

## **Brief for Paul Silk's meeting with the Secretary of State**

### **Objective**

- to explain the main recommendations of the report, and how we have met our remit.

### **Speaking note**

#### Introduction

- welcome the opportunity to brief you on our report. Will let you have a copy of the report when available in the week before publication on 3 March. Grateful to you and your officials for the evidence which you have provided
- we have consulted widely both in Wales and the rest of the UK and our report is very much driven by the evidence which we have received
- as in Part 1 we have based our recommendations on a clear set of principles, balancing the need to make decisions as close to the people as possible with retaining the economic, fiscal and social union benefits, creating a stronger Wales and UK
- we have been mindful of the need for wide support. The opinion poll and other evidence suggests that there is little demand for powers to go back to Westminster but support for further devolution of powers
- but we have concluded that a majority of the powers are in the right place; our recommendations would modify but not radically increase the scope of the devolved Welsh budget.
- report was fully agreed.

#### Reserved powers model

- we received a great deal of evidence supporting replacing the conferred powers model with a reserved powers model, which we did not think we could ignore – political parties and civil society groups appear to have taken the opportunity this Commission presented to make recommendations for this change.
- We set out fully in our report the arguments in favour of each and we recognise the position of the UK Government.
- We heard [from Charlie Jeffrey, in consultation with his colleagues overseas] that the UK was internationally unique in having different models of devolution within a single union. We find it difficult to see in principle why Wales should have a different model to Scotland and Northern Ireland – and both Scotland and Northern Ireland colleagues we met were satisfied with their model and rather disparaging about Wales's.
- and moving to that model would also provide an opportunity to simplify it. An argument we heard was that Schedule 7 needed a fairly substantial revision, having been implemented far sooner than expected – and that 'tinkering' with conferred powers would be inadequate. The opportunity to simplify demanded of the settlement is more likely with changing the model.

- as the list of conferred powers is long, complex and growing, the case for a shorter reserved powers model becomes stronger – rather than illustrations of conferred areas, exceptions (that are specific to subjects yet cross-cutting) and exceptions to exceptions, there would only be reservations and exceptions within them – this seems simpler.
- but changing the model does not mean devolving the legal system as in Scotland and Northern Ireland (evidence suggested that the aspects of law that required reserving could be clearly defined – as they were in the Scotland Act 1978). It would not itself increase the powers of the Assembly. In many ways the issues are more technical than political. It is not the panacea that some seem to think and we acknowledge that point.
- it would also provide the opportunity to align legislative and executive powers better and transfer pre commencement Minister of the Crown functions. The present settlement is subject to more uncertainty in knowing where powers lie than in Scotland and Wales
- we recognise that although the Scottish model provides a useful example for drafters of a Welsh model to follow there would need to be a significant amount of detailed discussion in drafting a new model for Wales, and our timetable for implementation allows for this
- we ourselves have not provided a template, although we refer to some useful ideas from the evidence of the Presiding Officer.

#### Areas where no changes in powers are proposed

- we are not proposing changes in a majority of areas. The powers which are currently devolved should remain so. The majority of powers currently held by HMG should remain so including the constitution, foreign affairs, defence, immigration, economic powers and social security.

#### Areas where changes in powers are proposed

- we are proposing devolving powers in transport, broadcasting, energy and water, policing and justice, and some other specific areas such as teachers pay
- but we have been careful in our recommendations. For example, broadcasting and energy regulation are unaffected. Justice is phased and subject to further review. Alignment of the water boundary is recommended but subject to more work on the details. Policing devolution is limited eg excludes the National Crime Agency.
- on broadcasting, we recognise the advantages of a single UK regulatory system. But we thought it anomalous that the responsibility for directly funding S4C was not transferred to the Welsh Government (the equivalent funding is devolved in Scotland, not made by DCMS). On the BBC, we acknowledge their dominant role in Welsh broadcasting, and suggest how Welsh views could be better represented. We do not suggest fundamental changes to the BBC's accountability. We suggest that there could be some arrangements whereby

public sector broadcasters make reports to the Assembly – this is not making them fully accountable to the Assembly.

#### Intergovernmental and interparliamentary relations

- we make a number of recommendations for improving intergovernmental and interparliamentary relations building on the existing foundations. Much of this is administrative and hopefully relatively uncontentious. We recognise the important role of the Wales Office and recommend a Welsh Intergovernmental Committee to foster good relations between the two Governments
- in some key areas such as the economy, health and social security we do not recommend a change in powers but improved working across the border
- we also recommend improved data, and audit. The paucity of available data and ability to compare performance in Wales with elsewhere was raised with us by opposition backbenchers: we believe our recommendations could support them and allow the public to be better informed.

#### The capacity of the Assembly and Welsh public sector

- we recognise the need to strengthen the Assembly's scrutiny of the executive to improve performance
- this includes the case for a larger Assembly without increasing the overall political representation in Wales, although we do not set a figure and recognise that the electoral system is beyond our remit – we consider the wider context of the PVSC Act and the Williams Commission.
- as an independent Commission, we felt beholden to raise the issue of the Assembly's size. While we mention that there could be some work done to make proceedings more efficient, we acknowledge that potential scrutiny improvements is limited – it would be stretching the same capacity further. Ultimately, we believe increasing the number of backbenchers would generate greater specialism, alternative voices and opposing viewpoints. This would help better hold the Welsh Government to account.
- we also recommend strengthening the capacity of the Welsh public sector, but without increasing its size and within a continued GB wide civil service.

#### Role of the Secretary of State

- we make a number of suggestions for how the Secretary of State's important role can be strengthened and used most effectively. For example, we assume the SoS will take a lead role in the Welsh Intergovernmental Committee we propose.
- We also suggest that the important consultation and engagement over the UK's legislative programme could be improved (and the appearance before the Assembly could be more productive).
- We also make some suggestions for how the existing intervention powers of the Secretary of State, particularly in relation to water, could be based on an agreed protocol – to ensure when the function is deployed, it is not misconceived as political interference.

## Implementation

- we envisage implementation in three phases : immediate for administrative changes; post election for a new Bill; and within ten years for further justice reviews
- for example, in advance of the General Election, the Welsh Intergovernmental Committee could be established, and preparation of a reserved powers schedule. There is also work to be done on ensuring data is comparable, and to develop a protocol on water.
- we do not recommend a further referendum but proposals to change legislation would be included in party manifestos.

## Overall impact

- we see this report as bringing long term stability, enabling Wales to focus on how powers are used not where they lie
- it will make for improved policy coherence and hence policy making in key area such as improving transport, more effective management of natural resources and improving access to justice, benefiting households and business
- this is an agreed report, which we expect will be widely supported.

## Defensives

Q. More than just modifications?

A. Changing the form of model would represent a significant modification but is essentially about how powers are listed in legislation rather than a fundamental shift in powers. And in two of the bigger areas which we recommend for devolution, police and rail, much of the funding is already devolved.

Q. No chance of consensus on increase in AMs?

A. This is in the context of reduced overall political representation. And the rest of the recommendations are not dependent on this one recommendation.

Q. Cost?

A. We have avoided commitments to big new costs such as a Welsh women's prison and police college. So it is affordable with a fair transfer of funding as is normal when powers transfer. Indeed there may be scope for savings.

Q. Biased towards WG evidence and against HMG evidence?

A. The report has been informed by all the evidence, including from the two Governments. All the Commissioners have made a joint independent assessment, not simply reflecting the views of any one party.

