

## JUSTICE SYSTEM

- a. The justice system is a shorthand term for something very complex
- b. The over-riding principle of our recommendations is that access to justice is paramount and that therefore the justice system should be brought as closely as possible to the community it serves
- c. Criminal justice should be distinguished from civil justice
- d. 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
- e. Civil justice is the way by which disputes between persons are determined. It is dependent partly on statute, but also on principles such as tort. Examples are family law and the various aspects of commercial law
- f. There is also public law and administrative justice, governing the way in which public bodies work
- g. 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, provided this is consistent with the principle of local access to justice enunciated in (b).
- h. On criminal justice, we believe that the NAW should have responsibility in the areas that are closest to the community – reflecting the principle in (b)
- i. So we have argued for the devolution of policing, while ensuring that there remains co-operation in dealing with serious crime
- j. We also believe the treatment and rehabilitation of youth offenders should be exclusively devolved to Welsh Ministers;
- k. In due course, the treatment and rehabilitation of adult offenders in the community should also be devolved to the National Assembly for Wales,
- l. It will be logical then to see the devolution of responsibility for prisons, though we recognise that there will need to be cross border cooperation, and that serious offenders may need to be dealt with on a Wales and England basis. We recognise the practical difficulties in this area and suggest a feasibility assessment as a first step. Whatever the results of this, we propose that a formal mechanism be established for Welsh Ministers to contribute to policy development on adult offender management
- m. Prosecution of offenders is not just a matter for the CPS, but once policing has been devolved, the case for devolving responsibility for other aspects of the prosecution of offenders should be considered, including the CPS;

- n. So far as the courts are concerned, 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
- o. 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)
- p. 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.
- q. 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
- r. The divisions of the Appeal Court should continue to sit in Wales on a regular basis to hear cases that arise in Wales.
- s. 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
- t. Welsh-domiciled defendants, appellants or plaintiffs who wish to use the Welsh language in court proceedings should be able to do so, wherever the case is heard.
- u. It will be necessary to ensure that there are enough judges able to conduct hearings at all levels in Welsh
- v. Some Wales only laws already carry criminal penalties, and our proposals will allow the creation of others. The criminal law has been devolved in Scotland and Northern Ireland. However, we do not recommend the devolution of the criminal law of England and Wales generally so that the law of theft or of offences against the person will remain the same in England and Wales. But we expect that a wider debate on these issues will emerge over time
- w. It will be important to ensure that the reserved powers model does not inadvertently remove criminal law powers from the NAW [*issue will also need to be mentioned elsewhere*]
- x. The NAW already has wide legislative powers in the civil law area, but it will be important to protect the single economic market by ensuring that fundamental principles of civil law remain the same in Wales as in England – this includes contract and tort.
- y. Other areas of civil and administrative law and procedure should remain the same as in England, including matrimonial, inheritance and property law
- z. Again, it will be important to ensure that the reserved powers model does not inadvertently remove powers from the NAW
- aa. There should be a judge on the UK Supreme Court with particular knowledge and understanding of the distinct requirements of Wales
- bb. Welsh Ministers should continue to have executive competence on tribunals in devolved areas of policy; and there should be clarity and coherence in the rela-

- tionship between devolved and non devolved tribunals; the process of appointment, training and terms and conditions of employment should be consistent
- cc.* 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
  - dd.* Welsh Ministers should be able to propose law reform projects to the Law Commission on a similar basis to UK Government Ministers
  - ee.* There should be improved access to all legislation in areas of devolved powers through publication of a consolidated body of legislation
  - ff.* As an example of the liaison we are suggesting elsewhere between UK Ministers and the NAW, there should be a periodic report by the Lord Chancellor to the Assembly on how access to justice is improving in Wales.
  - gg.* There should be regular dialogue between the Lord Chief Justice of England and Wales and Welsh Ministers on the administration of justice in Wales
  - hh.* We have concentrated on the administration of justice since 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 courts and judiciary may develop, but for the time being we are recommending that distinctive Welsh provision in the court system should be strengthened in the ways we have proposed.