen in section 4.

The **UK Government** stated:

England and Wales share a single legal jurisdiction, which has continued to evolve over hundreds of years to meet the changing needs of British society. We support the continuation of the current unified system, which in our view works well whilst offering scope for close working between devolved and non-devolved partners in delivering justice services in Wales. We believe that a separate Welsh legal jurisdiction would offer questionable tangible practical benefits to people living in Wales and could complicate the system unnecessarily for those who need to use it. We note that it would also result in substantial additional cost, which we estimate to be £105-£125 million per annum.<sup>46</sup>

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<sup>45</sup> Ibid.

<sup>46</sup> [Evidence from the UK Government \[accessed 23 May 2013\]](#)

The UK Government also noted that Acts of the Assembly can create criminal offences. However, in doing so there is nothing to require the Assembly, the Welsh Government or any Assembly Member or Assembly Committee bringing forward a Bill to have regard for the likely costs being imposed on Her Majesty's Courts and Tribunals Service when the new offences come into effect. This is in contrast to UK Government Departments, which must obtain the approval of the Justice Secretary before creating new offences. The UK Government suggested that **“the Commission might wish to consider this issue, and whether it is best dealt with administratively (for example, via a protocol) or in legislation [RS emphasis]”**.<sup>47</sup>

**Plaid Cymru** is of the view that:

A legal jurisdiction for Wales should be established. This would require the establishment of a Welsh court and tribunal structure. This should be complemented by the transfer of powers over the justice system as a whole, including the police forces and those services responsible for prosecution, probation, prisons and youth justice. These steps would create a coherent and workable system of devolved justice, enabling the adoption of an integrated approach that is tailored to Wales.<sup>48</sup>

**The Welsh Conservative Assembly Group** stated:

With a probable divergence in the content of law affecting England and Wales, we acknowledge that arrangements would have to change to accommodate that. However, we note there is no immediate problem with capacity in the current system and feel any decision concerning devolution in the near future would be political rather than practical. Our view, therefore, is that devolution of a legal jurisdiction is not a priority and the implications of divergent law will not be felt for some time.<sup>49</sup>

**The Welsh Liberal Democrats** said:

We [...] support, following the correct preparations, the creation of a separate legal jurisdiction for Wales. However, we acknowledge that this will be a significant change in the way that justice is administered and there would need to be substantial preparatory work.

In the meantime, we support the need for a more distinctive Welsh approach to the administration of justice within the existing jurisdiction. These would include having a greater number of cases primarily relating to Wales being heard in Wales and the appointment of a member of the Supreme Court from Wales.

This approach should be accompanied by the establishment of a Royal Commission specifically examining the process by which a separate legal jurisdiction would be created. It is our opinion that the issue involved, particularly relating to legal training and education and to the regulation of the legal profession need to be considered.<sup>50</sup>

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<sup>47</sup> [Evidence from the UK Government \[accessed 23 May 2013\]](#)

<sup>48</sup> [Evidence from Plaid Cymru \[accessed 23 May 2013\]](#)

<sup>49</sup> [Evidence from the Welsh Conservative Assembly Group \[24 May 2013\]](#)

<sup>50</sup> [Evidence from the Welsh Liberal Democrats \[accessed 24 May 2013\]](#)

As seen above **ACPO** is of the view that policing and devolution of the criminal justice system are “intrinsically linked” and one should not be devolved without the other.<sup>51</sup>

**The Chief Constable of Gwent Police** stated:

If the police service were to be devolved it would be desirable to devolve part of the criminal justice system as well namely Courts, Administration of Justice and Probation. This would ensure that the end to end criminal justice process was under a single governance arrangement. The rationale for creating an All Wales Criminal Justice Board underpins this principle. Precedence exists in both Northern Ireland and Scotland for a joined Criminal Justice approach in a devolved arrangement.<sup>52</sup>

**The UK Changing Union Partnership** said:

It seems to be common ground, even among those not previously disposed to devolution, that a distinct Welsh jurisdiction, or something very much like it, will emerge. That being so, we consider it necessary to plan ahead for that constitutional change, rather than let it emerge in a gradual, ad hoc and unmanaged manner. Our view is that any Act of Parliament establishing a reserved powers model should also make provision for establishing a Welsh legal jurisdiction.<sup>53</sup>

**The Older People and Children’s Commissioners** were of the opinion that “criminal justice should be devolved in the longer term” and identified “instances where consensual policy advances in Wales are being hampered by the lack of devolution in this area. Swifter progress could and should be instigated in the area of youth justice”.<sup>54</sup>

**The mental health charity GOFAL** said:

It is essential that legal professionals operating in Wales and dealing with cases of Wales-specific law are fully informed and aware of updates and changes to Welsh legislation. It is crucial that they can provide appropriate advice and support to individuals passing through the criminal justice and legal systems in Wales. This is especially important in the case of people with mental health problems, who may be particularly vulnerable in such circumstances. If this appears to be under threat as devolution progresses and a Welsh legal identity strengthens, we believe that appropriate mechanisms should be in place to facilitate the establishment of a separate Welsh jurisdiction.<sup>55</sup>

**The Steering Committee for Legal Wales** said:

There is a clear view shared, albeit not unanimous, amongst the current SCLW that in principle the idea or concept of a separate legal jurisdiction for Wales is attractive and that the only real questions which need to be addressed are firstly, when this might be appropriate and secondly, the practical and financial considerations of such a fundamental restructure.<sup>56</sup>

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<sup>51</sup> [Evidence from ACPO Cymru \[accessed 20 March 2013\]](#)

<sup>52</sup> [Evidence from the Chief Constable of Gwent Police\[accessed 20 March 2013\]](#)

<sup>53</sup> [Evidence from the UK Changing Union Partnership \[accessed 24 May 2013\]](#)

<sup>54</sup> [Joint Evidence from the Commissioner for Older People and the Children’s Commissioner \[accessed 24 May 2013\]](#)

<sup>55</sup> [Evidence from GOFAL \[accessed 24 May 2013\]](#)

<sup>56</sup> [Evidence from the Steering Committee for Legal Wales \[accessed 24 May 2013\]](#)

### **Lord Morris said:**

I am a late convert to the transfer of policing, although I would not be happy with one police force for Wales. Criminal Justice, depending on how it is defined, is more problematic and there are obvious difficulties here. I am pleased that the administration of justice is not proposed to be transferred at the present time. The obvious issue of costs is exemplified by the material set out in Lord Carswell's Memorandum attached to my evidence to the Select Committee (sic). The administration of justice is not in my view an appropriate subject for transfer now.<sup>57</sup>

### **An individual respondent, a barrister, stated.**

The current system of a Welsh Jurisdiction slowly developing creates confusion within the legal profession and the public as a whole. The lack of forward planning is a feature of Welsh devolution; there has been three different devolution settlements in Wales since 1998, in contrast to only one in Scotland. Forward planning should be done to address the issues likely to arise with a separate Welsh Jurisdiction and should be done formally through an Act of Parliament. A Parliamentary Act creating a separate Welsh Jurisdiction would be clearer for the legal profession and the public as a whole.<sup>58</sup>

### **The Federation of Master Builders (FMB) said:**

Given that in this paper the FMB proposes devolution of Health and Safety (H & S), builders licensing, Energy, and Severn bridges, there is clearly a strong case to be made for a separate legislature for Wales and the devolution of police and criminal justice. UK legislation and Welsh Assembly legislation is already causing divergence from England in many areas, as this divergence continues the lack of a Welsh jurisdiction would present a danger to the continued success of the devolution journey.<sup>59</sup>

### **Professor John Williams argued that:**

the timing of the creation of a Welsh jurisdiction is a finely based judgement[...] the decision depends upon objective criteria rather than political aspirations. A separate Welsh jurisdiction must follow the process of devolution rather than be a precondition of devolution's further development. The creation of a Welsh jurisdiction, unlike devolution itself, is more of an event than a process. It is difficult to envisage how it can be done incrementally. A 'minimum jurisdiction' as a starting point is unrealistic.<sup>60</sup>

Professor John Williams also said "there is a strong case for fully devolving responsibility for the probation service" as "the link with social services and housing (particularly when addressing the needs of former prisoners) are central to effective probation work".<sup>61</sup>

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<sup>57</sup> [Evidence from Lord Morris of Aberavon \[accessed 16 May 2016\]](#)

<sup>58</sup> [Evidence from Rhys Thomas \[accessed 16 May 2013\]](#)

<sup>59</sup> [Evidence from the Federation of Master Builders \[accessed 16 May 2013\]](#)

<sup>60</sup> [Evidence from Professor John Williams \[accessed 16 May 2013\]](#)

<sup>61</sup> [Ibid.](#)

In specific reference to administrative law, the **Welsh Committee of the Administrative Justice and Tribunals Council** stated:

it is not obviously apparent how the interests of the administrative justice user are best served by overlapping jurisdictional responsibilities shared between the Welsh and UK Governments. Such arrangements make it difficult for overall cohesion to be maintained, given that the relevant functions of the two governments often cross over, and that, for the administrative justice user, such crossover may occur in respect of what he identifies as a single issue of concern or principle.<sup>62</sup>

The **Welsh Government** noted that Welsh Ministers have powers to appoint members to make procedural rules for tribunals, but some residual functions are retained by the Secretary of State and Lord Chancellor, and the retention of these residual functions makes it difficult for the Welsh Government to adopt any consistent or coherent policies for these tribunals. As these tribunals operate mainly in devolved areas, Welsh Ministers should possess full executive competence in relation to them.<sup>63</sup>

However, an **individual respondent** who practised as a solicitor said:

The existing jurisdiction is a fundamental part of the Union between England and Wales. The creation of a Wales only jurisdiction would be a significant breach in the Union and would result in Wales having inferior arrangements. I conclude that there is no justification for a separate jurisdiction.<sup>64</sup>

### *3.4. Welfare*

The **Welsh Government** does not support devolving social security (including child support and pensions) to the Assembly and Welsh Government. It is a matter that should be reserved at Westminster.<sup>65</sup>

The **CHC Group** believes that the Welsh Government should be given the same powers over welfare as are currently held by the Northern Ireland Executive.<sup>66</sup>

The **Bevan Foundation** stated:

While financial constraints and the current process of reform of social security benefits make devolution of almost all aspects of the benefit system virtually impossible in the short to medium term[...] there is scope to devolve powers over employment programmes e.g. the Work Programme.<sup>67</sup>

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<sup>62</sup> [Evidence from the Welsh Committee of the Administrative Justice and Tribunals Council \[accessed May 2013\]](#)

<sup>63</sup> [Evidence from the Welsh Government \[accessed 17 May 2013\]](#)

<sup>64</sup> [Evidence from J L Gardner \[accessed 22 May 2013\]](#)

<sup>65</sup> [Evidence from the Welsh Government \[accessed 17 May 2013\]](#)

<sup>66</sup> [Evidence from Community Housing Cymru Group \[accessed May 2013\]](#)

<sup>67</sup> [Evidence from the Bevan Foundation \[accessed 20 March 2013\]](#)

However, the mental health charity **GOFAL** felt the benefits system should not be devolved to the National Assembly for Wales:

we do not wish to see the benefits system devolved to the National Assembly, as we believe this would be extremely costly and would not deliver clear benefits to the people of Wales.<sup>68</sup>

The **UK Changing Union Partnership** stated:

we do not regard devolution in this field as either feasible or desirable. The recent transfer to the WG of responsibility for administering certain social welfare functions illustrates the danger of devolving functions without consultation with the WG and without any accompanying transfer of resources.<sup>69</sup>

### 3.5. *Transport*

The **Welsh Government** is of the view that aviation, shipping and maritime safety, road and vehicle standards, and driver licensing should be reserved by the UK Parliament. However, the Assembly's existing powers in relation to transport, set out in Schedule 7 to the *Government of Wales Act 2006*, should be extended to speed limits, bus regulation, taxi regulation and ports.<sup>70</sup>

The **UK Government** believes that, with regard to ports, the present devolution boundary works satisfactorily. Welsh ports compete with those in the rest of Britain on an even footing. However, it said the Silk Commission may wish to examine the devolution boundary in respect of ports, noting that the UK Government should remain responsible for supranational matters.<sup>71</sup>

The **UK Government** also said that the Silk Commission may wish to investigate the devolution, or further devolution, of the regulation of local bus services and operators in Wales.

The **Welsh Government** sees scope for change in the devolution settlement as it applies to rail services and rail infrastructure, and is currently pursuing these options with the Department of Transport as part of the planning for the new Wales and Borders franchise.

The **UK Government** explained that the current devolution boundary in respect of the Wales and Borders franchise means that the in-franchise financial risk sits with the Welsh Government but the financial risk of a new franchise (and of catastrophic failure) remains with the UK Government. It believes this to be undesirable. The UK Government would welcome the Silk Commission's consideration of the current devolution boundary for railways, and the potential for changes to those arrangements.

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<sup>68</sup> [Evidence from GOFAL \[accessed 24 May 2013\]](#)

<sup>69</sup> [Evidence from the UK Changing Union Partnership \[accessed 24 May 2013\]](#)

<sup>70</sup> [Evidence from the Welsh Government \[accessed 17 May 2013\]](#)

<sup>71</sup> [Evidence from the UK Government \[accessed 22 May 2013\]](#)

## **Plaid Cymru stated:**

The Welsh Government should be able to decide how the train network in Wales is operated, following the expiry of the current franchise in 2018. It should have the power to decide the way in which it wishes to negotiate with train operating companies to provide their services, whether within the franchise system or outside it. If the franchise system is retained, then the Welsh Government should be the lead decision maker for the Wales and Borders franchise. These changes would enable the Welsh Government to develop an integrated transport system that better serves the people of Wales and is accountable to them, as well as helping to ensure a fairer share of funding. Responsibility for other aspects of transport, currently retained at Westminster, should also be devolved.<sup>72</sup>

## **The Welsh Conservative Assembly Group said:**

The Group believes that the Commission should explore any existing anomalies in the present system in relation to transport. For example, during the Third Assembly, the Welsh Government spoke of its investment into the accessibility of railway stations, whilst also highlighting statutory responsibility for railway accessibility as a reserved matter. This could be regarded as an inconsistency. Furthermore, we note the recent debate in relation to the possible future devolution of the Severn Bridge. It is the Group's belief that the Severn Bridge, acting as a gateway to Wales, is a hugely important issue and that the tolls have a significant impact on our nation's economy and tourist trade. Given the on-going debate concerning the Bridge's future ownership, the Group feels the Commission should give its view on future options for the Bridge following its return to public hands, which could happen in 2018.<sup>73</sup>

**Professor Stuart Cole** argued that in order to achieve an integrated transport policy for Wales, "key responsibilities, powers and functions should be transferred to the National Assembly which could then consider the transfer of some of these powers/obligations to Joint Transport Authorities or local authorities".<sup>74</sup>

**The Enterprise and Business Committee** of the National Assembly for Wales stated that it wants:

- A statutory relationship between the Welsh Government and Network Rail. This might include devolution of powers to specify high level outputs for Welsh rail infrastructure, similar to the powers of the Scottish Government;
- An enhanced role in the rail franchising process as it affects Wales, particularly powers to specify franchise agreements that comprise predominantly Wales-only services (passenger services that start and end in Wales), such as the current Wales and Borders Franchise;
- Bus regulation and registration, including making the Traffic Commissioner for Wales accountable to the Welsh Ministers.<sup>75</sup>

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<sup>72</sup> [Evidence from Plaid Cymru \[accessed 23 May 2013\]](#)

<sup>73</sup> [Evidence from the Welsh Conservative Assembly Group \[accessed 24 May 2013\]](#)

<sup>74</sup> [Evidence from Professor Stuart Cole \[accessed 16 May 2013\]](#)

<sup>75</sup> [Evidence from Enterprise and Business Committee \[accessed 22 May 2013\]](#)

The union **Unite Wales** stated:

It is the opinion of Unite Wales, along with the Wales TUC, that devolving the powers to specify output from Network Rail on the Welsh rail infrastructure would provide greater opportunity for a more integrated and democratic rail policy in Wales. The existing devolution settlement for rail is convoluted, confusing and does not assist the Welsh Government in making strategic interventions in transport policy in the interests of social and economic development.

Unite recognises that poor connectivity is a barrier to accessing work and labour markets for employees and employers alike. We too welcome the current Welsh Government agendas to create more integrated transport networks but despite this commitment it remains the case that poor rail infrastructure is detrimental to Wales' economic performance. The Welsh Government should have the power to specify output from Network Rail in order to address this.<sup>76</sup>

The **Older People's and Children's Commissioners** advocated greater devolution in the areas of enhanced transport integration, the regulation of buses, and the licensing and regulation of taxis and private hire vehicles.<sup>77</sup>

In the view of **Sustrans and the Bevan Foundation**, the Welsh Government should gain powers to decide bus subsidy/contract payment levels; decide bus routes and frequency for both commercially and publicly run routes; and have devolved bus user groups.<sup>78</sup>

Some **individual respondents** called for the Severn bridges to be devolved. The **UK Government** stated:

Whilst the future of the Severn Crossings is a matter of importance to the Welsh economy, the UK Government does not believe that it raises any issues in terms of the devolution or otherwise of powers to the Assembly or the Welsh Government. As such, we consider that this issue is best considered outside the Commission's work.<sup>79</sup>

**Bristol Airport** stated:

We are unable to identify any areas of aviation policy that are currently encumbered by the current division of responsibilities or the operation of the devolution settlement. Cross-border issues with the distribution of air travellers between airports in England and Wales require that a UK perspective needs to be maintained and with respect to international air travel is implemented through the EU and the International Civil Aviation Organisation. Aviation policy should therefore remain reserved to the UK Parliament. However in practice most, if not all, decisions relating to Welsh airports and air services are taken within currently devolved powers relating to the planning system, surface access and the provision of air services.<sup>80</sup>

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<sup>76</sup> [Evidence from Unite \[accessed 15 May 2013\]](#)

<sup>77</sup> [Joint Evidence from the Commissioner for Older People and the Children's Commissioner \[accessed 24 May 2013\]](#)

<sup>78</sup> [Evidence from SUSTRANS and Bevan Foundation \[accessed 15 May 2013\]](#)

<sup>79</sup> [Evidence from the UK Government \[accessed 23 May 2013\]](#)

<sup>80</sup> [Evidence from Bristol Airport \[accessed 20 March 2013\]](#)

The **UK Government** believes the devolution boundary in respect of aviation is in the right place.

### 3.6. *Equalities*

The **Welsh Government** argued that it is not possible that the Assembly should have full legislative powers in relation to equalities issues. If equality were not reserved, it would require the Welsh Government and the National Assembly to take over the full range of responsibilities currently carried out at the UK level, including implementing all developments in EU equality legislation into law in Wales. It judged this to be impractical in resourcing terms. However, it recommended the devolved competence should be strengthened or clarified, by way of appropriately drafted exceptions to an Equality reservation in a future Government of Wales Act.

The **Welsh Conservative Assembly Group** urged the Commission to explore inconsistencies it may deem to exist in relation to devolved matters in the field of equality of opportunity. It said:

A lack of clarity concerning some devolved competencies may prove a hindrance not only in the carrying out of the Assembly's functions, but in the execution of equality-focussed work by key representatives in Welsh public life, such as the Children's Commissioner and Older People's Commissioner.<sup>81</sup>

The **Equality and Human Rights Commission (EHRC)** believed that the National Assembly for Wales should be given powers to build on equality and human rights legislation including the *Equality Act 2010* and the *Human Rights Act 1998*. The National Assembly should be given:

- full primary legislative competence in relation to the Public Sector Equality Duty; and
- competence to strengthen its relationship with the EHRC.

The **Older People's and Children's Commissioners** believe that the National Assembly should be given powers to build on the provisions of the *Equality Act 2010*:

Whilst responsibility for both equality and tackling discrimination and its primary enforcement mechanisms remain reserved matters, the National Assembly should be enabled to go beyond the minimal provision of the Equality Act. This might include implementing sections of the Act that the UK Government has no immediate intention of implementing and extending the coverage to certain groups.<sup>82</sup>

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<sup>81</sup> [Evidence from the Welsh Conservative Assembly Group \[accessed 24 May 2013\]](#)

<sup>82</sup> [Joint Evidence from the Commissioner for Older People and the Children's Commissioner \[accessed 24 May 2013\]](#)

The **Church in Wales** stated that, “for the sake of clarity, equalities legislation should be fully devolved.”<sup>83</sup>

### 3.7. *Local Government functions*

The **Welsh Government** believes that only the following should continue to be matters reserved by the UK Parliament: Registration of births, marriages, civil partnerships and deaths; Sunday trading; electoral registration; functions of coroners; and responsibility for the licensing of exhumations.<sup>84</sup>

However, it believes that the following existing exceptions in relation to local government are no longer justified and should be within the Assembly’s legislative competence: administration of elections in Wales; licensing of sale and supply of alcohol; provision of entertainment and late-night refreshment; anti-social behaviour orders; and the provision of advice and assistance overseas by local authorities, in connection with the carrying on there of local government activities.<sup>85</sup>

The **Welsh Liberal Democrats** stated that:

the final element of local authority powers which are not devolved to the National Assembly should be made devolved powers. Specifically, licensing regimes which are decided by local authorities, such as alcohol and venue licensing and taxi licensing, should be devolved.<sup>86</sup>

The **Church in Wales** stated that burial policy “is a classic area where legislation is confused”. Permission for removal of remains is not devolved and has to be obtained from the Westminster Ministry of Justice. Burial fees, however, come under the Welsh Government. The Church in Wales wants everything relating to burials to be devolved.<sup>87</sup>

### 3.8. *Elections*

The **UK Government** said:

The conduct of local government elections in Scotland has been devolved since the Scotland Act 1998. Scottish Ministers are responsible for making the rules on the conduct of Scottish local elections, but not for the franchise or electoral registration in relation to those elections. The Commission may wish to consider whether electoral administration in regard to local government elections in Wales, which would cover setting the rules for the conduct of the elections, should similarly be devolved to Welsh Ministers. We would expect the franchise and electoral registration to remain non-devolved.<sup>88</sup>

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<sup>83</sup> [Evidence from the Church in Wales \[accessed 24 May 2013\]](#)

<sup>84</sup> [Evidence from the Welsh Government \[accessed 17 May 2013\]](#)

<sup>85</sup> [Evidence from the Welsh Government \[accessed 17 May 2013\]](#)

<sup>86</sup> [Welsh Liberal Democrats \[accessed 24 May 2013\]](#)

<sup>87</sup> [Evidence from the Church in Wales \[24 May 2013\]](#)

<sup>88</sup> [Evidence from the UK Government \[accessed 23 May 2013\]](#)

**The Electoral Commission** stated.

It would be sensible and consistent with arrangements in Scotland that secondary legislation for the conduct of Assembly and local elections be made by the Assembly rather than by the Secretary of State for Wales, which is the current position<sup>1</sup>. The Scottish Parliament has had responsibility for secondary legislation governing local elections in Scotland since 1999 and for Scottish Parliamentary elections since the Scotland Act 2012[...].

[...] Similarly, it would be consistent for the power to vary the date of Assembly elections by up to one month and call an extraordinary election to be with the Assembly Presiding Officer, as it is in the Scottish Parliament, rather than the Secretary of State for Wales.<sup>89</sup>

**Plaid Cymru** wants all electoral matters to be devolved.<sup>90</sup> **The Welsh Liberal Democrats** stated:

Local government is an almost wholly devolved matter and as a result, we find it incongruous that elections to local authorities, and community councils, are not a matter for the National Assembly to legislate on. As a result, we would wish to see the National Assembly for Wales given the power to alter the electoral arrangements for local authorities. This would include both electoral reform and lowering the voting age to 16.<sup>91</sup>

**Mark Drakeford AM** responded:

The additional matter which I wanted to highlight here, however, relates to electoral systems and electoral arrangements; and the possibility of local government and the National Assembly taking on these responsibilities. I believe there is a clear case for devolving these responsibilities to the National Assembly itself. This would allow decisions about the form of election to these tiers of government to be taken much closer to them. It would also allow the National Assembly to bring the way in which elections are conducted into the modern era.<sup>92</sup>

**The Electoral Reform Society Cymru** called for the devolution of powers on the National Assembly voting system to the National Assembly itself. It also stipulated that any change to the voting system passed in the Assembly should require a two-thirds majority.<sup>93</sup>

### 3.9. *Energy*

The **Welsh Government** noted that the Assembly also has broad legislative competence in relation to planning matters but this is subject to an Exception for development consent for large-scale energy projects under the *Planning Act 2008*. It wishes to see this Exception removed. The Welsh Government will be publishing a Planning White Paper and Draft Planning Reform Bill later in 2013 setting out its proposals for reforming the planning system in Wales, including in relation to

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<sup>89</sup> [Evidence from the Electoral Commission \[accessed 16 May 2013\]](#)

<sup>90</sup> [Evidence from Plaid Cymru \[accessed 24 May 2013\]](#)

<sup>91</sup> [Welsh Liberal Democrats \[accessed 24 May 2013\]](#)

<sup>92</sup> [Evidence from Mark Drakeford AM \[accessed 16 May 2013\]](#) This was submitted prior to Mr Drakeford becoming a Minister in March 2013.

<sup>93</sup> [Evidence from Electoral Reform Society Cymru \[accessed 23 May 2013\]](#)

devolved infrastructure developments. It wishes Welsh Ministers to have executive functions and the Assembly legislative competence regarding consents for large-scale energy generation projects (with the exception of nuclear power) and related energy infrastructure such as power lines.<sup>94</sup>

**The UK Government stated:**

We consider that planning policy and decision making for major infrastructure in Wales should be viewed in a wider context. England, Wales and Scotland collectively benefit from major developments in terms of economic benefits, security of supply and low carbon deployment. Developers welcome consistent planning policy and decision making to give them the confidence they need to make the very large investments required in, for example, new nuclear power stations at Hinkley and Wylfa, new connections with Ireland, and around £18bn of potential onshore network development by 2021. We consider that the current unified planning regime for England and Wales provides a stable platform for investment in major infrastructure both now and in the future.<sup>95</sup>

**It further commented:**

The UK Government has found the 50MW threshold for onshore development to be appropriate because many schemes above 50MW are of sufficient importance and scale to be considered nationally significant. Major infrastructure projects onshore between 50MW and 100MW include onshore windfarms, biomass plants and energy from waste plants. Changing the threshold from 50MW to 100MW could have a negative impact on energy and planning policy for major infrastructure and result in increased complexity in the planning system and less efficient, more piecemeal and more expensive development.<sup>96</sup>

**The UK Government also wants decisions on “associated development” for Nationally Significant Infrastructure Projects to be taken by the UK Secretary of State rather than local planning authorities in Wales. It stated:**

The UK Government believes there is a strong case to realign consenting powers in the area of “associated development” under the Planning Act 2008. Currently, in England only, the Act makes provision for ‘associated development’ (e.g. roads, substations) that is part of a larger development to be consented to at a national level, as it forms part of a Nationally Significant Infrastructure Project (e.g. power stations, overhead lines). In Wales, any ‘associated development’ is determined at local authority level which can result in additional complexity, cost and uncertainty. The Government considers that the planning framework for major infrastructure in Wales can be made more streamlined and more effective by including associated development within the Planning Act regime. The Commission may wish to consider this point.<sup>97</sup>

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<sup>94</sup> [Evidence from the Welsh Government \[accessed 17 May 2013\]](#)

<sup>95</sup> [Evidence from the UK Government \[accessed 22 May 2013\]](#)

<sup>96</sup> Ibid.

<sup>97</sup> Ibid.

## **Plaid Cymru said:**

Responsibilities for the planning, licensing and oversight of all resource extraction, exploitation and transfer in Wales should thus be transferred. Such powers should include those over water as well as those projects using imported energy sources, such as LNG. The Welsh Government should be able to decide the extent to which electricity should be generated for export, taking into account issues such as the environment and the potential for financial benefit.<sup>98</sup>

It further stated that the Welsh Government should have planning powers over all energy projects throughout Wales and its associated marine areas.<sup>99</sup>

The **Welsh Conservative Assembly Group** supports devolving competence for energy projects of up to 100 Mega Watts in size.<sup>100</sup> It also stated:

We also believe there is a strong case for Wales having control over Renewables Obligation Certificates (ROCs). We would urge the Commission to look closely at the feasibility of such a proposal. These certificates are key in ensuring that suppliers source an appropriate proportion of electricity provided to consumers from renewable sources and their devolution to Wales would give the Assembly parity with both Scotland and Northern Ireland on this important matter.<sup>101</sup>

The **Welsh Liberal Democrats** “support the devolution of energy planning (including for so-called section 36 consents relating to planning permission for energy generation facilities with an output of greater than 50MW). They also want powers over Renewables Obligations Certificates devolved.<sup>102</sup>

**Civil Engineers Wales Cymru** state that the current settlement places a limit on the Welsh Government’s powers to grant planning permission for large energy schemes. It considers that the Welsh Government should have powers to grant planning permission for all energy schemes in Wales and that cross border energy schemes should be determined by the UK Government. It concludes:

Wales needs full and strong powers in relation to its infrastructure, to maintain Wales’ vibrancy and to ensure the Country can grow in these difficult times.<sup>103</sup>

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<sup>98</sup> [Evidence from Plaid Cymru \[accessed 23 May 2013\]](#)

<sup>99</sup> [Evidence from Plaid Cymru \[accessed 23 May 2013\]](#)

<sup>100</sup> [Evidence from the Welsh Conservative Assembly Group \[accessed 24 May 2013\]](#)

<sup>101</sup> [Evidence from the Welsh Conservative Assembly Group \[accessed 24 May 2013\]](#)

<sup>102</sup> [Evidence from the Welsh Liberal Democrats \[accessed 24 May 2013\]](#)

<sup>103</sup> [Evidence from the Institute of Civil Engineers Cymru \[accessed 22 May 2013\]](#)

**Friends of the Earth Cymru** believed that all powers to consent, licence and permit energy developments in Wales should be devolved to the National Assembly for Wales. Its response says:

The complexity of the energy planning and consenting arrangements puts in place a barrier that is additional to all other factors and is absent from the planning and consenting regime in Northern Ireland and Scotland – ostensibly our competitors in renewables development. There appears to be no logical reason for Wales being treated so differently to the other devolved nations.<sup>104</sup>

The energy company, **SSE** stated:

SSE does not wish to intervene in constitutional matters. It is equally comfortable with the UK Government making decisions or with devolved administrations doing so, as has been the case in Scotland where SSE has numerous generation assets. The key driver of the development of energy infrastructure projects is a long-term and stable regulatory environment. This requires a time-limited and transparent process. SSE does, however, recognise the extent to which the constitutional settlement will inform the level of resources and the extent to which political leadership can contribute to this investment climate.

The development of large-scale energy generation projects is more complicated in Wales in comparison to the rest of the UK. This is partly due to the current devolution settlement, which has resulted in a split in competence between the central and the devolved Governments. SSE would wish to see decisions relating to large-scale generation projects and auxiliary developments (for example, a wind farm and a sub-station) to be made by a single body in order to ensure consistency of approach and clarity in the decision-making process. Any proposals to devolve powers relating to energy generation would also need to be compliant with National Policy Statements at the UK level.<sup>105</sup>

The **Wales TUC** and **Unite Wales** support the transfer of the executive responsibilities to Welsh Ministers in relation to the consenting of large scale energy generation and related energy infrastructure. Wales TUC state:

We believe that doing so would help reach targets for increasing the amount of energy generated from renewable sources and allow for a more consistent approach to energy policy across Wales. This would allow for a more stable and predictable environment for investors and help safeguard and develop employment.

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<sup>104</sup> [Evidence from Friends of the Earth Cymru \[accessed 22 May 2013\]](#)

<sup>105</sup> [Evidence from SSE \[accessed 15 May 2012\]](#)

### 3.10. Health and Social Care

Almost all aspects of health and social care are devolved. However, some responses alluded to aspects of health and social care.

The **Welsh Conservative Assembly Group** said:

Presently, where service personnel are based in Wales, their healthcare is delivered by the Ministry of Defence. The Group would recommend that the Commission explores the feasibility of this healthcare being provided, either wholly or in part, by the Welsh NHS.<sup>106</sup>

**Two councillors from north Wales** stated:

As you will be aware, the Silk Commission is currently considering the boundaries of the devolution settlement in Wales. Given the Welsh Assembly Government's manifest failure to deliver a satisfactory level of healthcare, can you please provide us with a compelling reason why competence for the Health service should not be transferred to Westminster, and why the Commission should not conclude accordingly?<sup>107</sup>

The Welsh Regional Council of the **Royal College of Pathologists** stated that it "is not aware of any amendments that should be made to the devolution settlement that would bring about improvements to the way pathology services are provided in Wales".<sup>108</sup>

The **Board of Deputies of British Jews** stated:

There are a variety of matters relating to Health that concern the Jewish community, including but not limited to circumcision, death certification, organ transplantation and provision of coroners services. On matters of Health that pertain to the Jewish community, we would advocate a closer working relationship with Westminster to allow for adequate provision of medical services for the Jewish community across Wales. This would not necessarily entail returning of powers in this area to Westminster, but maybe allowing for accommodation of minorities, or increased communication and sharing between Westminster and Wales. We believe that the community would be best served, possibly along with other minority communities, by having some flexibility within the Assembly in this area. Clearly Health legislation is highly important, and treatment of the sick and dead are incredibly significant to a religious community, and any changes to this ought to be discussed with transparency and sincerity.<sup>109</sup>

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<sup>106</sup> [Evidence from Welsh Conservative Assembly Group \[accessed 24 May 2013\]](#)

<sup>107</sup> [Evidence from Cllr. E Culshaw and Cllr. A Roberts \[accessed 22 May 2013\]](#)

<sup>108</sup> [Evidence from the Welsh Regional Council of the Royal College of Pathologists \[accessed 22 May 2013\]](#)

<sup>109</sup> [Evidence from the Board of Deputies of British Jews \[accessed 15 May 2013\]](#)

## True Wales commented:

Under devolution, we no longer have a truly National Health Service. We in True Wales support putting the 'national' back into the Aneurin Bevan's NHS. All British citizens should receive equal treatment wherever they live. We believe the very best medical expertise and equitable movement of medical staff between England and Wales must be ensured; to achieve this, a means should be found by which all hospital treatment is overseen at a UK level. What is currently a collection of disparate regional services should be restored as a truly National Health Service overseen as a whole by the United Kingdom Parliament.<sup>110</sup>

The **Older People and Children's Commissioners** feel that some additional transfer is needed in regard to social care "especially in the areas of safeguarding, adoption, fostering, and managing the process of entering and leaving care".<sup>111</sup>

### *3.11. Consumer Affairs*

The **Welsh Government** is of the view that matters such as product standards, safety and liability, and Weights and Measures should be reserved. Also, consumer protection should be a matter reserved to Westminster, although the Assembly's existing competence should be maintained in relation to food, agriculture and horticultural products, fish and fish products, seeds, fertilisers and pesticides, and the representation of consumers of water, as should Welsh Ministers' executive functions in respect of Consumer Focus (Wales) and the consumer councils for water and public transport.<sup>112</sup>

The **UK Government's** response noted that there are "two areas where the devolution boundary is not clear cut."

- Consumer law enforcement is mostly done by local authorities' trading standards services. Although the substantive rules under which these services operate are set at GB-level, prioritisation and funding decisions are made by the relevant local authority; and
- Consumer Representation, currently offered in Wales by a division of Consumer Focus.

The UK Government further stated that:

The whole question may be of interest to the Silk Commission, in terms of the balance between local authority prioritisation of funding and wider consumer protection.<sup>113</sup>

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<sup>110</sup> [Evidence from True Wales \[accessed 15 May 2015\]](#)

<sup>111</sup> [Joint Evidence from the Commissioner for Older People and the Children's Commissioner \[accessed 24 May 2013\]](#)

<sup>112</sup> [Evidence from the Welsh Government \[accessed 17 May 2013\]](#)

<sup>113</sup> [Evidence from the UK Government \[accessed 20 May 2013\]](#)

**Consumer Focus Wales**<sup>114</sup> quoted the House of Commons Welsh Affairs Select Committee report:

We further recommend that the Government conduct a review of the new arrangements for consumer representation two years after their implementation. This review should examine whether or not it is appropriate to devolve responsibility for consumer affairs to the National Assembly for Wales. We call on the Commission on Devolution in Wales to consider this matter when it reviews the powers of the National Assembly for Wales. (Representation of consumer interests in Wales; Welsh Affairs Committee; Dec 2011; p.18, rec 9)

### *3.12. Broadcasting*

The **Welsh Government** does not agree that broadcasting should be devolved. It argued:

Television and radio now form just one element of a much wider range of platforms for digital communications. In a rapidly evolving digital environment we do not believe that it would be sensible now to attempt to devolve responsibility for broadcasting or certain elements of broadcasting. The vital role that broadcasting institutions play in creating a common cultural citizenship for people across the UK would not be strengthened by any attempt to divide responsibility for broadcasting institutions among its constituent parts.<sup>115</sup>

However, the Welsh Government response contained the caveat “that the broadcasting landscape is changing rapidly. There is no guarantee that the structures currently in place will remain in the future, and the Welsh Government will respond according to developments”.<sup>116</sup>

The UK Government stated:

There are good reasons why broadcasting was not devolved in the devolution settlements and there is no evidence to suggest that devolution of broadcasting policy or a different approach to funding the BBC would benefit licence fee payers.<sup>117</sup>

While declaring himself broadly in agreement with the Welsh Government’s overall response, **Lord Morris** said:

I do not see how the Assembly can carry out its existing legislative competence for the Welsh language properly without a significant involvement in broadcasting, which is one of the main engines for ensuring the continuance of the language.<sup>118</sup>

**Plaid Cymru** wants broadcasting to be devolved.<sup>119</sup>

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<sup>114</sup> [Evidence from Consumer Focus Wales \[accessed 22 May 2013\]](#)

<sup>115</sup> [Evidence from the Welsh Government \[accessed 17 May 2013\]](#)

<sup>116</sup> [Ibid.](#)

<sup>117</sup> [Evidence from UK Government \[accessed 20 May 2013\]](#)

<sup>118</sup> [Evidence from Lord Morris of Aberavon \[accessed 16 May 2013\]](#)

<sup>119</sup> [Evidence from Plaid Cymru \[accessed 24 May 2013\]](#)

## The Welsh Conservative Assembly Group stated:

It is the Group's belief that broadcasters should be accountable to the Assembly for their work in these devolved areas. To this end, we are supportive of a mechanism for joint accountability to both the Assembly and the UK Parliament. The principle of joint responsibility is in existence already in relation to cross-border issues, so the Group deem this a practical approach.<sup>120</sup>

The UK Changing Union Partnership want full responsibility for S4C to be transferred to the National Assembly and Welsh Government, with the relevant Welsh minister responsible for appointing the Chair and members of the S4C Authority.<sup>121</sup> Cymdeithas yr Iaith Gymraeg also wants broadcasting devolved.<sup>122</sup>

Further information on developments mentioned in evidence which do not involve devolving powers over broadcasting can be seen in Section 4.

### 3.13. Water

#### The Welsh Government said:

The Assembly already has broad legislative competence in relation to Water but this is subject to two Exceptions which we wish to see removed as they are no longer appropriate. We want to remove the Exception relating to the licensing and regulation of any licensed water supplier within the meaning of the Water Industry Act 1991. We also wish to remove the Exception relating to the appointment and regulation of any water undertaker whose area is not wholly or mainly in Wales[...] In addition to removing these Exceptions, we seek to secure new legislative competence for the Assembly in relation to sewerage. This would complement the Assembly's broad competence in relation to water and other environmental matters. We wish to ensure that legislative competence for sewerage extends up to the geographical boundary with England.

We also propose removal of the existing Secretary of State unilateral intervention power in the case of functions relating to water. There is an important interdependency between Wales and England in terms of water resource management, water supply and water quality. We consider that any concerns about potential adverse impact in England in relation to these matters would be more appropriately addressed through inter-governmental mechanisms that set out the basis for co-operation and joint working between the respective Governments.<sup>123</sup>

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<sup>120</sup> [Evidence from the Welsh Conservative Assembly Group \[accessed 24 May 2013\]](#)

<sup>121</sup> [Evidence from the UK Changing Union Partnership \[accessed 24 May 2013\]](#)

<sup>122</sup> [Evidence from Cymdeithas yr Iaith Gymraeg \[accessed 24 May 2013\]](#)

<sup>123</sup> [Evidence from the Welsh Government \[accessed 17 May 2013\]](#)

## The UK Government said:

The technical features of the water and sewerage industries are complex. Separating cross border systems may not always be technically feasible at reasonable cost and may create significant regulatory difficulties. Any proposal to align the legislative competence of the Assembly and executive competence of the Welsh Ministers in relation to the water and sewerage industries with the geographic boundary of Wales, would have significant implications – including for the management of water resources; the potential impact on the stability of the regulatory regime for the statutory water and sewerage undertakers; investment and asset management; and the inter-dependence of the cross-border water and sewerage industries.<sup>124</sup>

## The Welsh Liberal Democrats stated:

We accept that most elements of water policy are already devolved powers, but we believe that the removal of the existing exception relating to licensing should be removed so that the National Assembly may legislate on all aspects of water supply within Wales.<sup>125</sup>

### *3.14. Teachers' Pay and Conditions*

The UK Government noted that Welsh Government evidence to the School Teachers' Review Body (STRB) argued against any move towards greater regional or local pay and questioned whether a link between teachers' pay and performance is necessary. However, the UK Government stated:

The school systems in the two countries are diverging at a growing rate, and it could be argued that devolving the pay and conditions of teachers in Wales is a logical consequence of deregulating teachers' pay and conditions in England and should be explored. The legal process to make changes to the School Teachers Pay and Conditions Document (STPCD) would be through an Order under section 122 of the Education Act 2002 made by the Secretary of State; because this is currently a function of a Minister of the Crown, it could either be devolved by the Secretary of State consenting to the provision in an Assembly Act in relation to this area or by the UK Government legislating in a Parliamentary Act to confer the function on Welsh Ministers (by amending the 2002 Act).<sup>126</sup>

The UK Government said it would welcome the Silk Commission considering the subject of teachers' pay and conditions but it proposed that teachers' pensions remain non-devolved.<sup>127</sup>

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<sup>124</sup> [Evidence from the UK Government \[accessed 22 May 2013\]](#)

<sup>125</sup> [Evidence from the Welsh Liberal Democrats \[accessed 24 May 2013\]](#)

<sup>126</sup> [Evidence from the UK Government \[accessed 22 May 2013\]](#)

<sup>127</sup> [Evidence from the UK Government \[accessed 22 May 2013\]](#)

The Welsh medium teachers' union, **UCAC**, stated:

Issues relating to the pay and working conditions of teachers in Wales are in the hands of the Secretary of State for Education in Westminster, who makes decisions based on recommendations made by the School Teachers' Review Body, and he is the one who decides on the Remit of the STRB. In UCAC's view, this means that there is a bias or prejudice in the Remit towards issues that can further the Secretary of State for Education's vision for education in England.

3.4. The overlap between some devolved issues and pay issues has given rise to ambiguity, which can lead to complications. Ensuring that all responsibility for issues relating to the pay and conditions of teachers is devolved would be better for the education workforce and sector in Wales. This would reduce the potential for conflict and misunderstanding, and it would improve accountability.

UCAC is in a unique position to attest to the complications of operating in an area that is partly devolved, and to the confusion that arises when the teachers of Wales are controlled by two masters.<sup>128</sup>

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<sup>128</sup> [Evidence from UCAC \[accessed 22 May 2013\]](#) Translation provided by the Assembly Translation and Reporting Service.

## 4. Evidence: improving the settlement in other ways than transferring powers

### 4.1. *Intergovernmental Relations*

The Silk Commission also asked for views on how the current settlement works in practice, and where improvements could be made. A number of responses alluded to the need for better **intergovernmental relations**.

The **UK Government** believes that the formal structures for relations between the UK and the devolved administrations are working well, and support constructive communications between the four administrations.<sup>129</sup>

The **Bevan Foundation** says that UK Ministers should be required to assess how legislation and policy decisions on reserved matters affect Wales and that major UK decisions that have a disproportionate impact on Wales should be discussed with Welsh Ministers.<sup>130</sup>

It further states that consultation between departments should be considerably improved so that there “are no surprises”. It cites the case of devolution of responsibility for council tax benefit as an example of this.

Finally, the Bevan Foundation recommends joint policy development on reserved matters with the Welsh Government contributing to the development of UK-wide policy to ensure that the specific circumstances of Wales and relevant Welsh policies and programmes are taken into account.

**Citizens Advice Cymru, the CHC Group and Unite** all expressed the view that intergovernmental relations were in need of improvement.

A specific example was provided by **Chief Constable of Gwent Police**:

The Home Office is some-times perceived in Wales to develop initiatives based on the English Partnership landscape and only recognises that the Welsh landscape is different as an afterthought, i.e. PCC legislation. I do accept that the Welsh Government is well placed to understand the needs and develop laws and policy for people in Wales.

However, I would encourage Welsh Government to make moves to strengthen the working relationships with the Home Office. I believe more could be achieved for the communities of Wales if there was less competition and more engagement between these two important legislative and delivery bodies of government.<sup>131</sup>

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<sup>129</sup> [Evidence from the UK Government \[accessed 22 May 2013\]](#)

<sup>130</sup> [Evidence from the Bevan Foundation \[accessed 22 May 2013\]](#)

<sup>131</sup> [Evidence from the Chief Constable of Gwent Police \[accessed 20 March 2013\]](#)

Also, **Higher Education Wales** state:

Responsibility for science policy in Wales is shared between the Welsh Government and the UK Government. We would advocate a more structured approach to intergovernmental relations. Any future review of Research Councils would be a subject for such an approach. A greater understanding of devolution by civil servants working in the science area should also be promoted.<sup>132</sup>

The **WCVA** stated:

Recent examples of conflict between governments caused by issues such as the devolution of council tax benefit or the introduction of Police and Crime Commissioners have led to confusion and a lack of accountability for decisions and consequences. Intergovernmental relations urgently need improving in respect of devolved areas such as health, where policy may diverge greatly but communication and some co-ordination is essential (the example offered to us by one organisation is the area of health and social care regulation), and non-devolved areas which may still have major implications at local or national level in Wales such as welfare reform.<sup>133</sup>

**True Wales** said:

The operation of the devolution settlement could be improved by the commencement of a mature, rather than petulant, dialogue between Cardiff Bay and Westminster. True Wales believes that the current belligerent stance towards the UK Parliament is detrimental to the wellbeing of our country.<sup>134</sup>

#### *4.2. Building the Welsh Legal Identity*

The **Welsh Government** considers that there should be preparation for a time when a separate legal jurisdiction may be necessary and beneficial. It declared its aim to proactively to enhance the Welsh identity within the joint jurisdiction of England and Wales and to develop the foundations on which any separate Welsh legal jurisdiction could be formed should a decision be taken to do so in the future.

Generally, the legal business of people in Wales should be administered and dealt with in Wales wherever possible. Suggested initiatives include:

- achieving a more clearly identifiable Welsh identity in the higher courts: the Welsh Government has, for example, argued for a Welsh member of the Supreme Court.
- establishing an office of the Court of Appeal in Wales as soon as possible, and a formal commitment given to hold hearings of appeals in Welsh cases in Wales wherever possible. Consideration should also be given to the establishment of a Welsh Division of the Court of Appeal, from which would be drawn the judges expected to sit in Welsh appeals cases.

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<sup>132</sup> [Evidence from Higher Education Wales \[accessed 20 March 2013\]](#)

<sup>133</sup> [Evidence from WCVA \[accessed 15 May 2013\]](#)

<sup>134</sup> [Evidence from True Wales \[accessed 15 May 2015\]](#)

- We also believe that there should continue to be a requirement **in primary legislation** for at least one member of the Judicial Appointments Commission “to have special knowledge of Wales”.<sup>135</sup>

The **Wales TUC** states:

The National Assembly for Wales Constitutional and Legislative Affairs Committee reported on their Inquiry into a Separate Legal Jurisdiction in December 2012. The Wales TUC supports their conclusion that a Welsh legal identity is getting stronger, regardless of whether a separate jurisdiction is required or not. They conclude that as a result, changes should be made within the current unified Wales and England model to ensure that it reflects and recognises this emerging legal identity. A number of these changes do not require the transfer of any powers, such as legal training for practitioners (recommendation 1), consolidation of Welsh Law (recommendation 3) and the appointment of a senior judge with experience of Welsh devolution and Welsh law to the Supreme Court (recommendation 5).

This was agreed by **Unite Wales**.<sup>136</sup>

### 4.3. *Broadcasting*

The **Welsh Liberal Democrats** did not call for broadcasting to be devolved but they made some proposals:

- The Welsh Government to be responsible for the appointment of Welsh members of the BBC and Ofcom.
- A single ITV licence to be created which covers all of Wales and no other area and the Welsh Government to be involved in licensing decisions.
- Further Welsh Government involvement in appointments for senior positions within S4C.
- Community Radio licensing to be devolved to Wales, given that these are predominantly local in nature and that the Welsh Government has already established a Community Radio Fund.<sup>137</sup>

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<sup>135</sup> The UK Government has conceded on this point. [Welsh Government Press Release, \*Wales'voice in judicial appointments to be maintained\*, 27 March 2013 \[accessed 6 June 2013\]](#)

<sup>136</sup> [Evidence from Unite \[accessed 15 May 2013\]](#)

<sup>137</sup> [Evidence from the Welsh Liberal Democrats \[accessed 24 May 2013\]](#)

The **UK Changing Union Partnership** also had proposals for broadcasting which fell short of devolution:

- that the Welsh member of the BBC Trust should be a joint appointment by the Welsh Minister and DCMS;
- that National Broadcasting Trusts should replace the BBC's Audience Councils in the devolved nations and should have responsibility for policy, content and allocation of resources for all services delivered solely for audiences in their respective countries; that Welsh Ministers should appoint representatives to the main board of Ofcom, and
- that responsibility for local and community radio policy and licensing should be handed to a renamed Ofcom Advisory Committee for Wales.<sup>138</sup>

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<sup>138</sup> [Evidence from the UK Changing Union Partnership \[accessed 24 May 2013\]](#)

## 5. Evidence: Size and Capacity Issues

Some responses to the consultation addressed the size and capacity of the Assembly, although the structure of the Assembly and the method of elections of AMs was not part of the remit of the Commission.

The **Church in Wales** said:

There is concern that in-depth scrutiny of important legislation may suffer because there are not enough back-bench AMs to carry out all the necessary tasks. Where large numbers of AMs have to be part of the government, it is hard for them to be sufficiently independent [...]

[...] However, if devolved powers increase, there could be an argument from outside that the number of Welsh MPs at Westminster could be reduced. This is a matter of serious concern as it diminishes Welsh influence on the UK, and impacts on representation in nondevolved areas, which may nonetheless impact very directly on Wales: for example, in defence (where there is concern over the use of Wales for basing nuclear submarines and testing drones), foreign policy, energy generation (given the critical position in Wales of nuclear power, wind power, the Severn Barrage) and the block grant itself.<sup>139</sup>

**The Electoral Reform Society Cymru** believes that the number of AMs should be increased, but that any increase in the number of AMs should be accompanied by a review of the number of elected politicians at a local, Welsh and UK level to avoid increased spending on politicians. It states:

Although the Silk Commission has not been asked to consider the structure of the National Assembly, we believe that it is important to comment on the number of Assembly Members in relation to capacity and scrutiny. The responsibility of scrutinising the Welsh Government currently lies with fewer than 50 Assembly Members (including only 30 opposition AMs), with most sitting on more than one Assembly committee. As a series of Welsh Bills begin their legislative journey, concerns have been raised about the current number of Assembly Members and the workload associated with appropriate levels of legislative and departmental scrutiny. This concern will only heighten if further responsibilities are devolved to the National Assembly. We believe that increasing the number of Assembly Members would facilitate more effective scrutiny, accountability and decision making. We support the Richard Commission's recommendation of increasing the number of Assembly Members to eighty, especially if more areas of responsibility such as tax and borrowing powers are to be devolved.<sup>140</sup>

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<sup>139</sup> [Evidence from the Church in Wales \[accessed 24 May 2013\]](#)

<sup>140</sup> [Evidence from Electoral Reform Society Cymru \[accessed May 2013\]](#)

## **The Wales Study Group of the Study of Parliament Group stated:**

Within the UK context, the Assembly is less than half the size of the Scottish Parliament (129 MSPs) and substantially smaller than the Northern Ireland Assembly (with 108 MLAs), which has a population half the size of Wales. The Assembly has fewer politicians than many Welsh local authorities: Cardiff Council has 75 councillors, and Swansea has 72. In 2004, when the Assembly's powers were much more constrained, the Richard Commission advocated an increase to 80 AMs.

It is often said that the matter of Assembly size should not be addressed whilst public disengagement with elected politicians remains high and against a context of economic recession. We argue to the contrary, that without consideration of the appropriate number of AMs, the capacity challenges which the Assembly currently faces are likely to be exacerbated by any new powers or competences that arise. In turn, this affects negatively public confidence and support for the institution, as well as challenging many of the fundamental principles that we have set out above. Furthermore, the Assembly Commission has a strategic goal to engage with the people of Wales by encouraging greater interest in the Assembly's work and facilitating involvement with the legislative process. For this to happen, there needs to be first, greater clarity and intelligibility, and also, sufficient politicians to discharge the Assembly's duties effectively.<sup>141</sup>

**GOFAL** believed that the number of Assembly Members should be increased to at least 80 in order to increase capacity and improve scrutiny of policy and legislation.<sup>142</sup>

## **Unite Wales argued:**

Current numbers mean that members must serve on a wide number of committees, consequently stretching specialisation and limiting the ability to develop areas of expertise. Unite believes there is a case for an increase in the number of Assembly Members. We have previously supported having 80 elected members in the National Assembly for Wales.<sup>143</sup>

## **The Law Society said:**

The current complement of just 60 Assembly Members is too few. The figure compares unfavourably with the Parliament in Scotland which has 129 and the Northern Ireland Assembly which has 108. Not all 60 Assembly Members are available for scrutinising the government as there are 8 Welsh Government Ministers and 3 Deputy Ministers who cannot take part in the scrutiny process. This is an issue which if not addressed when the powers of the National Assembly for Wales are widened will intensify.<sup>144</sup>

## **Professor John Williams stated:**

Proposed legislation must be drafted and then scrutinised by the Assembly. The composition of the Assembly is outside of the remit of the Commission. However, the capacity of the Assembly to scrutinise legislation is restricted by the limited number of AMs available to undertake that role.<sup>145</sup>

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<sup>141</sup> [Evidence from the Wales Study Group of the Study of Parliament Group \[accessed 3 June 2013\]](#)

<sup>142</sup> [Evidence from GOFAL \[accessed 24 May 2013\]](#)

<sup>143</sup> [Evidence from Unite \[accessed 15 May 2013\]](#)

<sup>144</sup> [Evidence from the Law Society \[accessed 15 May 2013\]](#)

<sup>145</sup> [Evidence from Professor John Williams \[accessed 16 May 2013\]](#)

However, **two respondents** from Ceredigion commented that “more devolution will mean more government (more Assembly members for example) and in our opinion we have too many politicians (representatives) already”.<sup>146</sup> Several other **individual respondents** expressed opposition to the number of AMs increasing.

**Unite Wales** also believed that any review or changes to the power and responsibilities of the National Assembly should sit alongside the strengthening and development of the civil service in/for Wales.<sup>147</sup>

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<sup>146</sup> [Evidence from Garth and Helen Hughes \[accessed 22 May 2013\]](#)

<sup>147</sup> [Evidence from Unite \[accessed 15 May 2013\]](#)

## 6. Next Steps

Over May and June 2013, the Silk Commission travelled around Wales and held a number of events open to the public. The Commission will publish its report on Part II in the **spring of 2014**.

## Annexe 1: Written Evidence to the Silk Commission Part II

[Lord Morris](#)

[Rhys Thomas](#)

[The Electoral Commission](#)

[Federation of Master Builders](#)

[UK Changing Union Our Future – Additional Submission on Welfare  
commonrepresentation.org.uk](#)

[Sir Stephen Laws – Identifying the Law of Wales](#)

[ACPO Cymru](#)

[Amanda Langley](#)

[Amgueddfa Cymru – National Museum Wales](#)

[Anon](#)

[Bevan Foundation](#)

[Bob Gaffey](#)

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