

Chapter 7: Policing and Justice; and other miscellaneous constitutional issues

7.1 OVERVIEW

- 7.1.1 In this chapter we use the principles outlined in Chapter 3 to assess whether there should be changes in powers in relating to policing and justice and the scope for change in a number of other miscellaneous constitutional areas changes.

7.2 POLICING

Current position

- 7.2.1 Policing is non-devolved. There are four police force areas in Wales: North Wales, Dyfed-Powys, Gwent and South Wales. Following the Police Reform and Social Responsibility Act 2011, each police force area now has a directly-elected Police and Crime Commissioner (PCC), who holds the police to account on behalf of the local population of the area which they serve. The PCCs replaced Police Authorities, and it has been suggested that they ~~It is worth noting that the introduction of Police and Crime Commissioners last year represented~~ a substantial decentralisation from the Home Office, reversing a previous trend towards centralisation. The Home Secretary nevertheless retains wide powers ~~which he / she could use and is. The Home Secretary is essentially~~ responsible for the legislative framework, for policing, funding and for setting the strategic policing requirement. ~~The Home Secretary nevertheless retains wide powers which she could use.~~
- 7.2.2 While policing is non-devolved, However, many areas of devolved policy influence levels of offending and criminality, including local government, health and education. There are also close links with the devolved emergency services (the ambulance and fire services). We understand that ~~the four~~ police forces in Wales work closely with their devolved partners. This, which has helped to identify shared priorities and deliver efficient, ~~value for money~~ and citizen-focused services. An example of this cooperation, for example, is that police forces ~~working~~ alongside local authorities and Community Safety Partnerships to deliver Domestic Abuse and Substance Misuse strategies. The police forces are also ~~They have developed strong relationships with devolved and non-devolved partners and are fully~~ involved in Local Service Boards in the ~~22~~ local authorities in Wales, and in the Welsh Government-led Public Service Leadership Group ~~in Wales~~, which provides leadership for collaborative work to improve public services ~~in Wales~~.
- 7.2.3 Direct ~~€~~ collaboration between the police forces in Wales and the Welsh Government has developed over time, with up to the four Chief Constables attending a meeting of the Welsh Government Cabinet in 2012. ~~and~~ ~~the~~

introduction of elected Police and Crime Commissioners (PCCs) has presented an opportunity for further co-operative work and collaboration and we understand that there are regular meetings between the Commissioners PCCs and Welsh Ministers, as there are between senior police officers and officials of the Welsh Government.

7.2.4 Collaboration to date has delivered a number of jointly funded projects:¹ (funding is considered further below):

- 500 additional community support officers;
- Tarian, the Southern Wales Regional Organised Crime Unit response to Serious Organised Crime, funded by the three forces in southern Wales, Home Office grants and the Welsh Government (Crime: £642,000k in 2012/13); and
- £2.5m funding from the Welsh Government for the All Wales Community Schools Liaison Core Programme (matching the UK Government's contribution).

Box 7.1: Evidence on Policing

Our Beaufort Research Opinion Poll showed that 63% per cent were in favour of the National Assembly for Wales and Welsh Government having responsibility for policing in Wales. A plurality of respondents (48 per cent) believed that policing was already devolved in Wales. In our questionnaires, around 58 per cent were in favour of devolution.

The UK Government said: 'Overall, the current arrangements work well. There are four key points to bear in mind in considering the devolution boundary for policing:

...Policing is inextricably linked with the criminal justice system

...Existing governance and partnership arrangements provide a significant level of integration and autonomy

...There are cost and complexity issues with separating out national structures and arrangements

...The Strategic Policing Requirement and the management of national threats.'

The Welsh Government said 'We propose that the Assembly should have legislative responsibility for policing, by which we mean the governance and administration of the police service in Wales. We are also seeking legislative powers in relation to community safety and crime prevention, where there is extensive overlap with the functions of devolved services - notably local government, the NHS and the fire and rescue service.... we regard the Police as essentially a service working principally within the criminal justice system alongside other services devolved and non-devolved, and already organised very much on a territorial basis within Wales.'

Winston Roddick QC, PCC for North Wales said 'For the people of Wales, who should be the central consideration for the commission on devolution, the benefits of

¹ Funding is considered further later

devolving the police service would be overwhelmingly positive’.

Ian Johnson, PCC for Gwent said that ‘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.’

Christopher Salmon, PCC for Dyfed-Powys said ‘creating divisions in this system would do nothing for justice and a great deal for criminals. If the decision was taken to devolve policing and criminal justice to Cardiff, all that would happen is that money would need to be re-routed via Cardiff, adding expense, confusion and complication in layers of bureaucracy.’

~~Alun Michael said : (Awaiting confirmation from his office that we can publish his evidence)~~ Alun Michael, PCC for South Wales, said: ‘So I agree that it makes sense to devolve responsibility for policing. It will bring together the responsibilities that fit together and enable a joined up approach to be taken to crime reduction and the building of healthy communities – two key purposes of democratic government which ought to sit together.’

The Police Federation of England and Wales said that ‘given the protracted evidence we have collated that devolving policing to Wales could be achieved. Should Government in Westminster and Cardiff agree to devolve policing powers to Wales, the Police Federation of England and Wales would fully support them to achieve this transition of governance to uphold the best traditions of British policing.’

The Association of Chief Police Officers (ACPO) Wales said ‘there is a need to maintain cross border services relations and interoperability if devolution were to occur.’ In their oral evidence they confirmed that they supported devolution of policing.

The former Chief Constable of Gwent Police said ‘The transfer of policing from Parliament to the National Assembly for Wales should be supported subject to a full and robust option appraisal. The devolution of policing must result in added value and an improved service to the people of Wales.’

The Superintendents Association said: ‘The key issue for us is whether the proposed devolution of power and control will provide an improved service and would it be fully funded?...For effective improvements, process re-engineering should examine the criminal justice system process from initial police involvement through to Courts proceedings and beyond...The short term devolution of policing would increase costs significantly – re-organisation of any kind is never without cost and in the current austerity climate this would be a challenging case to prove. In the medium to long term, the effective alignment of processes could potentially release efficiencies and save longer term policing costs.’

The WLGA said: ‘It is believed that at some point in the future, the devolution of policing may be required to ensure that policing in Wales can develop in line with priorities set by the Welsh Government for police forces and other key public sector partners, the majority of which are already devolved, and with the overall aim of creating safer communities...Devolution of policing should not lead to increased costs however a full financial impact assessment would need to be carried out in

identifying any financial implications and potential risks.'

Dr Timothy Brain, [Senior Honorary Research Fellow, Universities' Police Science Institute Cardiff](#), said: 'While acknowledging the risks, the close alignment of policing and community safety under the Welsh Government would be a major advantage, while increased accountability and transparency would enhance public confidence in policing.....~~Dr Brain added that~~ ['Devolution is not a panacea, but the principal advantage of devolving policing will be the closeness of political decision-makers to the issues, communities and service providers...'](#) There are risks associated with devolving policing, but there are with retaining the status quo. On balance, the benefits outweigh the risks.'

[The Wales in a Changing Union project](#) said: 'In general there was support for devolution of police powers to the Welsh Government from the majority of agencies and individuals interviewed as part of this research.'

Box 7.2: Key facts [on policing](#)

~~Key Wales has the following~~ crime and policing statistics [for Wales](#) compared to England [are set out here](#) (, although it should be borne in mind that Wales is more rural than much of England):

- in 2011-12 recorded offences per 1000 population ~~were~~ 63 compared to 71 for England;
- the detection rate was 35 per ~~cent~~ compared to 28 per cent for England, and was up from 28 per cent in 2002-03; [and](#)
- in terms of fairness, 62 per cent ~~think~~ the criminal justice system in England ~~was~~ fair compared to 65 per cent in Wales; for effectiveness, [the figures are](#) 44 per cent and 45 per cent.

In terms of spending per head, the England/Scotland/Wales/[Northern Ireland](#) figures for 2011-12 are: £255/[£247](#)/[£243](#)/[£488](#). So Wales has the least costly system, [though the costs but the figures](#) are similar to the devolved system in Scotland.

Police Funding

7.2.5 The police in Wales get their funding from ~~three~~ [we](#) main sources – [the UK central](#) Government (~~the UK Government~~, via the Home Office; ~~and~~ the Welsh Government; ~~;~~) and the police precept component of council tax. Through the Spending Review process, the Home Secretary determines the amount of ~~UK central~~ Government ~~(UK and Welsh Government)~~ funding to the police in Wales.

7.2.6 The Home Secretary decides the overall allocation of UK Government funding to Welsh police force areas [according to the Police Allocation Formula and a Welsh Top-Up Grant to ensure broad consistency between forces](#). In 2011/12 and 2012/13, all police force areas in England and Wales ~~have~~ had their UK

Government funding reduced by the same percentage. The Welsh Government decides the allocation of Welsh Government funding between police force areas. The Home Office also provides ring-fenced funding to Welsh police force areas for counter terrorism policing.

- 7.2.7 In 2012-13, the Home Office provided £229m, the Welsh Government provided £151m and the police precept funding provided £221m. Whilst the Home Secretary determines the quantum, and in effect, the allocation of Central Government funding to Welsh police forces, the Welsh Local Government Minister has control over council tax policy in Wales, including whether to cap on-capping the precept.

Assessment

- 7.2.8 Some of the evidence we have received supports the view that the present system works well. ~~—we did not hear that the current arrangements are failing.~~ The statistics on performance and cost per head~~noted above~~ seem to support this view. In addition, many acknowledged the good co-operation between the police and the devolved authorities. ~~We did not hear that the current arrangements are failing.~~
- 7.2.9 On the other hand, many have argued that devolution of policing would be an improvement on current arrangements. Arguments in favour of devolution came from ~~should be devolved, including~~ the Welsh Government, key professional police bodies, and the Chief Constables, and only one of the four Police and Crime Commissioners was definitely clearly opposed. In addition, in our opinion poll a clear majority of people supported the devolution of policing. We also considered views from outside Wales. We wrote to all living former Home Secretaries, and responses were received from Lord Baker, supporting devolution, and Lord Waddington, who did not. The Police Federation of England and Wales agreed with the Welsh Government that policing could be devolved without devolving other parts of the criminal justice system. While cross border issues were raised with us in some of the evidence we received, we think they can be addressed by maintaining close cross border cooperation, as happens in Scotland.
- 7.2.10 ~~The argument in favour of devolution was expressed succinctly by As the Counsel General observed in a speech to the Society of Legal Scholars in November 2012:-~~
“There are great advantages in having devolved responsibility for these services. Each part of the UK has its own unique challenges to face in relation to crime, and these are dictated by a number of factors; such as population density, terrain, cultural trends, the structure and organisation of police forces, and many others. By maintaining powers over policing and criminal justice at a more local level, it can be easier for devolved administrations to promote and encourage efficiencies through a restructuring of administrative services within their territorial boundaries while focusing on tackling the crimes which most greatly affect their communities”.
- 7.2.11 Policing is a public service that is of particular concern to citizens in their daily lives. In that way, it is like health, education and the fire service, all of which

are devolved. Policing is in fact one of the few public services that ~~which is not devolved in Wales. It, and it~~ is devolved in Scotland and Northern Ireland and is either wholly or partly devolved in most federal systems. ~~Devolution; there~~ There is thus in accordance with our principle of a subsidiarity. It is also consistent with our principle of ~~argument for devolution. There is also a~~ coherence, allowing argument in favour of tackling crime and the causes of crime to be tackled holistically under the overall policy framework of the Welsh Government and National Assembly.

7.2.12 ~~A~~ There is also an accountability ~~will also be improved by argument in terms of~~ aligning funding and policy responsibility. ~~As suggested by our opinion poll findings. The the~~ present arrangements are complex and not transparent. ~~and it~~ is also unsatisfactory in accountability terms that much of policing is funded from devolved sources yet ~~police policy and legislation~~ is determined in Westminster.

7.2.13 We also heard that policing policy tends to be dominated by English metropolitan concerns and a devolved policy would better reflect Welsh policing circumstances. Devolution would also bring together responsibility for the three emergency services in Wales and allow the development of synergies that might suit Welsh circumstances.

7.2.14 We note that the Welsh Government call was for the devolution of the governance and administration of the police. They did not suggest the devolution of police powers, such as those of arrest, stop and search and detention. We will consider later the issue of devolution of the criminal law. But unless and until the criminal law is devolved, ~~d~~ Devolution of legislative responsibility for policing might sensibly come with reservations so that basic principles on which police officers work in Wales and England would remain the same reflecting the fact that the legal system which the police enforce covers England and Wales—~~for~~. For example, the subject matter of the Police and Criminal Evidence Act 1984 (PACE) might be reserved.² ~~Unless and until there is a separate criminal law system in Wales, it seems sensible to retain the same PACE regime as England. This would ensure cases being brought before the England and Wales courts would be based on evidence obtained in the same way using common means.~~

7.2.15 ~~T~~ An issue raised in evidence was the need to ensure on-going co-operation between police forces, and the fact that crime did not observe borders, were often raised with us. We are aware that a large amount of current inter-force cooperation is essentially bilateral, without central government co-ordination. During our visit to Northern Ireland, we discussed the support available from forces in Great Britain for the disturbances in Belfast in 2012-13 and the security requirements of hosting the G8 summit. We were also told in

² The Police and Criminal Evidence Act 1984 (PACE) sets out the legislative framework for the powers of police officers to combat crime, and their code of practice. This mainly deals with powers of entry and search and the handling of evidence and witnesses or suspects of crime. Equivalent provision is made for Northern Ireland by the Police and Criminal Evidence (Northern Ireland) Order 1989 (SI 1989/1341). As it is devolved in Scotland, the equivalent in Scottish law is the Criminal Procedure (Scotland) Act 2010.

Scotland of the excellent cross-border co-operation between Scottish and English police forces. We do not believe that devolution would do nothing to inhibit prohibit inter-force co-operation, continuing. It would patently be in the interests of both Governments and the communities they serve to ensure excellent and would expect Governments to strive for co-operation between and inter-operability, of forces to be maintained.

7.2.16 We do not recommend would also exclude devolution of matters dealt with at United Kingdom –level by the National Crime Agency (NCA), which is responsible for tackling serious and organised crime, fraud, cyber crime, border protection and child exploitation. ~~The NCA has a wide remit. It tackles serious and organised crime, strengthen our borders, fight fraud and cyber-crime, and protect children and young people from sexual abuse and exploitation.~~

7.2.17 ~~We have also considered views for outside Wales. We wrote to former Home Secretaries. Lord Baker supported devolution, while Lord Waddington did not. The Police Federation of England and Wales confirmed that policing could be devolved without devolving other parts of the criminal justice system. While cross border issues were raised with us in some of the evidence we received, we think they can be addressed by maintaining close cross border cooperation, as happens in Scotland.~~ We would expect co-operation between the police in Wales and the NCA should to continue under devolution of policing.

7.2.18 In 2011, the UK Government published a Policing Pprotocol as a Statutory Instrument³ under the Police Reform and Social Responsibility Act 2011. This Pprotocol sets out the relationship between the Police and Crime CommissionersS, Chief Constables and the Home Secretary. The Home Secretary retains powers to direct PCCs and Chief Constables as a last resort. If policing were devolved, we envisage that Welsh Ministers would have these powers in devolved areas of policing.

Box 7.3: What devolution of policing would mean for Wales

The National Assembly would have legislative responsibility for the governance and administration of the police service in Wales and policing, by which we mean the governance and administration of the police service in Wales, and legislative powers in relation to community safety and crime prevention. ~~It would be more straightforward to establish fixed penalties in devolved areas that the police could administer,~~ where there is extensive overlap with the functions of devolved services –notably local government, the NHS and the fire and rescue service.

The National Assembly would in the future be able to take decisions on issues ~~issues~~ such as whether there should be Police and Crime Commissioners or a single Welsh police force, ~~would be for the National Assembly of Wales to determine.~~

We would however expect that the Welsh police forces would continue to have independent day to day operational responsibility; and interoperability with other

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/117474/policing-protocol-order.pdf

police forces and emergency services would be maintained.

~~We recognise the need to ensure that the~~ The police service's relationship with the criminal justice system, particularly the courts and Crown Prosecution Service, ~~wsh~~ ould also be maintained. essential links between the police service, the Crown Prosecution Service and the courts are maintained.

The Welsh Government would need to establish a policing team. The Welsh Government would fund Wales's~~their~~ police forces and determine both the overall amount and the allocation to police forces from within their block budget. The block grant would be adjusted, with ,increased according following ~~by~~ a transfer of existing resources from the Home Office.

The Welsh Government would also need to ensure there were satisfactory oversight arrangements, both in terms of professional standards and conduct. It~~We would be sensible for~~imagine that Her Majesty's Inspectorate of Constabulary (HMIC) and the Independent Police Complaints Commission to (IPPC) would continue to undertake their roles, given their expertise and reputations, and arrangements for this should be agreed between the two Governments. We acknowledge that a Welsh Government could decide to handle these matters differently in the future.~~As the Counsel General observed in a speech to the Society of Legal Scholars in November 2012: "There are great advantages in having devolved responsibility for these services. Each part of the UK has its own unique challenges to face in relation to crime, and these are dictated by a number of factors; such as population density, terrain, cultural trends, the structure and organisation of police forces, and many others. By maintaining powers over policing and criminal justice at a more local level, it can be easier for devolved administrations to promote and encourage efficiencies through a restructuring of administrative services within their territorial boundaries while focusing on tackling the crimes which most greatly affect their communities".~~

7.2.19 ~~W~~However we have considered the four concerns raised by the UK Government very carefully and how they. ~~We have considered whether the four concerns raised by the UK Government can be met:~~

- *Is policing inextricably linked with the Criminal Justice System (CJS)?* ~~Some have argued that policing and justice powers go together, while. But others have disputed this argueding that policing is a separate operation and these responsibilities are held by separate UK Government departments. While we agree that the links between~~ separating the police and from the remainder of the criminal justice system are strong is not ideal, it is noteworthy that policing and justice responsibilities are held by separate UK Government departments. W, and e will argue later go on in this chapter that to discuss how other parts of the ultimately the full criminal justice system might be devolved in the future. But we believe that police devolution does not necessarily need, or imply, wider criminal justice devolution. As an interim separation W, we would, of course, expect efforts to achieve efficiency and effectiveness though greater

interaction across the criminal justice system to continue (While the latter is technically true, in policy terms we accept that a holistic approach to the CJS is desirable and that breaking the link between policing and justice on a permanent basis would reduce the coherence and stability of the devolution settlement for example, co-ordinated IT systems).

- ~~Examples of interaction across the CJS are improving efficiency and effectiveness, for example, through coordinated IT systems; coordinated planning of capacity and policy bearing in mind that police crime detection largely determines the caseload of the courts and prisons; a coherent approach to sentencing and penalties bearing in mind the police have wide powers to issue penalties (for example traffic and ASBOs) so that any policing changes which the Welsh Government introduced in this area would need to take account of any impact on the courts' workload. This suggests that if policing is devolved there should be a presumption that other parts of the justice system should be devolved in due course, and we set out below how this might be achieved over time;~~
- Do the present arrangements provide a significant level of integration and autonomy? ~~We suggest that while~~ these are desirable characteristics of the present system ~~and which~~ should be ~~sustained retained~~. ~~M,~~ including mutual aid and interoperability arrangements between forces ~~are~~ ~~certainly vital~~. However, ~~,~~ devolution would enable the Welsh Government to maintain existing levels of integration ~~and to develop~~ ~~them further, especially with existing devolved services~~. Devolution would bring greater ~~while developing~~ autonomy ~~and the opportunity to adapt even better to local needs further~~;
- Are there cost and complexity issues? The four police services are co-terminous with Wales. ~~At its simplest, this means that devolution does not necessarily mean organisational change~~. However, there is ~~currently, and will need to be in future, excellent co-operation across the Wales/England border, which would facilitate devolution~~. We would not advocate breaking up the ~~United Kingdom~~-GB-wide arrangements, for example, on organised crime. Where there are cross border economies of scale, such as on procurement, ~~we would advocate that~~ these arrangements should be maintained post devolution. ~~It is true that criminals do not respect borders so continued cross border co-operation would be essential~~. In addition, the heavily populated border may in practice limit the extent to which the Welsh Government could follow radically different policing policies from England without adversely distorting criminal behaviour, for example, in relation to drug crime ~~although different PCCs and Chief Constables already set different priorities~~. There would be additional Welsh Government civil service costs but there may also be scope for savings, ~~considered further below~~. Police ~~pay and~~ pensions, the ~~P~~police ~~C~~ollege and other areas such as police complaints and independent inspection of policing could continue on an England and Wales basis; ~~In the case of the HMIC, IPCC and police college, and; we envisage that an agreement would be reached between~~

the two Governments which ensured continued access to these services on a charging basis, with no net additional cost.; and

- *Would devolution weaken the existing management of national threats such as organised crime, terrorism and; cyber threats? We see no reason why this should happen. Clearly the management of national threats would remain a top priority for both Governments and we are confident that both would wish to devise suitable cooperation~~devolution-~~arrangements would need to address how best to do so, drawing on experience in Scotland and Northern Ireland. As we have already mentioned, we would want the existing functions, including retention of the National Crime Agency to continue.*

Costs

7.2.20 If policing were devolved, ~~wether~~ we would ~~expect be~~ a full transfer of the existing Home Office Police Grant and associated revenue and capital provision to the Welsh Government. A policing team would be needed within the Welsh Government to support Ministers in exercising their powers. The Welsh Government estimate that this would cost ~~between~~ £2-3 million a year, a figure that which accords with the Home Office's estimates. Equivalent e; existing Home Office administrative resources relating to policing and crime policy and analytical support~~to Wales including in relation to the Police and Crime Commissioners~~ would be transferred to the Welsh Government.

7.2.21 We would not envisage any change to the non-devolved status of the National Crime Agency, ~~given its current GB remit.~~ However, there are other costs for specialist and centralised services that which the Home Office also meets centrally, notably for the Airwave digital communications system, but also for a number of other specialist services (national databases such as the Police National Computer for example). ~~Arrangements for these would also have to be negotiated and agreed, as~~ it is unlikely to be desirable or practical to try to set up separate arrangements for Wales ~~and it is recognised-~~ information sharing is crucial to the effective delivery of policing across the UK. We understand the Home Office intend the National College of Policing to become self-funding, through charges to police forces for their services.

7.2.22

7.2.23 Where these and other services are provided on an England and Wales basis (including the ~~Welsh forces should continue to be able to access~~ ~~College P~~police ~~C~~college, services. In relation to inspection and complaints arrangements (delivered by HMIC and IPCC), ~~initially at least we would expect~~ HM Inspectorate of Constabulary and the Independent Police Complaints Commission) Welsh costs could be apportioned on a fair basis and there is no reason to suppose that extra costs of any substance would arise as a result of devolution. to would continue to deliver these services in Wales, though acknowledge it would ultimately be for a Welsh Government to decide in the future on the basis of accountability, expertise (effectiveness) and cost (efficiency).

- 7.2.24 The responsibility for police pay would be devolved, but the Welsh Government could, and might well, decide to participate in pay negotiations on an England and Wales basis. We do not, however, recommend the devolution of pension arrangements. We would expect to see cost effective arrangements for pay, and pensions: this would include continuing to participate in national mechanisms for determining police pay and pensions if the Welsh Government so wished. There is no necessary extra cost as a result.
- 7.2.25 In subsequent spending reviews the Welsh Government would receive Barnett consequential of changes in police spending in England. The Welsh Government would be responsible for allocating grant to its police forces. It might, of course, wish to develop a different formula from that currently used by the Home Office.
- 7.2.26 To conclude Given the pragmatic model of devolution that which we propose above, we do not expect there to be substantial additional costs beyond existing costs. Existing annual Home Office policing costs in Wales would be transferred. At the margin, there may be some replication of Home Office costs and some costs of calculating the Welsh element of joint services, but these are likely to be minor around £275 million. Of course, the Welsh Government could choose to spend more or less on policing after devolution. Following devolution it would be for the Welsh Government and Assembly to decide what priority to give to police funding within its overall block budget. The establishment of the policing team for Wales would entail the transfer of Wales-specific administrative resources within the Home Office, but may entail some replication of Home Office resources. Therefore there may be some additional financial requirements, but these will be fairly minor, certainly much less than the £3m estimated above.
- 7.2.27 Devolution of operational policing would fit well with our principles of coherence, subsidiarity and accountability, provided the effectiveness of policing at the United Kingdom level was is maintained, and provided devolution is carried out in a way that which does not involve substantial additional costs, as we propose, we see police devolution as being insuiling the interests of Wales and the United Kingdom.

Recommendations

- R.42 We recommend the devolution of Ppolicing to the Assembly and related areas of community safety and crime prevention should be devolved to the National Assembly;
- R.43 We recommend that EWwhen devolved existing levels of cross border police co-operation should be maintained, with the future possibility of and enhanced enhanced through formal inter force and inter governmental agreements if required;
- R.44 We recommend that PTthere should not be devolution of legislative

powers in respect of arrest, interrogation and charging of suspects, and or of the general powers of constables should not be devolved unless and until criminal law is devolved;

R.45 ~~or of Neither bodies which tackle UK wide national crime such as the National Crime Agency nor or of the Home Secretary's powers in this area of law enforcement; and or of police pay and pensions~~ should be devolved, the; and

R.46 ~~It the P~~ police College, independent complaints and regulation bodies and common services such as Police National Computer system and, where appropriate, procurement arrangements should continue to operate on an England and Wales basis to ensure economies of scale, with ~~the precise sharing arrangements charging systems and the terms of service~~ being agreed by the two Governments.

Conclusions

7.2.28 ~~Most although not all of the evidence we have received has supported the devolution of policing in line with the devolution of other public services in Wales.~~

7.2.29 ~~If policing is devolved as we propose certain functions including those of the National Crime Agency should be excluded.~~

7.2.30 ~~Provided devolution is carried out in a pragmatic and flexible way, we would not expect there to be substantial additional costs, and devolution would open up the potential for savings to be made.~~

7.3 JUSTICE

Current position

7.3.1 ~~In this section we discuss the justice system in administration of justice within Wales. This is a shorthand term for something rather complex that includes the judiciary, courts, criminal prosecution, prisons, probation services, youth justice, sentencing guidelines, legal aid and the criminal and civil law judiciary.~~

7.3.2 Justice is currently non-devolved ~~under the Welsh devolution settlement. The judiciary is independent from government, while the justice system in Wales is administered by the Ministry of Justice is responsible for the administration and operation of most aspects of the justice system, though (MoJ) t. The Crown Prosecution Service (CPS), which is answerable to the Attorney General, is also not devolved.~~

7.3.3 The National Assembly exercises no legislative competence in terms of justice, and the Welsh Ministers have no executive powers directly in relation

to the justice system. However, Acts of the Assembly can create offences or otherwise make the law in Wales different from that in England ~~and could, for example, make certain contracts that are lawful in England unlawful in Wales.~~ Welsh Ministers also have executive powers in relation to devolved tribunals.

~~The justice system in Wales is administered by the Ministry of Justice (MoJ).~~

7.3.4 ~~This includes the courts, prisons, probation services, youth justice, sentencing guidelines, legal aid and the judiciary. The CPS, which is answerable to the Attorney General, is also not devolved.~~

7.3.1 While justice is not devolved, the Welsh Government does play a role in the delivery of justice services in Wales. The Ministry of Justice's responsibilities interact to a degree with those of the Welsh Government, and there is a good deal of co-operation and good practice on the ground. In particular, ~~MoJ~~ responsibilities for offender management, youth justice and criminal, civil, family and administrative law and justice interrelate strongly with the Welsh Government's responsibilities in respect of education and training, health and health services, housing, local government and social welfare.

Box 7.4: Evidence on the Justice Systemjustice system

Our Beaufort Research Opinion Poll showed that 35% per cent were in favour of the National Assembly for Wales and Welsh Government having responsibility for policing in Wales the courts and criminal justice system in Wales. In our questionnaires, 52 per cent were in favour of devolving the courts and prisons.

The UK Government said: '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.'

The Welsh Government said: 'We believe that Policing and Justice (including criminal justice) should in principle be matters of devolved competence. But the potential costs and risks are such that we do not feel able to argue for transfer of criminal justice and administration of justice responsibilities at the present time; these should be matters to be devolved in longer time, without the need for new primary legislation. Devolution to the Assembly of responsibility for policing in Wales can and should be undertaken, however; and the Welsh Ministers should have executive responsibilities in relation to youth justice.'

Sir Roderick Evans, former High Court Judge, (Queen's Bench Division) said: 'The creation of a Welsh jurisdiction would enable the development of a justice system tailor made to meet the needs of Wales, bring the administration of justice closer to the people of Wales and create jobs and career structures not presently available in Wales.'

Professor John Williams, Department of Law and Criminology, Aberystwyth University, said: 'There is a strong case for fully devolving responsibility for the

probation service. Again, the link with social services and housing (particularly when addressing the needs of former prisoners) are central to effective probation work. The future of probation under the Ministry of Justice is uncertain with the move towards privatisation. This could lead to a policy mismatch between, for example, probation and social services within Wales. Disjointed provision does not serve the needs of those using the probation service, or reduce the risk of reoffending. Reference should be made to three other areas of the criminal justice system. i. The criminal courts: the devolution of responsibility for the criminal courts is part of the broader debate on a Welsh jurisdiction discussed below. At present, the time is not right. ii. The prison service: the crisis within prisons, particularly overcrowding, makes devolving the Welsh prison service too complex. Given the need for a variety of prison accommodation, the existing prison estate in Wales may not yet be flexible enough to meet the needs of the Wales prison population. iii. Crown Prosecution Service: Logically if policing powers are devolved, there is a case for greater devolution of the CPS Wales functions, although the England and Wales CPS, and/or the Director of Public Prosecutions, should retain responsibility for areas such as terrorism and politically sensitive cases. Devolution of the CPS would follow the model of the Crown Office and Procurator Fiscal Service in Scotland, and the Public Prosecution Service in Northern Ireland.'

Professor Thomas [Glyn Watkin, retired academic and former Senior Civil Servant with the Welsh Assembly Government](#), -said: 'Against this background, it is arguably time to recognize formally that cases involving the application of the law which relates only to Wales should as a general rule be heard in Wales, both at first instance and at appeal, with only final review to the Supreme Court requiring the litigation to leave the country.'

The Welsh Committee of the Administrative Justice and Tribunals Council (WCAJTC) said: 'Regardless of whether there is to be a devolved judicial system, there are various means by which cohesion within current arrangements can be encouraged, in that there is greater scope for collaboration and coordination between arms of the UK and Welsh Governments responsible for administrative justice issues.'

The Law Society said: 'The debate on a separate jurisdiction for Wales is progressing. The inquiry by the Constitutional and Legislative Affairs Committee of the Assembly ("the Constitution Committee") and the Welsh Government's own call for evidence last year attracted much interest and reflected informed opinion. The Law Society's response to the Constitution Committee inquiry addressed the impact on solicitors and legal services.'

The Wales in a Changing Union project 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.'

Lord Morris [of Aberavon](#) 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.'

Sir Stephen Laws, [former First Parliamentary Counsel](#), said: 'The existence of separate rules of recognition would tend to suggest a need for separate courts systems. On the other hand, as things stand, there may be some areas of jurisdiction that would need to be exercised so infrequently that it would be organisationally and financially inefficient to have two wholly separate courts systems for England and Wales. Where that is the case, one court with one jurisdiction would need to be replaced by one court with two jurisdictions and the need to decide both which to exercise and how interactions between them are to be resolved. That would produce its own added complexity and inefficiencies.'

Professor Alan Trench, [School of Criminology, Politics and Social Policy, University of Ulster](#), said: 'There is no good reason, in my view, why a 'minimal' legal jurisdiction for Wales could not be established at least in the first instance. The key characteristics of a legal jurisdiction are a defined geographical area, and a defined (or identifiable) body of law that applies in that area. There is no reason why the body of law should be unique to that area, and there are plenty of reasons, in a Welsh context, for maintaining close connections with 'English' law.'

On the subject of a separate legal jurisdiction for Wales, the National Assembly's Constitutional and Legislative Affairs Committee Inquiry into a Separate Welsh Jurisdiction (December 2012) said the following:

'We note that many witnesses agreed that any future jurisdiction should be based on the following features:

- a defined territorial extent – for our purposes, Wales;
- a body of law, which would include laws made by the National Assembly as well as inherited laws at the time any jurisdiction is introduced; and
- a range of distinct legal institutions and a court system.

'From the evidence received, we believe that a Welsh legal identity is getting stronger, regardless of whether a separate jurisdiction is required or not. As a result, we believe that changes should be made within the current unified Wales and England model to ensure that it reflects and recognises this emerging legal identity.... We accept that the case for a separate Welsh jurisdiction will be strengthened as divergence between laws in Wales and England increases.'

In its evidence to this inquiry, the Welsh Committee of the Judges' Council said the following about the possibility of a separate legal system for Wales:

'Undoubtedly the law in Wales is becoming different from that in England in some areas, particularly public law. That is not however the case with important parts of

the body of the law such as criminal law (save in minor respects), consumer protection and employment law. Increased difference in laws increases the rationale for separately appointed judges and separately organised courts.

'The devolution of criminal justice would clearly be a major step. If the power to make criminal law remained with the UK Parliament, but its administration was devolved, tensions could develop. Commercial law could remain common between England and Wales. Consideration would need to be given to the administration of other specialist areas of law, for example, charities law. We would see no difficulty, if a separate jurisdiction were established, for Wales to remain a common law jurisdiction, as has Northern Ireland.'

Box 7.5: Key facts on Justice

Wales generally has similar criminal justice statistics compared to England: in terms of fairness 62 per cent thought the criminal justice system in England was fair compared to 65 per cent in Wales, for effectiveness the figures were 44 per cent and 45 per cent.

The Wales reoffending rate ie ex prisoners committing further offences is 51.6 per cent compared to the England and Wales average of 46.4 per cent.

In terms of spending per head, the England/Scotland/Wales/Northern Ireland + figures for 2011-12 for law courts are: £103/£95/£106/£161; and for prisons £64/£62/£70/£99. So the figures for Wales are a little more than for the devolved system in Scotland.

Box 7.6: Evidence on a separate jurisdiction for Wales

~~The NAW Constitutional and Legislative Affairs Committee Inquiry into a Separate Welsh Jurisdiction (December 2012) said the following:~~

~~'We note that many witnesses agreed that any future jurisdiction should be based on the following features:~~

- ~~—a defined territorial extent—for our purposes, Wales;~~
- ~~—a body of law, which would include laws made by the National Assembly as well as inherited laws at the time any jurisdiction is introduced; and~~
- ~~—a range of distinct legal institutions and a court system.~~

~~'From the evidence received, we believe that a Welsh legal identity is getting stronger, regardless of whether a separate jurisdiction is required or not. As a result, we believe that changes should be made within the current unified Wales and England model to ensure that it reflects and recognises this emerging legal identity. Details of our suggested changes are set out in recommendations 1 (legal training for practitioners), 2 (changes to the civil procedure rules), 3 (law commission), 4 (dealing with bilingual laws) and 5 (appointment of Supreme Court judges). We accept that the case for a separate Welsh jurisdiction will be strengthened as divergence~~

between laws in Wales and England increases.'

Box 7.7: Evidence on a Welsh Legal System

In their evidence to the NAW committee on a separate jurisdiction, the Welsh Committee of the Judges' Council said the following about the possibility of a separate legal system for Wales:

'Undoubtedly the law in Wales is becoming different from that in England in some areas, particularly public law. That is not however the case with important parts of the body of the law such as criminal law (save in minor respects), consumer protection and employment law. Increased difference in laws increases the rationale for separately appointed judges and separately organised courts.'

'The devolution of criminal justice would clearly be a major step. If the power to make criminal law remained with the UK Parliament, but its administration was devolved, tensions could develop. Commercial law could remain common between England and Wales. Consideration would need to be given to the administration of other specialist areas of law, for example, charities law. We would see no difficulty, if a separate jurisdiction were established, for Wales to remain a common law jurisdiction, as has Northern Ireland.'

Assessment

- 7.3.2 The 'justice system' is a shorthand term for something very complex.
- 7.3.3 The over-riding principle of our considerations recommendations is that access to justice is paramount and that therefore the justice system should be brought as close as possible to the community it serves (subsidiarity) while maintaining the quality of justice dispensed (effectiveness).
- 7.3.4 Criminal justice should be distinguished from civil justice.
- 7.3.5 In criminal justice, there are a number of stages: the determination by the legislature of what is a crime; the deterrence and prevention of crime; the detection of offences; the prosecution of offenders; the determination of guilt; the imposition of penalties (ranging from on-the-spot fines to life imprisonment); the treatment of offenders; the system of appeals; and the treatment and rehabilitation of offenders.
- 7.3.6 Civil justice is the system under which disputes between people, businesses and other organisations are determined. -It is governed by common law and statute, by legal concept principles such as tort and by the rules of the court. - Examples are family law and commercial law.
- 7.3.7 There is also public law and administrative justice, governing the way in which public bodies work.
- 7.3.8 Separate arrangements for Wales should not be established 'just to be different': giving responsibility for strategic direction to Welsh institutions does not preclude using mechanisms which operate on an England and Wales

basis in order to take advantage of existing experience and benefit from economies of scale, provided this is consistent with the principle of local access to justice ~~enunciated above~~.

7.3.9 In relation to criminal justice, ~~our starting principle is~~ we believe that the National Assembly for Wales should have responsibility in those areas that have the greatest impact on the community and the day-to-day lives of the citizens of Wales – reflecting the principles s above.;

7.3.10 ~~As set out above, we~~ So we have therefore proposed the devolution of policing, while ensuring that there remains co-operation in dealing with serious crime.

Youth ~~Justice Service, Prisons, and Probation~~ justice, prisons and probation

7.3.11 ~~In our evidence gathering, for example at a seminar at Swansea University, the distinction was made to us between public services such as the youth justice service, prisons and probation,; and the administration of justice through the courts. For the public services mentioned, On the former similar considerations apply as did to the police, particularly, for example, in terms of bringing together devolved and non-devolved services.~~

7.3.12 Currently, youth justice for England and Wales is overseen by the Youth Justice Board, a non-departmental public body, which is accountable to the Ministry of Justice. Band has its board members are appointed by the Secretary of State for Justice Secretary. Offenders People between 10 and 17 will go through the youth justice system. The great majority are dealt with in the community, though, and if found guilty of a serious crime, there is an option of put into secure custody. In 2011-12, fewer than 100 young people from Wales were in custody.⁴

7.3.13 In his report of December 2009⁵ commissioned by the Welsh Government, Professor Rod Morgan found that the factors linked to youth offending were ofteneither related to devolved services, such as education and training, social services, and health, while youth offenders were dealt with throughor to non-devolved services, such as the police, Youth Offending Teams and the youth court. He concludedIt would seem to make sense, therefore, that the Welsh Government should also have administrative responsibility for youth justice, given the related responsibilities it already held. Policy might then be better integrated.

7.3.14 We agree with this conclusion and therefore believe that the administrative responsibility for the treatment and rehabilitation of youth offenders in the community should be ~~devolved~~ to Welsh Ministers, particularly bearing in mind the close links ~~which that~~ exist with services provided by devolved local authorities.;

⁴ Youth Justice Statistics 2011/12, Page 39

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/218552/yjb-stats-2011-12.pdf

⁵ reference

- 7.3.15 The small number of young offenders who are sent to secure custody cannot currently be accommodated in As Wales, and there will need cannot currently accommodate all types of offenders, there could continue to be cross-border management of these youth offenders between England and Wales with an appropriate charging system. The numbers involved are not large.
- 7.3.16 There would be a small cost implication as a result of establishing a separate youth justice system in Wales of around £0.3million, according to the UK Government. These costs include the administrative costs of placing young people in custody, costs relating to Board activity in Wales and executive management oversight of the Youth Justice Board Cymru.
- 7.3.17 Adult offenders who receive community or custodial sentences are the responsibility of the National Offender Management Service (NOMS). From April 2014, NOMS has decided to appoint a Director for the National Offender Management Service Wales in order to acknowledge its relationship with the Welsh Government will be established. The Director's Wales will have will bring together responsibility for probation services in Wales, (including with direct responsibility for the probation of serious offenders); and for the four existing prisons in Wales. Probation services for less serious offenders will be provided by the private sector.
- 7.3.18 The provision of probation services in Wales is currently contracted to the Wales Probation Trust by the National Offender Management Service on behalf of the Secretary of State for Justice. The costs of probation services in Wales is around £56 million, according to UK Government evidence. No additional costs of devolution have been identified, although if contracts were separated out upon devolution, there might be costs associated with diseconomies of scale.
- 7.3.19 In principle, we believe that the treatment and rehabilitation of adult offenders in the community through the probation service should should could also be devolved to the National Assembly for Wales. This would allow better integration with areas already devolved that are crucial for offender rehabilitation, including help to overcome substance misuse, housing, education and training, for example. However we note the strong links between within the prison and probation services in Wales, which may suggest implies that it would be undesirable difficult to devolve one without the other.
- 7.3.20 It will be logical therefore to see consider the devolution of responsibility for probation alongside that for prisons. There are arguments for and against devolution of prisons. Devolution of prisons would enable the Welsh Government to implement distinctively Welsh policies in areas such as tackling reoffending and reducing recidivism, by, for example, in providing adult education service or training in prisons. Community prisons could be established in the places where offenders live, so making their re-integration into the community easier, as well as making visits easier for their families. There could be provision for female prisoners in Wales (there is none at present) and there could be greater sensitivity to the needs of Welsh-

speaking prisoners. Scotland and Northern Ireland and many states in federal systems manage their own prison systems effectively.

7.3.21 On the other hand, However in practice the prison service is heavily integrated between England and Wales in terms of planning and management. Furthermore

7.3.22 Creation of ~~To create a fully self-contained Welsh service, where all Welsh prisoners are accommodated in Wales, may have advantages in terms of ensuring prisoners were held closer to their communities to enable reintegration, and to take account of the requirements of Welsh speaking prisoners. However, a self-contained Welsh prison estate could~~ would ~~arguably be undesirable in its lack of flexibility, with less~~ for example, the ability to move prisoners between institutions and at the greater need to accurately to predict the numbers and types of prison places required in the future. If self-contained, it would also be as well as expensive, given that it would require the building of new accommodation for women and high security prisoners.

7.3.23 The UK Government suggested to us that, in a self sufficient devolution model, the additional costs of providing Category A and women's accommodation, plus additional over-head costs of operating a devolved prison system, would be a one-off cost of £101.5million, with additional annual running costs of around £22.5million. In the current financial climate we think additional costs of this order cannot be ~~would be difficult to justified.~~ However, as noted above we do not envisage that, as assumed in these figures assume that, a devolved Welsh prison service would necessarily house all Welsh prisoners, and/or that no English prisoners would be housed in Wales. A ~~Instead we envisage that there would be a cross border charging system is also possible.~~

7.3.24 There is certainly a mismatch between the number of prison places in Wales and the number of Welsh prisoners. We understand that at present there are more Welsh prisoners in England than English prisoners in Wales. However this position will be reversed when the ~~will change with the construction of a new prison in Wrexham enters service. We do not envisage that there will be a substantial net imbalance, although there will continue to be a cross border flows in both directions.~~

7.3.25 As we argue ~~set out throughout this report, we do not believe devolution entails self-sufficiency~~ autonomy. We recognise that there will need to be cross border co-operation, and that even under a devolved system there would be a case for some Welsh prisoners to be detained in England and vice versa. As in the case of the health service it should be possible to establish ~~accommodate the citizen according to their needs, with~~ introduce a suitable charging system agreed between the two Governments. ~~For example, some serious offenders may need to be detained in England. While such a system would be cheaper and more practical than a fully self contained system, it would mean that a~~ also bring fewer advantages in terms of locating Welsh prisoners in Wales ~~for example, the Welsh Government's policies~~ ability to

rehabilitate Welsh prisoners would apply only to those Welsh prisoners held depend on them being in Welsh Pprisons. The same problem arises for English prisoners held in Wales.

7.3.26 So while we ~~recommend~~ recognise there is a persuasive case in favour of devolution of prisons and probation in principle, we also recognise the practical difficulties in this area ~~and~~. We recommend that suggest that when policing is devolved, the two Governments should jointly carry out a feasibility assessment as a first step.

7.3.27 ~~Irrespective Whatever the results~~ of this, we ~~believe propose in the meantime~~ that a formal mechanism should be established for Welsh Ministers to contribute to policy development on adult offender management. We welcome the commitment offurther believe the new Director of the National Offender Management Service, -Wales to work with should be open to approaches from the Welsh Government on to provide education, and training and health care provided for to prisoners in Wales.

The Crown Prosecution Service (CPS)

7.3.28 CPS Cymru Wales is one of 13 regional divisions of the CPS, and the CPS recognises Wales's "unique identity". Administratively CPS Cymru Wales is largely self-contained. However, there can be no difference in prosecution policy between Wales and England, and we accept that, so long as the criminal law is not devolved, there is little case for the devolution of prosecution policy Prosecution of offenders is not just a matter for the Crown Prosecution Service (CPS), but oncealso the police. When policing has been devolved, the case for devolving responsibility for other aspects of the prosecution of offenders should be considered, including the CPS. However in practice the CPS works very closely with the court service and judiciary, so it may be difficult to fully devolve the CPS in isolation from the court service. If criminal law is in future devolved, then the case for a separate prosecution service in Wales, as in Scotland and Northern Ireland, is a strong one.

7.3.29

The Court Service

Box 7.8: ~~Evidence on~~ Administrative Devolution of Courts in Wales

The operation of the Administrative Court in Wales is a good example of how the courts can be increasingly devolved in an administrative sense within Her Majesty's Courts and Tribunal Service, rather than to a devolvedseparate tier of governmentrather than legislative sense.

Until 1999, Administrative Court cases could only be issued and heard in London. In the last 10 years, active steps have been taken to ensure that Administrative Court claims can be issued, managed and heard out of London; and, in particular, that decisions affecting people in Wales are administered and heard in Wales.

In April 2009, a discrete Administrative Court office was established in Cardiff, with the facility for issuing and managing Administrative Court claims. The office is designed to enable all Administrative Court proceedings to be started, administered

and heard in Wales, save for very narrow excepted classes of claim (e.g. terrorist, extradition and Proceeds of Crime Act proceedings).

In 2012 the then President of the Queen's Bench Division, ~~Sir John Thomas~~, issued a protocol for transfer to ensure that, as a matter of mechanics, Welsh claims would be transferred to the Administrative Court in Wales in all but exceptional circumstances. The practice direction and protocol are also complemented by policy guidance issued by the Administrative Court in Wales which provides that, in the absence of exceptional circumstances, claims with a connection with North Wales will be heard in North Wales. Unlike the English regions, although most Welsh cases are heard in Cardiff Civil Justice Centre, the Administrative Court in Wales is generally willing to sit away from its main centre, and hears cases at venues throughout Wales.

7.3.30 There is already a great deal of administrative devolution in the courts system. Below the High Court, justice is already administered in Wales by Welsh courts withby magistrates (who are appointed locally) and judges who are appointed to the Wales circuit. At the High Court level, we welcome several welcome initiatives that have already happened, a good example of which is described insuch as in the Administrative Court Box 7.8.

7.3.31 While, in the absence of full devolution, we recognise that there will be cases of complexity or those involving specialist areas of law that will sensibly be heard in London, we believe that, in general, cases arising in Wales or involving Welsh parties at all levels should be able to be heard in Wales. There is a particular issue in cases involving laws that apply only in Wales. We believe that they should be heard , whenever possible, at first and second instance in Wales. (This is in the context of law applying in Wales only but extending to England and Wales).⁶

7.3.32 Thus weWe also believe that the various divisions of the High Court should sit in Wales on a regular basis to hear cases that arise in Wales. A High Court office might with benefit be established in Wales to co-ordinate High Court sittings in Wales. We also believe that, an and High Court judges should be allocated to sit in Wales only if they satisfy the Lord Chief Justice, or the Master of the Rolls for civil matters, that they understand the distinct requirements of Wales and Welsh law. Similarly, the divisions of the Appeal Court should continue to sit in Wales on a regular basis to hear cases that arise in Wales. Appeal Court judges should be allocated to sit in Wales only if they satisfy the Lord Chief Justice, or Master of the Rolls, that they understand the distinct requirements of Wales and Welsh law. While the Supreme Court will normally sit in London, we understand that the Court that court is also willing to sit in Cardiff, and we very much welcome this.

7.4 As in England, there is a hierarchy of courts depending on the seriousness and complexity of the case, some of which sit in in Wales, such as magistrates courts

⁶ Technically laws passed by the National Assembly for Wales are part of the law of England and Wales, although generally speaking they only apply in Wales and so are known as Welsh laws.

~~and the Crown Courts, and some of which only sit in England such as the Supreme Court and some of the specialist courts. Below the High Court, justice is already administered in Wales by Welsh courts by magistrates (who are appointed locally) and judges who are appointed to the Wales circuit.~~

- 7.4.1 ~~So there is already some administrative devolution in Wales. The evidence which we have received suggests there is scope for taking this further~~
- 7.4.2 ~~Cases involving laws which apply only in Wales should be heard, whenever possible, at first and second instance in Wales. (This is in the context of Law applying in Wales only but extending to England and Wales)⁷:-~~
- 7.4.3 ~~The various divisions of the High Court should sit in Wales on a regular basis to hear cases that arise in Wales. A High Court office might be established in Wales to coordinate High Court sittings in Wales. High Court judges should be allocated to sit in Wales only if they satisfy the Lord Chief Justice that they understand the distinct requirements of Wales and Welsh law.~~
- 7.4.4 ~~The divisions of the Appeal Court should continue to sit in Wales on a regular basis to hear cases that arise in Wales. Appeal Court judges should be allocated to sit in Wales only if they satisfy the Lord Chief Justice that they understand the distinct requirements of Wales and Welsh law.~~
- 7.4.5 In principle we believe that Welsh-domiciled defendants, appellants or plaintiffs who wish to use the Welsh language in court proceedings transferred to England should be able to do so, as they already can for cases heard in Wales. ~~Wherever the case is heard, although we~~ acknowledge that further consideration needs to be given to the details including where the parties do not all agree and the issue of cost effectiveness and availability of resources.
- 7.4.6 There should also be mechanisms to ensure that there are judges at all levels who are competent to hear cases in Welsh. ~~It would be necessary to ensure that there are enough judges able to conduct hearings at all levels in Welsh, which may be difficult to achieve in practice.~~
- 7.4.7 Beyond administrative devolution we have also considered whether responsibility for the court system and judiciary should be devolved to the Welsh Government as they are it is in Scotland and Northern Ireland. ~~Such devolution need not cover all courts; and there could be separate arrangements for hearing Welsh laws and England and Wales laws. We recognise that it is unusual for a devolved state or region that has legislative powers not to have a court system of its own where cases involving those laws are heard, though devolved courts do not have to deal exclusively with devolved laws: in the case of Scotland and Northern Ireland, there are devolved court systems that deal comfortably both with devolved law and non-devolved law.~~
- 7.4.8 There are two separate issues here. The first is whether the administration of the courts in Wales should be transferred to the Welsh Government. Though

⁷ Technically laws passed by the National Assembly for Wales are part of the law of England and Wales, although generally speaking they only apply in Wales and so are known as Welsh laws.

there would be clear advantages in devolution of courts administration, with the opportunity for court provision for example to reflect Welsh needs, there would be substantial costs.

- 7.4.9 According to the UK Government, a devolved court service would cost an additional £10m largely consisting of IT system and support costs on top of the existing £70 million costs.
- 7.4.10 The second issue is whether Wales should have a separate judiciary and a separate legal profession. In terms of a devolved judiciary, the costs to a large extent cases heard in Wales are presided over by a judiciary which is based in Wales and lay justices who live in Wales and serve their local justice areas. Judicial deployment in Wales has been centralised for a significant time; judges are appointed to a Circuit; and since 2007 there has been a Wales Circuit, so the impact of devolving courts and the judiciary would be limited in routine day-to-day management terms. According to the UK Government, the total additional cost of operating a separate judicial office and judicial appointment and complaints function would be £1.5m (JO) and £0.5m (JAC/JACO) respectively, totalling £1.5m.
- 7.4.11 Our view is that at present there is not a sufficient volume of distinct Welsh law to justify full devolution, and in addition there appears to be no wide public demand at the current time. However in principle we recognise that in other countries if a devolved state or region has legislative powers it is also normal for it to have powers over its courts where those laws are heard, . This is sometimes known as having a separate jurisdiction.
- 7.4.12 We would however expect the issue to be kept under review over the coming decade, and if are not convinced of the case for devolving the court system and judiciary to the Welsh Government. The principal argument here is that there needs to be a devolved Welsh judiciary and legal profession because of the existence of separate Welsh laws. Divergence between the law in Wales and England is at present small. However as more Welsh laws are introduced and Westminster passes further laws that apply to England -only, and as there is more administrative devolution of the courts, the case for a Welsh judiciary becomes stronger. An administrative form of a separate jurisdiction is likely to evolve. If there is sufficient support across Wales in the future, a legislatively devolved court service would emerge over time could be introduced
- 7.4.13 Although Scotland and Northern Ireland have their own judiciaries, it is also possible to share a judiciary: the Supreme Court is retained by some Commonwealth countries as their final court of appeal, and Judges from the United Kingdom sit in the higher courts of the Channel Islands. The advantages of a wider pool of expertise are clear. If our recommendations on administrative devolution of the courts are implemented, we see little immediate advantage in creating a separate Welsh judiciary.
- 7.4.14 As far as the legal profession is concerned, people will use lawyers who are experienced in the relevant area of law and are therefore likely to use lawyers with experience of Welsh law for relevant cases in Wales. There is no need to create a separate legal profession to achieve this. There would also be

potential disadvantages for lawyers in Wales who represent clients in England if there were separate legal professions, even if many lawyers were qualified in both jurisdictions.

- 7.4.15 We are not therefore convinced of the case for devolving the court system or creating a Welsh judiciary and legal profession at present. We also recognise that there seems from our opinion poll to be limited public appetite for devolution in this area. However, a separate Welsh courts system and a separate Welsh judiciary is something that must be contemplated in the future, and we recommend that the two Governments review the case for this within the next ten years.

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Sentencing policy

- 7.4.16 We do not recommend that there should be different sentencing policies or guidelines in Wales for the same offences as England until or unless the criminal law is/were fully devolved to Wales.

A separate criminal and civil law-legal system for Wales

- 7.4.17 ~~A question raised by some of the evidence which we have received is whether more of the legal system should be devolved, including the criminal law.~~ Some laws created by the National AssemblyNAW under its devolved powers already carry criminal sanctions for breach, and ~~we do not propose that the National AssemblyNAW should continue to be able~~ be limited in its power to impose criminal sanctions in areas of devolved responsibility. In this context, it will be important to ensure that the reserved powers model does not inadvertently remove the ability of the National Assembly to create criminal sanctions where it is necessary to support its wider devolved law making powers.
- 7.4.18 ~~However there is a wider question as to whether the criminal law as a whole should be devolved, as it~~ whereas the criminal law has been devolved in Scotland and Northern Ireland, we do not recommend the devolution of the criminal law of England and Wales generally. Devolution could mean, given the lack of widespread support in Wales at the current time, so that, for example, the law of theft or of offences against the person could be being different will remain the same in England from and Wales, or that penalties could differ between the two jurisdictions. While such devolution would meet our principle of subsidiarity, we recognise that devolving criminal law would be a very substantial change, for which there is currently no widespread support. This is particularly mindful of the lack of widespread support in Wales at the current time, and ~~But we expect that a wider debate on these issues will emerge over time.~~
- 7.4.19 Similar arguments apply in respect of civil law and procedure. It will however be important to ensure that the reserved powers model does not inadvertently remove the ability of the NAW National Assembly to create

~~criminal sanctions where it is necessary to support its wider devolved law-making powers.~~

- 7.4.20 The ~~NAW~~ National Assembly already has wide legislative powers in public law aspects of the civil law, and it will be important to ensure that the reserved powers model does not inadvertently remove powers from the National Assembly. Giving the National Assembly the power to make different commercial, matrimonial, inheritance and property law would be another very major change.
- 7.4.21 Devolution of full criminal and civil law powers would not mean that the UK Parliament would no longer legislate for the United Kingdom as a whole: it has frequently done so since devolution in criminal law areas in Scotland with the consent of the Scottish Parliament. Nor would it mean that there would necessarily be great divergence in the law: it is noticeable that law is very similar in Northern Ireland to England and Wales despite the powers that have existed since Northern Ireland came into existence for laws to differ (Scotland has always had a different Roman law model).~~but it will be important to protect the single economic market by ensuring that commercial law including contract and tort remains the same in Wales as in England—this includes contract and tort.~~
- 7.4.22 ~~Other areas of civil and administrative law and procedure should remain the same as in England, including matrimonial, inheritance and property law other than already devolved aspects such as planning law.~~
- 7.4.23 ~~Again, No doubt a wider debate on these issues will emerge over time. it will be important to ensure that the reserved powers model does not inadvertently remove powers from the NAW~~ National Assembly.

Other Justice issues

~~We have received evidence on a range of other issues discussed below.~~

- 7.4.24 Scotland and Northern Ireland, ~~which both comprise distinct legal jurisdictions,~~ are each represented ~~on~~ in the Supreme Court bench. We heard the argument that tThere should similarly be at least one judge on the ~~UK~~ Supreme Court with particular knowledge and understanding of the distinct requirements of Wales and Welsh law. ~~It would also be beneficial if the Supreme Court sat in Wales from time to time.~~ We note that the President of the Supreme Court has already announced that on any appeal involving Welsh devolution issues, the Supreme Court panel will, if possible, include a judge who has specifically Welsh experience and knowledge. We would like to go further, and therefore recommend that there should be a requirement that one member of the Supreme Court should have experience and knowledge of the requirements of Wales. We have earlier welcomed the willingness of the Supreme Court to sit in Wales.
- 7.4.25 Tribunals provide an important form of redress of citizens against a government's decision. Welsh Ministers should continue to have executive competence on tribunals in devolved areas of policy and there is a case for considering legislative competence also. However there should be clarity and

coherence in the relationship between devolved and non-devolved tribunals; and the process of appointment, training and terms and conditions of employment should be consistent. It is important that tribunals are seen to be independent in Wales as elsewhere.

- 7.4.26 Some suggested in evidence that responsibility for Legal Aid should be devolved, as it is in Scotland and Northern Ireland. If legal aid were devolved, there would be a transfer of around £110m plus an additional costs of around £5m per annum from loss of economies of scale.
- 7.4.27 We believe legal aid should not be devolved at the present time as it is important that people in Wales should have the same access to the law as in England, and therefore Legal Aid should not be devolved until such time as there is wider devolution of the legal system. However, although the UK Government should fully consult the Welsh Government and other key stakeholders to ensure that the operation of the legal aid system reflects Welsh circumstances.
- 7.4.28 Currently, the Welsh Ministers are unable to propose law reform projects to the Law Commission in the hope of improving the effectiveness and coherence of the Welsh Statute book. We believe that ~~We do not recommend that there should be different sentencing policies or guidelines in Wales for the same offences as England.~~
- 7.4.29 Welsh Ministers should be able to propose law reform projects to the Law Commission on a similar basis to UK Government Ministers.
- 7.4.30 A concern raised in a number of submissions to us related to the difficulty sometimes of establishing what the law is that applies in Wales. Laws for Wales have been made by Parliament and the National Assembly, and laws made by each have been amended by the other, with statutory instruments sometimes amending primary legislation to complicate the picture further. It is important that law should be accessible to practitioners and citizens. We recommend that a mechanism be sought to ensure the expeditious publication of up-to-date law applying in Wales, and that a programme of consolidation of law should be undertaken.
- 7.4.31 Another aspect of accessibility is that law should be as clear and simple as possible. The existence of primary powers in Wales is an opportunity for law to be drafted in a form that is readily understood. ~~absence of a Welsh statute book, which set out the laws of Wales as passed by the National Assembly and the UK Parliament. It would be concerning if the law in Wales is not accessible, let alone understood, and we believe there should be improved access to all legislation in areas of devolved powers through publication of a consolidated body of Welsh legislation.~~
- 7.4.32 As an example of the liaison we are suggesting elsewhere between UK Ministers and the National Assembly, there should be a periodic report by the UK Government, in consultation with the Welsh Government, to Parliament and the National Assembly on how access to justice is improving in Wales.

7.4.33 It would be helpful for there to ~~There should~~ be regular dialogue between the Lord Chief Justice of England and Wales and Welsh Ministers on the administration of justice in Wales.

~~To conclude, we have concentrated on the administration of justice. We note that the term 'jurisdiction' has several distinct meanings. Since the courts will increasingly need to deal with laws made in Wales and applying only in Wales, it is possible that, in due course, a separate Welsh jurisdiction in the sense of separate devolved courts and judiciary may develop. For, but for the time being we are recommending that distinctive Welsh provision in the court system should be strengthened in the administrative ways we have proposed.~~

Box: timetable for devolving the police and justice system

A suggested timetable for devolving policing and justice is:

2016: devolution of youth justice system

2017: devolution of the police

2019: review of devolution of prisons and probation

On-going: administrative devolution of the court system

By 2025: review of legislative devolution of the court system, judiciary and CPS.

The economic importance of the Welsh legal sector

7.4.34 The evidence ~~has presented to us~~ emphasised the economic importance of developing a strong Welsh legal sector including: the opportunity which devolution brings to Welsh law schools; the need for a growing indigenous legal profession so that the courts become less dependent on advocates from outside Wales; the wider role which a strong Welsh legal profession plays in the development of the Welsh economic and civil polity; and the importance of an outward facing Welsh legal sector playing its full part in the United Kingdom and internationally.

Costs

7.4.35 ~~he evidence we have received from the UK Government is as follows. The additional costs of providing Category A and women's accommodation, plus additional over head costs of operating a devolved prison system, will be a one off cost of £101.5m, with additional annual running costs of around £22.5m. However as noted above we do not envisage that, as assumed in these figures, a devolved Welsh prison service would necessarily house all Welsh prisoners, or that no English prisoners would be housed in Wales. No additional costs were identified in full transfer of probation services but it was noted that there would be costs associated with diseconomies of scale for separating out contracts, if that proved necessary. The UK Government estimates that there would be a small cost implication as a result of establishing a separate youth justice system in Wales of £0.5m. These costs~~

include the administrative costs of placing young people in custody, costs relating to Board activity in Wales and executive management oversight of YJB Cymru, and the costs of analysis and research currently undertaken centrally which include Wales. A devolved court service would cost up to £8.53m largely consisting of IT system and support costs. In terms of a devolved judiciary, to a large extent cases heard in Wales are presided over by a judiciary which is based in Wales and lay justices who live in Wales and serve their local justice areas. Judicial deployment in Wales has been centralised for a significant time; judges are appointed to a Circuit; and since 2007 there has been a Wales Circuit, so the impact of devolving courts and the judiciary would be limited in routine day to day management terms. The total additional cost of operating a separate judicial office and judicial appointment and complaints function would be £1.5m (JO) and £0.5m (JAC/JACO), totalling £1.5m.

7.4.36 To conclude we think that the additional costs, while not insignificant, should be manageable provided devolution is designed in a cost effective way.

Recommendations

- R.47 ~~We recommend that~~ the treatment and rehabilitation of youth offenders should be devolved to Welsh Ministers;
- R.48 ~~We recommend that subsequently~~ the treatment and rehabilitation of adult offenders in the community ie probation services should also be devolved to the National Assembly for Wales;
- R.49 ~~We recommend the~~ devolution of responsibility for probation and prisons, though we recognise that there will need to be cross border cooperation, including in relation to serious offenders, and suggest a feasibility assessment as a first step. should be reviewed by the two Governments after policing is devolved. In the meantime, we propose that a formal mechanism be established for Welsh Ministers to contribute to policy development on adult offender management;
- R.50 ~~We recommend that~~ Once policing has been devolved, the case for devolving responsibility for other aspects of the prosecution of offenders should be considered, including the CPS;
- R.51 ~~We recommend that cases involving laws which apply only in Wales should be heard, whenever possible, at first and second instance in Wales. There should be~~
- R.52 ~~We recommend further administrative devolution of the court system, including: that~~
- a. ~~that~~ the various divisions of the High Court should sit in Wales on a regular basis to hear cases that arise in Wales, other than highly specialist cases;
 - b. ~~A~~ High Court office ~~should~~ might be established in Wales to coordinate High Court sittings in Wales;

- c. ~~The~~ divisions of the Appeal Court should continue to sit in Wales on a regular basis to hear cases that arise in Wales; and
- d. High Court and Appeal Court judges should be allocated to sit in Wales only if they satisfy the Lord Chief Justice that they understand the distinct requirements of Wales;.
- R.53 ~~The~~ We recommend that Welsh domiciled defendants, appellants or plaintiffs who wish to use the Welsh language in court proceedings should as far as possible be able to do so, wherever the case is heard. It will be necessary to ensure that there are enough judges able to conduct hearings at all levels in Welsh
- R.54 ~~We do not recommend the devolution of the~~ criminal law of England and Wales should not be devolved generally. But we expect that a wider debate on these issues will emerge over time. It will be important to ensure that the reserved powers model does not inadvertently remove existing criminal law powers from the National Assembly for Wales;
- R.55 ~~We recommend that~~ it will be important to protect the single economic market by ensuring that commercial law remains the same in Wales as in England – this includes contract and tort. Other areas of civil and administrative law and procedure should remain the same as in England, including matrimonial, inheritance and property law. Again, it will be important to ensure that the reserved powers model does not inadvertently remove existing powers from the NAW National Assembly;
- R.56 ~~We recommend that~~ There should be at least one judge on the UK Supreme Court with particular knowledge and understanding of the distinct requirements of Wales;
- R.57 ~~We recommend that~~ Welsh Ministers should continue to have competence on tribunals in devolved areas of policy; and there should be clarity and coherence in the relationship between devolved and non devolved tribunals; the process of appointment, training and terms and conditions of employment should be consistent, and tribunals should be seen to be independent of government;
- R.58 ~~We recommend that~~ Legal aid should not be devolved ~~at the present time~~, although the UK Government should fully consult the Welsh Government and other key stakeholders to ensure that the operation of the legal aid system reflects Welsh circumstances;
- R.59 ~~We recommend that~~ Welsh Ministers should be able to propose law reform projects to the Law Commission on a similar basis to UK Government Ministers;
- R.60 ~~We recommend that~~ There should be improved access to all legislation in areas of devolved powers through publication of a consolidated body of Welsh primary and secondary legislation;
- R.61 ~~We recommend that~~ As an example of the liaison we are suggesting elsewhere between UK Ministers and the National Assembly for Wales, there should be a periodic report by the UK Government in consultation with the Welsh Government to Parliament and to the Assembly on how access to justice is

improving in Wales. There should be regular dialogue between the Lord Chief Justice of England and Wales and Welsh Ministers on the administration of justice in Wales; [and](#)

R.62 Since the courts will increasingly need to deal with laws made in Wales and applying only in Wales, ~~it is possible that, in due course, a separate Welsh jurisdiction in the sense of devolution of separate devolved courts and judiciary may develop if there is a consensus at the time, but for the time being we are recommending that distinctive Welsh provision in the court system should be strengthened in the~~[an the](#) administrative ways we have proposed. ~~form of a separate jurisdiction is likely to evolve. If there is sufficient support across Wales in the future, a legislatively devolved court service could be considered and we recommend that the two Governments review the case for this within the next ten years.~~

Conclusions

7.4.37 ~~There is no consensus at the present time for devolving the whole of the justice system.~~

7.4.38 ~~However following the devolution of policing there is a case for devolving the youth justice, probation and prison services.~~

7.4.39 ~~There is also a case for the administrative devolution of the courts and judiciary. In the longer term there may be a case for legislative devolution as the volume of Welsh law builds up.~~

7.4.40 ~~We would expect a debate to develop about how far a distinctive Welsh legal system might develop over time.~~

7.5 CIVIL CONTINGENCIES

Current position

7.5.1 Although civil protection and emergency powers are not in themselves devolved, the role of the Welsh Government in co-ordinating civil protection activity in Wales has evolved. For example, it now co-ordinates cross-cutting activities and the work undertaken by Local Resilience Forums.

Box 7.9: Evidence on Civil Contingencies

The UK Government said: *‘The respective roles of devolved and non-devolved bodies in the response phase of an emergency may not always be clear in advance. Clarity of roles and responsibilities is important as is the ability to work together in planning for emergencies and to build, as far as possible, on day-to-day arrangements in the response phase. While the Government believes that no major change is necessary, understanding of how these arrangements might work better in practice would be helpful.’*

The Welsh Government said: *‘The Welsh Government has very limited formal powers in respect of civil contingencies, although it exercises a de facto role of leadership and*

co-ordination. A recent Wales Audit Office report on 'Civil Emergencies in Wales' concluded that 'the Welsh Government's remit for routine leadership and coordination of civil contingencies is particularly unclear. In addition, the expectation that the Welsh Government will routinely provide some leadership to the organisations that are accountable for civil contingencies is also potentially confusing, because the Civil Contingencies Act 2004 does not appear to empower the Welsh Government in this way'. We believe that transfer of the Ministerial functions in Part 1 of the Civil Contingencies Act 2004, with full transfer of the necessary resources, would recognise the Welsh Ministers' de facto role and clarify accountability.'

Assessment

- 7.5.2 In the light of the evidence of the two Governments we suggest that the two Governments should ensure that there is a clear understanding of their respective roles, including any agreed transfer of executive powers if necessary to ensure effective resilience.

Recommendation

- R.63 ~~we recommend that~~ the two Governments should ensure that there is a clear understanding of their ~~ir~~ respective roles ~~of the two Governments~~ in relation to civil contingencies and emergencies, including any agreed transfer of executive powers if necessary to ensure effective resilience.

7.6 LORDS LIEUTENANT

Current position

- 7.6.1 Lords Lieutenant represent the Crown in each of the counties of the United Kingdom, and are important to in the civic life of Wales. They are appointed by the monarch on the advice of the Prime Minister. The appointment of Lords Lieutenant is a non-devolved matter. In Wales, the First Minister decides a recommended individual and then asks the Secretary of State for Wales to commend to the Prime Minister to make the recommendation to the Queen. (footnote to https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/80177/Protocol_for_Appointment_Process_of_Lord-Lieutenants-July-09.pdf)

Box 7.10: Evidence on Lords Lieutenant

The Welsh Government said: 'There is also the question of the responsibility for recommending the appointments of Lord Lieutenants. Currently, this is a UK Government function, although the administrative work in relation to these appointments, and to Lord Lieutenants' budgets, is undertaken by Welsh Government officials. These arrangements appear to the Welsh Government to be outdated now that the First Minister of Wales is both a Crown appointee and Privy Counsellor, able

to make recommendations to Her Majesty in his own right.'

Assessment

- 7.6.2 In Scotland, the First Minister's recommendation is conveyed directly to the Prime Minister to make to the Queen. There seems to be no clear reason why Wales has an additional step.
- 7.6.3 We suggest there is a case for greater transparency in the appointment process, with recommendations for appointments being devolved while continuing to agreedbe agreed by the two Governments.

Recommendation

- R.64 ~~we recommend that~~ Ithe First Minister should be able to commend any recommendation for a Lord Lieutenantcy direct to the Prime Ministerresponsibility for recommending the appointments of Lords Lieutenant- should be formally agreed between the two Governments;

7.7 EQUAL OPPORTUNITIES

Current position

- 7.7.1 Equality ~~[of opportunity]~~ is largely non-devolved. The Equality Act 2010 provides a comprehensive legal framework in relation to discrimination on the basis of specified protected characteristics. There are a few exceptions to the non-devolved nature of the Equality Act:
- the power for Welsh Ministers to prescribe specific equality duties for public bodies in Wales ~~{in devolved public services. The equality duty comprises a General Duty which applies equally across Great Britain, and specific duties (regulations) which areapply to devolved}; services; and~~
 - ~~and~~ the socio-economic duty in the devolved public sector which requires public authorities to have due regard to reducing the inequalities of outcome from socio-economic disadvantage.

Box 7.11: Evidence on Equal Opportunities

The UK Government said: 'We have announced our intention to repeal this duty (which has never been commenced) in respect of GB-wide and English authorities. We are working with the Welsh Government to agree an approach which allows Wales to commence the duty for Welsh bodies (as specified in the Equality Act 2010).'

The Welsh Government said: 'For purely pragmatic reasons, it is not possible for the Welsh Government to argue 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. This is impractical in resourcing terms. Devolved competence should however be strengthened or clarified, by way of

appropriately drafted Exceptions to the Equality reservation.'

The view of the Equal and Human Rights Commission was: *'Three recommendations are made for consideration by the Commission on Devolution. These are: The National Assembly 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. The National Assembly should be given competence to strengthen its relationship with the EHRC.'*

[The other Commissioners said:...]

Assessment

7.7.2 The recent Commission on a Bill of Rights noted the distinctive approach towards human rights taken by the National Assembly and Welsh Government, including the development of a system of rights protection in Wales noting:

7.7.3 *"We would want strongly to support the right of the devolved administrations and legislatures, in their areas of competence, to introduce additional rights if, but only if, they thought it right to do so."*

7.7.4 It also noted general levels of satisfaction with the Human Rights Act in Wales:

7.7.5 *"In general, there was satisfaction with the Human Rights Act and the current system of rights protection developed by the Welsh Government and Assembly within its devolved competence under the Government of Wales Act 2006. This included legislation such as the Welsh Language (Wales) Measure 2011 and the Rights of Children and Young Persons (Wales) Measure 2011. As a result, it was suggested that these and other policy areas were now a matter for the devolved institutions in Wales and not issues which should figure in any discussion on a UK Bill of Rights. Concern was also expressed that if a UK Bill of Rights contained justiciable provisions that touched on devolved areas of competence, such as language, they could disturb the delicate balancing which had been achieved in Wales through instruments such as the Welsh Language Measure."*

7.7.6 In the light of the above evidence, we support the principle that the Welsh Government should have powers over rights in devolved areas of policy and the clarification of powers sought by the Welsh Government.

Recommendation

R.65 On equal opportunities:

- a. ~~we recommend that~~ Welsh Ministers should continue to have powers over rights in devolved areas of policy, and ~~that~~ consideration should be given to extending these executive powers to legislative competence in the context of a reserved powers model
- b. ~~this should~~; including the existing power to introduce specific equality duties for the Welsh devolved public sector; powers over the socio-economic duty in the devolved public sector which requires public authorities to have due regard to reducing the inequalities of outcome from socio-economic disadvantage; accountability for the Equality and Human Rights Commission in devolved areas; and powers over positive discrimination in the devolved public sector.

7.8 WELSH LANGUAGE

Current position

7.8.1 Legislative competence over the Welsh language is devolved to the National Assembly. This means that the National Assembly can legislate in relation to the Welsh language, other than in the specific case of the use of the Welsh language in courts (or areas such as broadcasting that are exemptions from the Assembly's competence under the 2006 Act). The Welsh Language Act 1993 sets out that the Welsh language is treated on the basis of equality in the administration of justice in Wales, and practice directions and other guidance developed by judiciary in Wales ensure that Civil, Family and Criminal Courts apply the principles of the Act in practice. The Judicial College is working with HM Courts and Tribunal Service's Welsh Language Unit to provide training in Welsh so as to broaden the availability of appropriately trained Welsh-speaking judiciary.

Box 7.12: Evidence on the Welsh Language

The Welsh Language Commissioner said: *'The Welsh Language Commissioner is of the opinion that any further amendments to the Welsh constitution should contain a clear statement on the face of the legislation, confirming that Welsh is one of the official languages in Wales, and that it has official status. We request that the Commission on Devolution in Wales reviews the British Legislation which currently treats the Welsh language less favourably than the English language, and considers how the situation could be rectified to ensure justice for Welsh speakers.'*

Assessment

7.8.2 In the light of the evidence we suggest that the UK Government and Welsh Government should keep under review the way in which UK legislation treats the Welsh language ~~in matters such as registrations of births and deaths~~ recommended by the Commissioner.

Recommendation

R.66 ~~we recommend that the scope of devolved legislative competence over the Welsh language should be kept under review, including any restrictions on the use of Welsh more generally such as in relation to registration of births and deaths, cremation, and marriage; we recommend that T~~the Welsh devolution settlement should confirm that Welsh is one of the official languages in Wales. and that in general UK legislation should not treat the Welsh language less favourably than the English language.

7.9 ELECTIONS

Current position

- 7.8.1 General elections to the National Assembly for Wales are a reserved matter. Local authority elections are devolved with two express exceptions. ~~I, these are the local government franchise and electoral registration and administration which are listed in Schedule 7 of the Government of Wales Act 2006. The administration of local government elections in Wales is not devolved.~~
- 7.8.2 In May 2012, the UK Government published a Green Paper on the future electoral arrangements of the National Assembly for Wales, following the Parliamentary Voting Systems and Constituencies Act. The paper put forward proposals in relation to Assembly constituencies, length of term of the National Assembly for Wales, standing as a constituency candidate and regional candidate and multiple mandates (sitting as an MP and AM). These issues are ~~specifically outside seen as beyond~~ the Commission's Terms of Reference and have therefore not been ~~considered included~~ in this report.

Box 7.13: Evidence on Electionselections

The UK Government said: 'National Assembly elections are regulated by secondary legislation which the Secretary of State makes under the GoWA. These provisions are framed so as to ensure that the law relating to Assembly elections is broadly similar to that which applies at Parliamentary and local elections.'

'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.'

The Welsh Government said: 'there should be no Reservation to the UK Parliament of powers in respect of elections to the Assembly, or to Welsh local authorities (save that the Exceptions to the Assembly's existing legislative powers, in respect of the local government franchise and electoral registration, should be confirmed as

matters Reserved).’

The Parliament for Wales Campaign requested that election issues in Wales be placed in the hand of the Assembly Commission.

The Electoral Reform Society Wales said that the voting system for Assembly should be devolved, with a two-thirds threshold. It should remain unicameral and the dual candidacy ban should be ended.

The view of Wales Study Group of the Study of Parliament Group was the Presiding Officer ought to set the date of extraordinary elections (rather than the SoS), and there ought to be a longer post-election period before the Assembly must meet to appoint a Presiding Officer.

[Need to include The Presiding Officer’s evidence]

Assessment

- 7.8.3 ~~In the light of the above evidence we suggest the following:~~
- 7.8.4 ~~m~~Major changes, for example those eg as discussed in the ~~recent~~ Wales Office’s Green Paper are beyond our terms of reference.
- 7.8.5 ~~h~~However we suggest some detailed changes to Assembly elections, including ~~devolving to the Presiding Officer powers in GoWA for varying the date of elections, and~~ devolving to the Welsh Government powers in relation to the conduct Order.
- 7.8.6 ~~w~~We also suggest changes to local government elections, including devolving to the Welsh Government electoral administration including rules for the conduct of elections.
- 7.8.7 ~~t~~There is no substantial evidence to support the devolution of the electoral franchise.

Recommendation

- R.65 ~~we recommend devolving to the Welsh Government~~ powers in relation to the conduct Order should be devolved to the Welsh Government, so aligning the administration of devolved elections with Scotland; and devolving to the Welsh Government local authority electoral administration including rules for the conduct of elections. ~~We also recommend devolving to the Presiding Officer powers in the Government of Wales Act for varying the date of devolved elections if the Assembly resolves that it should be dissolved.~~

7.9 CONCLUSIONS

Policing

- 7.9.1 Most although not all of the evidence we have received has supported the devolution of policing in line with the devolution of other public services in Wales. Devolution would create a better alignment between policies for

tackling crime and the causes of crime; would bring accountability for policy and funding into alignment; and would facilitate policing policies better attuned to the circumstances of Wales.

7.9.2 Policing should therefore be devolved although certain functions including those of the National Crime Agency should be excluded.

7.9.3 Provided devolution is carried out in a pragmatic and flexible way, we would not expect there to be substantial additional costs, and devolution would open up the potential for savings to be made and for policing priorities in Wales to be more closely aligned with the wishes of the Welsh public. We think that the additional costs, while not insignificant, should be manageable provided devolution is designed in a cost effective way.

Justice

7.9.4 There is no consensus at the present time for devolving the whole of the justice system.

7.9.5 However the youth justice system should be devolved. Following the devolution of policing, there is a case for reviewing whether to devolve probation and prison services.

7.9.6 There is also a case for the administrative devolution of the courts and judiciary. In the longer term, there may be a case for legislative devolution as the volume of Welsh law builds up if there is a consensus in favour.

7.9.7 We would expect a debate to develop about how far a distinctive Welsh legal system might develop over time.

Other constitutional matters

7.9.8 We make a number of recommendations for improving the devolution settlement in relation to civil contingencies, appointment of Lords Lieutenant, equal opportunities, the Welsh language, and elections.

7.9.9 In the next chapter, we consider the role of the National Assembly and inter-parliamentary relations.