



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



Interim report by The Independent Commission on the **Constitutional Future of Wales**

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Interim Report: Foreword by the Co-chairs

We are pleased to present our interim report. It provides an account of the first phase of our inquiry to end November 2022, and includes work completed and work in progress.

This interim report has been written in a period of unprecedented turbulence in the governance and politics of the UK, and at a time when all the citizens of the UK are faced by significant economic challenges. We have been given a sharp reminder that the UK's unwritten constitution does not guarantee stability or good governance, with significant tensions between the executive and Parliament and between the government and the courts, as well as increasingly difficult relations between the UK Government and the devolved governments.

More than ever, it is clear that the challenges with the way Wales is governed can only be addressed by acknowledging the inter-dependence with wider constitutional issues in the UK. Even if we in Wales wanted to put our collective heads in the sand and dismiss issues of governance as a niche concern, we cannot ignore the existential challenges to the United Kingdom as currently constituted from developments in Scotland and Northern Ireland.

We therefore believe that our work is timely and relevant, even if, at this stage, we have more questions than answers. We are an independent Commission, with a diverse group of members, united in our commitment to approaching our task objectively and dispassionately, with our focus on the interests of the people of Wales. Through our expert panel, we have drawn on additional constitutional, legal, financial and policy expertise.

This first phase has concentrated on gathering evidence on how Welsh governance and democracy currently work, and on starting our conversation with the people of Wales about their priorities for the governance of their country. Their views are front and centre in our inquiry; we believe they should be decisive in determining how our country should be governed.

In this report we set out the action we have taken through the national conversation to engage the public, and our plans to expand this in the second phase of our work next year. We summarise the evidence we have received so far, and our initial findings based on this evidence.

At this interim stage, the following issues are already clear to us:

- Devolution was a major step forward for Welsh democracy, but the current settlement has been eroded by decisions of recent UK Governments particularly in the context of Brexit. The status quo is not a reliable or sustainable basis for the governance of Wales in the future.
- The UK's unwritten constitution takes for granted the unfettered sovereignty of the Westminster Parliament. This means that the ability of the people of Wales, and their elected representatives, to determine how they should be governed is severely constrained. Within the UK Parliament, the Welsh Members will always be a small minority, with the result that the particular concerns of Wales will struggle to be heard;
- The UK is one of the most centralised economies in Western Europe, within which Wales has not prospered over a long period. At the same time, the prospects for our economy outside the UK are highly uncertain;

- Whether Wales should remain part of the UK, on whatever constitutional model, begs a crucial question: what sort of UK would work in the interests of the people of Wales – and is a reformed UK achievable?

Politically and culturally, Wales is distinct: for more than 100 years, Welsh Labour has achieved the largest share of the vote in every General and Assembly/Senedd election, and the broad centre-left (including the Liberals/ Liberal Democrats, Plaid Cymru and the Green Party) have rarely won less than 60% of the popular vote.

Yet for 43 of the last 70 years, the United Kingdom has had centre right governments with comfortable majorities and, as has been clear in the last few years, without the constitutional checks and balances which exist in most Western democracies. Faced by this history, it is understandable that many question whether constitutional reform within the UK can achieve the change they consider necessary for Wales to prosper.

Our work has led us to conclude that there are three viable future constitutional options for Wales: entrenched devolution, federal structures and independence. Each presents opportunities and challenges, and our final chapter sets out the key questions that need to be addressed on each one.

Thus in the case of entrenched devolution, the question is whether entrenchment is achievable without rethinking the prevailing understanding of Parliamentary sovereignty (which means that a future Parliament could repeal any entrenching measures).

In the case of federal structures, the question is how could a UK-wide federal structure avoid domination by England, and how could England's agreement be secured for arrangements that would constrain the powers it currently enjoys.

In the case of independence, it is necessary to ask how an independent Wales would guarantee fiscal stability and viability (and how challenges such as borders and currency would be met).

We will continue our efforts to stimulate a balanced body of evidence, and through our national conversation, we will be proactive in seeking to hear many different perspectives. We want to hear the broadest range of views, including from supporters of the status quo. Despite our invitations, to date we have received scant evidence from this group, although opinion polls suggest a significant proportion of the Welsh electorate do not see the need for a significant increase in the powers exercised by the Senedd and the Welsh Government.

We wish to encourage those who have not yet responded to us, whatever their views, to contact us through any of the following channels:

ConstitutionCommission@gov.wales

Twitter: [@Comisiwn](https://twitter.com/Comisiwn)

Instagram: [@Comisiwn](https://www.instagram.com/Comisiwn)

We now look forward to continuing our conversation with the people of Wales, their elected representatives and civic society, in the next stage of our work. Our plans for next year are set out in the final chapter of the report.

In our final report we will present our evaluation of the constitutional options and how each might further the social and economic well-being of Wales.

**Professor Laura McAllister and
The Rt. Revd. and Rt. Hon. Dr Rowan Williams**

Executive Summary

Background

The Welsh Government established the Independent Commission on the Constitutional Future of Wales in November 2021. Our Co-chairs are Professor Laura McAllister and Dr Rowan Williams, with nine Commissioners who come from diverse backgrounds and perspectives, some linked to a political party, others not.

This is our interim report, covering what we have learnt in the first phase of our work to November 2022, and looking ahead to our plans for the second phase in 2023.

The objectives set by the Welsh Government (see Appendix 2) are:

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

Values for Strengthening Welsh Democracy

Our assessment of these options will be based on our values. We endorse the values of the Silk Commission, the Nolan Principles, and the Well-being of Future Generations Act, which are widely recognised in Welsh public life. Building on these, we have identified the following as particularly relevant to our inquiry:

- Agency
- Equality and Inclusion
- Accountability
- Subsidiarity

Citizens' Perspectives

We launched our online consultation *Dweud eich Dweud: Have your Say*, on 31 March 2022 to give us an early insight into citizens' perspectives on governance.

There were some common themes in the responses. The need for transparent and accountable government at all levels came up repeatedly. Respondents expressed frustration with the status quo and their ability to influence decisions; often they did not know how Welsh governance works, or how they can hold politicians to account, apart from through the ballot box. Many responses favoured more direct democracy, with more powers to make decisions held locally. Many expressed a desire for a more comprehensible and less complex model of government.

While there was common ground, there were also distinct differences in values and priorities between respondents who favour more devolution, and those who favour a reduction in devolved powers.

Elected Representatives and Civic Society

We have sought a diversity of views from across the political spectrum and will continue to seek as broad a range of views as possible. At this interim stage, we have heard more voices which are concerned about current arrangements and believe that change is needed, than those who believe the status quo is working well.

Common themes raised by those who support maintaining current arrangements

The UK Government Ministers and Conservative ex-Ministers we met argued the devolution arrangements are, overall, working well. We heard evidence that Brexit has presented new challenges for relationships between governments, and that trust in the UK Government could be restored if there were to be a renewed commitment to partnership with the devolved governments.

Common themes raised by those who support change

Overwhelmingly, those who presented evidence to us were in favour of devolving more powers to Wales, to a greater or lesser degree. Several organisations who deliver services raised the difficulties presented by the complex overlap between devolved and reserved powers. Some who advocated further devolution, or a form of federalism, saw this as necessary to preserve the Union.

Devolution Under Pressure

The creation of a Welsh legislature and executive was a major step forward for Welsh democracy and has made possible laws and policies tailored to the needs of Wales.

But at this interim stage it is already clear to us that devolution is under significant pressure, as a result of Brexit and other factors.

We identify ten immediate pressure points as follows:

1. **Instability of the devolution settlement:**

recent developments have shown the vulnerability of the devolved institutions to unilateral decisions by the UK Government, to which they have no meaningful redress. This undermines public confidence in the UK Government's approach to Wales and works against constructive relations between governments.

2. **Fragility of intergovernmental relations:**

the machinery for inter-governmental relations operates at the discretion of the UK Government, and its reduced engagement in recent years has coincided with its willingness to override conventions. This enables unilateral decision-making which does not contribute to the best outcomes for citizens.

3. **Absence of leadership on the Union:**

the UK Government in recent years has not provided the consistent leadership needed for effective collaboration with the devolved governments. Its assumption seems to be that the interests of the Union, particularly after Brexit, require devolution to be kept in check, and even (from the viewpoint of many commentators) rolled back.

4. **Constraints on policy and delivery at the boundaries of the settlement:**

apart from tax varying powers, the scope of devolved powers has remained largely in line with the executive powers of the pre-devolution Wales Office. The UK Government has not engaged with proposals to extend devolution, in spite of recommendations based on practical experience of front line delivery.

5. **Problems with the system for financing devolution:**

the objective of achieving an evidence based, independently verified and transparent process for allocating resources between the nations and regions of the UK, remains essential and should underpin any proposals for constitutional change.

6. **Restrictive budget management:**

the ability of the Welsh Government to manage its budget for the long term is constrained by detailed Treasury controls. It is hard to see why these are needed given its accountability to the Senedd for its stewardship of public expenditure.

7. **Strains on representative democracy:**

respondents to our consultation felt that the current system relies too heavily on indirect mechanisms for the public to influence policy e.g. by voting for parties based on their manifestos, and holding government to account through the ballot box.

8. **Information and accountability deficit:**

the respondents to our consultation lacked confidence in the mechanisms for holding government to account, and some had no knowledge of the mechanisms currently in place.

9. **The economic conundrum:**

the outlook for the Welsh economy within a UK economy which is one of the most unequal in Europe, is highly uncertain. But there is no certainty about the prospects for greater progress under a different constitutional model.

10. **The constitutional conundrum:**

the supremacy of the Westminster Parliament means that any change to the current arrangements must be initiated by the UK Government and agreed by Westminster. Whatever case for change is made, it is open to the UK Government to ignore it.

In the next phase of our work we will explore how to tackle these pressure points, including through options for constitutional change.

Constitutional Futures and Welsh Democracy

We conclude that neither the status quo nor unwinding devolution are viable options for further consideration. In our view there are three viable options for the way forward for Wales. Each raises significant issues on which we will seek further evidence in the next phase of our work.

Three potential ways ahead for Wales:

Entrenched devolution

This option would protect against unilateral changes by the UK Parliament and Government, promote more constructive inter-governmental relations, and provide a more stable foundation for Welsh governance in the future. As part of our consideration of this option, we will review the case for expanding the devolved powers, including in respect of justice and policing. This option could provide greater stability and require minimal change for the rest of the United Kingdom.

Federal structures

This option would involve reform of the constitution of the UK on federal lines, including a separation of the UK Parliament and Government's responsibility for England from their responsibility for the UK, and reform of the second chamber.

In respect of powers held by the Senedd and Welsh Government, we intend to explore two main variants, either of which would be consistent with federal models elsewhere in the world:

- financial responsibility for welfare (pensions, unemployment benefit, disability benefits) is transferred to the Senedd, with responsibility for taxation principally resting with the Senedd (and responsibilities are broadly consistent with those devolved to Scotland and Northern Ireland) and
- welfare remains the responsibility of the United Kingdom Government and Parliament.

Independence

Under this option Wales would become a sovereign country, eligible for full membership of the UN and other international organisations. A range of governance options could become available after Welsh independence, with the agreement of other parts of the UK, including free association and confederation.

Conclusion

This interim report concludes the first phase of our inquiry. It is work in progress, but it is already clear from the evidence that there are significant problems with the way Wales is currently governed. In the second phase next year, we will investigate these issues in more depth and continue the conversation with the people of Wales about how they might be overcome.

Chapter 1

Introduction



This chapter outlines the background and context to our inquiry, sets out the structure of this interim report, and explains how we are approaching our task.

Background

The Welsh Government established the Independent Commission on the Constitutional Future of Wales in November 2021 with the support of Plaid Cymru, as part of the Co-operation Agreement published on 22 November.

The objectives set for us by the Welsh Government (see Appendix 2) are:

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

Our Co-chairs are Professor Laura McAllister and Dr. Rowan Williams.

Our nine Commissioners are:

- Dr. Anwen Elias
- Miguela Gonzalez
- Professor Sir Michael Marmot
- Lauren McEvatt
- Albert Owen
- Philip Rycroft
- Shavanah Taj
- Leanne Wood
- Kirsty Williams

The Commissioners come from diverse backgrounds and perspectives, some linked to a political party, others not. More information on our experience and expertise is in Appendix 1.

We are agreed on our shared purpose: to evaluate the strengths and weaknesses of the current constitutional arrangements; to identify the problems and pressure points that affect their operation to the potential detriment of the people of Wales; and to identify changes that will benefit them. We have sought to approach these questions dispassionately and without any partisan agenda.

Expert Panel

To support our work, the Welsh Government appointed an Expert Panel, whose members are detailed in Appendix 6. The group's role is to provide expert advice and analysis on constitutional, financial and legal issues.

Why another Commission?

It has been said that Wales is a land of commissions. Since the establishment of the National Assembly in 1999, there have been six major reviews of Wales' constitutional arrangements (Richard, Silk 1 and 2, Holtham 1 and 2, and Thomas), and three Acts of Parliament (Government of Wales Act 2006, Wales Act 2014 and Wales Act 2017) replacing nearly all of the founding legislation in the Government of Wales Act 1998.

In the early years it became clear that the structure and powers of the National Assembly for Wales were unworkable and unsustainable. These Commissions were needed to examine the evidence of how the original design of Welsh devolution, as set out in the 1998 Act, was working and advise on how to strengthen Welsh governance from a flawed start.

Some recommendations from previous Commissions, to broaden the devolved powers, have not been carried forward and merit our attention as part of a holistic overview of current arrangements. We did not feel it would be useful for us to consider afresh issues already subjected to detailed expert analysis. This analysis will inform our work on options for the future as discussed in Chapter 8.

Each Commission has made an important contribution to the development of Welsh governance. Our work cuts new ground in three ways:

- our commitment to making the **voice of the people of Wales** central to the debate. The Welsh constitution is largely the product of an elite process, with decisions made by a small number of politicians and officials in Wales and Westminster. From the outset we decided to take a new approach, using multiple engagement routes to ensure that we include people from every part of Wales and from all sections of society.
- the **breadth of our remit**: which includes strengthening Welsh democracy as whole, not just reviewing the division of power between the Senedd and Westminster.

- our focus on **Wales and the wider United Kingdom**. Previous inquiries focused on Wales alone and took the continuation of the UK for granted in a way that is simply not possible today. Our objective is to consider the constitutional options for Wales as part of, or outside of, the UK in the unstable political context in which we find ourselves.

Some argue that people outside politics are not interested in constitutional debate. This has not been our experience. Our first stage of engagement - the *Dweud eich Dweud: Have your Say* online consultation - generated over 2000 responses¹, of which the vast majority were reasoned and thoughtful individual contributions.

This was the first step in the national conversation which we have designed after consulting leading experts on public engagement. In 2022, we held 15 evidence sessions and round tables, five expert workshops and partnered with eleven community groups across Wales. This engagement will continue in 2023. Chapter 3 has more information on the Commission's work programme.

Context

As we write this report, Wales, like the rest of the UK, is in a period of social, economic and environmental crisis. Citizens and businesses are facing high inflation, the impacts of climate change, and a cost-of-living crisis following the unprecedented shocks of the Covid pandemic, the global energy crisis, and Britain's exit from the EU. These factors impact on people's daily lives, making it harder to afford food and housing, and other basic needs.

In historical terms, the standard of living in Wales is high. Many people in Wales live in a way which would be the envy of earlier generations. But the evidence of progress in meeting people's aspirations while protecting the well-being of future generations is mixed:

- the last 20 years have seen increasing employment with reductions in unemployment and economic inactivity², (itself a legacy of the massive economic change of the 1970s and 1980s), but average household incomes in Wales remain lower than most parts of the UK³.

¹ The online consultation remains open for people to share their views with the Commission, responses received by 3 November have been included in this report

² Stats Wales (2022) *Employment rates by UK country/English region and quarter (seasonally adjusted)*

³ ONS (2021) *Regional gross disposable household income, UK: 1997 to 2019*

- There are an estimated 40,000 working-age adults in relative income poverty in Wales despite living in households where everyone worked full-time⁴.
- Child poverty in Wales is high, with 31% of children living in relative poverty after housing costs are considered⁵, and this will undoubtedly get worse in the short term as energy costs increase. The Bevan Foundation has found that households with children, both lone parents and couples with children, were particularly badly affected by increased living costs during the pandemic⁶.
- Wales lags behind England and Northern Ireland in healthy life expectancy, and there has been a notable slowdown in improvements to life expectancy in Wales. Male life expectancy in Wales increased by 2.6 years between 2001-03 and 2010-12. Since 2010-12, improvement has slowed down to 0.2 years. Female life expectancy in Wales increased by 2 years between 2001-03 and 2010-12. Since 2010-12, improvement has slowed down to less than 0.1 years⁷.
- There is a huge disparity in healthy life expectancy between the least and most deprived areas within Wales, with men in the least deprived areas having an extra 13.4 years of healthy life expectancy than men in the most deprived areas. For women, that difference is even larger, at 16.9 years.⁸
- Productivity in Wales in 2020 (both GVA per hour worked and GVA per job filled) was amongst the lowest of any UK country or English region. Productivity in Wales has declined relative to the UK since 1998, largely due to London having the highest productivity of any UK country or English region with an output per hour more than 50% higher than the median region. Scotland and Northern Ireland have made relative improvements in that time⁹.

Although Wales enjoys huge environmental assets, the UK-wide problems of very variable air quality, polluted waterways and coasts, and decreasing biodiversity are all evident¹⁰ and there is increasing evidence of the effects of climate change in the growing intensity of droughts, flooding and heatwaves¹¹.

Against this background, questions about constitutional structures and political culture may seem abstract, even irrelevant. But there is evidence that political stability, combined with good governance, is a crucial factor in generating investment¹² and economic growth¹³. There is also evidence that a stable political system with effective multi-level governance is a factor in economic success, reducing inequality and improving personal well-being¹⁴.

We believe therefore that it is necessary and timely to investigate whether the constitutional structures of Wales within the UK are fit for purpose, and whether alternative constitutional options could provide a more effective underpinning for the prosperity and well-being of the people of Wales.

Having said this, it is important to understand that constitutional structures do not determine political choices, which are legitimately the outcomes of political debate and the decisions made at the ballot box. After all, the same constitutional system in the UK delivered the governments led by Clement Attlee, with its focus on universal services, nationalisation and redistribution of wealth, and led by

4 Welsh Government (2021) *Relative Income Poverty: April 2019- March 2020*

5 Welsh Government (2021) *Relative Income Poverty: April 2019- March 2020*

6 The Bevan Foundation (2021) *Different Experiences of Poverty in Winter 2020*,

7 ONS (2021) *National life tables – life expectancy in the UK: 2018 to 2020*

8 ONS (2022) *Health state life expectancies by national deprivation quintiles, Wales*

9 ONS (2022) *Regional Labour Productivity: 2020*

10 Natural Resources Wales (2020) *The Second State of Natural Resources Report (SoNaRR2020) Assessment of the Achievement of SMNR Aim 1: Stocks of Natural Resources are Safeguarded and Enhanced*,

11 Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), 2019, *The Global Assessment Report on Biodiversity and Ecosystem Services*,

12 Busse, M., Hefeker, C (2007) *Political risk, institutions and foreign direct investment*

13 Hussain, Z. (2014) *Can Political Stability Hurt Economic Growth?* World Bank Blog

14 McCann, P. (2016) *The UK Regional-National Economic Problem: Geography, globalisation and governance*

Margaret Thatcher, with its belief that liberating market forces would improve lives. As the manifestos at the last Senedd election made clear, the priorities of Welsh Governments led by Plaid Cymru or by the Welsh Conservatives would be very different to those of the current Welsh Labour led Government.

State of Welsh democracy

Elections and turnout

Turnout at elections is usually considered a key measure of political engagement in democracy. Turnout at local elections in Wales has declined from 55% in 1973 to 41.8% in 2019¹⁵. Turnout for the Senedd elections are also not encouraging, though slowly increasing. 46.8% of eligible voters voted in the 2021 Senedd elections, up from 45.6% in the 2016 elections¹⁶. Voter turnout in Wales at UK Parliament elections is higher at 66.6% at the 2019 elections¹⁷, down from 68.6% at the 2017 election¹⁸ but higher than the recent modern low of 61.6% in 2001¹⁹.

A comparison of the voter turnout at referendums in the UK demonstrates the variability of turnout:

Turnout in UK referendums 1979-2016

- 2016 [Brexit referendum](#) – 72.2% (UK turnout) 71.7% (Wales turnout)²⁰
- 2014 [Scottish Independence referendum](#) – 84.6% (Scotland only)
- 2011 [Alternative Vote referendum](#) – 42.0% (UK turnout) 41.6% (Wales turnout)²¹
- 2011 [National Assembly for Wales Referendum](#) – 35.6% (Wales only)
- 1998 [Good Friday Agreement referendum](#) – 82% (Northern Ireland only)
- 1997 [Welsh devolution referendum](#) – 50.1% (Wales only)
- 1997 [Scottish devolution referendum](#) – 60.2% (Scotland only)
- 1979 [Welsh devolution referendum](#) – 58.8% (Wales only)
- 1979 [Scottish devolution referendum](#) – 63.3% (Scotland only)

The lowest turnout was for referendums on mostly technical constitutional issues that did not easily demonstrate a direct impact on people's daily lives. The highest turnout was for widely publicised contentious matters that would have a clear impact on the future of both the country and citizens personally. One significant factor is the access that citizens have to information about upcoming elections or referendums and what they are voting for. Many media outlets do not have specific editions for Wales, in the way that some do for Scotland. There are several standalone Scottish newspapers such as the Herald, the Scotsman and the Daily Record, while the only nationally circulated Welsh newspaper is the Western Mail. As a result, issues that purely affect Wales do not get the same media profile and citizens do not get the same level of information, which may be a factor in lower turnout in Wales-only referendums.

15 House of Commons Library Service (2021) [Turnout at Elections](#),

16 Electoral Commission (2021) [Report on the May 2021 elections in Wales](#),

17 UK Parliament (2019) [UK Election Results](#)

18 UK Parliament (2017) [UK Election Results](#)

19 House of Commons Library Service (2001) Research Paper 01/54: General Election Results, 7 June 2001

20 House of Commons Library Service (2016) Briefing Paper Number CBP 7639: European Union Referendum 2016

21 House of Commons Library Service (2011) [Research Paper 11/44: Alternative Vote Referendum Analysis of Results](#)

By the measure of voter turnout alone, Welsh democracy would seem to be in a poor state. But voter turnout is decreasing across the globe²²; low turnout rates are not a uniquely Welsh problem. The reasons why people may choose not to vote are complex, but factors include the closeness of the vote, the perception of the issues at stake, electoral systems, the expenditure on campaigns, levels of political interest and education in the populace, and sense of civic duty²³.

Voter turnout alone, high or low, does not always demonstrate dissatisfaction or disengagement. Over two thirds of people in Wales are satisfied with their local community and 74% are satisfied with their local services and facilities²⁴. There is some tentative evidence of an increase in participation in local democracy in the last year: 34% of people say they have opportunities to participate in making decisions about the running of their local services, compared with 17% in 2019-20. 30% of people say they can influence decisions affecting their local area, compared with 19% in 2018-1925. The National Survey for Wales notes that these are marked increases which may reflect the change in the survey mode or are a result of the pandemic or a combination of both, and further analysis is needed.

Trust and confidence in institutions

This evidence suggests that people are engaged in democracy in Wales. At the UK level opinion polling suggests that trust in politicians and the political system is low. 35% of the UK population stated that they trust the UK Government, and 20% trust political parties.²⁶ Comparable figures for Wales are not available, but there is evidence that the Senedd commands somewhat more confidence than Westminster²⁷.

Information and understanding

It is commonly held that many people in Wales do not understand (or indeed, misunderstand) the way in which power and responsibility are currently distributed between the devolved institutions and Westminster and Whitehall. This is borne out by our first consultation, *Dweud eich Dweud: Have your Say*, the results of which are set out in Chapter 5.

Opinion polling shows that people in Wales are generally willing to express preferences between different constitutional options. In the 2021 St David's Day poll by the BBC and ICM only 5% of those surveyed said 'don't know' when asked about their preference for a governance model for Wales.²⁸

Direct democracy

Participation in elections and responses to opinion polls are not the only methods of political engagement. Some Western democracies (notably Switzerland and some of the states of the United States) have significant elements of direct democracy where popular referendums determine major political issues. Ireland uses deliberative democracy to engage citizens in addressing contentious political issues through its citizens' assembly mechanism. These have been used in some local authorities in Wales: Blaenau Gwent held a citizens' assembly on tackling the climate crisis in 2021, for example²⁹.

We see our remit as including the way political culture and practice might strengthen democracy and participation, as set out in our final chapter.

22 Solijonov, A. (2016) *Voter Turnout Trends around the World*, International Institute for Democracy and Electoral Assistance

23 Solijonov, A. (2016) *Voter Turnout Trends around the World*, International Institute for Democracy and Electoral Assistance

24 Welsh Government statistical release (2022) *National Survey for Wales headline results: April 2021 to March 2022*

25 Welsh Government statistical release (2022) *National Survey for Wales headline results: April 2021 to March 2022*,

26 ONS (2022) *Trust in Government, UK: 2022*

27 Deloitte and Reform, (2021) *The State of the State 2021-22: Towards a new public sector normal*

28 ICM Unlimited (2021) *BBC Wales – St David's Poll 2021*

29 Blaenau Gwent Climate Assembly (2021) *Final Report of the Blaenau Gwent Climate Assembly*

Devolution and democracy

The current devolved governance arrangements were established by the Labour UK Government in 1999. They represented a break with the previous structure, under which most domestic policy for Wales, Scotland and Northern Ireland was determined by Secretaries of State who were members of the UK Government Cabinet and accountable to the Westminster Parliament. The history is set out in more detail in Chapter 4.

The creation of the devolved institutions in 1999 was a major step forward for democracy in Wales, endorsed by referendums in 1997 and 2011. The new arrangements put in place, for the first time, a representative assembly elected by the people of Wales, and later a Welsh government accountable to them for its policies and delivery. This gave new expression to the distinct Welsh polity and identity that had survived five centuries of incorporation into the England and Wales jurisdiction.

Along with the creation of the Scottish Parliament and Government, and the Northern Ireland Assembly and Executive, this structure created three new representative bodies and executives with responsibilities for much policy related to Wales, Scotland and Northern Ireland, but without changing the ultimate sovereignty of the United Kingdom Parliament.

We note in Chapter 7 the positive achievements of devolution: it has enabled policies and laws designed to respond to the needs of Wales, and the partnership model of government described in Chapter 4. The growing Welsh statute book (see Appendix 10) includes far reaching initiatives such as the Well-being of Future Generations Act and social partnership.

Inter-governmental relations

At its inception and subsequently, the UK Government viewed devolution as a question of bespoke arrangements for each territory viewed largely in isolation from each other³⁰. This gave little thought to the implications for the governance of the UK as a political entity, with very few changes implemented at UK Parliament and government level to work within a new framework of devolution. Understanding of devolution in Whitehall has frequently been criticised as lacking³¹.

One consequence of this has been the inadequate development, until the potentially significant reforms introduced earlier this year, of effective machinery for the management of inter-governmental relations between necessarily interdependent administrations within the UK. Although new committees were established in 1999 for this purpose, they quickly fell into disuse, and when pressed again into service after 2007, their operation relied on political goodwill. There was a period of relatively constructive operation under

Prime Minister David Cameron, as we set out in Chapter 4, but this was not sustained. The structure has proved inadequate to deal with the difficulties experienced in recent years, as we discuss in Chapter 7.

In the early years of devolution, the new institutions operated within a relatively benign public expenditure context. In subsequent years, however, they have faced significant challenges arising from the 2008 financial crisis, the UK Government's austerity strategy, the UK's departure from the EU, and Covid. At the time of writing, the cost-of-living crisis seems likely to place severe pressure on the devolved governments and their relationships with the UK Government, as the UK's fiscal situation deteriorates.

Impact of EU Exit

When the UK voted to leave the EU in the 2016 referendum, England and Wales voted to leave, with Scotland and Northern Ireland voting to remain. It became clear that there would be profound and contested implications for the devolution settlements. The outcome prompted the Scottish Government to call for a further referendum on independence for Scotland. In the previous referendum in 2014, 55.3% voted to stay in the UK, with the prospect of staying in the EU given as one reason for voting this way.

30 Institute for Government (2019) *Devolution at 20*

31 The Public Administration and Constitutional Affairs Committee, *Devolution and Exiting the EU: reconciling differences and building strong relationships*, House of Commons Select Committee

In Northern Ireland, the problem of trying to reconcile cross-border trade with Ireland with the terms of the UK's exit from the EU has placed great pressure on the Stormont power-sharing arrangements required by the Good Friday Agreement. The protocol negotiated between the UK Government and the European Commission was rejected by the Democratic Unionist Party, the largest unionist group in the Assembly, and currently the devolved institutions in Northern Ireland are effectively in abeyance.

The UK Government's approach to replacing the EU's legislative and financial frameworks was challenged by devolved governments. In the UK Government's view, the circumstances of EU exit justified their refusing to observe the conventions governing legislative consent, which had been placed on a statutory basis by the 2017 Wales Act and by equivalent legislation for Scotland.

Following the elections to the Northern Ireland Assembly in May 2022 Sinn Fein (a party committed to the unification of Ireland), became the largest party and the DUP refused to enter government until the protocol issue had been resolved to its satisfaction. The 28 October deadline for restoring the institutions passed without reaching agreement. Following consultations with the political parties, the UK Government concluded that early elections to the Northern Ireland Assembly would be unlikely to assist in resolution of

the outstanding issues. New legislation has therefore been introduced giving additional time for formation of a new Northern Ireland Executive. If this continues to prove impossible, Assembly elections are likely to take place in the early months of 2023.

The Scottish Government referred the question of its power to legislate for a second referendum on independence to the Supreme Court. The Court concluded that any Bill providing for a referendum, even one only of a purely advisory character, would be beyond the powers of the Scottish Parliament, as relating to a matter reserved to the UK Parliament. Only if the Scotland Act was amended explicitly authorising the Scottish Parliament, whether temporarily or permanently, to enact such legislation would a referendum therefore be lawful. The present UK Government has made it clear that it will not promote such an amendment.

Impact of the Covid pandemic

The response to the Covid pandemic, at UK and at Wales level, revealed important strengths and challenges in the current governance arrangements. The fact that most of the relevant powers were devolved, meant that inter-governmental relations were ramped up to an unprecedented degree of urgency and frequency of engagement, at both Ministerial and official level.

This inter-governmental working contributed to positive outcomes, including some co-ordinated decision-making and information sharing, and the UK-wide vaccine procurement. But the Welsh Government's calls for greater formality and reliability of communication and engagement were not met. The formal intergovernmental structures were not used, and the devolved governments were dependent on ad hoc contact from the UK Government. Frequently this led to confusion in messages given to the public, which is critical in a pandemic response.

Structure of the report

This is the Commission's interim report; we will present a final report at the conclusion of our work in the coming year.

The structure of this report is as follows:

- **Introduction**
The background to our inquiry and our approach to our task
- **Values**
Our criteria for evaluating future options for change
- **Commission Work Programme**
Ensuring that the voice of the people of Wales is front and centre of our inquiry
- **Governance of Wales in 2022**
History of devolution and outline of governance structures
- **Citizens' Perspectives**
What we have heard from the first phase of the national conversation
- **Elected Representatives and Civic Society**
What we have heard in evidence sessions and round tables
- **Devolution Under Pressure**
Immediate challenges identified to date
- **Constitutional Futures and Welsh Democracy**
Priorities and plans for the second phase of our inquiry

We are grateful to all those who have given of their time to share their views and experience with us to date, and to those who will work with us in the second year of our inquiry.

Race Council Cymru partnered with the African Community Centre and the Chinese in Wales Association

Race Council Cymru engages grassroots Minority Ethnic communities to work together to share information and resources regionally and to bring their voices, lived experience and expertise to Government and key organisations across Wales.

The African Community Centre supports people of African descent to meet socially and participate in promoting African culture in the community. Our centre has become a place where not only African and African Caribbean people can call home but where people from all diverse cultures can find a welcome and a listening ear.

The Chinese in Wales Association aims to deliver services that will make a positive difference to the lives of ethnic Chinese residents in Wales. We are developing better services to meet the changing needs of the Chinese community in Swansea and the surrounding areas and now pan Wales.

Together we have delivered engagements sessions focusing mainly on ethnic minority women, including women who are also minoritised due to being single mothers, disabled, economically disadvantaged, LGBT+ and other factors.

“Being able to use our own language – Cantonese and Mandarin – to explain the questions to them, it lets them express themselves and talk about these issues in their own language...and they have so much to say! The future of Wales really matters to them, to their children and grandchildren. In their own language they can express their true story.”

Yen Yen, Interpreter for the Chinese in Wales engagement event with Race Council Cymru.

“I think the UK Government and the Welsh Government should work together and make something good come out of it. Because me, as a citizen, I’ve benefitted from them both.”

Kemi Kadeso, participant at the engagement activity with the African Community Centre, with Race Council Cymru

“There’s a wide variety of nationalities, and for everybody to put their speech in, it was awesome. It was great!”

Angela, participant at the engagement activity with the African Community Centre, with Race Council Cymru



Values for strengthening Welsh democracy



Commissioners visited The Talking Shop in Cardiff in May 2022. They listened to Democracy Box young co-creators and Talking Shop hosts about how Omidaze are developing these two concepts and using creativity to inform and engage all citizens to increase democratic and cultural participation.

The Talking Shop™ and The Democracy Box™ and all associated content is copyright of Omidaze Productions/Yvonne Murphy

The purpose of this chapter is to consider the values that will form the basis of our assessment of the constitutional options for Wales, and how these options would strengthen Welsh democracy.

Components of Democratic Systems

Our terms of reference require us to identify ways to strengthen Welsh democracy. We understand this to mean all the components of the democratic system, and the way these work in practice.

- Representative institutions: Y Senedd, Westminster Parliament, local authorities
- Accountability mechanisms: scrutiny by elected representatives and citizens
- Transparent decision-making to build trust and enable effective scrutiny
- Participative and deliberative mechanisms for citizen engagement
- An independent judiciary, and access to justice for all citizens
- Access to information through a free press and media

In putting values at the centre of our thinking, we are following the public's lead. More than that, a values-based approach is important because the values that lie behind systems of governance shape the world in which citizens live. Governance is not an abstract concept; it has a direct impact on everyone's lives.

Our Values for Strengthening Democracy

Reflecting on the values expressed by citizens, the values frameworks set out above, and our own experiences in the public sphere we have identified the following values as particularly relevant to our inquiry.

These are:

- **Agency:** the public has the power to influence policies and decisions, through elections, and other mechanisms for participative and deliberative decision-making.
- **Equality and inclusion:** everyone is empowered to participate in the democratic system, and has equal access to public goods and processes; institutions represent all citizens and places equally, and resources are allocated transparently and fairly at every level of government.
- **Accountability:** citizens hold government to account through their elected representatives; they understand and have confidence in accountability mechanisms.
- **Subsidiarity:** decisions should be taken as close to those affected as practically possible.

Agency

Whether people feel a sense of agency within a democracy is related to their understanding of how the system works, their ability to influence the decisions made on their behalf, and whether they trust the institutions involved.

In a well-functioning democracy people might not agree with the decisions of their government, at whatever level, but they will recognise the authority for those decisions deriving from the government's electoral mandate. The message from *Dweud eich Dweud: Have your Say* is that there is an information gap about how decisions are made and how they could be challenged, although this varies by institution.

Equality and inclusion

In considering equality and inclusion there is a grey area between constitutional design and processes, which are within the scope of our inquiry, and political choices such as the distribution of resources, which fall outside our scope.

Therefore, we have decided to focus on the practical workings of the democratic system, and whether it enables everyone to participate on equal terms. *Dweud eich Dweud: Have your Say* tells us that many people feel that

their vote does not count, or that their voice matters only at election time, and they can only respond to what is said in the manifestos. If the manifestos are silent on matters that are important to them, the voting system gives them no real voice. Likewise, membership of a political party might give some the opportunity to influence the policies of elected representatives but does nothing to aid those whose preferred party is out of government, or those who do not feel any party aligns with their views and values.

Accountability

Creating a more directly accountable relationship between the government of Wales and citizens was one of the main objectives of the campaign for a national assembly in the 1990s. Previously, accountability was exercised indirectly through the Westminster Parliament whose MPs had only limited time and inclination to scrutinise Welsh matters.

Accountability for devolved decisions is now exercised directly by elected members in Wales. Ministers in the Welsh Government are subject to scrutiny by 15 Committees of the Senedd, including the Public Accounts Committee, dealing with the efficiency and value for money of government spending, and supported by the Auditor General for Wales.

But the strong message of *Dweud eich Dweud: Have your Say* is that people do not feel that either government is sufficiently

accountable to them. Many respondents to *Dweud eich Dweud: Have your Say* said that they felt disconnected from their elected governments, felt that they are not listened to, and, apart from voting every so often, feel detached from decisions that affect their lives. They lack confidence that the accountability mechanisms available to them, such as voting in elections, will have an impact on the actions of government.

Between elections, many do not see a way to hold politicians to account for their actions. In addition, the lack of media coverage in Wales, especially of local government and the Welsh Government, mean that people have very limited information on the activity and performance of those bodies.

Accountability depends on trust and integrity. The public must be confident that their representatives will follow the recognised standards of conduct in public life. Concern about standards of behaviour, and the need for stronger enforcement of the rules, was one of the main findings of the Citizens' Assembly on Democracy³².

Subsidiarity

The principle that decisions should be taken as closely as possible to the people they affect is widely recognised in Welsh public life and is one of the key arguments for devolution. The principle applies to the relationship between central government (including devolved

government) and local authorities, and the relationship between local authorities and local communities.

The principle of subsidiarity is usually qualified by the recognition that while power should be exercised at the smallest possible scale, this must be balanced by the needs of effective administration. This balance is at the heart of debates about further devolution within the UK and within Wales and will form an important part of our consideration.

Values Expressed by Citizens

Values were a strong theme in the responses to our *Dweud eich Dweud: Have your Say* consultation and in the UK wide Citizens' Assembly on Democracy.

Dweud eich Dweud: Have your Say

The responses we received to *Dweud eich Dweud: Have your Say* suggested that people's views on Welsh governance are strongly linked to their values and political affiliation. There was a polarisation of views on political priorities for government, depending on their constitutional preference. Those who support independence emphasised fairness, tackling poverty, increasing opportunities, the wellbeing of all, inclusion, sustainability and the green economy. Those who oppose devolution prioritised government efficiency, effective delivery of public services such as health

and education, value for public money, and economic growth.

At the same time, there was significant common ground on both accountability and agency across constitutional preferences. Many respondents stressed the importance of being able to hold their elected representatives accountable and of having the agency to influence the decisions of government. For many, the perceived lack of agency and lack of accountability under the current system were the two main reasons for seeking a change of governance, even if they had different views about what form of governance would be an improvement.

As explained in Chapter 5, it is likely that this consultation captures the opinions of those who hold the strongest views, at either end of the spectrum of constitutional options, and may not be wholly representative of the values of the people of Wales. During the next stages of the national conversation, we will also seek to understand the values of those in the middle ground of the debate.

Citizens' Assembly on Democracy in the UK

In 2021 the Constitution Unit at University College London held a Citizens Assembly on how the people of the UK want our democracy to work. Its 67 members – recruited to be representative of the UK adult population – met online over six weekends in the final

months of 2021 to learn from each other and from a diverse array of experts, to reflect and deliberate, and to come to conclusions. The representativeness of the cohort and the depth of the consideration give weight to their recommendations.

The report of the Citizens Assembly on Democracy in the UK³³ published in April 2022 focused on three aspects of the democratic system: the balance of power between government and (the Westminster) parliament; the role of the public in democratic processes; and ways of upholding basic rights and standards.

The report made 51 recommendations. In their conclusions, Assembly members highlighted the following points:

- They want their elected representatives to act honestly and selflessly. They believe that better regulation is needed to achieve this.
- They do not want power to be concentrated too far within the executive. They think that parliament should play a stronger role in scrutinising the actions of government. They want the courts to be able to enforce human rights and basic democratic standards.
- They want better mechanisms for the voice of the public to be heard. They make recommendations to build closer relations between people and their representatives,

strengthen petitions, and improve the conduct of referendums. They want deliberative processes such as citizens' assemblies to play a greater role, though without usurping the place of elected representatives.

Although the focus of the report is on UK institutions, and the membership of the Assembly was drawn from all parts of the UK, its conclusions resonate with the messages from our inquiry to date.

Values Recognised in Welsh Public Life

We considered three value frameworks which are widely recognised in Welsh public life: the Wellbeing of Future Generations Act goals and ways of working, the Nolan Principles, and the values set out in the Silk Commission report. These are set out in the Annex to this chapter. They reflect careful thought by previous commissions and inquiries, and, in the case of the Wellbeing of Future Generations Act, extensive public consultation by the Welsh Government and scrutiny by the Senedd. They are particularly relevant to our inquiry, and we affirm them in full.

33 UCL (2022) Report on the Citizens Assembly on Democracy in the UK

Value Frameworks

Wellbeing of Future Generations Act

Through the Wellbeing of Future Generations Act, the Senedd has put in place a statutory framework to guide the policy and practice of devolved institutions, to ensure that they take good decisions, informed by the needs of communities today and in the future. The framework includes seven wellbeing goals and five ways of working. It is backed up by the resources and expertise of the Future Generations Commissioner whom we met at the start of our inquiry.

Silk Commission

In its second report published in 2012, the Silk Commission on Further Devolution to Wales proposed eight principles to guide the development of devolution.

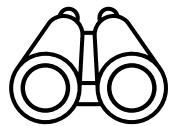
Nolan principles

The Seven Principles of Public Life were set out by Lord Nolan in 1995 in the first report of the Committee on Standards in public life. The Committee was established by Prime Minister John Major in response to concerns about conduct in politics, and they continue to inform standards of behaviour in public life.

Conclusion

This chapter has explained our wish to anchor our analysis within a framework of values and identifies the values that are most relevant to our inquiry. These will continue to guide our work and will form the benchmark for the analysis of the constitutional options in our final report, as foreshadowed in Chapter 8.

Well-being of Future Generations Act – Well-being Goals and Ways of Working



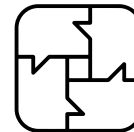
Long term

The importance of balancing short-term needs with the need to safeguard the ability to also meet long-term needs



Prevention

How acting to prevent problems occurring or getting worse may help public bodies meet their objectives



Integration

Considering how the public bodies' well-being objectives may impact upon each of the well-being goals, on their other objectives, or on the objectives of other public bodies.



Collaboration

Acting in collaboration with any other person (or different parts of the body of itself) that could help the body to meet its well-being objectives.



Involvement

The importance of involving people with an interest in achieving the well-being goals, and ensuring that those reflect the diversity of the area which the body serves.

Silk Commission principles for devolution

- **Accountability** – voters should be able to hold the responsible institutions to account for delivering policies in a transparent way;
- **Clarity** – voters should understand where decisions are made and the settlement should be straightforward to operate;
- **Coherence** – the National Assembly should have freedom and autonomy to use devolved policy and legislative levers within a coherent framework of powers;
- **Collaboration** – the Welsh and UK Governments should work constructively together;
- **Efficiency** – the arrangements should be affordable and provide value-for-money to the taxpayer, and should not place undue burdens on individuals or business;
- **Equity** – fundamental standards and rights should be enjoyed by citizens across the United Kingdom;
- **Stability** – the settlement should be well founded, sustainable and predictable in its operation, and meet the needs of current and future generations; and
- **Subsidiarity and localism** – decisions should be made as close as possible to the people they affect, consistent with addressing the relevant matter effectively, thus promoting empowerment.

Nolan principles

Selflessness

Holders of public office should act solely in terms of the public interest.

Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty

Holders of public office should be truthful.

Leadership

Holders of public office should exhibit these principles in their own behaviour and treat others with respect. They should actively promote and robustly support the principles and challenge poor behaviour wherever it occurs.

Community Engagement Fund Partner – Swansea MAD

Swansea MAD is a grassroots, anti-poverty, anti-racist, pro-equality, inclusive youth and community charity, intolerant of discrimination and injustice. Driven by the advancement of social justice and equity, we work with young people and communities who are marginalised by systemic oppression to dismantle structures which support discrimination.

Swansea MAD facilitated a series of engagement activities providing opportunities for people to participate in the national conversation on the future of Wales, including:

- Engagement activities during digital workshops, employability support, music production, Metaverse sessions and coding workshops
- Community Events
- Outreach activities, including DJing workshops with pupils at Pentrehafod School, Swansea
- Swansea MAD Team meetings

“In some way I feel like I have a say through my ability to vote my person/or political party that I align with. I also participate in action plans like the Race Equality Action Plan (REAP). However, there is no clear outline on how my input contributes to the governance of Wales. Nonetheless, it’s important that the voices of young people continue to be championed and projected”

“More grassroots assemblies, politicians speaking to the masses and answering to them”

“I don’t think it’s clear enough who controls what”

Engagement participants



Chapter 3

The Commission Work Programme



The purpose of this chapter is to explain our approach to evidence, how we have engaged the people of Wales in the first year of our inquiry and our plans for continuing this over the coming year.

Our objectives include conducting a national conversation with the people of Wales about how their country should be governed. Previous Commissions have included consultations with the public, but we intend to use all the tools available to make the views of the people of Wales front and centre of our inquiry.

Our approach is to draw on the widest range of evidence possible while making best use of public funds. Our conclusions will be based on the full picture drawn from a combination of quantitative and qualitative evidence.

The *Dweud eich Dweud: Have your Say* consultation was the first stage in the conversation and we will expand the conversation in 2023. We will continue to draw on a wide range of evidence and expertise including:

- Opinion polling and survey evidence
- Evidence sessions with elected representatives, members of civic society and academics
- Expert seminars with academics and practitioners
- Engaging with local citizen forums and under-represented groups.

Since our first meeting in November 2021, we have held 24 meetings and workshops (to end October 2022) details are in Appendix 4. Between August 2021 and September 2022, Commission expenditure amounted to some £490,000.

The Commission has featured in multiple broadcasts, newspaper articles, podcasts and online publications. There were 71 individual pieces of content from the Commission over 38 outlets, including the BBC, S4C, the Western Mail, Wales Online, Nation.Cymru, Walescast, Times Radio and local papers. In total, this added up to nearly 48 million opportunities to see the work of the Commission, with the encouragement to get involved and share views. The Commission has had an active social media presence on Instagram, Twitter and Facebook, which has been amplified by interested groups with large followings.

Our strategy for citizen engagement

At an early stage, we convened expert seminars on how to engage with citizens on political and constitutional matters. The advice we received was to:

- use multiple channels and methods, give people the opportunity to engage in ways that work for them
- allow enough time for planning and design
- work with partners and trusted intermediaries, making resources available to support them
- go where people are, using a wide range of events and organisations
- use a balance of digital and traditional methods of engagement

In line with this advice, our strategy includes the following activities, which have been completed or will take place in 2023:

- An online survey consultation (*Dweud eich Dweud: Have your Say*) which opened on 31 March³⁴
- Commission-hosted events or sessions at national and local events and festivals, including at the Senedd and Westminster

³⁴ The survey remains open for citizens to contribute their views, responses received up to 3 November were considered in this report.

- Working with seldom heard communities through our Community Engagement Fund
- A citizens' panel, made up of regional panels across Wales, recruited to be representative of the Welsh population
- Information resources to support engagement across social media channels
- Audience insight and analysis
- Online engagement platform with digital tools to increase public participation

Engaging with those who are less often heard in the constitutional debate

In early July, we launched a Community Engagement Fund³⁵ providing an opportunity to explore innovative engagement methods, and to invest in existing networks that promote the interests of people that are under-represented in mainstream debate. This enables us to invest in existing expertise and best practice engagement within those communities. The scheme aims to remove barriers to participation and capture lived experiences of those communities. We have partnered with eleven groups in the first round and, depending on the evaluation of the scheme, we will consider a second round in 2023.

Partner groups are

- **All Wales Forum of Parents & Carers of People with Learning Disabilities (AWF)** (Pan Wales)
- **ArtsFactory** (Rhondda Cynon Taf – working with Older People, Community Groups, Disabled People, and those who have/are experiencing unemployment)
- **Autistic Minds** (Caerphilly & South Wales)
- **Community Impact Initiative CIC** (Neath Port Talbot - working with disadvantaged people)
- **National Pensioners Convention Wales, Cymru** (Pan Wales)
- **North Wales Africa Society** (North Wales)
- **Race Council Cymru** (Swansea)
- **Swansea MAD** (Swansea & Neath Port Talbot – working with young people and marginalised communities)
- **Tai Pawb** (Cardiff – working with asylum seekers who are facing destitution and/or homelessness)
- **Voices from Care Cymru** (Pan Wales – working with young people in care and care leavers)
- **Letters Grow** (Bangor – partnering with a range of local community groups)

Future of Wales People's Panel

A key element of our engagement activity will involve deliberative sessions with a representative sample of the Welsh population, drawing on best practice. This work will run to the conclusion of our inquiry at the end of 2023.

Our plans include a programme of work with citizens' panels across Wales (formed of participants selected to be as representative of the population of Wales as possible) to explore the possibilities for change and their implications. These panels will make up the Future of Wales People's Panel and will be at the heart of our engagement work in 2023; members will remain in place until our work is completed. As the first stage, the discussion and debate undertaken by the panels will inform and frame a representative survey, to issue in the first half of 2023. The panels will regroup to consider and discuss the results of the survey, then report to the Commission to inform our final report by end 2023.

Information resources

We recognise that informing people must form a key part of our engagement strategy. Our website pages contain key information on the Commission and its task. The Commission's Twitter, Instagram and Facebook accounts include graphics and videos explaining the current settlement and potential options for the future. We continue to grow our follower

³⁵ Further information on the Community Engagement Fund can be found [here](#)

base as we build online relationships and invest in the work of our community partners. Our stakeholder toolkit includes accessible factual material which we invite stakeholders to share through their own channels. We continue to develop these tools to support stakeholders in building awareness and understanding of our inquiry.

Audience insight and analysis

Our audience intelligence research aims to identify the groups with the highest and lowest propensity to engage. This will inform our communications messaging with the objective of extending beyond the hyper-engaged and reaching new audiences.

Conclusion

This chapter describes our plans to help us understand the priorities of the people of Wales, and the action taken so far. As set out in Chapter 5, the response to *Dweud eich Dweud: Have your Say* suggests there is a strong appetite to engage on governance issues, and our engagement with community groups confirms that there is a strong appetite for more information on governance to support and enable engagement.

We will expand our engagement next year as set out above and in Chapter 8.

Community Engagement Fund Partner – Autistic Minds

At Autistic Minds we believe that autistic people have so much to give and form an integral part of our society.

We carried out the following consultation activities during September and October 2022, in order to gather the views of the autistic community in South Wales on the Constitutional Future of Wales:

- An in-person consultation as part of our Autistic Minds Live Event at Cardiff City Football stadium
- Online survey and polls throughout October
- Online consultation session facilitated over Teams
- An in-person consultation event at our Caerphilly Community Hub

“What matters most is the UK and Welsh governments should work with each other and there should be no conflict as to who deals with certain issues”

“Unity is a good thing with our neighbours however our partnership is not equal. Our voice in Wales is often not heard”

“It’s confusing. People aren’t informed enough about who makes which decisions in our country”

“We should have more power, at least on a par with Scotland. Having to rely on UK funding instead of having direct access to money gathered in Wales I feel is something to change. Defence is something that should be central, so full control is a no-go for me. I don’t believe independent Wales is viable, at least in the near future”.

Engagement participants



Governance of Wales in 2022



Commissioners held an 'in conversation' event at the National Eisteddfod 2022 in Tregaron, hosted by Melanie Owen

This chapter explains how Wales is governed and provides the context of our inquiry.

It summarises the recent history of devolution, and the three main institutions of democratic government in Wales:

- the UK Government, accountable to the Westminster Parliament for the exercise of powers in respect of Wales relating to 'reserved matters',
- the Welsh Government, accountable to the Senedd for the exercise of powers on matters which have not been reserved, and
- local councils where the executive cabinet is accountable to the electorate through scrutiny committees.

This chapter does not mention all public institutions in Wales, its focus is on the principal democratic structures which form the focus of our inquiry.

A Brief History of Welsh Governance

In the post Roman period, Welsh kingdoms, (including Gwynedd, Powys, Deheubarth, Brycheiniog and Gwent) formed in what is present day Wales. In the middle ages internal conflict and external pressure from the English (and later, the Norman conquerors of England), led to the Welsh kingdoms coming gradually under the control of the English crown. In 1282,

the death of Llywelyn ap Gruffudd completed the conquest by King Edward I of England. The Welsh launched several revolts against English rule, the most significant led by Owain Glyndŵr in the early 15th century.

Wales was assimilated administratively into the England and Wales jurisdiction by the Acts of Union in 1536 and 1542. This followed the period after the conquest by Edward I, during which Wales comprised two jurisdictions, the Principality and the Marcher Lordships. The union of England and Wales with Scotland came about by consent of the English and Scottish Parliaments, enacted in 1707, and with Ireland, by consent of the United Kingdom and Irish Parliaments, enacted in 1801.

In the 19th century there began an intermittent series of distinctive Welsh legislation which formed a precursor to the growing Welsh statute book passed by the Senedd, as discussed below. This included the Sunday Closing (Wales) Act 1881 (the first legislative enactment to apply to Wales a different set of principles from those pertaining in England), the Welsh Intermediate Education Act 1889, the Welsh Church Act 1914 and the Welsh Language Act 1967.

From the early 20th century, the UK Government began a process of administrative devolution, with the creation of Welsh departments within the ministries for education, agriculture and health. In the 1950s the role of Minister for Welsh Affairs was created, and in 1965, the Welsh Office was established, under a Secretary of State for Wales, assuming responsibility for functions relating to housing, local government, the Welsh language, planning, water, forestry, parks, museums and libraries, economic development and highways. Over the following thirty years a wide range of other functions became the responsibility of the Secretary of State for Wales.

In 1979, following the 1973 *Report of the Kilbrandon Commission on the Constitution*, proposals for devolution to Scotland and Wales were submitted for voters' endorsement by way of referendums. For Wales, the proposals envisaged an elected assembly with a limited range of executive powers, with other functions continuing to be exercised by the Secretary of State for Wales. The proposals were heavily defeated.

Government of Wales Act 1998

Following further referendums in 1997 and 1998, new devolution settlements were introduced, providing for elected representative bodies in Scotland, Wales and Northern Ireland, each with different sets of powers and electoral arrangements. In the case of Wales, these new arrangements were given effect by the Government of Wales Act 1998.

In each case, the electoral system of the new institutions was more proportional than the First Past the Post system used to elect members of the Westminster Parliament. All members of the Northern Ireland Assembly were to be elected by the Single Transferable Vote system of proportional representation. For Scotland and Wales, the Additional Member System was introduced, with most representatives elected in single member constituencies, but with additional members, elected on a regional basis reflecting the way votes are cast for party lists. This serves partially to compensate for the inequities produced by First Past the Post, though the Additional Member System is less proportionate in Wales than in Scotland.

The White Paper that preceded the 1998 Act gave particular emphasis to the case for direct accountability to the people of Wales in respect of the exercise of devolved powers. The scope of the powers devolved to Wales was determined by transferring the range of powers exercised by the Secretary of State for Wales, as they stood in 1997. This meant

devolution of the main domestic portfolios, except for policing and justice, and social security. But unlike in Scotland and Northern Ireland, the new National Assembly for Wales was not given powers to make new legislation on these devolved matters.

Policing and justice were devolved to the Scottish Parliament from 1999, reflecting the Scottish legal jurisdiction and the pre-devolution powers of the Scottish Office. Northern Ireland was also a separate jurisdiction, but the devolution of justice did not take place until 2010. For Wales these powers continue to be exercised by the UK Home Office and Ministry of Justice. Accountability for the justice system in Wales is to the Westminster Parliament, except where devolved services operate within the justice system such as health and education services for prisoners, which are accountable to the Senedd.

In their early years, the devolution settlements differed one from another in various ways. For the main part, this reflected the differing circumstances, history, and politics of each nation prior to devolution. As set out in Chapter 1, the new arrangements were seen by Whitehall as relevant only to the respective territories, and requiring bilateral relations with the UK Government, with little thought given to wider implications for the governance of the UK.

The model provided for Wales was unique in another important respect. For Scotland and Northern Ireland, the UK Parliament provided for a legislature with full primary legislative powers, and a separate executive. As noted above, this was not the case in Wales; the structure comprised a National Assembly with only secondary legislative and executive powers, with no separate executive, and so akin to the local government corporate model.

For all three territories, the power to amend the devolution settlement rests exclusively with Westminster. Wales has no power to make or resist changes – the legal position is explained in the paper by the Expert Panel *The Current Settlement and the UK Parliament's Legislative Supremacy* at Appendix 8.

Government of Wales Act 2006

Since 1999, the Welsh system of devolution has been subject to three amending Acts. The first enacted by the Labour UK Government in 2006 gave effect to some of the recommendations of the Richard Commission appointed by the Welsh Assembly Government.

The Government of Wales Act 2006 created a new Welsh Assembly Government, now known as the Welsh Government, as the devolved executive for Wales, accountable to the National Assembly. The executive functions of the Assembly were transferred to the Welsh Ministers. The National Assembly began to acquire primary legislative responsibilities on

specific matters under the provisions of the Act, until a broader scheme of legislative devolution came into effect after being endorsed by the people of Wales in the 2011 referendum.

Wales Acts 2014 and 2017

These measures gave effect to recommendations of two reports by the Silk Commission, appointed by the UK Conservative and Liberal Democrat coalition Government in 2011, published in 2012 and 2014. The first report, dealing with financial matters, built on the recommendations of the report of the Holtham Commission published in 2010.

The 2014 Act conferred tax raising powers on the National Assembly, and the 2017 Act provided for the permanence of the Assembly which could not be abolished without the consent of the people of Wales in a referendum. It also placed the ‘Sewel convention’, that the UK Parliament would not normally legislate on devolved matters without the consent of the Assembly, on a statutory basis.

The 2017 Act also transferred some new executive powers (including speed limits and consenting for energy developments) and extended the Assembly’s legislative competence to include elections. These powers enable the Welsh Government to reform the Senedd’s electoral system, and it has announced that it will legislate so that all members will be elected through a list system

of proportional representation. Any such reform will require the support of two-thirds (a ‘supermajority’) of Senedd members.

Reserved and devolved powers

Despite the series of revisions to the Welsh devolution arrangements outlined above, and apart from the taxation powers conferred by the 2014 Act, the scope of the devolved powers, based on the executive powers of the Welsh Office as they stood in 1997, has remained largely unchanged since 1999. However, the Wales Act 2017 introduced an important reform; henceforth, the powers of the devolved institutions are to be defined as all those matters which are not reserved to Westminster. These reserved matters include:

- The Constitution
- Foreign Affairs
- Fiscal and Monetary Policy
- Trade
- Social Security
- Policing
- Justice
- Major Energy Projects
- Some Transport Matters

with all other matters devolved to Wales.

The scope of devolution to Wales (following the reforms introduced by the 2014 and 2017 Acts) by comparison with Scotland and Northern Ireland is considered in a paper by the Expert Panel at Appendix 9. This explains that the powers of the Welsh legislature and executive remain more limited than those in Scotland and Northern Ireland, mainly in respect of:

- Policing and Justice
- Rail Infrastructure
- Welfare

The paper notes the broad reach of the reservation of policing and justice. Its effect is to reserve matters (such as licensing, abortion, anti-social behaviour) which overlap with devolved responsibilities, and thus it constrains the Senedd’s scope for action in those areas.

The fact that these matters are devolved, or partly devolved, to Scotland and Northern Ireland suggests that the continued case for making Wales an exception needs careful consideration.

Devolution and the EU

The UK's continuing membership of the European Union was a 'given' when the various devolution settlements were constructed.

This meant that from 1999 until 2020 devolved powers in respect of, for example, energy, agriculture and economic development, were exercised in the context of European legislation. The UK's departure from the EU, following the 2016 referendum, therefore had major and contested implications for the devolution settlements – these are discussed in the paper by the Expert Panel in Appendix 7.

Government Finance in Wales

There are two main components of the financing of government in Wales.

- (A) Revenues raised from Welsh taxpayers. This includes UK wide taxes, such as VAT and National Insurance, which go to the UK Government; devolved taxes including non-domestic rates, Land Transaction Tax and Landfill Tax which go to the Welsh Government, and council tax which goes to the local authority.
- (B) Public expenditure which comprises:
 - devolved expenditure by the Welsh Government, local government, and devolved agencies

- UK government expenditure. This includes expenditure in Wales in reserved areas such as pensions, benefits and the justice system, and on behalf of Wales on matters such as defence and foreign affairs.

The Welsh Government does not fund itself solely from devolved taxes. The UK Government transfers funds through a block grant to the devolved administrations each year, and in turn the Welsh Government transfers a block grant to local government through the Revenue Support Grant. Additionally, the Welsh Government and local authorities can raise revenue through borrowing, within constraints set by the UK Government.

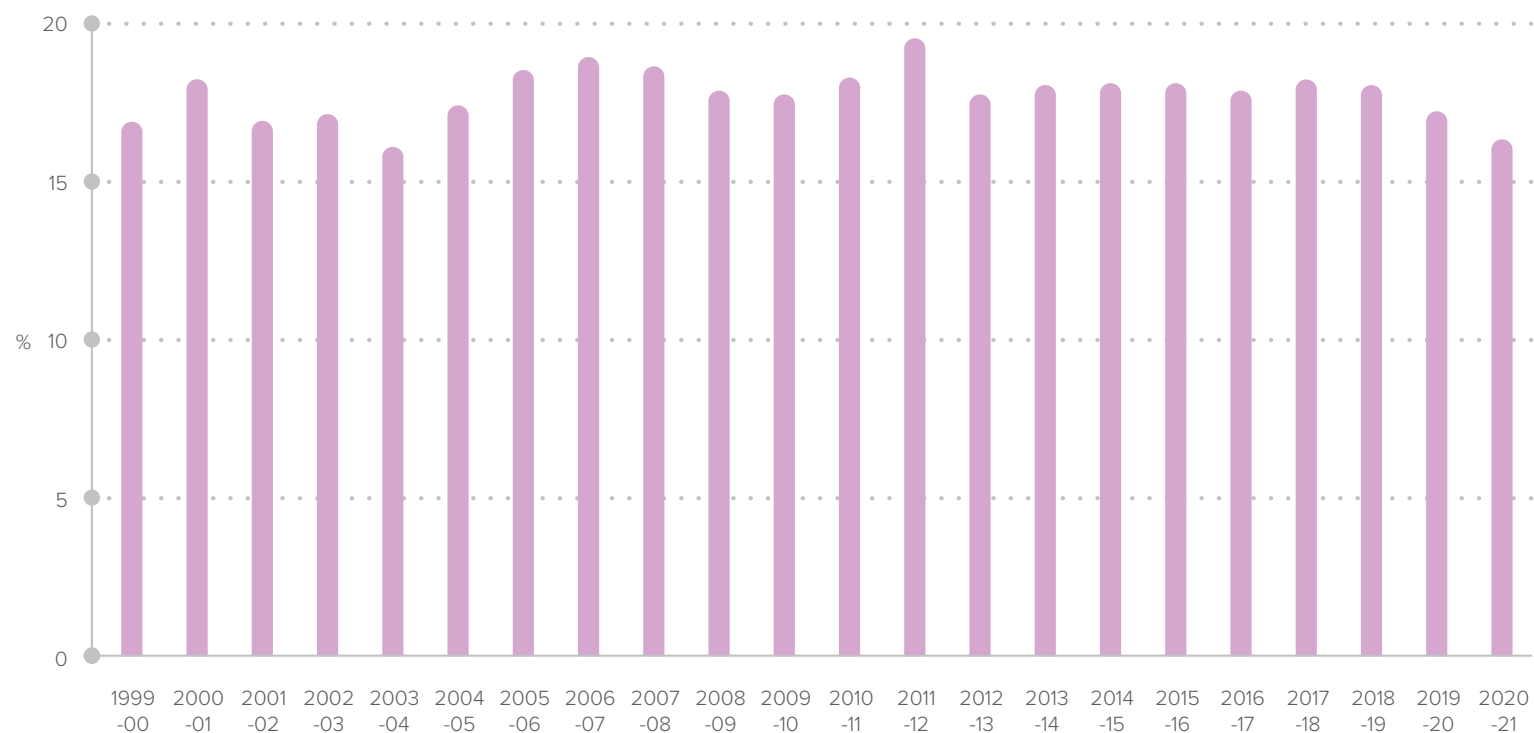
Since 2019, income tax has been partially devolved to Wales. In April 2019, the UK government reduced the three rates of income tax paid by Welsh taxpayers by 10p per tax band. Each year, the Welsh Government decides the Welsh rates of income tax which are added to the reduced UK rates; choosing to vary these rates or keep them the same as those paid by English and Northern Irish taxpayers.

The revenue raised by Welsh rates of income tax goes to the Welsh Government budget, predicted to be £2.5bn in 2022/23. To date, the Welsh Government has not chosen to vary the Welsh rates of income tax. Should it do so, the increase (or decrease) caused by the change

in tax rates in Wales would fall on the Welsh Government's budget.

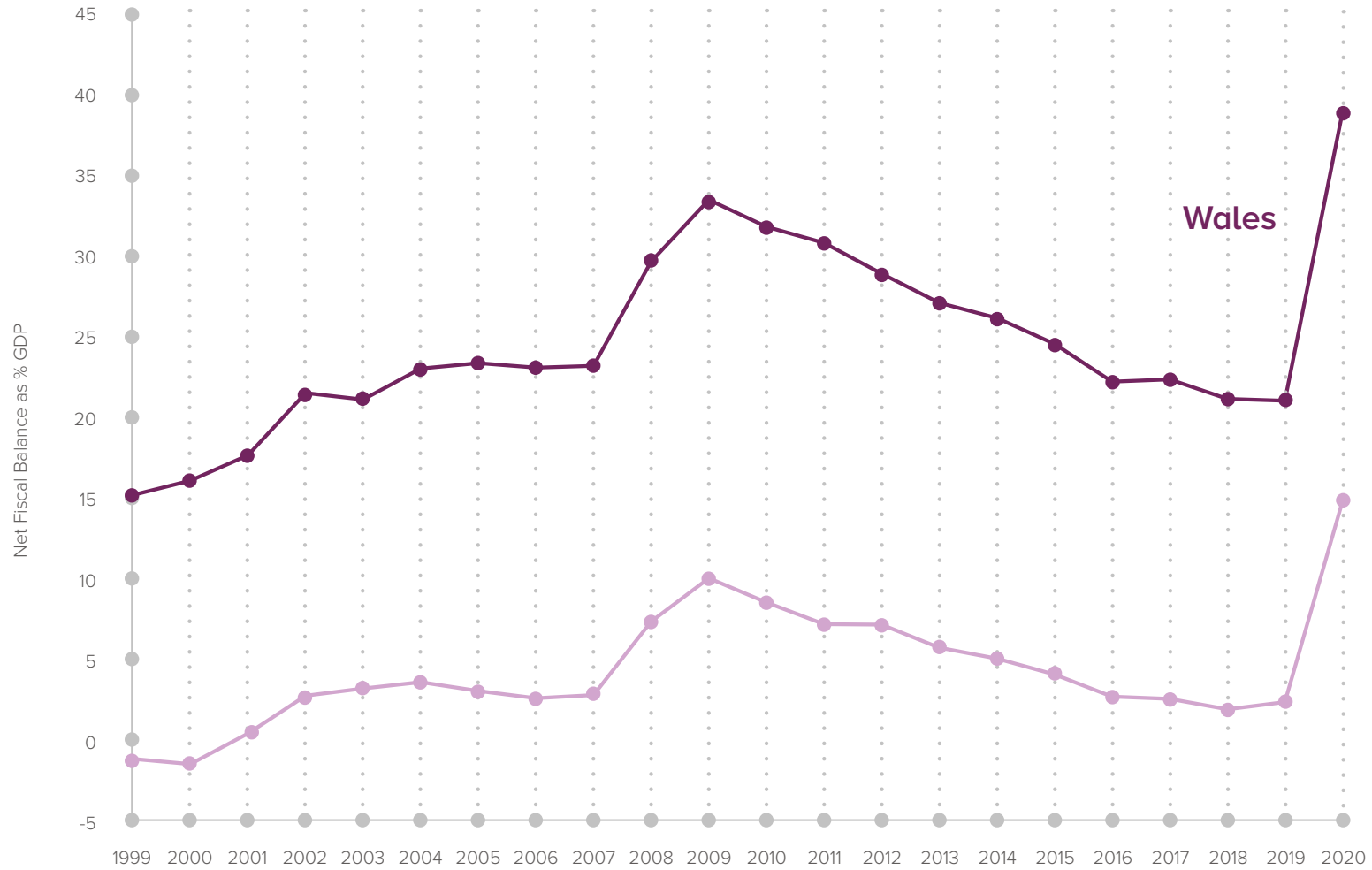
The balance of revenue and expenditure in Wales has been the subject of a series of studies by the Wales Fiscal Analysis team in the Wales Governance centre. Their 2020 report, *Wales' Fiscal Future*³⁶, estimated that in 2018-19, the difference between total revenue (A) and total expenditure (B) represented a fiscal deficit of £13.5 billion or 18% of Welsh GDP. This has remained relatively consistent, indicating that this is a structural deficit.

The ONS produce an annual publication: *Country and Regional Public Sector Finances*, which estimate revenue from and expenditure in the regions. Chart A below shows the Welsh fiscal balance as a share of the UK's GDP.

Chart A: Wales' structural net fiscal balance as a share of GDP

When compared to the net fiscal balance across the UK, using the same ONS data, Chart B demonstrates that Wales' net fiscal balance has generally remained constant in relation to that of the UK. The UK's net fiscal deficit increased at the time of the financial crisis, and then was on a downward trajectory from 2010, until the impact of the covid pandemic increased the deficit once again. Wales's net fiscal deficit has broadly tracked these trends, albeit at a substantially higher level than that of the UK.

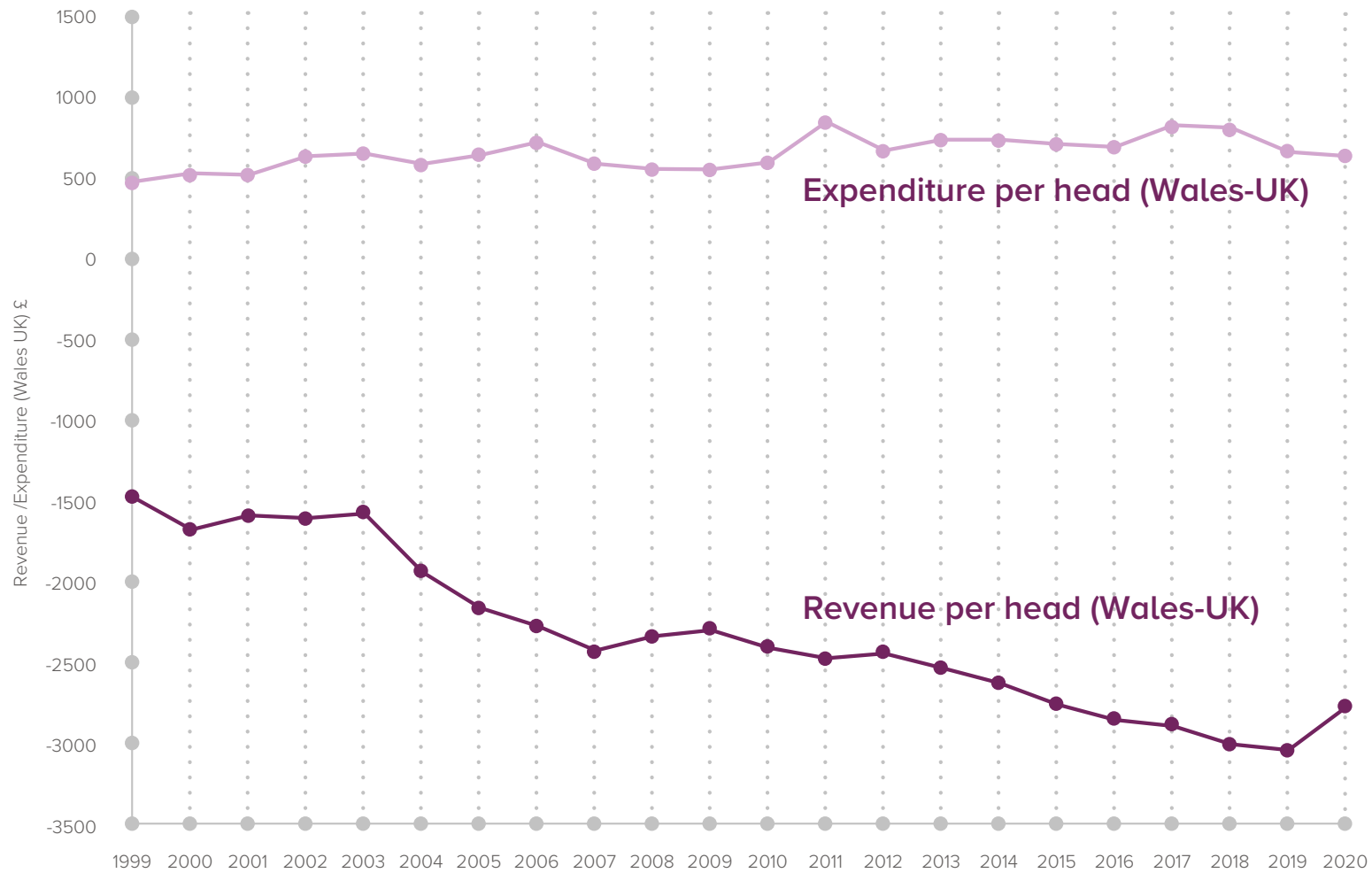
Chart B: Wales' net fiscal balance compared to UK net fiscal balance



Source: ONS Country & Regional Public Sector Finances, Expert Panel

The following Chart C, again drawing on the same ONS data, demonstrates the cause of the fiscal deficit. Spending has remained broadly constant with other UK regions, but lower revenues in Wales mean that Wales' deficit is larger, in contrast to Scotland where the fiscal deficit is largely driven by higher spending.

Chart C: Revenue and expenditure per head in Wales

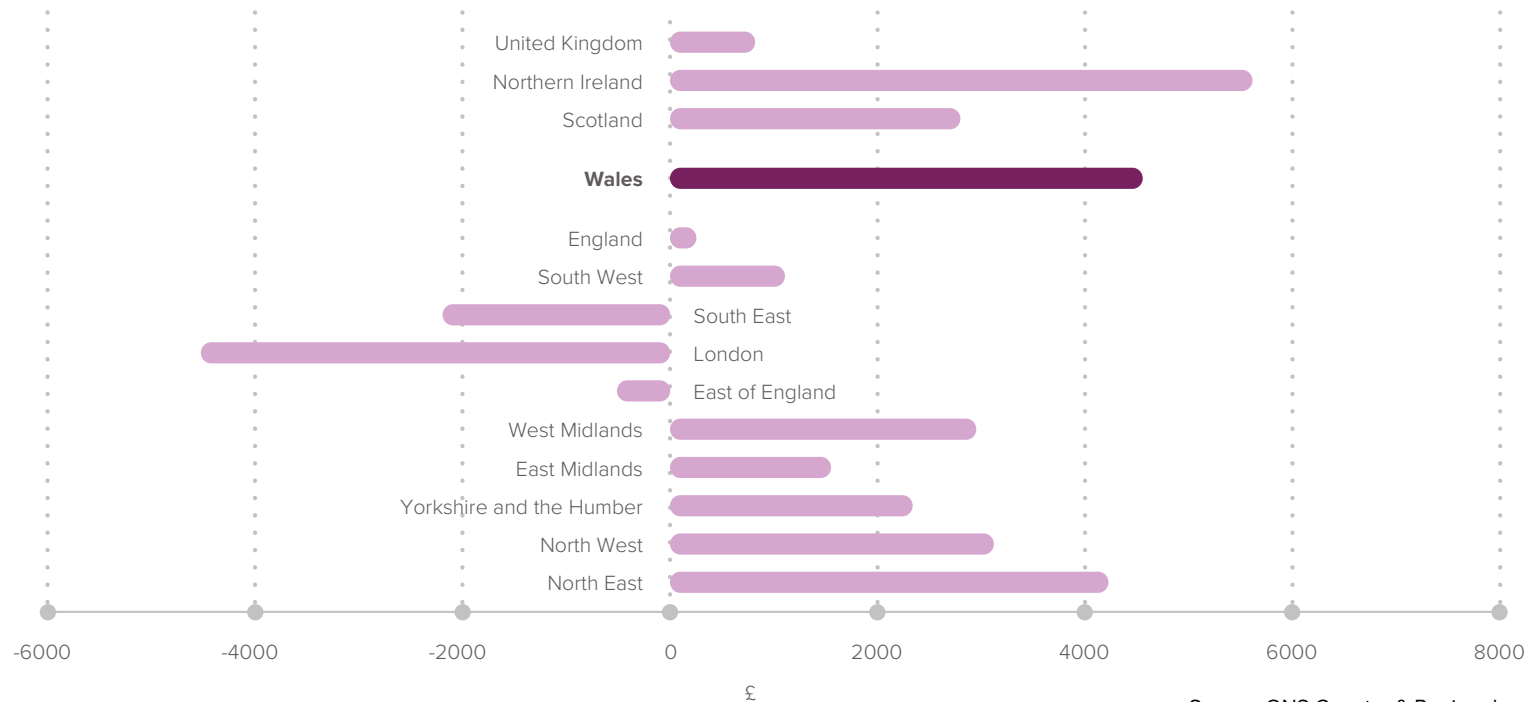


Source: ONS Country & Regional

Wales's fiscal deficit is not unique within the UK, especially following the effects of the pandemic on government expenditure and tax revenues. In every nation and region of the UK expenditure was higher than revenue from taxes in 2020/21.

The relative fiscal positions of the countries and regions of the UK largely reflect regional economic inequalities, with public expenditure exceeding revenues in poorer regions and revenues exceeding expenditure in richer regions. This is more clearly demonstrated by the pre-pandemic data, as the unusual public finances during the pandemic meant that all regions were in deficit.

Chart D: Net Fiscal Balance per head (postive figures are a deficit, negative a surplus) 2019-20



Source: ONS Country & Regional Public Sector Finances

Comparing relative revenue and spending levels per person across countries and regions, tax revenues have a more consistent and substantial effect on net transfers than variations in public expenditure. While spending per person ranges from 92% of the UK average in the East of England and 115% of the UK average in Northern Ireland, revenues per person range from 77% of the UK average in Wales to 149% in London.

This level of regional inequality is unusual internationally. The UK is one of the most inter-regionally unequal countries in the industrialized world. The only countries in the OECD with inequality between regions greater than the UK are Slovakia and Ireland.³⁷ There are many historic and geographical reasons for this, but the centralisation of government and finance in London is a factor. If London is removed from these calculations, the UK looks like a less wealthy but more equal country.

The Block Grant

As set out above, the Welsh Government receives a block grant from the UK Government to fund its expenditure. The block grant forms most of the Welsh Government's revenue. In 2022/23 it amounted to £17.7 billion³⁸, out of a total budget of £21 billion.

The financial arrangements established to support devolution largely continued those that were used to fund the Welsh Office when it was a UK Government department. As with the

Scottish and Northern Ireland Offices, the Welsh Office budget was allocated an adjustment in each spending round, which was a percentage of the increase in comparable English budgets, determined by the relevant population share. This system, introduced in the late 1970s by and named after the then Chief Secretary to the Treasury Joel Barnett, did not make any reference to relative needs in the four parts of the UK, and has continued to form the basis for funding the devolved governments ever since.

For Wales, these arrangements were examined in detail in the Holtham report, published in July 2010, and in the first report of the Silk Commission, published in November 2012.

Holtham concluded that the Barnett arrangements, if unchanged, could lead to significant underfunding of public services in Wales. The evidence for this was the results of applying to Wales the needs-based formulae used by the UK Government to allocate resources within England. In response to this evidence, the UK Government agreed to adjust the application of the Barnett formula to Wales. As a result, the spending power available to the Welsh Government is now above the needs-driven floor identified by Holtham.

The first Silk report argued for the devolution of some tax powers as a means of strengthening the financial accountability of the Welsh Government. The UK Government accepted this, and the new powers were enacted in the

Wales Act 2014. The Welsh Revenue Authority was established as an arm's length body, subject to the scrutiny of the Senedd Public Accounts Committee.

Local government

Wales has 22 unitary local authorities created in 1996 to replace the eight counties and 37 districts that had been formed in 1974. The powers and duties of local government therefore pre-date devolution and can be amended by laws passed by both the Senedd and Westminster Parliament. Local authorities' responsibilities span the boundary between devolved and reserved matters. For example, they chair the local community safety partnerships established by the Home Office's 1998 Crime and Disorder Act, and operate trading standards and licensing regimes, which are reserved matters.

The principal functions of local authorities have remained constant since devolution, including education, social services, planning, waste, parks and libraries and local transport. The Senedd has legislated to give local authorities a power of general competence, and the Welsh Government has supported the creation of regional partnerships for many of their core functions, with the objective of strengthening capability and expertise, and promoting collaboration. The Local Government

37 Philip McCann (2020) *Perceptions of regional inequality and the geography of discontent: insights from the UK*,

38 HM Treasury (2021) *December 2021 Publication: Block Grant Transparency*

and Elections (Wales) Act 2021 created a structure of Corporate Joint Committees to provide a statutory basis for partnerships of local authorities to deal with strategic planning and transport on a regional basis.

Town and Community Councils

There are over 700 Town and Community Councils in Wales, whose responsibilities include the maintenance of community facilities and public spaces. They do not exist everywhere and can be established or disbanded at the behest of the community.

Accountability

At national level, devolution means that Wales has two governments, the UK Government and the Welsh Government. The UK Government is accountable to all UK citizens through the Westminster Parliament, the Welsh Government is accountable to the people of Wales through the Senedd and its Committees.

For example, prisons in Wales are managed as part of the England and Wales prison system and accountability lies with the Secretary of State for Justice. The House of Commons Welsh Affairs Committee carries out inquiries into the operation of reserved matters in Wales: its recent reports have examined social security, trade and rail transport in Wales, and the UK Government is required to respond to those reports.

The effectiveness of the Committees in the Senedd and in Parliament at holding their governments to account relies on a range of mechanisms, including parliamentary conventions and media / public attention. They generally do not have powers to compel the government to change policies or to act in a particular way. Both the Senedd and the Westminster Parliament have recently considered how to improve the effectiveness of their scrutiny and improve accountability of the government^{39 40}.

Local councils have a corporate structure so that the executive cabinet is accountable to the authority's scrutiny committees, as well as to the electorate at the ballot box.

Offices of the Commissioners

One of the first actions of the National Assembly was to establish in 2001 the office of the Children's Commissioner for Wales with a remit to strengthen the voice and rights of children and young people. This was followed by creation of the office of the Older Persons' Commissioner in 2006, the Welsh Language Commissioner in 2011, and in 2015 by the office of the Commissioner for Future Generations, whose role is to be the guardian of future generations, by ensuring that public bodies consider the long-term impact of their decisions.

These four offices create a structure to scrutinise public services and champion citizens' voices and rights which is unique to Wales. The powers of each Commissioner are set out in legislation and include conducting inquiries to which the Welsh Government must respond, publishing reports drawing attention to issues of concern, raising awareness of citizens' rights and challenging public bodies where policy or practice contravene or fail to respect those rights.

The Welsh statute book

Since the enactment in 2011 of the relevant provisions of Government of Wales Act 2006, the Senedd, and its predecessor Assembly, have passed 50 Acts designed to respond to the needs of Wales, creating a growing Welsh statute book. These laws are listed at Appendix 10. This has formed a new and growing body of Welsh law on devolved matters, which operates alongside, and increasingly replaces, laws previously passed for England and Wales on these matters by the UK Parliament. The UK Parliament continues to enact legislation on reserved matters applicable in Wales.

39 House of Commons Liaison Committee (2019) *The effectiveness and influence of the select committee system: Fourth Report of Session 2017–19*

40 Stirbu, D. (2021) *Power, Influence and Impact of Senedd Committees: Developing a framework for measuring committees' effectiveness*

The Welsh public service model

Through this Welsh statute book the Senedd has established a distinct governance architecture for public services in Wales. This has developed under Welsh Governments led by the Labour Party, or Labour in coalition with the Welsh Liberal Democrats (2000-2003) or Plaid Cymru (2007- 2011) or under the current co-operation agreement with Plaid Cymru.

The characteristics of this model include:

- Belief in the positive role of government in addressing problems
- The relationship between the individual and the state characterised by citizenship, and citizen voice as the driver of improvement
- Commitment to equality of outcome
- Pluralism, partnership and participation
- Collaboration not competition in the relationships between public bodies.

This builds on the architecture established in the 1998 Act which provided for statutory partnerships between the Assembly and local government, business and the third sector. Since then, it has become hard-wired into the culture and practice of government in Wales and is sometimes described as ‘the Welsh way of doing things.’

Recent expressions of this model include:

- the tripartite social partnership structure, which had a key role during the covid pandemic, and is the subject of the Welsh Government’s Draft Social Partnership and Public Procurement (Wales) Bill published in 2022
- the Wellbeing of Future Generations Act 2015 which established a new decision-making framework for devolved public bodies, and gave statutory underpinning to Public Service Boards, which bring together the key statutory agencies at local level with a remit to ensure co-ordinated planning and delivery.

Conclusion

This chapter has outlined the main architecture of governance in Wales in 2022 and provides the factual basis for our inquiry.

Community Engagement Fund Partner – North Wales African Society

North Wales African Society is a membership-based community for people of African and Caribbean descent living in north Wales. Its members consist of a high number of students and others in various professions. Our vision is to achieve a vibrant inclusive society that supports, integrates and sustains our diverse community.

We had a conversation with our members through a welcome party for new students, through a virtual town hall meeting and through our virtual platforms (WhatsApp, Twitter, and Instagram) urging our members to fill in the consultation and return them to us. The strategies we employed have afforded members of our community the opportunity to share their opinions and add their voice to the discourse around the governance of Wales.

“... I believe the current system has worked well, however I think that Wales should have more decision making power on some of the issues that are currently being deliberated and decided at Westminster for Wales...”

A participant (paraphrased) - Virtual town hall event,
North Wales African Society

“What matters to me is the inclusion of people of diverse ethnicity, background, individual characterises and cultural beliefs in the decision-making process to reflect the interest of the people of Wales”.

“We need more power to the local government as this is the government closest to the people and their activities add to the safety and prosperity of the Wales citizens”.

Engagement participants



Chapter 5

Citizens' perspectives



'Hackathon' event organised by the Cwm Taf Morgannwg Regional Partnership in collaboration with ArtsFactory and Cwm Taf People First.

The purpose of this chapter is to set out the insight we have received into the perspectives of citizens on the governance of Wales. At the time of writing, the most significant source of this has been the responses received to *Dweud eich Dweud: Have your Say*, our online consultation launched on 31 March 2022.

With over 2000 responses⁴¹, this is a valuable insight into the concerns and priorities of people in Wales. It is important to note that respondents were self-selecting and their views may not be wholly representative of all Welsh citizens, as sometimes demonstrated by comparison to quantitative evidence. The pattern of responses demonstrates that some were prompted by organised pressure groups. As a result, there are significantly more responses representing either end of the constitutional spectrum (from independence to a return to pre-devolution governance models), than those supporting the status quo.

The polarisation of views was expected. In our workshop on engagement, we saw examples of the variance between representative survey responses and self-selecting survey responses. This was only the first stage of our engagement with citizens. As indicated in Chapter 3, we intend to balance this consultation with different kinds of engagement to reach a wider group of citizens in the second phase of our inquiry.

The Dweud eich Dweud: Have your Say process

Dweud eich Dweud: Have your Say is an online consultation on a dedicated web platform from 31 March 2022. It is accessible via the Commission's website and social media channels. Respondents have the option of responding to questions about Welsh governance by online form, or by downloading a form and sending via email or by post. Respondents also have the option to send freeform responses via email or post, if they do not wish to be constrained by the questions in the form. The online form offers the option of submitting a response in an alternative format such as video or audio messages.

Common Themes in Responses

The need for transparent and accountable government at all levels came up repeatedly. There was a strong feeling that the current structure is neither of those things, due to either the politicians currently in power, or the confusing and overlapping governance arrangements. There is a consistent frustration with the status quo; even those who stated that the status quo was their preference felt it could not continue without some modification. This feeling is matched by wider society; the most recent British Social Attitudes Report found 'a new widespread appetite for changing the electoral system, while there have been marked increases in support in both Scotland and Northern Ireland for leaving the UK. In both cases this means there is a divergence of view on the territorial governance of the UK between England (which still shows only minority interest in devolution for itself) and the rest of the country⁴².

41 *Dweud eich Dweud* did not have a formal closing date, though respondents were encouraged to reply by 31 July to ensure that their comments could be fully considered in the preparation of the Interim Report. The analysis here is based on the 2016 responses received by 3 November.

42 National Centre for Social Research (2022) *Broken Britain, British Social Attitudes Survey 39*,

Many respondents reported feeling disempowered and disenfranchised. This seemed to be driven less by their concerns about the governance structure of the UK, and more by 12-20 years of being governed by a party (at either Wales or UK level) that does not reflect their views or focus on their priorities. Many felt ignored or disrespected by the government, either in Westminster or in Cardiff Bay. This is not unique to our respondents. The Hansard Society's most recent Political Engagement Audit found that while people's certainty to vote and interest in and knowledge of politics have all increased since their first audit in 2004, satisfaction with the system of governing Britain has dropped from 36% to 29%, and people's sense of being able to bring about political change is down from 37% to 34%⁴³.

Many responses conflated governance structures with political choices. Almost all responses cited failures of the present system (for example poor NHS outcomes, lack of infrastructure investment, high rates of poverty) and asserted that their preferred governance structure would enable that problem to be solved.

Many responses favoured more direct democracy, with more powers to make decisions held locally. Suggested methods included more referendums, greater use of

citizens' assemblies, and more empowered and active local government.

Many expressed a desire for a more comprehensible, less complex model of government. Many felt there were too many tiers of government, though there was no consensus on which should be removed.

Amongst respondents who commented on local government, there was near universal agreement that 22 local authorities is too many, but no agreement on how many there should be.

Analysis by Constitutional Preference

While there was common ground, there were also distinct differences in values and priorities between respondents who favour more devolution, and those who favour a reduction in devolved powers.

Responses in favour of independence

This was the most popular preference amongst respondents, with 1096, or 55%, of responses in favour; considerably higher than the 14% who preferred to see independence in the St David's Day poll⁴⁴. This is possibly due

to pro-independence groups encouraging their supporters to respond. A minority in this group are 'reluctantly pro-independence'. This includes people who would prefer a federal UK, or even a continuation of the current system, but see this as impractical or unachievable.

Attitudes to the UK Government and Parliament

Respondents in this group were overwhelmingly negative about the actions of the current UK Government. Lack of trust in the Westminster Parliament and Government was the most common reason cited for seeking independence. While polling shows a steady reduction in support for the current UK Government, the uniform opposition is stronger than seen in the general public.⁴⁵ There were strong objections to a Conservative led government having power over Wales when Wales has consistently returned mainly Labour MPs and Labour has formed the largest party in the Senedd since 1999.

Several respondents in this group believe that the UK Government is hostile to devolution and taking steps to undermine it. Some observed that the current UK Government did not recognise the concept of the UK as a union of nations, instead conceiving the UK as synonymous with England. For a sizeable number of respondents, Wales is already a

43 the Hansard Society (2018) *Audit of Political Engagement* 15,

44 BBC and ICM *St David Day Poll 2021*,

45 YouGov, September 2022, *Westminster Voting Intention Figures*,

distinct territory and the authority of the UK Government is tantamount to rule by a foreign power.

An imbalance in the Union was often cited as the reason for a perceived unwillingness by the UK Government to deliver on what they see as Welsh priorities and values. Some examples were raised repeatedly:

- HS2 funding not benefiting Wales, and lack of investment in transport where it is non-devolved. HS2 (or High Speed 2) is an infrastructure project to build 250 miles of new high speed railway track between the north west of England and the south east of England, with a budget for the first phase of £44.6 billion
- refusal to make St David's Day a bank holiday
- cancellation of the Swansea tidal bay lagoon project
- challenging the decision of the Welsh Ministers on the M4 relief road

Many responses raised what they see as flaws in the democratic system in the UK – an unelected House of Lords, a hereditary monarch and the first past the post electoral systems.

Attitudes to the Welsh Government and Senedd

In general, these respondents had a high level of approval of the actions of the Senedd and the Welsh Government. Some felt that the Welsh Government was easier to hold to account than the UK Government, but this was not a uniform view. In this respect these respondents' views were similar to those of the general public, for whom the Welsh Government appears to be the most trusted administration in the UK⁴⁶.

While many sought further powers for the Senedd, some raised concerns that in an independent Wales centralisation in London could be replaced by centralisation in Cardiff.

Fiscal and financial matters

Many respondents felt that the current funding arrangements are insufficient to meet the needs of Welsh citizens, and argue that Wales would be in a better fiscal position without the UK government's involvement. A sizeable minority believe that the UK Government gives back less under the Barnett formula than Wales raises in taxes. Notably, few responses considered the totality of public expenditure in Wales, including that which falls outside of the Barnett system (such as justice and social security). The exception was for funding for heavy rail infrastructure, which was often raised in relation to the lack of a Barnett consequential for HS2. Several

respondents noted that the UK funding to replace the EU funds lost after Brexit is less than promised in the run up to the EU exit referendum. Many respondents objected to the level of control that the UK government has over this funding, noting that disbursing EU funds had been the responsibility of the Welsh Government.

There were repeated claims that the natural resources of Wales (particularly water and energy) are being exploited for the benefit of England. The role that water and energy could play in the financial viability of an independent Wales was raised in this context.

Wales on the international stage

For these respondents sovereignty was conceived as a right to self-determination rather than a need to stand outside of international bodies, in contrast to the argument that was presented during the Brexit referendum debates that the UK needed to be outside of the EU to have sovereignty. Most recognised that as a member of international organisations such as the UN an independent Wales would not have the influence that the UK currently has, but none saw that as a reason to remain within the UK. Re-joining the EU was given as a reason for seeking Welsh independence in a significant number of responses, but only a very small minority felt that Wales could only manage as an independent country if it were in the EU.

46 Deloitte and Reform, 2021, *The State of the State 2021-22: Towards a new public sector normal*

The Welsh language, culture, and identity

Identity, culture, and language are presented by many as a rationale for independence, often citing the perceived lack of respect for linguistic and cultural differences within the Union by the UK Government. There was near uniform support for the Welsh language amongst this group of respondents. Almost all responses submitted in Welsh were in favour of independence, the minority that were not favoured a federal UK. Almost every response saw the promotion of the Welsh language as one of the key functions of the Welsh Government and viewed independence as highly beneficial to the language.

Assumptions about the stability of the Union underpinned many responses. The possibility of Scotland and Northern Ireland leaving the Union was mentioned only by those in favour of independence or enhanced autonomy within the UK. Many respondents felt that remaining in the Union (especially if Scotland left) would be a threat to the Welsh language, culture, and identity. Responses from this group conveyed a sense of domination by England, politically and culturally; holiday homes were raised frequently in this context.

Values

Many of those supporting independence favoured citizen-centred values. Responses often raised concern for fairness, accountability, people-centred policies, tackling poverty, increasing opportunities, wellbeing of all, sustainability and the green economy. There was a strong presentation of Wales as a welcoming, diverse country, a nation of sanctuary, welcoming all to make Wales their home. Many in this group believe that independence will lead to a more equal and fairer country.

Responses in favour of a federal UK, more devolution, greater autonomy, Devo Max

The number of responses that favoured this option was small, 260, or 13%. No single definition was put forward for this option. The flexibility of definitions meant that responses were not always advocating for similar models. This group proposed a wide range of models, ranging from broadly the current settlement but with more areas devolved (e.g. justice, policing, broadcasting, taxation), to self-government in all matters except defence and foreign policy which should be managed at UK level.

There was some overlap with the responses seeking independence. Some were prepared to settle for these models as lesser but acceptable options if independence was not viable. Others saw it as a first step towards independence in the future.

Some of these respondents were motivated by support for localism, subsidiarity and making decisions at the most appropriate level. Some favour this approach because of concerns about the cost of independence and the impact on the border with England. Some feel that independence is not an option in the modern world, and there will always be a need to pool sovereignty. Others feel that greater autonomy is the only way that Wales can remain within the Union long term, believing that the breakup of the UK is inevitable without reform.

Generally, this option seems less tied to questions of language and identity in the minds of respondents and was discussed in less emotive terms than other options. However, for some this preference was tied to a concept of Britain which could survive federation but not independence, with some noting anxiety about what independence would mean for their own identity as 'British'.

Some noted that a federal approach would require UK-wide agreement. They felt that for a federal UK to be successful, England would need to be divided into regions so the federation could give equal and fair weight to all members. Some advocated federation or greater autonomy to give Wales more status

within the Union, and to address the power imbalance within the current set up. Some sought a federal UK to protect the existing or extended devolution settlement, allowing the Welsh Government and Senedd to act without interference from the UK Government.

There was little distinction between the values expressed by those who favoured this approach and those who favoured independence. Respondents in this group were strongly in favour of promoting the Welsh language, with only three dissenting.

Responses in favour of retaining the status quo, including with minor modifications

151, or 8% of respondents stated they did not want to see significant change in the current devolution settlement. For many, this is because they do not want to see further devolution rather than contentment with the status quo.

Many expressed significant unhappiness with devolution but felt that either there was no reasonable prospect of reversing it, or that it was a better alternative than further devolution. Some expressed opposition to independence, which they felt would be harmful to Wales. Others felt that the current settlement went far enough, or slightly too far, and would favour

returning some powers to the UK Government where the Welsh Government was not delivering well enough.

Some respondents felt that the current arrangements were probably acceptable, but required better co-operation between governments, less political point scoring, and more skilled politicians.

Support for this option is significantly lower than the 25% who indicated in the St David's Day poll that were content with the current powers of the Senedd. However, this option includes a broader scope, encompassing views of the UK Parliament and how the UK is governed more generally. Additionally, in a self-selecting survey it is reasonable to expect that those who are broadly content with current arrangements are less motivated to respond.

All the respondents who specified where they live resided outside of Cardiff, mainly in north and west Wales. This group expressed a range of views on the Welsh language and values more generally.

Responses in favour of less autonomy / abolition of devolution

390, or 20%, of responses received argued for a reduction in devolution. This is slightly higher than the views held by the general population, where 15% favour abolition.⁴⁷

Values

These respondents placed great emphasis on efficiency and value for money and government that focuses on core services and growing the economy. Many objected to devolution but favoured participation in government, localism, and accountability of elected representatives. Earlier responses favoured common laws and standards across the UK, feeling that divergence is detrimental to people in Wales.

Attitudes to the Welsh Government and Senedd

This group conveyed a strong sense of feeling disenfranchised. Except for three respondents in south-east Wales, every respondent who identified their location lived in the north and west of Wales. Many reported that as Conservative voters they did not feel represented in the Senedd. Many were critical of what they perceived as the current Welsh Government's focus on minority rights, sustainability and the 'woke agenda' at the expense of the economy and standards in health and education. Many expressed strong opposition to 16-17 year olds being able to vote.

There is some evidence to suggest that support for lowering the voting age lowers as the age of the respondent rises and is particularly unpopular with Conservative voters.⁴⁸ While we do not have robust

47 BBC and ICM St David Day Poll 2021

48 Loughran, T., Mycock, A., Tonge, J. (2021) *Public opinion, political partisanship and the Votes-at-16 debate in the United Kingdom*, The British Journal of Politics and International Relations, Volume 24, issue 2

demographic data of respondents, this is in line with the demographic information that some respondents chose to share in their responses.

These respondents perceive declining standards of health care and education, which they cite as proof that the devolution experiment has failed and the Senedd's powers should be returned to the UK Government and/or given to local authorities. For several this was the sole or main reason given for seeking a reduction in devolved powers.

Many of these responses were strongly critical of the calibre of politicians in Wales. Some suggested that politicians in the Welsh Government and local government are overpaid or over-staffed compared to those in England. The current First Minister was singled out for criticism. The co-operation agreement with Plaid Cymru was uniformly unpopular with this group.

Some respondents raised objections to specific policies of the Welsh Government. Often they felt that they were unable to influence decisions or hold Welsh representatives to account. Many were particularly unhappy about the Welsh Government's policies on second homes. Some of these respondents identified themselves as second homeowners and/or providers of tourist lets.

Attitudes to the UK Government

This group spoke highly of the UK Government, believing that it delivers better services and is better able to represent their views. Some felt it was closer and more accessible to them than the Welsh Government and more active in their community. Many stated that they valued that the UK Government was able to override the Senedd and constrain Welsh Government action. Many stated that the UK Government subsidises Wales, with some arguing that this is unfair to England.

Most in this group expressed a preference to return to the pre-1999 governance arrangements.

Welsh language, culture, and identity

This group of respondents were near unanimously against the promotion of the Welsh language. Many felt that Welsh speakers were unfairly privileged, or that non-Welsh speakers were disadvantaged and made to feel like second class citizens. In this respect, this group diverged from the majority view of the Welsh language in Wales, where 86% believe the Welsh language is something to be proud of.⁴⁹

Most respondents identified themselves as British rather than Welsh. A small number identified as English residents in Wales. Some felt that the concept of Britain and Britishness was under threat from devolution,

or from the view of Wales, Scotland and Northern Ireland as separate nations regardless of their governance structure.

Despite this, these respondents expressed little sense of instability in the Union. For this group, devolution has been a failed experiment but has not yet fundamentally affected the UK as an entity. Many in this group seem to see the Welsh Government as a body that delivers public services to a region of the UK as opposed to the government of a nation, which is how those who support more devolution or independence see it.

Responses in favour of other models / did not express a preference

110, or 6%, of respondents either did not express a preference for a model or put forward alternative models for consideration. For a small number, it was not clear what model they supported, or they focused on matters unrelated to the work of the Commission.

A number expressed what they did not want to happen, such as independence or socialism, but did not say what they would like to see. Some focused on local government exclusively. Some focused on the remit of the Commission: arguing for more direct engagement via citizens' assemblies; a focus on voter turnout and democratic mandates; a full constitutional

convention and the Welsh people to vote on what is and is not to be devolved.

A few respondents presented alternative governance models including:

- Wales to become a dominion (status given to some previous countries of the British Empire)
- A confederation of Britain and Ireland; with self-governing cantrefi (administrative units in medieval Wales)
- A similar model of governance to the Channel Islands (self-governing possessions of the Crown)
- The same model of governance as the Swiss Cantons (a form of federalism where powers are retained at local level, combined with extensive use of direct democracy)
- Direct democracy with citizens voting directly on policies, rather than through elected representatives
- Local authorities to be the primary source of governance under the Crown
- A standing Commission to operate as a second chamber of the Senedd

Conclusion

The response to *Dweud eich Dweud: Have your say* is self-selecting and so we cannot say for certain how representative it is of the views of the people of Wales. Nevertheless, the scale of the response, and the variety of views expressed, provides a valuable insight into the concerns, priorities and motivations of those who support different constitutional options.

We will consider these views alongside the evidence we gather in the next stage of engagement as set out in Chapter 3. This will include the engagement with under-represented groups which is currently underway.

Although there are many different views on constitutional structures and options for the future, there is important common ground. There is a strong message about the importance of accountability and the need to strengthen it. Although relatively small in number, some respondents' lack of understanding of, and trust in, Wales' system of government is an important concern which we will address in the next phase of our work.

Community Engagement Fund Partner – The Community Impact Initiative

The Community Impact Initiative (Cii) is a not-for-profit organisation. Every six months, we identify a community that needs our support and purchase an old, disused property locally. We then use the renovation process to support unemployed community members to learn life-changing skills from our expert construction tutors and achieve three vital qualifications for free, helping them on the path toward employment. The property is sold, and all of the profits are reinvested into the next community regeneration project, continuing the cycle of community growth. As part of the Commission's Community Engagement Project, we conducted interviews with past and present Cii participants and held the group sessions during coffee breaks at the project.

“We have 12 local volunteers from the local area who are quite marginalised. We wanted to run this project with the Commission because we thought it was a great chance to speak to people who wouldn't usually get the chance to be heard. We're using this project to get their opinions.”

Abi Lewis, Engagement and Wellbeing Officer,
The Community Impact Initiative

“The UK Government will be looking at things on a bigger scale but the Welsh Government is always going to be looking at what's best for Wales. From A-Z it'd be better if Wales could make its own choices.”

Cii participant

“It would be good to see the Welsh Government get more powers like they have in Scotland.”

Cii participant



Chapter 6

Elected representatives and civic society



***Dweud eich Dweud: Have your Say*, summarised in the previous chapter, gave us the views of citizens in their personal capacity. The purpose of this chapter is to summarise the views put to us by elected representatives, the third sector and other members of civic society in Wales in their official organisational capacity. Some of these views were shared with us in virtual meetings, others were submitted to us in writing. Some organisations contributed in both formats.**

The evidence from individual citizens generally stayed closely to the questions posed in *Dweud eich Dweud: Have your Say*. The evidence from organisations and elected representatives tended to be wider ranging and focus on their specific areas of expertise.

Together these chapters set out the evidence from the early stages of the national conversation. In some cases, the first evidence session identified issues requiring further detailed consideration and we will resume the conversation on those in the coming year.

This chapter simply reports the evidence presented to us - our analysis and response to this evidence and the evidence submitted by citizens is set out in Chapters 7 and 8.

The Evidence Gathering Process

We invited organisations and individuals to present evidence to the Commission in meetings and workshop sessions. The complete list of sessions is set out in Appendix 4, and minutes are published on the Commission's webpage⁵⁰.

Our aim is to seek the widest range of views on Wales's constitutional future, including those who are less often heard. We will continue to gather evidence during 2023 and consider the full range of views in our final report.

Between November 2021 and September 2022, we heard from the individuals and groups listed in Appendix 5. Those who contributed were invited to send further views and evidence they wished us to consider, and some took up this invitation. Some evidence sessions took the form of round table discussions.

We have received written evidence from political parties and groups within the parties (in order of submission): the Sovereign Party; Left Unity Wales; Gwlad, Plaid Annibyniaeth Cymru; the Welsh Liberal Democrats, Wales Green Party/Plaid Werdd Cymru; the Monmouth branch of Plaid Cymru; Labour for an Independent Wales; and Plaid Cymru.

The Centre for Welsh Politics and Society at Aberystwyth University and the Learned Society for Wales contributed written evidence from an academic perspective.

A range of Voluntary, non-for-profit, campaigning and lobbying organisations submitted evidence either in writing, in person or both:

- National Pensioners Convention
- Adult Learning Wales, who submitted a response that summarised discussions in their regional forums and 42 individual responses from learners
- Women's Equality Network Wales
- Electoral Reform Society
- Cyngor Cyfathrebu Cenedlaethol
- Anti*Capitalist Resistance, supported by Socialist Resistance and Ecosocialist.scot
- Institute for Welsh Affairs
- Co-operatives and Mutuals Wales
- Melin Drafod
- Wales Council for Voluntary Action
- Yes Cymru
- Unison
- The Bevan Foundation

⁵⁰ The Commission's webpage is available [here](#)

We held expert workshops on the constitutional context, on how to engage with citizens including those less often heard, and on Wales's fiscal position. The details of attendees are set out in Appendix 5.

The views of elected representatives and civic society

We have heard from politicians and members of civic society with experience of devolution and operating the current settlement. We have sought views from across the political spectrum and will continue to seek as broad a range of views as possible as we continue our work programme. The continuing national conversation will bring more voices to our consideration, and we are inviting a diverse range of individuals and groups to give oral evidence in 2023.

At this interim stage, we have heard more voices which are concerned about current arrangements and believe that change is needed, than those who believe the status quo is working well. The overwhelming majority of the organisations who responded to our consultation or spoke to us directly were in support of changes to enhance devolution. This included some of those who support the Union, believing that greater devolution is needed to make it work effectively. This is a greater proportion in support of further devolution than in the general population⁵¹, but those giving evidence include many with

experience of working and delivering services through these systems.

Common themes raised in evidence: under the present settlement

In support of maintaining the current settlement

The UK Government Ministers and Conservative ex-Ministers we met argued the devolution arrangements are, overall, working well. They view the provisions of the Internal Market Act and overriding of the Sewel convention as temporary aberrations necessitated by the unique circumstances of Brexit. The Internal Market Act spending powers are there to promote the visibility of the UK Government, and do not alter the fundamentals of the devolution settlement. We were told that the UK Government's aim is to 'take devolution to the next stage' by creating a more direct relationship with local government in Wales.

The case made for the Union included the UK Government's financial firepower in procuring the supply of covid vaccines and funding the furlough programme, which many of those who advocated change also recognised as beneficial. The smooth operation of the UK single market and common rules on trade and employment, are seen as essential for business

and business confidence, especially for small businesses.

We heard evidence that trust in the UK Government can be restored if there were to be a renewed commitment to partnership with the devolved governments. The focus should be on shared rule, recognising the inter-dependence of the governments in delivering outcomes for the whole of the UK. The importance of inter-governmental relations was emphasised, as well as respect for conventions and providing leadership to the civil service on respect for devolution.

Some organisations and individual representatives argued that citizens want to see more constructive co-operation between governments, rather than constitutional change. This is especially the case from groups outside the public sphere, who say that navigating complex and overlapping systems of government is confusing and unhelpful. They want to see governments co-operating to support businesses and citizens. Some difficulties were seen as resulting from politics, rather than structure, and working at official level is sometimes more productive than interacting with ministers.

In support of change

Some who advocated further devolution, or a form of federalism, did so as a means of maintaining the Union. For these groups, systemic change and moving powers to the

nations was needed to shore up what they saw as an inherently unstable union.

Overwhelmingly, those who presented evidence to us were in favour of devolving more powers to Wales, to a greater or lesser degree. This ranged from minor changes to the current settlement, to substantial additional powers, through to full independence. This was a strong message, not only from pro-independence groups but also from wider civic society.

For the majority of those we spoke to outside the political sphere, a desire for further devolution was driven by practical concerns, arising from the constraints on policy and delivery at the boundaries of the devolution settlement. They see the current settlement as hampering effective delivery, blurring accountability and lines of decision making, and leading to inefficient and complex policy implementation. Several organisations who deliver or oversee services raised the difficulties presented by the ‘jagged edge’ between devolved and reserved powers, where the Welsh Government and Senedd lack the powers to make coherent policies. Examples given were:

- problems at the interface with the justice system as evidenced in detail by the Thomas Commission
- limitations on Wales’s ability to make progress on equalities and human rights
- the inability to make rail and air travel a coherent part of transport or economic development strategy

- limitations on planning for sustainability evidenced by the Wales Green Party

Some organisations told us that the current arrangements left them caught in the middle, consulted by both governments but caught between their actions. Bodies that operate on a Wales-only basis said that they are not able to influence the UK Government to the same extent as their English counterparts on non-devolved issues, sometimes resulting in UK Government decisions that reflect the situation in England alone. Some Welsh organisations have a statutory right to make representations and present evidence to the Welsh Government on devolved matters; there is no corresponding right on non-devolved matters to the UK Government. At the same time, some noted that UK Government Ministers were often willing to meet them despite the absence of statutory requirements to do so.

The deficit in information as well as accountability was raised in evidence to us. Many organisations, in political and campaigning spheres especially, saw a link between the lack of devolved responsibility for broadcasting, the lack of Wales-specific media, and the low levels of public engagement in Welsh politics. They argue that media in Wales rarely distinguish between England and Wales, thus blurring the roles of the Senedd and UK Parliament/ UK and Welsh Government. This was brought into sharp focus during the pandemic, where the different rules in England and Wales were often not well understood.

Inter-governmental relations are seen as fragile, with a lack of leadership on issues affecting the union of the nations of the UK. Some political figures who gave evidence argued that under the government headed by Prime Minister David Cameron, intergovernmental relations were characterised by restraint and respect for the distinct mandates of the First Ministers, but this is no longer the case. Prior to this, there had been Labour Governments in both Wales and the UK, which made for a different working dynamic. Under recent Conservative UK governments the intergovernmental machinery is not seen as a robust mechanism for collaboration between the four governments of the UK. Some experienced commentators felt that the UK Government was unwilling to treat devolved administrations as equals and several observed that the UK Government feels no obligation to respond to evidence-based arguments for change, such as those set out by the Thomas Commission.

Generally, the UK Government is seen as not open to proposals to strengthen devolution. The proposals published in March this year to strengthen the machinery of inter-governmental relations were welcomed by respondents, but several were reserving judgment until they saw how this was working in practice.

The evidence highlighted different understandings of devolution. The policy characterised as ‘muscular unionism’, where the UK Government acts on devolved matters in order to promote the Union, was singled out as unhelpful and not conducive to the maintenance of the Union. The UK Government’s initiative in allocating funds directly to Welsh local government for projects in devolved areas is seen by many who gave evidence as undermining and rolling back the settlement. It was seen as duplicating activity, complicating the process for organisations seeking funding, blurring accountability, and risking poor value for money by excluding devolved bodies from decision making. Organisations who received funding noted that they saw no option but to participate in the process; failure to bid for funds would not be acceptable to their electors.

By including new powers in the Internal Market Act to provide such funding to local government in the devolved territories, many felt that the UK Government has worked against the spirit of partnership that prevailed under the European Structural Funds, and in respect of its own City Deal arrangements.

We heard repeatedly that the UK’s departure from the European Union has placed the Union under unprecedented pressure, because of the differing views of the UK Government and the devolved governments about where powers previously exercised by the European

Parliament and Commission should lie, and the UK Government’s decision to impose its will.

Some of those who believe the UK Government was entitled to claim those powers, recognise that its unilateral action, through the Internal Market Act and the Subsidy Control Act, was inconsistent with the conventions governing Parliamentary legislation on devolved matters (including the Sewel convention which the 2014 Wales Act placed on a statutory basis).

Several political figures argued that the doctrine of Parliamentary sovereignty, which enables this unilateral action by the UK Government, conflicts with the democratic mandate of the devolved governments who have no redress in these circumstances. For some, this conflict has made the devolution arrangements fundamentally unstable and has put a strain on representative democracy.

We heard views from some supporters of the Union that the UK should be reconstituted on quasi-federal lines, with enhanced devolution to Scotland, Wales and Northern Ireland and to local government in England, or as a full federation, to prevent the Union from fracturing. For others, the only solution to the governance problems of the UK was full independence for Wales. It should be noted that definitions of independence and particularly federalisation differed between those who gave evidence. Plaid Cymru presented an alternative option of a free association model, which they described as ‘devolution upside down’. Under this model,

all the currently reserved powers would come to Wales and then it would be up to Wales to decide which of those powers should be operated by the UK on Wales’ behalf.

Some, particularly the Scottish Government and the Welsh Liberal Democrats, stressed the principle of self-determination as the basis for participation in or leaving the Union. If a nation of the UK decides to leave the Union, either through a referendum or another constitutionally respected and proper way, then there will be damage to the rule of law and the reputation of the UK if these wishes are not respected. In turn, the concept of a voluntary union of nations should underpin any further devolution, federalisation, and inter-governmental relations should respect that principle.

Several respondents discussed the economic case for further devolution. Some who gave evidence, including Plaid Cymru, connected political devolution with economic devolution, noting that at present the UK’s economy was heavily weighted towards London and the southeast of England. Several raised the impact of the UK Government’s long-term policy of austerity and the fiscal restrictions that the devolution settlement places on the Welsh Government, which in turn limits their scope to make fundamental reforms even in devolved areas. Plaid Cymru recently published a document on the Welsh fiscal deficit and gave evidence to the Commission setting out

their view on the economic implications of independence. Their view is that the structural deficit is overstated and they argue that it presents less of a barrier to further fiscal devolution than many consider it to be.

The fiscal settlement was discussed in several sessions, (including the issues with the Barnett process that are set out in Chapter 4), with those who gave evidence arguing that the system is outdated and opaque. While many believed that changing this would benefit Wales this was tempered by the expectation that change would require UK wide change, which the other nations would not support.

We discussed the boundaries of the settlement in relation to the justice system in Wales with the Chair of the Commission on Justice in Wales (the Thomas Commission), and an academic expert from Cardiff University's Wales Governance Centre. The Commission's report is widely seen as providing strong evidence that the present settlement does not serve Wales well. To date, the UK Government has not published its response. We will continue to pursue this, and we will invite others who support maintaining the current system to present their case to us.

In meetings with the Welsh Local Government Association, the Mayor of Greater Manchester and John Denham Professor of English Identity, University of Southampton, we discussed questions of subsidiarity and aspirations for devolution within Wales and England. In relation to England, we discussed the

problems arising from the UK Government's dual role of governing the United Kingdom, and governing England in relation to devolved matters. We explored the case for changing the centralised model of funding and delivery in England that has operated under different political parties and how this could be reformed to empower city regions and local councils. It is not part of our remit to consider the governance of England, but our remit does require us to consider developments in England, as well as Scotland and Northern Ireland, and their potential implications for Wales.

The Wales Green Party emphasised to us the importance of values and citizen participation in constitution building and want to see sustainability and action on climate change as guiding principles for reform.

The First Minister made the case for a reformed Union that works in the common interests of citizens across the UK, and one to which the people of Wales would want to belong. He argued that reform should be based on four principles:

- Solidarity of the welfare state, providing protection for all citizens against the threats of old age, sickness and disability. This safety net has been eroded since 1979, and there is a positive case for pooling resources across the UK to share resources with those most in need.

- Solidarity of common interests in the necessities of life, such as water, energy and transport. Dŵr Cymru was a model for taking an essential utility out of the market economy.
- Solidarity of the enabled citizen: human rights, environmental rights and labour rights should be guaranteed as part of UK citizenship.
- Solidarity of a fair voting system: for most of the past 40 years people in Wales have been governed by a Conservative led UK Government, although the party has never won a majority of Welsh seats in the Senedd or at Westminster. This has eroded confidence in representative democracy as the route to progress. A reformed electoral system would result in a Westminster Parliament that more faithfully reflected voting patterns across the UK.

Minority groups reported on positive developments made possible by devolution, such as defining Wales as a nation of sanctuary and creating a positive civic response to refugees from Afghanistan and Ukraine. Since the beginning of devolution, the Welsh Government had recognised the value of partnership with faith communities and had built strong relationships over many years. Those working directly with refugees and asylum seekers reported difficulties in working with UK Government agencies, including persuading the Home Office to enable creative solutions designed in Wales.

Conclusion

From the views expressed in this and the preceding chapter we draw two interim conclusions.

First, except for the views of the UK Government Ministers and Conservative ex-Ministers, the weight of evidence from those tasked with navigating the UK's governance system is overwhelmingly in favour of change. We are anxious to ensure that we hear the full range of views and will continue to invite those who support the current settlement or wish to see greater involvement by the UK Government in devolved matters to make that case to us.

Second, the evidence summarised above suggests that the status quo is under serious pressure, and vulnerable to arbitrary or opportunistic modification by a Westminster Government. In Chapters 7 and 8 we set out our assessment of the immediate pressures and our plans to respond to them in the second phase of our work.

Pembrokeshire Youth Assembly

Pembrokeshire Youth Assembly is a county-wide youth forum that consists of two representatives from each school, special interest group and youth forum in Pembrokeshire. The group meets once a month to come together to discuss issues and topics that affect young people in Pembrokeshire.

The group aims to:

- Promote the voice of young people and the 'United Nations Convention on the Rights of the Child'
- Involve young people in decisions that affect them.
- Provide opportunities to meet with decision makers.
- Work on projects that are identified with young people using co-production

Kirsty Williams joined members of Pembrokeshire Youth Forum to hear their discussions on democracy, the future of Wales and priorities for young people in the area in which they are living.

“Everything that’s happened over the last 5 years with the UK government is quite worrying. I’d like to see Wales transitioning to be independent.”

Brandon Jolliffe

“I don’t think independence is right for us now, we rely too heavily on Westminster. But we should have the right to make the laws that affect Welsh people”

Evelyn Thomas

“I want to see more devolution than division. In the next 5 years I would like to see Wales have a better voting system than the UK – the current system doesn’t represent the voice of the people.”

Thomas Akash



Chapter 7

Devolution under pressure



This chapter sets out ten immediate pressure points arising from the evidence we have heard in the first phase of our inquiry. We will continue to explore these in the next phase of our work and make recommendations in our final report.

These pressures relate mainly to relations between the UK and Welsh governments. This is a critical dimension of Welsh governance and the one on which we have received most evidence. It is not the only focus of our inquiry, and we set out in the next chapter the full range of issues we will pursue in the second phase of our work.

These issues are not always evident to the public, although several respondents to our *Dweud eich Dweud: Have your Say* consultation mentioned the importance of relations between governments. The list below reflects this evidence, the views of civic society and those of political leaders experienced in trying to make the current arrangements work.

Why these issues matter

Devolution is worth protecting

These issues matter because devolution represents a major step forward in Welsh democracy. The Welsh Government implements policies based on a manifesto endorsed in a Welsh election, and the Senedd holds the Welsh Government to account for its delivery and stewardship of public funds, including through detailed scrutiny by cross-party committees.

Devolution has enabled policies and laws designed to respond to the needs of Wales, and implemented through the partnership model of government described in Chapter 4. The growing Welsh statute book is summarised in Appendix 10. This includes initiatives which could be useful to other countries, including the Well-being of Future Generations Act and social partnership arrangements (comprising Welsh Government, local government, the third sector, business and trade unions). The way social partnership worked in Wales during the covid pandemic was highly valued by stakeholders.

Devolution is a substantial improvement on what went before in relation to the values we identify in Chapter 2. For this reason, it is vital to identify and address problems that undermine the effectiveness of the devolved institutions in serving the people of Wales.

Impact of inter-governmental tensions on citizens

The problems outlined below have direct real-world impacts. Where relations between the UK and Welsh Governments do not work well, this affects citizens in three main ways:

Policy and delivery: the ability of the Welsh Government to implement policies that respond to the needs of citizens, at the interface with reserved services, can be undermined by an inflexible approach by UK Government agencies. Examples include the Thomas Commission evidence, and the barriers experienced by third sector groups seeking to support refugees and asylum seekers in Wales.

Efficiency and value for money: there is a high cost from wasteful public spending or reduced value for money when UK Government projects do not acknowledge devolution and are planned and funded in isolation from those of partners. For example:

- The UK Government's operation of the Shared Prosperity Fund excluded the Welsh Government, leading to confusion for local government and other partners and missing the opportunity to coordinate with other programmes operating in Wales. This departed from the UK Government's previous Growth Deals model which was a partnership with the Welsh Government.

- The UK Government’s (adult education) Multiply Programme, top-sliced from the Shared Prosperity Fund, was designed to operate across the UK, although education is a devolved matter. There was limited engagement with the Welsh Government. This undermined the effectiveness of the scheme for Welsh learners, as it did not coordinate with devolved programmes.
- The constraints applied by the UK Treasury to the Welsh Government’s management of its budget, including its borrowing powers, undermine its ability to plan for the long term.

Trust: disagreement and conflict between governments undermines trust at all levels of governance, as well as trust in the health and viability of the Union.

Ten pressure points

1. The instability of the settlement

Imbalance of power

The working of the settlement relies on the sovereignty of the UK Parliament and the power that hands to the UK Government. Recent UK Governments and the devolved governments appear to have had different perceptions of devolution and of how Wales and the United Kingdom should be governed.

The UK Government has shown its willingness to override convention and process to assert its will.

The Welsh Government’s view is that devolution has given formal political and institutional recognition to the four-nation, voluntary nature of the Union, with four governments and legislatures, each with distinct mandates rooted in popular sovereignty⁵².

The UK Government’s approach has been inconsistent and opaque. At times, it has seemed to view devolution as a form of delegation of specific subjects, akin to the arrangements for Mayors and joint authorities in England, within a unitary state. It does not seem to recognise devolution as having changed fundamentally the governance of the UK, although the recent rapid changes at the top of the UK Government make it difficult to discern a consistent view.

The most recent formal statement by a UK Prime Minister on the Union came from Theresa May, speaking in Scotland at the end of her premiership in 2019⁵³. She spoke of the UK as a family of four nations, resting on the consent of its constituent parts. The actions of the government led by Boris Johnson, particularly as it dealt with the outcomes of Brexit, did not reflect his predecessor’s conception of the Union. Prime Minister Liz Truss made no contact with the First Ministers of Wales or Scotland

during her time in office. Her successor Prime Minister Rishi Sunak made early contact with both First Ministers, and in November 2022, chaired a meeting of the British-Irish Council, the first Prime Minister to do so for fifteen years. It remains to be seen what strategic approach his government will take to the inter-governmental challenges set out below.

Impact of EU Exit

As discussed in Chapter 2, the UK’s departure from the EU meant that it was necessary to put in place new arrangements for a single market in the UK, and to replace the EU structural funds. The Expert Panel paper: Implications of EU exit for devolution at Appendix 7 discusses this in more detail.

It would have been consistent with the devolution legislation and inter-governmental conventions for these new arrangements to be negotiated between the UK and devolved governments. In an early response to Brexit, the four governments agreed a system of Common Frameworks for managing the interface between a UK internal market and devolved competencies. The joint working between governments on Common Frameworks demonstrated how this negotiation could have been done.

⁵² Welsh Government (2021) Reforming our Union: Shared governance in the UK (2nd edition)

⁵³ Theresa May, *Speech on the Union*, Stirling, Scotland, 4 July 2019 ‘*First, our Union rests on and is defined by the support of its people. It is not held together by a rigid constitution or by trying to stifle criticisms of it. It will endure as long as people want it to – for as long as it enjoys the popular support of the people of Scotland and Wales, England and Northern Ireland.*’

Citing exceptional circumstances, the UK Government acted unilaterally through the United Kingdom Internal Market Act 2020 (UK IMA). It determined that powers previously exercised by the EU should be retained by Westminster, and that the requirements of a UK single market should override the devolved institutions' legislative powers.

To ensure the passage of the UK IMA, the UK Government set aside the provisions of the Sewel convention (see Glossary in Chapter 8), arguing that the circumstances of EU exit were not 'normal' (see Chapter 4). The Act included provisions for the UK Government to incur expenditure on devolved matters in the devolved territories, which seemed to signal an intent to undermine devolved competence. This issue remains contested between the two governments.

It can be argued that EU exit was a once in a generation event, and that the UK Government was entitled to deliver its interpretation of the referendum outcome. But there are worrying signs that this way of working is becoming normalised, for example: the operation of the Shared Prosperity Fund mentioned above; the UK Government's plans to repeal the Trade Union Wales Act passed by the Senedd in 2017⁵⁴ announced in June 2022; and the top slicing of the Welsh Government budget to fund military support for Ukraine.

These developments illustrate the vulnerability of the devolved institutions to unilateral decisions by the UK Government, to which they have no meaningful redress. This undermines public confidence in the UK Government's approach to Wales and works against constructive relations with the devolved governments.

2. Fragility of inter-governmental relations

For many years, the Welsh Government has protested about the informality and unpredictability of the UK Government's approach to inter-governmental relations (IGR), calling for a business-like timetable, agendas and papers. In practice, whether meetings happen at all is at the discretion of the UK Government, and the diminution of engagement in recent years has coincided with the willingness to override conventions discussed above. This enables unilateral decision-making which does not contribute to the best outcomes for citizens.

The reliance on personalities at the top of government adds to instability. We were told in evidence sessions that, under Prime Minister David Cameron, relations with the devolved governments were respectful of the devolved governments' powers and mandates. For example, in 2011, the UK Government responded to the Holtham Commission's final

report published in 2010, by establishing the Silk Commission to review the then Assembly's legislative and financial powers.

In 2018, the Joint Ministerial Committee, chaired by Prime Minister Theresa May, initiated a joint review of the IGR machinery. The outcome, published in spring 2022⁵⁵, was agreed by all four governments as heralding a new approach. The review committed to more formality of process, including an independent secretariat, but did not resolve all points of tension, including the role of the Treasury as arbiter of decisions on financial matters.

Despite these good intentions, the developments associated with the UK IMA, and the Shared Prosperity Fund described above, suggest that the 'respect agenda' no longer prevails.

We will continue to take evidence on the progress of IGR, including:

- evaluating recent practice against the intentions set out in the IGR review;
- considering whether the new IGR machinery is being used to operate the partnership approach promised in the UK Government's Levelling Up White Paper⁵⁶.

54 Government acts to make it easier for businesses to use temporary staff to help ease disruptions caused by strike action - GOV.UK (www.gov.uk)

55 Department for Housing, Levelling Up and Communities, (2022) *Review of intergovernmental relations*

56 Department for Housing, Levelling Up and Communities (2022) *Levelling up the United Kingdom: Policy Paper*

3. Absence of Leadership on the Union

Strong and consistent inter-governmental relations require leadership and commitment from the constituent governments. The UK Government's interest in the territorial constitution of the UK and its governance structures has appeared very limited in recent years. Its assumption seems to be that the interests of the Union, particularly after Brexit, require devolution to be kept in check, and even (from the viewpoint of many commentators) rolled back. In this perspective, any demands from the devolved institutions for broader powers will be regarded negatively, whatever the strength of the evidence.

In January 2022 the House of Lords Constitution Committee published its report: *Respect and Co-operation: Building a stronger Union for the 21st Century*⁵⁷, drawing on an extensive body of written and oral evidence. The UK Government's response, published in August 2022, barely engages with the Committee's analysis.

In July 2022, the House of Lords Common Frameworks Scrutiny Committee report endorsed the Constitution Committee's recommended consensual approach to inter-governmental relations. The UK Government's response published in November 2022 was more positive than the August response, reaffirming the merits of the

common frameworks approach in facilitating inter-governmental issues on a range of policy areas.

In the new UK Government, oversight of common frameworks has transferred to Michael Gove as Secretary of State for Levelling Up, Housing and Communities and Minister for Intergovernmental Relations. The new Cabinet Committee structure includes the Prime Minister chairing a Cabinet Committee for Union Affairs. This structure and Mr Gove's appointment may restore a degree of continuity and experience, but the extent of change in structures and personnel at the top of the UK Government in recent years has not provided the consistent leadership needed for effective collaboration with the devolved governments.

4. Constraints on policy and delivery at the boundaries of the settlement

The development of Welsh devolution since 1999 has generally been one of 'deepening' rather than 'broadening'. Apart from the tax-raising powers conferred by the Wales Act 2014, the legislative powers the Senedd now has reflect to a significant degree the set of executive functions the Secretary of State transferred to the Assembly in 1999. Those powers have been deepened by enabling the Assembly, and now the Senedd, to make primary legislation on these matters, but not broadened into new areas of public policy.

During this period, consideration of the case for a broader settlement has focused on the following areas:

- Justice and Policing: reviewed by the Commission on Justice in Wales (the Thomas Commission) which reported in October 2019
- Employment – under review by the TUC Wales Commission chaired by Professor Jean Jenkins
- Welfare – reviewed by the Wales Centre for Public Policy⁵⁸,
- Broadcasting – under review by an Expert Panel launched June 2022⁵⁹
- Energy and the Crown Estate
- Equalities
- Rail transport

In the next phase of our work, we will consider these areas in the round, from the perspective of strengthening Welsh democracy and the implications for the Union.

Of the reviews mentioned above, the most comprehensive evidence has been that of the Thomas Commission which unanimously concluded that the present system is detrimental to justice for the people of Wales. The UK Government has not provided a substantive response to this evidence from those with extensive experience of operating

57 House of Lords Constitution Committee (2022) *Respect and Co-operation: Building a stronger Union for the 21st Century*, 10th Report of Session

58 Wales Centre for Public Policy (2020) *Administering social security in Wales Evidence on potential reforms*

59 Welsh Government Press Release (2022) *Expert Panel on the Devolution of Broadcasting Announced*

the current system. Given the importance of the issues raised by the Thomas Commission and its expertise, this refusal to engage is hard to understand. We will continue our efforts to hear from witnesses who support current arrangements, so that we are able to consider a balanced body of evidence.

5. Problems with the system for financing devolution.

The financial arrangements underpinning devolution were examined in detail in the reports of the Holtham (2009 and 2010) and Silk Commissions (2012 and 2014). The Wales Governance Centre report⁶⁰ on Wales' Fiscal Future, March 2020, placed these arrangements in the wider context of the Welsh economy and tax base.

We discussed the financial and fiscal position in an Expert Workshop led by the Wales Fiscal Analysis team in the Wales Governance Centre and involving experts from Scotland and England (see Appendix 5 and chapter 4).

We have received no evidence that the Welsh Government's share of the resources provided by the UK Government for the relevant services is unfair at the present time, relative to England. But the size of devolved budget will continue to be determined by the UK Government's priorities, based on its austerity strategy in place since 2010. The Welsh tax powers give the Welsh Government some flexibility but in

practice this is limited in current circumstances by the low tax capacity of the Welsh economy.

The lack of an objective process to determine the block grant to the devolved governments has been apparent since the adoption of the Barnett formula in the late 1970s. At that time, it was an administratively convenient basis for setting the budgets for the Welsh, Scottish and Northern Ireland Offices, which were departments of the UK Government. It does not provide the objectivity and transparency required for a transfer between governments and scrutiny by elected representatives in a devolved United Kingdom.

Without an objective UK-wide process, it is not possible to determine the adequacy of the Welsh block grant relative to other parts of the UK. While resisting the case for such a process, the UK Government responded to the evidence presented by the first Holtham Commission report, by making a Barnett adjustment to mitigate the relative under-funding of Wales identified by that Commission.

We do not propose to revisit the comprehensive exercise completed by Holtham. But it is vital not to lose sight of the principle that the devolved budgets should reflect the governments' relative need to spend, and Holtham proposed a transparent and workable process for achieving this. No progress has been made due to the political obstacles to implementation.

We recognise these but note that the disruption from adjusting expenditure to align with relative need, which invariably creates winners and losers, could be addressed by phasing over a long period of time. The objective of achieving an evidence-based, independently verified and transparent process for allocating resources between the nations and regions of the UK, remains essential and should underpin any proposals for constitutional change.

6. Restrictive budget management

The most immediate practical financial issue arises from the restrictions applied by HM Treasury to the Welsh Government's management of its budget. In many ways this treats the Welsh Government as if it were a department of the UK Government.

The Welsh Government's ability to borrow for capital investment, and to carry over capital spending between financial years, is constrained by limits set in 2016-17, and any requests for flexibility are required to be put to the Treasury on a case-by-case basis which is time-consuming and resource intensive.

We have received evidence from the Welsh Government that these constraints undermine its ability to manage its budgets and plan for the long term. It is hard to see why they are needed given that the Welsh Government is accountable to the Public Accounts Committee of the Senedd for its stewardship of public expenditure. Where there are disputes about

60 Ifan, G. Sion, C. Poole, E.G. (2020) *Wales' Fiscal Future: A path to sustainability?* Wales Governance Centre, Cardiff University

financial management, for example the decision that Wales should receive no share of the HS2 rail investment, the UK Treasury is in a powerful position, although the recent inter-governmental reforms have introduced an independent element to the arbitration process. We will explore these issues in more depth in the next phase of our work.

7. Strains on representative democracy

The establishment of the Senedd and Welsh Government represented a major step forward in representative democracy in Wales, including the introduction of a degree of proportionality into the electoral system. Surveys suggest that levels of trust in the Senedd and Welsh Government to act in Welsh interests are strong⁶¹. But the consistently low level of participation in elections to the Senedd and local government evidenced in chapter 4 is a constraint on representative democracy.

This message is borne out strongly by our *Dweud eich Dweud: Have your Say* consultation. Respondents felt that the current system relies too heavily on indirect mechanisms for the public to influence policy by voting on parties based on their manifestos and holding government to account through the ballot box.

Some respondents who discussed proposals for Senedd reform were unconvinced by the Welsh Government's plans for a closed list system of proportional representation,

feeling that this would give too much power to political parties and make it harder for citizens to hold their representatives and the Welsh Government to account.

As discussed in the next Chapter, in the next phase of our work we will consider how to strengthen representative democracy in Wales, including through deliberative mechanisms such as citizens' assemblies, direct consultation mechanisms and enhanced civic education. The objective is to give citizens more opportunities to participate in informed debate and to give elected representatives better information about the views of the public.

8. Information and accountability deficit

Our *Dweud eich Dweud: Have your Say* consultation suggests that there is a significant information and accountability deficit as regards the workings of devolved government. This concern was common ground across constitutional preferences and applied to all levels of government. Many of those who responded used Parliament/ Senedd and government interchangeably, either due to not understanding the distinct roles of these bodies or not seeing the distinction as important. Many lacked confidence in the mechanisms for holding government to account at each level of government, with some having no knowledge of the mechanisms currently in place.

We received expert evidence that the lack of transparency of the justice system in Wales is a barrier to accountability and scrutiny. We also heard evidence that the weakness of the Welsh media means that where information is provided by public agencies it is often not publicised, scrutinised or widely understood, again undermining accountability and trust.

9. The economic conundrum

The fiscal position of Wales, as outlined in Chapter 4, means that a more autonomous Wales would face difficult choices. If macro-economic powers were devolved, without a substantial continuing transfer of resources, the Welsh Government would have no choice, in the short to medium term, but to introduce some combination of significant tax increases, substantial cuts in public spending and borrowing.

The greater the autonomy available to Wales, the more it will need to rely on its own resources. This could involve enhancing its tax powers under the current model of devolution, as has happened in Scotland. Greater autonomy would enable economic policies tailored to Welsh needs and could grow the economy and tax base in the medium to long term. But in the short term, reliance on its own resources would sharply constrain the choices available to Wales.

61 Deloitte and Reform, (2021) *The State of the State 2021-22: Towards a new public sector normal*

The dilemma facing Wales is that its economic prospects within a UK which is one of the most unequal in Europe are highly uncertain. But there is no certainty about the prospects for greater progress under a different constitutional model. We will consider this issue in detail in evaluating constitutional options as discussed in the next chapter.

10. The constitutional conundrum

There is no mechanism for the people of Wales, or the Senedd, to initiate constitutional change or to determine Wales's governance structures. The only exception is when there is a referendum on specific options as in 1979, 1997 and 2011.

The supremacy of the Westminster Parliament (see Expert Panel paper at Appendix 8) means that any change to the current arrangements must be initiated by the UK Government and agreed by Westminster. Whatever case for change is made, it is open to the UK Government to ignore it. Provided it has a sufficient political majority, it is open to the UK Government to undermine and/or roll back the devolution settlement, with no reference to the Senedd or to the people of Wales.

Conclusion

This chapter sets out the immediate pressure points that are evident at this interim stage of our inquiry. The last two points: the relative weakness of the Welsh economy and the supremacy of the Westminster Parliament, are fundamental challenges that must be addressed in the debate on Wales's constitutional future.

The strong response to the first stage of our inquiry demonstrates the public appetite to engage in this debate. We believe that the views of the people of Wales should be decisive, and that no changes to the current settlement should be made without their consent.

As things stand, the people of Wales and their elected representatives cannot have the final say on their country's constitution and cannot even initiate the process of change. That power resides with the governing party in Westminster, and a referendum on options for the future could not take place unless agreed by the UK Government and approved by Parliament. Welsh MPs may of course be part of the governing party, but the voice of Wales, as a national political entity, can never be decisive in the UK Parliament.

In the next phase of our inquiry, we will explore how these pressures could be addressed, including through evaluation of the constitutional options, as set out in the next chapter.

Community Engagement Fund Partner – Tai Pawb and Home4U

Tai Pawb is a membership organisation with members including all housing associations in Wales, most local authorities and a group of third sector partners. We believe in a Wales where everyone has a right to a good home. Too many people in Wales don't have somewhere to live in security, peace and dignity and too many people face systemic prejudice, discrimination and disadvantage in accessing suitable accommodation. We are determined to change that. Home4U is a registered charity based in Cardiff that provides accommodation to people seeking asylum, who are facing destitution and homelessness. We ensure that the properties provided are homely,

and of a high standard. We aim to provide respite from homelessness and help individuals establish pathways out of destitution.

To help raise the voice of refugees and asylum seekers in the discussion of the constitutional future of Wales it was important to 'meet people where they are'. Special thanks to Oasis Refugee Centre and Hoops and Loops drop-in service for allowing us to attend their services to promote the consultation.

"We want a government that cares for all. I would like to take part in politics. I like politics because it can help place grow. As an Asylum seeker, I do not have access to politics. Internet access is needed to get access to the information"

Focus Group Participant v

"Wales is kind, communities are helpful, generous people. We're very grateful, we don't take things for granted, we know we have to work hard."

Focus Group Participant ii

Wales
94%

Chapter 8

Constitutional futures and Welsh democracy



This interim report concludes the first phase of our inquiry. It is an account of work in progress, but it is already clear from the evidence we have received that there are significant problems with the way Wales is currently governed.

In the second phase of our inquiry, we will investigate these problems in more depth and continue the conversation with the people of Wales about how they might be overcome.

This chapter sets out the priorities for the second phase of our work, based on the evidence received from members of the public, civic society and the political leaders, past and present, with experience of operating Wales's current constitutional arrangements.

In Chapter 1 we set out some of the challenges facing Wales and how governance and constitutional structures influence the way these challenges are met. In Chapter 7, we identified the pressure points in the current settlement which in our view make it an unstable basis for addressing these challenges.

In our terms of reference, the Welsh Government asked us to 'consider and develop options for fundamental reform of the constitutional structures of the United Kingdom' and 'to consider and develop all progressive principal options to strengthen Welsh democracy'.

To fulfil this remit, we plan to focus the next stage of our work on three main areas:

- **Mechanisms for strengthening representative democracy at each level of government.**
- **Options for reform of constitutional structures, including practical steps to protect Welsh democracy and the current devolution settlement.**
- **Taking forward the national conversation to explore with the people of Wales how they believe their country should be governed in the future.**

In our view, getting these areas right is essential to provide a solid basis for social, economic, and environmental progress in Wales.

Strengthening representative democracy

Improving the workings of representative democracy is essential whatever constitutional path is chosen by the people of Wales. Our evidence demonstrates that this has many components, including the culture and practice of politics at each level of government.

We will consider whether the current organisation of multi-level governance in Wales fully reflects the principle of subsidiarity, which seeks to ensure decisions are made as close to the ordinary citizen as possible, and that decisions are taken by a higher tier of government only where the matter concerned cannot be addressed effectively at a lower one. We will continue our discussions with the Welsh Local Government Association and other stakeholders on this point.

We will consider options for engaging citizens in the work of representative democracy at all levels of governance, through deliberative mechanisms such as citizens' assemblies, juries and panels, and other mechanisms such as surveys and referendums. We will examine further the operation of citizens' assemblies, including in the Republic of Ireland, where there has been significant investment in the model, and there is a framework for their work to feed into the policy and decision-making process. Our engagement next year will include working with representative citizens' panels as set out in Chapter 3.

We will continue our focus on the accountability and scrutiny of government at every level, including discussions with the Senedd

Commission and local government about the work of Scrutiny Committees and ways of including citizens in the scrutiny process, with a view to improving the impact and visibility of democratic scrutiny.

We have heard consistent evidence about the need to strengthen people’s understanding of how they are currently governed, including through civic education. This was a strong message from our *Dweud eich Dweud: Have your Say* consultation described in Chapter 5. We will consider the impact of the new Welsh curriculum, and other current and potential mechanisms for democratic and civic education after school age.

Evaluating constitutional options

As set out in previous chapters, our starting point is that the constitutional future of Wales should be decided by the people of Wales and their elected representatives. In respect of Scotland, the Westminster Parliament accepted the principle of popular consent to the Union, by authorising the Scottish Parliament to enact the necessary legislation for the 2014 independence referendum. The Northern Ireland Act 1998 provides for ‘border polls’ from time to time on the possible reunification of Ireland. The same fundamental principle of consent should extend to the people of Wales.

During the first phase of our work, we have considered the whole spectrum of potential constitutional options for Wales, from independence without any residual political and constitutional ties to the rest of what is currently the UK, to the abolition of the Senedd (which the Westminster Parliament has accepted would require the consent of the people of Wales, as provided for in the Government of Wales Act 2006) and of any all-Wales governance structures.

During the second phase we intend to focus the debate on options that seem viable to us, that fit with our values (Chapter 2) and that could enable better progress in promoting the well-being of people in Wales, than has been achieved under present arrangements.

As we have said, priorities and outcomes are determined not by constitutional structures but by elected representatives and their political parties. But constitutional structures determine who holds the power to make change, and they can present significant obstacles to progress. In our view the evidence received so far, as summarised in Chapter 7, makes a compelling case that current arrangements are not working for Wales.

Maintaining the status quo

We recognise that maintaining the status quo may be supported by many people in Wales, but so far we have received little evidence to counter the concerns set out in Chapter

7. Maintaining the status quo is the stated policy of the Conservative Party and the UK Government, but the erosion of devolution outlined in the previous chapter suggest to us that the status quo is no longer a stable basis for the future. The settlement can readily be unpicked without any effective veto from the people of Wales, or their government and representatives. The legislative guarantee that the Senedd could only be abolished following a referendum in Wales could be unilaterally overturned by a simple majority at Westminster at the behest of the UK Government, just as the Fixed Term Parliaments Act was repealed.

Unwinding devolution

No political group has submitted evidence in support of reversing devolution, but this is an option that a significant minority raised in response to our consultation. It would mean that Wales would revert to being governed from Westminster and Whitehall. In a Parliament of 650 MPs, Wales would be represented by 40 MPs, falling to 32 once current legislation is implemented. If the pre-1999 governance arrangements were put in place, executive decisions for Wales, including budget allocations and public appointments, would be taken by a member of the UK Cabinet, accountable to Parliament, with scrutiny carried out by the single Select Committee dealing with Welsh Affairs.

None of the main political parties advocate the abolition of the Senedd or a reduction in its role and powers. In the 2019 General Election, all the major parties at Westminster said that they supported devolution, with the Welsh Conservatives pledging ‘we are committed to devolution and guarantee that Wales will not lose any powers or funding as a result of our exit from the EU’. Parties opposed to devolution gained only 2.4% of the constituency vote and 5.3% of the regional list vote in the 2021 elections, winning no seats in the Senedd. We have received no response to our invitations to submit evidence from groups such as Abolish the Assembly or Reform UK.

Unwinding devolution would be complex: it would not be straightforward (politically or administratively) to harmonise arrangements between England and Wales after 20 years of divergence in devolved policy making. But in our view, these complexities are far less important than the principles at stake.

There is a strong democratic basis for devolution. The public voted in favour of Welsh devolution in 1997 (albeit by a narrow margin). After ten years’ experience of the new institutions, in the 2011 referendum the people of Wales gave strong backing to the creation of a Welsh legislature with primary legislative powers.

This option would be a step backwards in terms of democracy, accountability and subsidiarity, and would be inconsistent with the values we set out in Chapter 2. It would leave the people of Wales with less agency to influence the decisions that affect them, and in our view, would weaken the governance of Wales.

At the same time, we recognise the strength of feeling of those who feel that devolution has not improved their lives. We may disagree with their analysis and proposed solution, but we do not dismiss their concerns. We will continue to engage with those who hold these views to better understand their perspective and keep them involved in considering future options.

Therefore, we conclude that neither the status quo nor unwinding devolution are viable options for further consideration. Based on our values, our engagement to date, and publicly available information about the views of the Welsh public and their elected representatives, we see three principal options for the way forward. To assist readers in considering these, a glossary is attached as an Annex to this chapter.

Three principal options

Based on this evidence, and having considered the broad spectrum of options in the light of our terms of reference, alongside our views of what might be practically achievable, we have decided to focus our consideration on three principal options, discussed below in order of least significant change to most significant change from the status quo:

- entrenched devolution
- federal structures
- independence.

Which option the people of Wales ultimately choose will be influenced by events and decisions elsewhere in the UK. For example, if UK governments persisted in seeking to undermine or erode the devolution settlement, that might persuade more people that the people of Wales need greater constitutional protection. If Scotland and Northern Ireland were to leave the UK, that too is likely to influence how people see the future of Wales. The three principal options are not static; each may be more or less viable or desirable depending on wider events. We will evaluate the options within this dynamic context and reach our own views on the way forward.

Polling evidence suggests that the largest proportion of Welsh voters favour greater powers for the Senedd while remaining part of the UK. In this context, it is useful to distinguish between:

- the constitutional status of the devolved institutions – as distinct from the scope of their responsibilities
- the scope of the devolved powers, whether or not there is any change in the constitutional arrangements

Our evaluation of the options will include both dimensions; polling data does not distinguish between them, and so further investigation is merited.

Entrenched devolution

This option would protect against unilateral changes by the UK Parliament and Government, promote more constructive inter-governmental relations, and provide a more stable foundation for Welsh governance in the future. This is perhaps the option closest to the policy of the UK Labour Party, as the Opposition in the Westminster Parliament. It would respond to the widespread concern from stakeholders about recent experience of a UK Government with a large majority at Westminster able to over-ride and in practice re-write parts of the current settlement.

As part of our consideration of this option, we will review the case for expanding the devolved powers, including in respect of justice and policing. The Thomas Commission has made a strong case for the devolution of these powers to Wales, as is already the case in Scotland and Northern Ireland. We have yet to be presented with a coherent argument as to why this is not desirable: we will continue to seek a wide range of views before reaching a conclusion on this and other current proposals for a more coherent Welsh settlement.

This option would require minimal change in terms of the rest of the United Kingdom, while providing greater stability. Again, it would seem to broadly consistent with polling suggesting the largest proportion of voters in Wales favour greater devolution.

We believe the key questions on this option include:

Entrenched devolution: key questions

- ▶ **Is it plausible that robust entrenchment of the powers of the Senedd and the Welsh Government could be achieved without a UK wide written constitution which introduced limitations to Parliamentary sovereignty?**
- ▶ **Is it possible to restore confidence in the process of inter-governmental relations, given its vulnerability to changing priorities and personalities within the UK Government.**
- ▶ **Would expanding the devolved powers into new areas solve the ‘jagged edges’ in the current settlement or would it just create different challenges?**

The evidence received so far does not provide fully compelling answers to these questions and we will pursue these in the second phase of our inquiry.

Federal structures

This option assumes UK wide reform with the following elements:

- a statutory separation of powers between the UK Government and Westminster Parliament and the Senedd and Welsh Government, and the other devolved legislatures and executives, entrenched by a UK constitution which replaced the principle of unlimited Parliamentary sovereignty.

- a separation between the role of the Westminster Parliament and Government in relation to their UK-wide responsibilities, and their role in governing England in respect of devolved matters
- a reformed second legislative chamber at UK level, designed to provide territorial representation.

This option reflects in broad terms the position of the current Welsh Labour Government, and the UK and Welsh Liberal Democrats, and the position of many stakeholders who see a need for significant reform to avoid the ‘jagged edge’ of the current settlement.

We intend to explore two main variants of this option, either of which would be consistent with federal models elsewhere in the world:

- financial responsibility for welfare (pensions, unemployment benefit, disability benefits) is transferred to the Senedd, with responsibility for taxation principally resting with the Senedd (and responsibilities are broadly consistent with those devolved to Scotland and Northern Ireland) and
- welfare remains the responsibility of the United Kingdom Government and Parliament.

We will consider the range of federal models that operate internationally as well as the work of the Constitution Reform Group (see Chapter 6) and other proposals for reform on federal principles generated within the UK.

We believe the key questions on this option include:

Federal structures: key questions

- ▶ **What evidence is there that the public in England, who make up the large majority of the UK population, would support far-reaching constitutional change of the sort necessary for this option to be viable?**
- ▶ **Given that there is little or no appetite for devolved regional government in England on the model of Welsh and Scottish legislative devolution, how would it be possible to design UK-wide structures that would not inevitably lead to domination by England?**
- ▶ **What are the prospects of achieving a UK-wide consensus on reform of the current funding model, to replace the Barnett formula with an evidence-based and legally binding system that enables fiscal transfers between the economically stronger parts of the UK and less successful economies like that of Wales?**

As with the previous option, the evidence received so far does not provide convincing answers to these questions and we will pursue these in the second phase of our inquiry.

Independence

Under this option Wales would become a sovereign country, eligible for full membership of the United Nations and other international organisations. This option is currently the expressed wish of only a minority of respondents in public polling, but there is evidence that support is increasing, particularly amongst younger people, and it is an essential part of the political platform of one of Wales’s three main parties. Polling suggests that support for independence could increase if either Scotland or Northern Ireland leave the United Kingdom. It is therefore neither premature or inappropriate to try to understand, and to stimulate wider debate over, the advantages and disadvantages of such a change.

We believe the key questions on this option include:

Independence: key questions

- ▶ **Could an independent Wales sustain at least the current level of public services on the basis of its own fiscal capacity?**
- ▶ **How would an independent Wales finance those responsibilities currently funded entirely by the UK Government, including pensions and benefits, and create the capacity to operate systems such as immigration, trade and overseas representation?**

- ▶ **How would an independent Wales establish its fiscal stability and credibility, and what currency would it use? How would it maintain the confidence of the financial markets in the immediate aftermath of separation, and in the medium/longer term?**
- ▶ **How would the Wales/England border operate and what would be the implications for businesses and citizens crossing it every day in both directions?**
- ▶ **What would be the implications of the national border for trade with the rest of the UK, Europe and the world?**
- ▶ **Would an independent Wales initiate the accession process to join the EU, bearing in mind that the arrangements negotiated by the UK before leaving the EU are unlikely to be available, and how long would this take?**

In the modern world, no nation exists in isolation, and it is highly likely that an independent Wales would seek to negotiate new arrangements to interact with its neighbours. It seems to us essential for any campaign for independence to set out the intended future relationships between an independent Wales and other nations. The importance of achieving clarity on this was underlined by the experience of Brexit and the challenges of agreeing the UK's future relationship with the EU.

As a minimum, it seems to us that there would need to be treaty agreements on matters such as borders and trade. There are a range of governance options which could become available after Welsh independence, if other parts of the UK were willing to implement them, including free association and confederation.

Free Association

This option could be implemented ahead of full independence. This model has most commonly been implemented in nations that are either under the protection of another nation, have been colonised, and/or are in the process of decolonisation. As such, international examples of free association models have been shaped by the historical relationship between the nations. However, the general approach is that under a free association model, nations choose to delegate certain functions to another nation to operate on their behalf. The level of control that the delegating nation retains over the delegated function varies depending on the structure of the free association agreement. For example, in an independent Wales, matters such as defence could be delegated to the rest of the UK to exercise on Wales' behalf, and this would be subject to a bilateral negotiation and agreement between Wales and the rest of the UK.

Confederation

In a confederation, independent nations chose to pool their sovereignty on specific topics. The European Union is an example of such a confederation, as is the Benelux confederation of Belgium, Luxembourg, and the Netherlands. Decisions on these topics (such as trade, foreign policy, defence and so on) are taken jointly and all nations agree to be bound by the common decisions.

Governance models vary, but they can feature weighted voting arrangements depending on the populations of the constituent nations, and nations holding veto powers over actions of the confederation. This model would require agreement from all parties involved. For example, if the UK split into constituent nations confederation would require agreement from England, Wales, Scotland and Northern Ireland.

For both these variants, the questions above apply, and there would be further questions, including:

- ▶ **What evidence is there that England and/or other parts of the UK would join in any free association or confederal arrangements with Wales which would constrain their own freedom of action?**
- ▶ **If other parts of the UK were unwilling to enter into shared governance arrangements with an independent Wales, how would cross border matters be managed?**

The evidence received so far does not provide convincing answers to these questions and we will pursue these in the second phase of our inquiry.

In the coming year we will take further evidence to enable us to fully evaluate the strengths and weaknesses of these different directions of travel. We will also discuss them with the people of Wales through the ongoing national conversation.

Taking forward the national conversation

The work programme mapped out above includes ways to improve the workings of our representative democracy as it currently stands, as well as options for constitutional change. We will use the mechanisms set out in Chapter 3 to discuss these ideas with the public and civic society. This will enable us to find out what the people of Wales think are the priorities for change.

Conclusion

We have spent our first year taking evidence on the way the current settlement works and the problems identified by citizens, elected representatives and civic society. In the second phase next year we will deepen our evidence base and test potential solutions to these issues.

On our remit to strengthen Welsh democracy, the evidence suggests a wide range of pressures on the workings of representative democracy today, and we will evaluate the most promising ways of addressing them.

In respect of constitutional change, we have considered a wide spectrum of options and narrowed them down to three ways forward, all of which we consider viable. Each of these raises fundamental questions, and the evidence received to date does not answer them fully and convincingly. In the second phase of our work, we will extend the conversation with the people of Wales and continue to seek more detailed and comprehensive evidence so that we can test these options with the public on a sound basis.

Community Engagement Fund Partner – ArtsFactory

ArtsFactory is a community based social enterprise and charity that has been based in Ferndale in the Rhondda Fach since 1990. We exist to ‘change people’s lives’, working with individuals who often go unnoticed within society by making the ‘unseen, seen’.

Cwm Taf People First is a Charitable Incorporated Organisation that was set up and is run by and for adults with learning disabilities, to self-advocate, co-produce and co-design health & social care services in order for them to have a voice, choice and control of their lives.

Co-producing this report allowed us to gather information from community members who have varied abilities and lifestyles. We engaged with Older People, Community Groups, Disabled People, and those who have or are experiencing unemployment through focus groups, a hackathon, interviews, workshops, sometimes in different settings like an outdoor walk.

“I feel that consultation within communities gives the silent majority a voice”

Participant – Anonymous

“The opportunity to run and facilitate the hackathon process was really exciting for us... [The hackathon] has helped people understand that they have power to potentially influence change through sharing their experiences and ideas in creative ways, giving language to and in some cases a gateway to release emotions, ideas and passion”.

Facilitator – Jenny Mushiringani Monjero

“I took part because I believe that making my voice heard makes a difference to my community as the Welsh Government will know how people feel.”

Participant – Margaret (79)



Glossary

Independent/ independence

A state which is recognised by other members of the international community as politically independent and is therefore eligible to join international organisations such as the United Nations or the European Union as a full member.

Sovereign

A state or the political authority within it which has full autonomy to determine its own legislation and policies, subject only to the membership of international or supranational organisations which it (at least in theory) could decide to withdraw from (as the UK has done from the European Union). In practice of course, sovereignty is constrained by the decisions and attitudes of other states and international actors, reflected in the development of the global economy, environmental challenges, and the broader geopolitical situation.

Federal/ federation

Arrangements within a sovereign state which distribute legal and political powers between a federal government and a number of component 'states' or regions and in which the distribution of powers is set down in a constitution or fundamental law which can only be amended if special constitutional thresholds are met. Usually, but not invariably, all the component 'states' have the same powers, and are represented in the institutional governance structures at the federal level. Examples of federal states are the USA, Germany, Canada, Australia etc.

Home rule/ 'Devo Max'

A constitutional settlement in which all 'internal' policies are devolved, with only foreign affairs, defence, security and macro-economic policy retained at the 'federal' level.

Asymmetric Devolution

Constitutional arrangements within a sovereign state in which certain regions or component nations have specific political and legislative institutions which are not common to other parts of the state. Spain and the UK are the two most obvious examples of this sort of arrangement. In the UK, because of the doctrine of Parliamentary sovereignty, devolution is also in one sense provisional, since nothing could prevent a Parliamentary majority from fundamental re-writing of the devolution statutes.

Sewel convention

The convention, now codified in s.107(6) of the Government of Wales Act 2006, that Westminster should not normally legislate on matters which are within devolved competence or which alter the scope of devolved competence without the consent of the Senedd. This convention - which the Supreme Court has said is not legally enforceable - has been undermined by Parliament ignoring the refusal of consent on several occasions since 2018 even where it is not disputed that Sewel is engaged, having previously been respected by Westminster Governments.

Appendix 1

Members of the Commission



Left to right: Miguela Gonzalez, Lauren McEvatt, Philip Rycroft, Albert Owen, Dr Anwen Elias, Professor Laura McAllister, Professor Sir Michael Marmot, Leanne Wood, The Rt. Revd. and Rt. Hon. Dr Rowan Williams, Kirsty Williams, Shavanah Taj.



Professor Laura McAllister (Co-chair)

Professor Laura McAllister is a Professor of Public Policy and the Governance of Wales at Cardiff University's Wales Governance Centre. She is an expert on constitutional politics, specifically devolution and Welsh politics and elections. She also researches gender and politics and sports governance.

She is a former Chair of Sport Wales and board member of UK Sport, a current Director of the Football Association of Wales Trust, Deputy Chair of UEFA Women's Football Committee, and former Wales international captain with 24 caps.



The Rt. Revd. and Rt. Hon. Dr Rowan Williams (Co-chair)

Dr Rowan Williams was the Bishop of Monmouth (1992-2002) and Archbishop of Wales (1999-2002), before becoming Archbishop of Canterbury between 2003 and 2012.

Since 2014 he has been Chancellor of the University of South Wales and Chair of the international development charity Christian Aid. He has published widely on religion and social affairs.



Dr Anwen Elias

Dr. Anwen Elias is a Reader in Politics at the Department of International Politics, Aberystwyth University. Educated at Ysgol Dyffryn Teifi, Llandysul, she is a graduate of Cambridge University and the European University Institute, Florence, where she completed a PhD in Political and Social Science. Her research interests include comparative territorial and constitutional politics, political parties and deliberative democracy.

She is Co-Director of the Centre for Welsh Politics and Society and the Wales Institute of Social and Economic Research and Data, and is a member of the Editorial Board for the Institute of Welsh Affairs' 'The Welsh Agenda' current affairs magazine.

She has been a Visiting Fellow at the Universitat Pompeu Fabra, Catalonia and the Universidade de Santiago de Compostela, Galicia.



Miguela Gonzalez

Miguela Gonzalez is a diversity and inclusion practitioner and a former journalist. She is currently the Head of Diversity and Inclusion at Abcam, a global life sciences firm, where she is working to build an open, inclusive culture. Prior to this, she worked in the media for 15 years, mostly as a journalist with the BBC, but also in data analysis, project management and subject matter expertise roles.

As a Diversity and Inclusion Lead with the BBC's Workforce D&I team, she designed, project managed and implemented the extensive consultation that led to the broadcaster's current 3-year Diversity and Inclusion strategy.

Miguela has worked with the Welsh Government on the implementation of the Culture Connect Cymru project and has also been a visiting lecturer at Cardiff University's School of Journalism, Media and Culture. She is also on the board of trustees for Shelter Cymru and National Theatre Wales.

She brings to the Commission insights gained from wide-ranging experiences in key roles across a number of committees, teams and projects, including innovation funds, school governing bodies, art installations and music festivals.



Professor Sir Michael Marmot

Sir Michael Marmot has been Professor of Epidemiology at University College London since 1985, and is Director of the UCL Institute of Health Equity. He is the author of *The Health Gap: the challenge of an unequal world* (Bloomsbury: 2015), and *Status Syndrome* (Bloomsbury: 2004).

Professor Marmot is the Advisor to the WHO Director-General, on social determinants of health, in the new WHO Division of Healthier Populations; Distinguished Visiting Professor at Chinese University of Hong Kong (2019-), and co-Director of the of the CUHK Institute of Health Equity. He is the recipient of the WHO Global Hero Award; the Harvard Lown Professorship (2014-2017); the Prince Mahidol Award for Public Health (2015), and 19 honorary doctorates.

Marmot has led research groups on health inequalities for nearly 50 years. He chaired the WHO Commission on Social Determinants of Health, several WHO Regional Commissions, and reviews on tackling health inequality for governments in the UK.

He served as President of the British Medical Association (BMA) in 2010-2011, and as President of the World Medical Association in 2015. He is President of the British Lung Foundation. He is a Fellow of the Academy of Medical Sciences and Honorary Fellow of the American College of Epidemiology and of the Faculty of Public Health; an Honorary Fellow of the British Academy; and of the Royal Colleges of Obstetrics and Gynaecology, Psychiatry, Paediatrics and Child Health, and General Practitioners. He is an elected member of the US National Academy of Medicine and of the Brazilian Academy of Medicine.

He was a member of the Royal Commission on Environmental Pollution for six years and in 2000 he was knighted by Her Majesty the Queen, for services to epidemiology and the understanding of health inequalities.



Philip Rycroft

Philip Rycroft was a civil servant for 30 years. He worked at a senior level for the devolved government in Scotland before moving to the Cabinet Office in London where he led civil service work for the UK government on the constitution and devolution. His last posting was as Permanent Secretary at the Department for Exiting the EU.

He is now a non-executive director, a consultant and an academic at Edinburgh University and the Bennett Institute for Public Policy at Cambridge University.



Lauren McEvatt

Lauren McEvatt is a Conservative former UK Government Special Adviser to the Wales Office from the Coalition Administration, where she worked under David Jones MP the then Secretary of State for Wales. Her term of service covered the drafting and submission of the UK Government's contribution to the Silk Commission, as well as the drafting and initial stages of the Wales Act 2014.

She has subsequently worked for several governments across East Africa and the Caribbean, including the government of a British Overseas Territory, where her background in devolution has proved most useful time and again, as she supported negotiations on British Overseas Territory constitutional reform, and on trade and investment across devolved and national government offices in an East African nation.

She was born in England to Irish and American parents, and was raised in Hong Kong. She currently works in international government affairs covering public and private sector engagement with multilateral institutions and development organisations.

She is studying remotely for an MA in Global Diplomacy at SOAS, where her proposed thesis topic will be on sub-nation state/ devolved administration representation at multilateral institutions.



Albert Owen

Albert Owen is a former Member of the UK Parliament, elected to represent his home constituency of Ynys Môn for five parliamentary terms. During his time as a Member of Parliament, he was an advocate for the constituency and Wales on a range of political, industrial, social and environmental issues.

He has diverse experience on Welsh affairs, energy, international development and procedures through membership of select committees, All-Party Parliamentary Groups and serving on the Speakers' Panel of Chairs. As a Member of the Speakers' Panel of Chairs, he was an early supporter of pre-legislative scrutiny of draft Bills to include interest groups, organisations and the public in shaping government legislation.

During his time as Member of the House of Commons Welsh Affairs Committee, he had a special interest in devolution, transport and energy matters.

His interests include Welsh and Maritime history, holding the roles of patron of the local Maritime Museum & Vice President of the RNLI. He enjoys coastal walking, travel, reading, cooking, and watching sport.



Shavanah Taj

Shavanah Taj is Wales TUC's first BME General Secretary. She joined Wales TUC in February 2019 from the Public and Commercial Services Union (PCS), where she was the Welsh Secretary from 2013. Shavanah is a graduate of the TUC Organising Academy 2002.

Prior to joining PCS as a full-time officer in 2002, Shavanah worked in retail, call centres and the third sector.

Shavanah is a passionate campaigner and activist for equity and social justice. She is a board member for a number of charities, including the Bevan Foundation and the People's Health Trust and Chair for Women Connect First. Shavanah is a visible advocate for workers' rights, often appearing on TV, Press, giving advice and evidence to Welsh Ministers and Committees, contributing speeches at round table debates and protest marches. Key areas of expertise include worker exploitation, low pay, anti-racism, human rights, women's rights and climate justice.



Kirsty Williams

Kirsty Williams served for 22 years in the Senedd, prior to which she was a member of the National Assembly Advisory Group appointed by the then Secretary of State for Wales to advise on the establishment of the newly devolved institution. In 2008 she was elected leader of the Welsh Liberal Democrats, the first woman to lead one of the four main political parties in Wales.

Between 2016 -2021 she was Minister for Education, leading a national mission of education reform. She retired from front line politics in May 2021 and now chairs the advisory board of the International Learning Exchange Programme, Wales' replacement for Erasmus+.

She lives on the family farm in the heart of the Brecon Beacons and is an enthusiastic volunteer at Pontfaen Young Farmers Club.



Leanne Wood

Leanne Wood has more than 25 years' experience as a political activist. She has held many roles in political life including local councillor, MS for the Rhondda and leader of Plaid Cymru. She was the first woman to represent the Rhondda and the first woman to lead Plaid Cymru.

Leanne has championed many and various social and economic issues and is determined to work to ensure that whatever Wales' constitutional future looks like, those who are struggling and those who are marginalised have a chance to see real improvements in their lives.

Appendix 2

Broad objectives of the Independent Commission on the Constitutional Future of Wales

Objectives

The commission has 2 broad objectives:

- ▶ **To consider and develop options for fundamental reform of the constitutional structures of the United Kingdom, in which Wales remains an integral part**
- ▶ **To consider and develop all progressive principal options to strengthen Welsh democracy and deliver improvements for the people of Wales.**

Working practices

The commission will be co-chaired by Professor Laura McAllister and Dr Rowan Williams. Including the Co-chairs, the commission will comprise 11 members drawn from a broad range of political opinion and sections of Welsh society. The commission will be supported in its work by a Secretariat and a panel of experts.

In carrying out its work the commission should develop a programme of inclusive engagement with civic society and the Welsh public to stimulate a national conversation; and commission research, analysis and expert opinion through a panel of experts established for this purpose.

Timetable

The commission should produce an interim report by the end of 2022.

It should produce a full report with recommendations by the end of 2023.

Appendix 3

Commission Expenditure August 2021 - October 2022

	Spend (August 2021 - March 2022)	Spend (April 2022 - October 2022)	Total spend
Secretariat Staff costs	£174,077	£197,825	£371,902
Commissioners' costs	£17,941	£24,266	£42,207
Expert Panel Costs	£1,996	£10,513	£12,509
Research, Engagement and Events	£12,970	£46,093	£59,063
TOTAL	£206,984	£278,697	£485,681

Appendix 4

Meetings of the Commission

2021	November	25/11/2021	Business meeting
	December	09/12/2021	Constitutional context workshop
2022	January	12/01/2022	Engagement workshop
		19/01/2022	Evidence and business meeting
February	16/02/2022	Evidence meeting	
March	07/03/2022	Engagement workshop	
	16/03/2022	Evidence meeting	
April	26/04/2022	Business meeting	
	27/04/2022	Evidence meeting	
May	05/05/2022	In person meeting	
	24/05/2022	Evidence meeting	
	25/05/2022	Fiscal context workshop	
June	09/06/2022	Business meeting	
	22/06/2022	Evidence meeting	
	28/06/2022	Business meeting	
July	15/07/2022	Evidence meeting	
September	07/09/2022	Business meeting	
	20/09/2022	Evidence meeting	
	27/09/2022	Evidence meeting	
October	06/10/2022	In person meeting	
	12/10/2022	Evidence meeting	
	18/10/2022	Research and polling workshop	
	18/10/2022	Evidence meeting	
	20/10/2022	Evidence meeting	

Appendix 5

Participants in evidence sessions and workshops

Participants in evidence sessions

- Adam Price MS, Leader, Plaid Cymru
- Andy Burnham, Mayor of Greater Manchester Combined Authority
- Angus Robertson, Cabinet Secretary for the Constitution, External Affairs and Culture, Scottish Government
- Anthony Slaughter, Leader, Wales Green Party
- Black Lives Matter Cymru
- CBI Wales
- Chambers Wales
- Dafydd Iwan, Welsh language campaigner, musician, and former President of Plaid Cymru
- Democracy Box
- Dr Robert Jones, Cardiff University
- Elin Jones MS, Llywydd, Senedd Cymru
- Ethnic Minorities and Youth Support Team Wales
- Federation of Small Businesses, Wales
- Future of Devolution and Work Commission, Wales TUC
- Gwenith Price, Acting Welsh Language Commissioner
- Heléna Herklots, Older People's Commissioner for Wales
- Huw Thomas, Leader, Cardiff Council
- Independence Commission, Plaid Cymru
- Institute of Directors, Wales
- Jane Dodds, Leader, Welsh Liberal Democrats
- Labour Party Constitution Commission (Rt Hon Lord Paul Murphy, Rt Hon Professor Carwyn Jones)
- Lord Peter Hain, member of the Constitution Reform Group, and former Secretary of State for Wales
- Lord Thomas of Cwmgiedd
- Mabli Siriol Jones, Chair, Cymdeithas yr Iaith
- Neath Port Talbot Council for Voluntary Service
- Neil O'Brien MP, Minister for Levelling Up, the Union and Constitution, UK government
- Prof Mererid Hopwood, Chair of Welsh and Celtic Studies, Aberystwyth University
- Professor John Denham
- Rt Hon Mark Drakeford MS, First Minister of Wales
- Rt Hon Simon Hart MP, Secretary of State for Wales
- Sally Holland, Children's Commissioner for Wales
- Sir Paul Silk, member of the Constitution Reform Group, and former Chair of the UK government's Commission on Devolution in Wales
- Sir David Lidington
- Sophie Howe, Future Generations Commissioner for Wales
- The Lord Dunlop
- Urdd Gobaith Cymru
- Voices From Care Cymru
- Wales Council for Voluntary Action
- Wales Race Forum
- Wales Young Farmers Club
- Welsh Local Government Association, Political Leaders and Officers
- Young Carers Academy
- Yes Cymru

Participants in expert workshops

- Adam McDonnell, You Gov
- Akash Paun, Institute for Government
- Alan Renwick, University College London
- Cian Sion, Wales Governance Centre
- David Phillips, Institute of Fiscal Studies
- Ed Poole, Wales Governance Centre
- Gareth Williams, Expert Panel
- Guto Ifan, Wales Governance Centre
- Hugh Rawlings, Expert Panel
- Jac Larner, Wales Governance Centre
- Jane Wallace, Head of Public Affairs, Which
- Jerry Latter, YouGov
- Jess Blair, ERS Cymru
- Jill Rutter, National Conversation on Immigration
- Katie Alpin, Head of Strategic Insight, Which
- Mairi Spowage, Director, Fraser of Allender Institute, University of Strathclyde
- Nicholas Duffin, Fellow, The Consultation Institute
- Noreen Blanluet, Co-production network
- Richard Wyn Jones, Wales Governance Centre
- Sophie Beesley, Research Data Analyst, Which
- Welsh Government officials with expertise in specialist areas

Appendix 6

Members of the Expert Panel

Gareth Williams (Chair) – Former Special Adviser to the Welsh Government on European Transition

Prof Diana Stirbu – Professor of Policy and Governance at London Met University

Jess Blair – Director of the Electoral Reform Society Cymru

Prof Emyr Lewis – Head of Department of Law and Criminology at Aberystwyth University

Auriol Miller – Director of the Institute of Welsh Affairs

Akash Paun – Head of Institute for Government's devolution programme

Dr Hugh Rawlings – Former Director of Constitutional affairs at the Welsh Government

Prof Mairi Spowage – Professor of Practice and Director of the Fraser of Allander Institute

Appendix 7

The impact of Brexit and the devolution settlement

Paper from the Expert Panel

Introduction

In this paper we consider why and how the UK's exit from the European Union has had a significant impact on the 'status quo' of devolution and how disagreements between the devolved nations and the UK Government over the handling of this hugely challenging process have undermined the fragile consensus about the role of devolution in the UK's governance.

We first consider the way in which devolution was predicated on membership of the EU (Section 2); then the impact of the legislation which was necessary to implement the UK's withdrawal from the EU on the legal position of the devolved legislatures and governments (Section 3, with a summary table of legislation where consent was refused and ignored); the tension over how to replace the EU Structural Funds and its unilateral resolution by the UK Government (Section 4); and finally the impact of EU withdrawal on the processes and structures of inter-governmental relations in the UK (Section 5).

The paper focuses largely on the interplay between Wales and Scotland on the one hand, and the UK Government on the other. As is well-known, for much of the period from June 2016 to the present, and most critically perhaps between January 2017 and January 2020, there was no Northern Ireland Executive, so representation of the Province in inter-governmental institutions was by civil servants.

This is necessarily a high-level summary: we are grateful for the assistance of Welsh Government officials for underpinning analysis of legislative developments.

EU membership and the devolution settlements

The devolution settlements which were enacted in 1998 and all subsequent legislation specific to Scottish and Welsh political institutions up to and including the 2017 Wales Act were devised on the assumption that EU membership was a constitutional 'given'.

The settlements gave the devolved institutions in general terms exclusive competence within the UK (always subject of course to the sovereignty of the Westminster Parliament to

amend any statute) over a wide range of policy areas, from education to planning. Many of these areas of competence overlapped with those policy matters in which the EU exercised significant powers, such as the environment, agriculture, fisheries and economic development. Given the supremacy of EU law, as set out in the European Communities Act 1972, the devolved institutions could only act within the framework of EU legislation. For example, the Government of Wales Act made it explicit that the National Assembly (as it then was) did not have competence to make any provision which was incompatible with Community law (as it was then known).

Crucially, however, the UK Parliament and Government was subject to these constraints. There was thus a parity between the freedom of action of the UK political institutions in respect of England with those of the devolved institutions in respect of Scotland, Wales and Northern Ireland on such crucial issues as what pesticides could be used by farmers, the safety of consumer products such as toys, and the recognition of professional qualifications from other parts of the EU. The frameworks set by EU policy and legislation therefore also limited

the extent to which the legal and political approach to matters within EU competence could diverge between different parts of the UK.

The EU institutions necessarily operate in a multi-national political context and the fundamental principles set out in the EU Treaties include those of subsidiarity – that decisions should be taken as close to the level of the individual citizen – and proportionality - that the EU should only act to the extent necessary to achieve the aims of the Treaties. As a result, most EU legislation is in the form of directives which prescribe goals and broad principles, leaving the detailed design of implementing measures to the Member-States, while other forms of EU action is mostly also mediated through the Member-States.

Within the UK, where EU and devolved competence interacted, the devolved institutions could exercise the full extent of the flexibility within EU law, while the scope of the UK Parliament and Government in such matters was limited to policy in respect of England. Thus, for example, significant differences emerged in the way in which agricultural policy and financial support were structured in Wales and England, though both operated within the framework of the Common Agricultural Policy. The Court of Appeal confirmed that this was lawful in the Horvath case in 2007. To take a more specific example, since the EU gave member-states freedom to determine whether

GM crops could be grown, the UK Government agreed to permit such crops in England whereas the Welsh Government implemented a ban in Wales.

Legislation to implement EU withdrawal and devolution

As the UK's EU membership was so thoroughly incorporated into the legal architecture underpinning devolution, leaving the EU inevitably required legislative change. Similarly, EU exit meant that the domestic intergovernmental machinery in place was no longer fit for purpose. Both the law, and the governments' ways of working together, required adaptation. Practically, EU exit would affect many of the most significant areas of Senedd and Welsh Government responsibility.

Change was not, however, a simple case of crossing out references to the EU in the various legal texts – instead, changes needed to provide for some continuity on exit; reflect and implement the terms of the Withdrawal Agreement; implement the UK's new relationships with the EU and the wider international community; and support new domestic structures as the nations of the UK took over many areas of policy which were previously led on by the EU.

The EU (Withdrawal) Act, 2018

The first legislative step to address the domestic consequences of EU withdrawal was the EU (Withdrawal) Bill which was introduced

to the House of Commons in July 2017. The White Paper which preceded it contained a chapter setting out the UK Government's position on the Bill's interaction with the devolution settlements.

“When the UK leaves the EU, the powers which the EU currently exercises... will return to the UK, allowing these rules to be set here in the UK by democratically elected representatives... This will be an opportunity to determine the level best placed to take decisions on these issues, ensuring power sits closer to the people of the UK than ever before. It is the expectation of the Government that the outcome of this process will be a significant increase in the decision making power of each devolved administration”.

The underpinning assumption here that powers were ‘returning’ from the EU and thus would automatically be vested – at least initially - in the UK Parliament was challenged by the Scottish and Welsh Governments. They argued that policies such as agriculture and the environment had been devolved to Wales and Scotland, subject only to the provision that the devolved institutions should operate within the framework of EU law. With that legislative constraint no longer applying to the UK, the devolved institutions should, they argued, have the same enlarged scope and discretion within Scotland and Wales as Westminster and Whitehall did in England. If there was a need for harmonisation or limiting divergence across the

UK as EU law had in effect provided, then such UK-wide approaches should be negotiated and agreed by all three governments (and the Northern Ireland Executive, if operational).

The passage of the EU (Withdrawal) Act (EUWA) was of course highly contentious given the Government's lack of an overall majority and disagreements within the Conservative Party. The UK Government had recognised that the Sewel convention – that UK legislation which impacted on the powers of the devolved institutions should 'not normally' be made without the consent of the relevant devolved legislatures – applied to the Act, and the Government led by Theresa May was anxious to secure this consent. Protracted negotiations within the Joint Ministerial Committee (see Section 5) took place, and both the Welsh and subsequently Scottish Governments prepared their own 'continuity' legislation as a way of challenging the approach of the UK Government: the National Assembly passed the Law Derived from the EU (Wales) Bill in March 2018.

However, in April 2018, the UK and Welsh Governments reached a compromise in the 'Inter-Governmental Agreement (IGA) on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks'.

The IGA provided for a default position that the devolved institutions should continue to have unfettered powers in those areas previously governed by EU law, subject to a time-limited

provision that the UK Government could ask Parliament to 'freeze' their competence to amend 'retained' EU law on specific issues. (In practice, this power, given effect by section 12 of the EUWA, was never used). At the same time, the Agreement set in train a process of developing 'Common Frameworks', which were intended to manage divergence across the UK in respect of devolved policies formerly subject to EU law which could negatively impact on the economic coherence of the UK or undermine its ability to enter into and implement international agreements.

Despite having participated vigorously in the negotiations, the Scottish Government declined to sign the Agreement, although it did agree to participate in the work of establishing Common Frameworks, and the Scottish Parliament voted to refuse consent to the Bill. By contrast, the National Assembly voted to give consent.

At this point, the UK Government decided to proceed with the Bill despite the Scottish Parliament's refusal of consent, arguing that they had made every effort to find a compromise in the face of the SNP Government's intransigent opposition to the UK strategy and that the circumstances of Brexit were 'not normal' and that the Sewel convention was not therefore undermined. This latter point was widely contested.

The EU (Withdrawal Agreement) Act 2020 and the EU (Future Relationship) Act 2020

The resignation of Theresa May as Prime Minister and the election of Boris Johnson in the summer of 2019, followed by the Conservative victory in the General Election in December 2019, was the background to the second major piece of Brexit legislation, the EU (Withdrawal Agreement) Bill, which was intended to implement the agreement reached between the UK Government and the EU in October 2019. It was introduced first in October 2019, then withdrawn, then re-introduced after the election in December 2019 and passed in an accelerated procedure in January 2020. The UK Government recognised that the Sewel convention applied and requested the consent of the devolved legislatures: all three (as the Northern Ireland Assembly was re-convened in January 2020) declined to give consent. Notwithstanding this, the UK Government pressed ahead with the legislation, arguing once again that the unique circumstances of EU Withdrawal justified this step.

‘We recognise that taking the Bill to Royal Assent without the consent of the devolved legislatures is a significant decision and it is one that we have not taken lightly. However, it is in line with the Sewel Convention... The circumstances of our departure from the EU, following the 2016 referendum, are not normal – they are unique’

(Michael Gove, Chancellor of the Duchy of Lancaster)

By contrast, the Institute for Government argued that:

‘the Sewel Convention has been broken by Brexit, [by Parliament]... passing one of the most significant pieces of constitutional legislation in UK history despite the expressed objections of three out of four of its constituent parts’.

This precedent was repeated in respect of the EU (Future Relationship) Act 2020, which passed through all stages of the Parliamentary process in one day on 30 December 2020, without the consent of any of the devolved legislatures.

Common Frameworks and the Internal Market Act, 2020

As has already been noted, while the UK was a member of the EU, EU legislative frameworks played a key role in managing divergence within the UK in policy areas which were devolved. The key impetus for managing divergence came from the development of the EU ‘internal market’.

The EU’s Internal Market is based upon ‘Four Freedoms’ – free movement of goods, services, capital and people. The aim is to maximise economic efficiency by enabling businesses to trade within the EU on the same basis that they trade within their own domestic market. In broad terms, the EU’s approach is either to prescribe specific standards which goods and services have to meet or, more frequently, to set minimum standards alongside a provision that goods and services which were approved by one Member State should be able to be ‘put on the market’ in all.

EU rules came to provide a common thread across all UK nations. They provided a ‘base line’, and, whilst often allowing for the sort of divergence noted in Section 2 above, they also held the nations together, protecting against intra-UK competition or undercutting tactics. They would thus prevent the Senedd from legislation that deliberately or implicitly closed the Welsh market to goods or services from elsewhere in the UK which were in competition with those produced in Wales. However, as

also noted above, they equally prevented the Westminster Government from taking measures in England which would discriminate or disadvantage goods or services produced in Wales from being marketed in England.

Under the Government of Theresa May, and more specifically during the tenure as Chancellor of the Duchy of Lancaster of David Lidington (January 2018 – July 2019), the preferred solution of the UK Government had been the negotiation of Common Frameworks as a way of managing divergence and preventing fragmentation within the UK market after Brexit.

Work at official level on Common Frameworks continued under the new Government led by Boris Johnson and accelerated after the Withdrawal Agreement between the EU and the UK, which provided for the end of the transition period in December 2020 (subsequently extended to the end of January 2021), when the UK would no longer be subject to EU law. Efforts were however impeded by the Covid pandemic which inevitably required a hugely significant re-prioritisation of both political and official work within all administrations.

Moreover, the Government of Boris Johnson, with its focus on ‘muscular unionism’ was more concerned with ‘getting Brexit done’ and ensuring the coherence of the UK internal market after it than with working with the grain of devolution.

As a result, in September 2020 the Government introduced the UK Internal Market Bill to Parliament.

The content of the Bill clearly posed significant challenges to the UK's devolved structures, which was quickly recognised by academics. For example, it introduced 'market access principles' for goods, namely, mutual recognition (goods produced / sold in one part of the UK should be available for sale elsewhere in the UK) and non-discrimination (conditions related to the sale of goods in one part of the UK should not discriminate against goods connected to another part of the UK). These principles did not leave space for divergence around the UK – if the UK Government, acting for England, were to permit a particular good to be sold there, it should be permitted for sale in the other UK nations, even if that ran counter to the policy choices of their elected governments.

The Bill, as introduced, did not reference Common Frameworks and there was no indication as to how the Bill's provisions would interact with Frameworks – indeed, the Bill's automatic application did not appear to leave space for intergovernmental discussions as the Frameworks programme envisaged.

Both the Scottish and Welsh Governments vigorously opposed the Bill, and the Welsh Government proposed a series of amendments which would have limited the application of the market access principles to policy areas

where it had proved impossible to negotiate Common Frameworks. While intensive efforts to secure support in the House of Lords led to amendments which recognised the role which Common Frameworks could play, these were insufficient to persuade the Scottish Parliament and the National Assembly to give their legislative consent to the Bill, with the Scottish Government contending that:

'The UK Internal Market Act constitutes the most significant and far-reaching assault on devolution since 1999'

Once again the UK Government pressed Parliament to complete the passage of the Bill notwithstanding the refusal of consent, arguing once again that the Bill was necessary because of Brexit and that the circumstances were therefore 'not normal'.

Commenting on the tension between the Internal Market Act and the work on Common Frameworks, the House of Lords Common Frameworks Scrutiny Committee wrote early in 2022 that:

'The success of common frameworks depends on collaborative working and consensus being achieved between the administrations. We regret that the potential for common frameworks to succeed in this way has been challenged by the approach of the UK Internal Market Act. This Act makes it more

difficult to achieve the consensus approach that is at the heart of common frameworks. As a consequence, there is a risk common frameworks will become a missed opportunity'.

Subsidy Control Act, 2022

As well as the critically important clauses on market access principles, the Internal Market Act also gave the UK Government new powers over funding activity in areas of devolved competence within Scotland, Wales and Northern Ireland (see Section 4 below) and explicitly reserved to the UK policies relating to the 'regulation of the provision of subsidies which are or may be distortive or harmful by a public authority to persons supplying goods or services in the course of a business'.

This resolved – albeit in a way which was strongly contested by both Scottish and Welsh Governments – a longstanding disagreement about whether subsidy control – or 'state aid' as it is known in the EU – was within devolved competence or not.

While the UK was within the EU, all public bodies (including the UK Government) were obliged to operate within the EU 'state aids' regime which prescribed the types and intensities of grants and subsidies which could be provided to private enterprises. Following Brexit and the resolution of the 'reserved' nature of 'subsidy control', the UK Government introduced legislation to put in place a new regulatory framework in the Subsidy Control

Bill introduced to Parliament in June 2021 and enacted in early 2022

The Act establishes only a broad framework, giving the UK Secretary of State the powers to establish the details of the system. The Act provides for the Competition and Markets Authority (CMA) to provide a key role in regulating subsidies and also establishes a Competition Appeals Tribunal (CAT) to undertake judicial reviews where affected parties or the Secretary of State consider measures could be distortive. Moreover, while schemes or decisions made by the devolved governments may be referred to the CMA or the CAT (as is the case for local authorities and other public bodies), those made by the UK Government may not, while the UK Government is also given exclusive powers to introduce streamlined subsidy schemes.

In the view of the devolved governments, the Act therefore undermines the parity between the UK Government and the devolved governments which existed under the EU state aids regime, a point endorsed by many independent observers:

‘The Bill gives the UK government considerable power to set the subsidy control agenda, and gives it an ability to subject subsidies by devolved governments to scrutiny which is not reciprocal. The Bill also creates a constraint on the law-making power of the devolved Parliaments that does not apply to the UK Parliament (which is also the Parliament that

legislates for England). ...The old EU regime bore down equally severely on both UK and devolved governments, whereas the new regime, though more liberal, is also more unequal.’ (George Peretz QC writing for the UK State Aids Law Association).

Other legislation

In addition to the Subsidy Control Act, the UK Government has proceeded with a number of pieces of legislation despite the refusal of consent to all or part of the Bills by the Senedd, notably the Nationality and Borders Act, the Police, Crime, Sentencing and Courts Act and the Professional Qualifications Act. The last of these was again a direct consequence of Brexit, and involved the potential centralisation of the powers to recognise overseas qualifications (for example, of medical staff), which formerly were the responsibility of the devolved institutions within rules laid down by the EU. While the Sewel ‘system’ of seeking legislative consent is still functioning – with the Senedd giving consent to more than 10 other Bills in the last 12 months - these cases suggest that the Convention is, at the least fraying.

European Funding

From 1999 onwards, West Wales and the Valleys – an area including around two-thirds of the population of Wales – qualified for the highest levels of support from the European Structural Funds, which aim to promote spatial and social cohesion across the EU territories.

Promoting such cohesion is a core mission of the EU, with an objective system of determining eligibility and the intensity of funding available to regions as defined by the EU.

In practical terms, this meant that Wales benefited from significant sums of additional investment, which increasingly was used to support core priorities of the Welsh Government, notably in skills (where, for example, the European Social Fund was used to increase the scale of apprenticeship provision in Wales and to target support on the economically inactive), economic development (with the European Regional Development Fund core funding business support provision, providing vital capital for the Development Bank of Wales, and boosting investment in applied research and knowledge transfer between the academic and private sectors) and rural development (where the European Agricultural and Rural Development Fund supported diversification of the rural economy and the ‘greening’ of farming practices). The last programming period of Structural Funds support (2014 – 2020) provided around £2.1 billion of additional funding to Wales: insufficient, given the scale of the economy, to effect a wholesale economic transformation, but significant in terms of the devolved budget of around £15bn in 2015/16.

Importantly, Structural Fund programmes for Wales (and Scotland) were negotiated principally between the devolved governments and the European Commission, with very little scope for the UK Government to either shape them or influence their implementation. The Welsh Government was the ‘implementing body’, although the management of the funds was overseen by a Programme Monitoring Committee consisting of representatives of key stakeholders such as the Welsh Local Government Association, the Wales Council for Voluntary Action, Welsh Higher and Further Education and the social partners.

There was never any question that withdrawal from the EU would end the UK’s access to the EU Structural Funds, although as negotiations on withdrawal dragged on, it became clear that what were then the ‘current’ programmes (allowing financial commitments to be made up until December 2020 and funding to be drawn down until December 2023) were likely to be left to run their course.

The Welsh Government made very clear from its first policy document on EU withdrawal – ‘Securing Wales’ Future’ published in January 2017 – that it would hold the UK Government to the promises of the Leave campaign that ‘Wales would not be a penny worse off’ as a result of Brexit and that it assumed replacement funding would continue to be managed by the Welsh Government: one reason for this assumption was that the UK Government

lacked the legal powers to directly fund operations in devolved policy areas within the devolved nations.

The Welsh Government began to prepare a framework for the management of future funding working very closely with a wide partnership and drawing on the expertise of the Organisation for Economic Development (OECD): this led to the publication in November 2020 of a Regional Investment Framework, ‘signed off’ by all the key partners within Wales.

However, the UK Government did not share the same view, particularly after Theresa May was replaced by Boris Johnson. Already in the 2017 Conservative Manifesto, the Government had announced an intention to develop a ‘Shared Prosperity Fund’ to replace the Structural Funds but it was far from clear whether this would apply only to England, or if UK-wide what would be the role of the devolved institutions.

In 2020, the UK Government used the vehicle of the UK Internal Market Bill to take new powers to ‘provide financial assistance to any person’ for economic development and related purposes – giving it the possibility of bypassing the devolved institutions for the first time. Despite strenuous objections from the devolved governments and from the House of Lords, this clause became Article 50 of the Internal Market Act.

Hot on the heels of the publication of the Internal Market Bill in September 2020, UK Ministers finally published proposals for the UK Shared Prosperity Fund (UKSPF) at the same time as the publication of the 2020 Spending Review in November 2020. At this point it was confirmed that the UK Government intended to manage funding UK wide, working mainly through local authorities, and did not necessarily foresee any role for the devolved institutions.

In April 2022, the UK Government published the Shared Prosperity Fund prospectus. This confirmed that Wales would receive just under £600 million over the three years 2022/3 – 2024/5, with allocations ringfenced to individual local authorities. While the Prospectus references the need for project submitted by local partners to ‘take account of the wider funding landscape’ notably, in the case of Wales, ‘the Framework for Regional Investment’, no provision was made for any formal involvement of the Welsh Government with the management of the funds, although the UK Government claims that it ‘remains committed to working with the devolved governments... in the implementation of the UK Shared Prosperity Fund’

Inter-governmental relations

As part of the creation of the devolved institutions in Scotland, Wales and Northern Ireland, the UK Government created a 'Joint Ministerial Committee' (JMC) as a forum for co-ordination between the 'devolved administrations' and the UK Government. The JMC itself was originally expected to meet annually at Head of Government (plenary) level, with provision for sub-committees to be formed as and when necessary.

However, in practice, prior to the Brexit referendum, the JMC was hardly a critical part of UK governance. JMC Plenary did not meet at all between 2002 and 2008 and met only three times during the five years of the 2010 coalition government. The only dynamic part of the system was the JMC (Europe) which met, generally, at least twice a year in advance of European Council meetings in order to discuss and agree a UK approach to key issues impacting on devolved competence.

Following the Brexit vote, the JMC agreed to create a new sub-committee, JMC (European Negotiations) or JMC (EN). Its terms of reference were 'to agree a UK approach to, and objectives for, Article 50 [EU withdrawal] negotiations'.

In reality, the JMC (EN), though meeting relatively frequently, was not a forum which the UK Government sought to consult with meaningfully on its strategy on Brexit: in any event, it was also clear that it would be

impossible to arrive at a consensus, given the resolute hostility of the Scottish Government and Sinn Fein ministers to the whole Brexit process, based on the fact that both Scotland and Northern Ireland had voted to remain in the EU.

Article 50, the starting gun for the negotiations, was triggered without any discussion as to timing with the devolved governments, and after the June 2017 election, the problems facing the minority Conservative Government of keeping its own backbenchers onboard (and the constant leaking and briefing of even Cabinet Ministers against the Prime Minister and one another) meant keeping devolved Ministers informed, let alone consulted, on the negotiations with the EU became a very low priority. Moreover, UK Ministers increasingly argued that, as foreign affairs were reserved to Westminster, the devolved institutions had no formal right to a privileged role in terms of Brexit strategy. These arguments became more strident after Boris Johnson became Prime Minister.

There were occasional successes however, notably the agreement of the approach to Common Frameworks at a JMC (EN) in October 2017, which in turn has led to an ongoing, largely successful, process of agreeing a series of these Frameworks.

Although the different governments had very different views of the extent to which the devolved institutions should be involved in detailed formulation of Brexit policy, there was a general agreement that the inter-governmental machinery was no longer fit for purpose given the enormous changes to UK governance entailed by EU withdrawal and in March 2018, the JMC (Plenary) launched a review of Inter-governmental relations (the IGRR).

The Covid pandemic provided yet more evidence of the need for more effective inter-governmental machinery: indeed, the governments did not even attempt to use the mechanisms of the JMC for co-ordination between themselves.

After a long hiatus in the official-level discussions over the IGRR caused by the pandemic, the process was restarted in June 2020, and finally in January 2022 agreement was reached on new inter-governmental machinery which is characterised by greater parity between the four governments (including an independent secretariat and dispute resolution mechanisms which – with the important exception of disputes with HM Treasury – appear balanced and equitable).

Independent observers generally welcome the agreement as a significant step forward, while recognising that living within it would be challenging given the depth of hostility between the UK Government and (in particular) the Scottish Government. Typical was the view of the Scottish constitutional expert, Professor Nicola McEwen:

‘In the midst of intense mistrust and fundamentally competing outlooks on the constitutional and political future of the UK, can the governments set aside their differences and work together to forge positive and constructive relationships? Overall, the reforms have gone further than I thought they could. But the proof will be in the practice. Machinery matters. Process and organisation matter. But the culture and conduct of inter-governmental relations matters more’.

Conclusion

This paper has tried to explain how the Brexit process has impacted on the devolution settlements as they existed in 2016. While different political actors will have different perspectives on these developments, it is possible to conclude that:

- There have been significant changes to the devolution settlements as a result of the legislation to implement the UK’s withdrawal from the EU, which in general terms and in practice appear likely to limit the degree of policy flexibility which the devolved institutions can exercise in areas of devolved competence while formally freeing them from the constraints of acting within EU law.
- Brexit related legislation has underscored the supremacy of the UK Parliament, and the fact that the Sewel convention does not guarantee that Parliament will not exercise this sovereignty to make changes to the devolved institutions’ powers and competences without the consent of the Senedd, the Scottish Parliament and the Northern Ireland Assembly (albeit in the context of the exceptional challenges posed by Brexit).
- Legislation such as the Internal Market Act and the Subsidy Control Act has also changed the pre-Brexit landscape in which the UK Government and the devolved governments were equally constrained

by EU law on policy within devolved competence and has increased the inequality between the devolved executives and the Westminster Government.

- The way in which replacement funding for the European Structural Funds has been developed has markedly reduced the role of the devolved institutions while the Internal Market Act has for the first time enabled the UK Government to directly provide economic development funding to local authorities and other bodies in Wales, Scotland and Northern Ireland.
- As a result of all of these factors, trust and respect between the different governments has been eroded, with the UK Government increasingly believing that the devolved institutions have used Brexit to ‘play politics’ and have subordinated the need for the UK for a smooth transition from EU membership to their own institutional ambitions: and the devolved governments seeing the UK Government as no longer prepared to ‘play by the rules’. Moreover, it is more clear than ever that the devolution settlements are mutable and not fixed.
- Notwithstanding this, Brexit has comprehensively demonstrated the need for improved inter-governmental machinery and the announcement in early 2022 of important changes to this machinery give some grounds for optimism.

ANNEX

Summary table of Brexit Legislation and Legislative Consent

Legislation	Senedd Consent	Scottish Parliament Consent	NI Assembly Consent	Enacted without consent of at least one devolved legislature?
EU (Withdrawal) Act 2018	Yes	No – refused	N/A – Suspended	Yes
EU (Withdrawal Agreement) Act 2020	No – refused	No – refused	No – refused	Yes
EU (Future Relationship) Act 2020	No (request not debated)	No – refused	No – refused	Yes
UK Internal Market Act 2020	No – refused	No – refused	No – refused	Yes
Subsidy Control Act 2022	No – refused	No – refused	N/A	Yes
Professional Qualifications Act 2022	No – refused	No – request for amendment ignored	N/A	Yes

Appendix 8

The current settlement and the UK Parliament's legislative supremacy (also called the Sovereignty of Parliament)

Paper from the Expert Panel

This is an absolute power, conventionally described as having three features.

The UK Parliament can, through Acts of Parliament, make any laws it wants about anything at all. It can also repeal and amend those laws through subsequent Acts of Parliament. There is no legal constraint on the laws it can make.

The UK Parliament cannot bind itself or a future Parliament. So whatever law a Parliament makes can be repealed or amended by another Act of Parliament.

No person or body – including a court of law – may question the validity of an Act of Parliament

This means that the UK Parliament can amend or repeal:

- the Acts which establish/govern the Welsh devolution settlement
- laws made by the Senedd or by the Welsh Government

They can do this without the approval of the Senedd, the Welsh Government or the electorate in Wales.

The practical limitation on the exercise of this unlimited power is political, not legal. It is self-restraint which makes politicians in power hold back from 'going too far'.

The Senedd

The Senedd can, through Acts of the Senedd, make laws about anything at all so long as it doesn't go beyond the boundaries set by the (Westminster) Acts which govern it.

The boundaries are not straightforward – they are extensive and complicated.

If it crosses those boundaries, then a court can strike down the law as invalid

This means that the Senedd can amend and repeal Acts of the UK Parliament, so long as those boundaries are not crossed.

The Senedd can do this without the approval of the UK Parliament or UK Government, but the UK Government can apply to the Supreme Court to strike down a proposed law made by the Senedd for having crossed the boundaries.

The situation is not equivalent because The Senedd's powers can be altered (and indeed the Senedd abolished) by the UK Parliament. The UK Parliament and its powers are inviolable. (Although Section A1 of the Government of Wales Act 2006 provides that the Senedd and Welsh Government are "a permanent part of the United Kingdom's constitutional arrangements" and can only

be abolished by the people of Wales in a referendum, these provisions themselves can be repealed by the UK Parliament without any referendum).

The powers of the UK Parliament include everything the Senedd can do. The Senedd can do only a subset of what the UK Parliament can do. The Senedd is an additional legislature for Wales, not a replacement for Parliament.

The UK Parliament is free without limitation to change the composition and powers of the Welsh Government. The Senedd cannot change the composition of the UK Government. The scope for the Senedd to change the powers of the UK Government in devolved areas is limited by very complex statutory restrictions.

The UK Government

The UK Government can only do things if it has the powers to do them. Those powers come from two sources

The prerogative power of the Monarch. This is what is left of the total power of the King or Queen to govern. It covers some very important areas including conducting foreign affairs.

Acts of the UK Parliament and other legislation. The Government is given the power by Parliament to do things.

One of the greatest powers that the UK Government has is to decide how public money is to be spent. The key aspect of this is the budget which it sets, describing how much

money will be spent on what Government functions. That budget determines by and large how much the Governments in Wales, Scotland and Northern Ireland will get to spend on their areas of responsibility (relevant areas), although the devolution of some limited powers over taxation to Scotland and Wales means that at the margin the size of public expenditure can in these nations can be increased (or indeed decreased).

The mechanism (Barnett Formula) under which the UK Government allocates funding to the devolved nations is a set of rules which the UK Treasury (ie the UK Government) has put in place. Crudely, it looks at how much the UK Government's budget will spend in England on relevant areas (the England allocation). It then allocates a sum of money to the relevant devolved Government. That sum is a fraction of the England allocation calculated by reference to relative population size. They are reflected in a written agreement between the UK and Welsh Governments (the Fiscal Framework agreed in 2016). That agreement reflects adjustments to the rules which are intended to accommodate the Welsh Government's concerns that a pro-rata formula does not take account of certain demographic and economic factors.

The Fiscal Framework has provided additional funding to Wales compared to what would have been available had the previous rules remained in force. Ultimately, however,

the rules are not laws and neither they or the agreement are legally binding. The UK Government is free if it chooses to do so as a matter of law to adapt or change rules or indeed to ignore them.

The Welsh Government

The Welsh Government derives all its powers from legislation, and ultimately from the UK Acts of Parliament which established it.

Until recently, in most cases, the Welsh Ministers had exclusive powers within Wales within devolved areas. Correspondingly, the UK Government and its ministers had no power under normal circumstances to stop or overrule the exercise of their powers. This perhaps became clearer during the coronavirus pandemic, with the realisation that not only could the Welsh Government make different laws from England having very different effects (including closing the border), but UK Government ministers were powerless to stop them, even if they wanted to.

Nevertheless, the Legislative Supremacy of Parliament means that the UK Parliament can change this. While it is still true that in many areas the Welsh Ministers' powers are exclusive, the UK Government has secured legislation to allow UK Ministers to take action in the devolved territories in relation to activities which would be regarded as devolved such as economic development, and more recently (with the proposal for a new UK-wide adult numeracy programme) education.

Appendix 9

The Welsh devolution settlement – a comparison with devolution elsewhere in the UK

Paper from the Expert Panel

Summary

This briefing, prepared for the Independent Commission on the Constitutional Future of Wales, contains an analysis of the Welsh devolution settlement in comparison with the devolution arrangements in the other nations of the United Kingdom.

The purpose of the paper is to inform the Commission as it considers particular areas where amendment of the contours of devolution could be considered as part of any future constitutional reform process.

In particular, the paper maps out ‘gaps’ in the Welsh devolution settlement, meaning powers that are devolved elsewhere in the UK but not to Wales. This paper makes no comment on the arguments for or against further devolution of any these functions.

The analysis is based on comparison of the Acts of Parliament that delineate the powers of the various devolved institutions and analysis of government spending data that illustrates the extent of devolution in different policy areas.

Overview of devolution settlements in Wales, Scotland and Northern Ireland

One useful lens through which to compare the devolution settlements of Wales, Scotland and Northern Ireland is the HM Treasury analysis of UK government spending according to whether it is devolved to Wales, Scotland and Northern Ireland, which is contained in the ‘Statement of Funding Policy’ published alongside each government Spending Review.

The analysis is conducted for each government spending programme, with programme level assessments aggregated to produce a ‘comparability factor’ for each department. This figure is a measure of the proportion of the department’s responsibilities that is devolved to Wales, Scotland and Northern Ireland.

The Treasury’s definition is that “comparability is essentially the extent to which services delivered by UK Government departments correspond to services delivered by the devolved administrations.” Comparability factors are expressed as a percentage, where the higher the figure, the more extensively devolved are the functions of that department.

These figures relate to the ‘Departmental Expenditure Limits’ (DELs) set by the Treasury for planned expenditure by the UK Government, but not to demand-driven ‘Annually Managed Expenditure’ (AME) that includes the bulk of spending on pensions and benefits.

The figures also do not take into account direct spending by UK government ministers in the devolved nations, for instance via the Levelling Up Fund and Shared Prosperity Fund, which bypass the devolved administrations altogether.

Table 1 presents the comparability figures produced as part of the 2021 Spending Review, presented in descending order from the perspective of Wales. So the departments at the top carry out functions that are fully or largely devolved to Wales, while those at the bottom carry out functions that are mostly or entirely reserved to Westminster.

Table 1: Departmental comparability factors, 2021 Spending Review

Department	Scotland	Wales	Northern Ireland
Education	100.0%	100.0%	100.0%
DLUCH: Local Government	100.0%	100.0%	100.0%
DLUCH: Levelling Up, Housing and Communities	100.0%	99.6%	100.0%
Health and Social Care	99.5%	99.5%	99.5%
Environment, Food and Rural Affairs	96.9%	96.9%	96.9%
Digital, Culture, Media and Sport	68.0%	67.7%	67.7%
Transport	91.7%	36.6%	95.4%
Business, Energy and Industrial Strategy	6.8%	6.5%	71%
HM Revenue and Customs	4.0%	4.0%	3.4%
Home Office	74.1%	1.7%	74.1%
Justice	100.0%	1.3%	9.9%
Law Officers' Departments	98.3%	0.0%	90.1%
Work and Pensions	20.1%	0.0%	97.9%
Cabinet Office	0.0%	0.0%	0.0%
HM Treasury	0.0%	0.0%	0.0%
Foreign and Commonwealth Office	0.0%	0.0%	0.0%
Defence	0.0%	0.0%	0.0%
International Trade	0.0%	0.0%	0.0%

Source: HM Treasury, 2021, Statement of Funding Policy. NB. Higher figures imply that a greater share of departmental responsibilities are devolved.

This data provides a simple but useful overview of the three national devolution settlements, and draws attention to a number of ‘gaps’ in the Welsh devolution settlement. These are reflected in the lower ‘comparability factors’ for Wales than for the other two nations, especially in the domains of transport, home affairs, justice, and welfare policy, but to a lesser extent in other areas. This briefing examines each major policy domain in turn below.

There are also important differences in the three settlements that do not relate to spending on public services. This briefing therefore also details certain matters that are excluded from the legislative competence of the Senedd and the executive competence of Welsh ministers, but are devolved to Scotland and/or Northern Ireland.

We consider in particular the list of ‘reserved’ (non-devolved) matters set out in Schedule 7A of the Government of Wales Act 2006,³ and how this differs to the lists of non-devolved matters in Schedule 5 of the Scotland Act 1998 and Schedules 2 and 3 of the Northern Ireland Act 1998.

The UK territorial constitution is complex and the precise division of powers between central and devolved tiers of government is not straightforward to describe or understand in full. As such, this short paper cannot provide a comprehensive comparison of all aspects of the different devolution settlements. Rather it seeks to highlight the most significant ways in

which the powers of Senedd Cymru and the Welsh Government differ from powers held elsewhere.

Education

- The Department for Education (DfE) is the most extensively devolved department, in that a full 100% of its departmental expenditure relates to services that are devolved to Wales and the other devolved nations.
- The Senedd and Welsh Government thus have full responsibility for early years provision, schools, further and higher education and apprenticeships.
- This suggests there is little or no scope for further devolution of education functions to Wales.

Levelling Up, Communities and Local Government

- The services delivered by the Department for Levelling Up, Housing and Communities (DLUHC) – housing, local government, local growth funding – are also categorised as being almost entirely devolved to Wales.
- One small exception is the Leasehold Advisory Service, which provides functions across England and Wales that are devolved to Scotland and Northern Ireland. The same was true until recently of the Planning Inspectorate, but in October 2021

the Welsh Government took over the functions of this body.⁴

- In addition, UK ministers are able to spend money directly in Wales on various functions relating to economic development, using powers under Part 6 of the UK Internal Market Act 2020.⁵
- These powers are being used to operate the Levelling Up Fund and UK Shared Prosperity Fund (UKSPF), as part of which UK ministers allocate money to projects across the UK on functions that are otherwise devolved, including aspects of adult education (through the Multiply scheme⁶) and local economic development and infrastructure.
- In the case of the UKSPF, the Greater London Authority, mayoral combined authorities (where they exist) and local authorities elsewhere in England have been designated as lead authorities for delivery of funds. In Wales, the UK government has allocated money directly to local authorities, rather than to the Welsh Government, and has announced its preference for delivery at the scale of Wales’s four City and Growth Deal areas.⁷
- The Levelling Up Fund is being delivered through local authorities in Wales, Scotland and England, with MPs (but not Members of the Senedd or Scottish Parliament) able to give their “formal priority support” for up to two local bids.⁸

- The Welsh Government will have little direct say over allocation decisions for either of these funds.

Health and Social Care

- The functions of the Department for Health and Social Care (DHSC) are almost entirely devolved to Wales.
- Over 99% of DHSC spending in normal times is for England only on services devolved to Wales, Scotland and Northern Ireland, including spending on primary, secondary, and tertiary care, and public and community health initiatives.
- The only UK-wide services provided by the department listed in the Spending Review were spending on the European Economic Area reciprocal healthcare scheme, and the costs of running the Medicines and Healthcare Products Regulatory Agency.
- In addition, during the pandemic, DHSC was responsible for procurement of covid tests and vaccines for the whole UK, by agreement with the devolved governments.
- There are also a number of limitations on the Senedd's legislative competence in the domain of health policy, not all of which apply to Scotland and Northern Ireland.
- For instance, the Senedd cannot pass legislation that relates to xenotransplantation, genetics and embryology, or the regulation of medicines.

These matters are not devolved to Scotland or Northern Ireland either.

- However, abortion policy is devolved to both Scotland (since 2016) and Northern Ireland (since 1998), but is reserved in the case of Wales. Provision of 'welfare foods' (schemes for improving nutrition for pregnant women, mothers and children) was also devolved to Scotland in 2016, but is not devolved to Wales.

Environment, Food and Rural Affairs

- Around 97% of departmental programme spending by the Department for the Environment, Food and Rural Affairs (Defra) is on services that are devolved to Wales.
- This does not count separate funding to support agriculture and fisheries, which is provided by the UK government directly to the devolved administrations.
- The small slice of departmental expenditure that is on devolved functions includes spending on the regulation of animal and plant health, and management of chemical, biological, radiological and nuclear hazards.
- These regulatory functions are provided by Defra on a UK-wide basis, so they do not reveal gaps in Welsh devolution by comparison to the arrangements in Scotland and Northern Ireland.
- By contrast, the regulation of the water industry is carried out across England

and Wales by Ofwat, with these functions devolved to Scotland and Northern Ireland.

- Another small power that is devolved to Scotland and Northern Ireland but not to Wales is hunting with dogs, which is reserved to Westminster by the Government of Wales Act.

Digital, Culture, Media and Sport

- The Department for Digital, Culture, Media and Sport (DCMS) comes next in the list of departments when ordered by the extent to which their functions are devolved to Wales.
- About two-thirds (67.7%) of DCMS programme spending is devolved to Wales. A marginally higher proportion of spending is devolved to Scotland and Northern Ireland.
- The biggest areas of non-devolved spending are digital infrastructure, broadcasting and media, and central libraries. These functions are provided by DCMS on a UK-wide basis.
- Spending on certain tourism bodies and regulation of commercial gambling is also devolved to Northern Ireland (but not to Scotland or Wales).
- DCMS also funds the Information Commissioner's Office, which operates across England, Wales and Northern Ireland. Scotland has its own freedom of information legislation applying to information held by devolved bodies, and its own information

commissioner.⁹ However, the Scottish and Welsh devolution settlements are identical in this regard, so the Senedd could pass its own legislation if it chose to do so.¹⁰

- Another small DCMS function devolved to Scotland and Northern Ireland, but not Wales is safety of sports grounds, which is reserved to Westminster and relates to the broader reservation of policing and justice functions.
- In addition, both the Charity Commission and National Archives, which are overseen by DCMS, operate across England and Wales. These functions are devolved to Scotland and Northern Ireland. Responsibility for Welsh public records could be devolved by UK ministers with the agreement of Welsh ministers.¹¹
- Responsibility for broadcasting and communications across the UK is reserved to Westminster: none of the three devolved nations have legislative powers in this area. Ofcom therefore operates on a UK-wide basis, with offices in each of the devolved nations.
- In addition, the BBC Board includes non-executive members representing each of the devolved nations, who cannot be appointed without the agreement of the devolved government in question.

- In June 2022, the Welsh Government established an expert panel to consider the devolution of communications and broadcasting powers.¹²

Transport

- Transport is the first policy area on the list where the Treasury spending data point to substantial differences between the three devolution settlements.
- Just 37% of DfT spending in the 2021 Spending Review relates to functions that are devolved to Wales, compared to over 90% in the case of both Scotland and Northern Ireland.
- This makes DfT a largely ‘England and Wales’ department, in that a majority of its spending is on services and policies that extend to those two nations but not to Scotland or Northern Ireland.
- A major difference is that Wales has less devolution with regard to rail travel.
- Spending by DfT on Network Rail and HS2 is categorised as being by the Treasury as being for the benefit of England and Wales, even though the HS2 line will run only through England. This reflects the fact that responsibility for heavy rail infrastructure is not devolved to Wales.

- Responsibility for rail franchising is also reserved to the UK Government. However, executive responsibility for procuring an operator for the Welsh rail franchise has been devolved to Wales, by a transfer of functions order passed in 2018 supported by a set of contractual arrangements between the UK and Welsh governments.¹³
- As the House of Commons Welsh Affairs Committee concluded in 2021, “the management of railways in Wales is complex.”¹⁴
- Responsibility for policing of railways and railway property was devolved to Scotland in 2016, although a planned merger of British Transport Police with Police Scotland has not gone ahead.
- Northern Ireland has full devolved responsibility for its rail network, as well as additional rail-related functions not devolved to Scotland such as rail reform, rail pensions, railway security and for the functions of the Office of Rail and Road.
- The case for wholesale devolution of the railways has been made by the Welsh Government at various points.¹⁵
- There are other differences in the three devolution settlements in terms of transport powers. For instance, the Scottish Government has control of drink and drug driving limits,¹⁶ and some other aspects of road safety.¹⁷

- Northern Ireland is responsible for most aspects of road traffic legislation, including driver and vehicle testing and driver licensing, road safety policy and legislation, and vehicle standards.¹⁸
- The functions of Transport Focus, the independent watchdog for transport users, are devolved to Northern Ireland¹⁹ – and also to London, which runs its own watchdog for Transport for London services.²⁰

Business, Energy and Industrial Strategy

- Over 90% of spending by the Department for Business, Energy and Industrial Strategy (BEIS) is on non-devolved functions, for the UK as a whole.
- However, there are a few important differences between the three devolution settlements.
- Employment law, including legislation relating to industrial relations and workers' rights, is for the most part not devolved to either Wales or Scotland, although Scotland has certain responsibilities that Wales does not, for instance in relation to tackling modern slavery.²¹
- Northern Ireland has fuller legislative competence over employment law, which has led to a number of differences in workers' rights between Northern Ireland and Great Britain.²²
- Northern Ireland also has greater responsibility for energy policy than Scotland or Wales. The generation, transmission, distribution and supply of electricity is reserved to Westminster in the case of Wales and Scotland, but devolved to Northern Ireland, except for nuclear energy.
- Spending by BEIS on functions including smart meters and the Green Deal is therefore on a GBwide basis, with Northern Ireland running its own programmes in this area. Similarly the regulatory functions of the Office for Gas and Electricity Markets (Ofgem) are devolved to Northern Ireland.²³
- The Scottish Government has certain executive powers relating to energy policy that Wales does not, for instance in relation to fuel poverty schemes²⁴ and energy company obligations concerning the reduction of carbon emissions.²⁵
- Scotland and Northern Ireland also both have devolved responsibility for the functions of the Insolvency Service, which operates across England and Wales. Northern Ireland also runs its own equivalent of the ACAS conciliation service.
- Scottish ministers, acting jointly with UK ministers, have the power to make references to the Competition and Markets Authority, which Welsh ministers do not.²⁶

HM Revenue and Customs

- HM Revenue and Customs is also principally a UK-wide department. Over 95% of the department's spending is on operation of the UK tax system.
- The small share of spending by the department that is classed as devolved relates to money set aside for the administration of devolved taxes and for the operation of the Valuation Office Agency in England.
- Wales and Scotland have both established agencies to collect and manage devolved taxes – the Welsh Revenue Authority and Revenue Scotland respectively.
- In the 'HM Treasury' section below, this paper considers the fiscal powers of the three devolved nations, highlighting the gaps in the Welsh settlement by comparison with Scotland and Northern Ireland.

Home Affairs

- Perhaps the most significant gaps in the Welsh devolution settlement can be found in the spheres of home affairs and justice, as discussed in a separate paper produced for the Commission by the Expert Panel. Here we summarise the position in brief.
- In the case of the Home Office, just 1.7% of service spending relates to services that are devolved to Wales. This relates to the

budget for fire services, which is devolved to all three devolved nations.

- By contrast, nearly three-quarters of spending is on functions that are devolved to Scotland and Northern Ireland.
- The main non-devolved function in the case of Wales is policing, along with and related functions such as HM Inspectorate of Constabulary and responsibility for crime reduction policy. However, although policing is not a devolved matter, the Welsh Government and local authorities in Wales provide part of the funding for policing and community safety, in part to make up for spending cuts imposed by the UK government since 2010.²⁷
- Full responsibility for policing and crime reduction has been devolved to Scotland (since 1999) and Northern Ireland (since 2010). The Silk Commission (2014) and Thomas Commission (2019) both recommended that policing should be devolved to Wales.
- The reservation of policing and justice in the case of Wales is the basis for the reservation of Home Office functions which overlap with devolved responsibilities such as alcohol licensing and anti-social behaviour.
- Within England, the functions of Police and Crime Commissioners (PCCs) have been merged into the role of directly-elected Mayor in Greater London, Greater Manchester and West Yorkshire. PCCs were

created in Wales against the wishes of the Welsh Government and Senedd.

- The Home Office is also responsible for a number of UK-wide functions including immigration, the border, visas and passports, the National Crime Agency and counter-terrorism operations.

Justice and the Law Officers' Departments

- Virtually all of the functions of Ministry of Justice (MOJ) and the Law Officers' Departments are devolved to Scotland and Northern Ireland.
- This reflects the fact that Scotland and Northern Ireland have responsibility for their own courts, prisons, probation and legal aid systems.
- Scotland – but not Northern Ireland – is also responsible for the functions of the Criminal Cases Review Commission and the Serious Fraud Office.
- Virtually none of these functions are devolved to Wales, reflecting the fact that England and Wales form a single legal jurisdiction and have shared court and probation systems, with the exception of the devolved Welsh Tribunals.²⁸
- The 1.3% of MOJ spending that delivers services that are devolved to Wales encompasses spending on the Children & Young People Court Advisory Board.

- There has also been a limited form of justice devolution within England (based on partnership working rather than full devolution of responsibility) to the Mayor of London²⁹ and the Greater Manchester Combined Authority.³⁰
- As for the preceding section, various commissions and reports have recommended the devolution to Wales of all or part of the justice system.

Work and Pensions

- None of the functions of the Department of Work and Pensions (DWP) are devolved to Wales. This is reflected in the 0% comparability factor shown in the table above.
- By contrast, the social security system is almost fully devolved to Northern Ireland, with a few exceptions such as Child Benefit. This is reflected in the 98% departmental comparability factor shown in the table.
- However, Northern Ireland is committed to maintaining 'parity' with Great Britain in terms of provision of social security, child maintenance, and pensions systems, in return for which it receives direct funding from the Treasury to meet the costs of the system. In practice, Northern Ireland therefore cannot diverge substantially from UK government policy.

- However, Northern Ireland does have some scope to adapt the delivery of social security, which it has used to amend the operation of the Universal Credit and to provide welfare mitigations to protect certain groups from the effects of DWP cuts.³¹
- Northern Ireland also provides its own employment and skills programmes for unemployed people, and runs its own network of Jobs and Benefits Offices. Northern Ireland also has its own Health and Safety agency and legislation.³²
- In the Scotland Act 2016, a number of welfare benefits were devolved to Scotland, following the Smith Commission that was established after the 2014 independence referendum.
- The functions devolved include several health and disability benefits, specifically: Disability Living Allowance, Personal Independence Payment, Attendance Allowance, Severe Disablement Allowance, and the Industrial Injuries Disablement Benefit.
- In addition, the Carers Allowance, Sure Start Maternity Grant, Funeral Expenses, Cold Weather Payments, Winter Fuel Payments and Discretionary Housing Payments have been devolved, along with loans provided by the Social Fund.
- Like Northern Ireland, Scotland holds some powers in relation to Universal Credit, for instance the power to split payments between household members.
- Scotland also has a general power to create other new welfare benefits, which it has used to institute a ‘Scottish Child Payment’, targeted at children of six and over from lower-income families.³³
- Devolved social security benefits are administered in Scotland by a new agency – Social Security Scotland – and in Northern Ireland by the Department for Communities. In the event of welfare devolution to Wales, additional institutional capacity along these lines would need to be built.
- Finally, Scotland has gained responsibility for employment support programmes for certain disadvantaged groups.³⁴
- There has been some devolution of this function within England too. In particular, London and Greater Manchester have been given funding to commission local providers for the Work and Health Programme, which provides employment support to long-term unemployed and disabled people.
- The UK Government has also committed to ‘co-design’ the delivery of this programme with local partners in other ‘devolution deal’ areas in England – and with the Cardiff City Capital Region, though not with the Welsh Government.³⁵

The Cabinet Office – including constitutional policy

- The core functions of the Cabinet Office – including support to the Prime Minister and Cabinet, efficiency and reform of government, and responsibility for the Union and democracy – are all classed as non-devolved spending for all three devolved nations.
- However, there are a few differences in respect of the devolution of constitutional and governance functions.
- The civil service is a devolved matter in the case of Northern Ireland. The Northern Ireland Civil Service is legally a separate entity to the Home Civil Service that extends across Great Britain.
- Welsh and Scottish devolution both have a similar constitutional status, recognised in law as ‘permanent features’ of the UK constitution, which could only be abolished via a referendum (albeit that in principle the UK Parliament could simply repeal this provision).

- Devolution to Northern Ireland has a different – arguably higher – constitutional status in that the Northern Ireland Act 1998 reflects the domestic implementation of an international treaty with the Republic of Ireland.
- It is also recognised in law that Northern Ireland has the right to leave the UK and reunite with the Republic, and that the UK Government is obliged to hold a referendum on this question “if at any time it appears likely” that a majority would vote in favour.³⁶
- The right of Scotland to leave the UK, following a referendum, was accepted by the UK Government prior to 2014, when Parliament temporarily devolved the power to hold a referendum on independence. This power expired after the referendum took place in September 2014.
- The Supreme Court has been asked by the Lord Advocate of Scotland to determine whether the Scottish Parliament has the power to hold a second referendum on independence under the Scotland Act as it currently stands. The Court concluded that it does not have such power; the Scotland Act would therefore have to be amended to permit this. The Government of Wales Act would likewise require amendment by the Westminster Parliament if the other constitutional matters devolved to Wales are similar to those devolved to Scotland. These include control of the electoral Senedd were

to be able to legislate for an independence referendum for Wales system, electoral franchise and size of the Senedd, subject to a two-thirds majority in the Senedd. The Northern Ireland Assembly does not have the power to change its electoral system.

HM Treasury – including fiscal policy

- HM Treasury is categorised as a fully UK-wide department in terms of its core departmental spending. This reflects the fact that the Treasury retains responsibility for macroeconomic stability, monetary policy and the total level of public spending and borrowing across the UK.
- However, a number of important fiscal levers have been devolved to Wales, Scotland and Northern Ireland within this overall framework of Treasury control. There are also some important differences between the different devolution settlements in this regard, with Scotland in particular having a more extensive set of tax and borrowing powers than Wales or Northern Ireland.
- On income tax, the Scottish Parliament can set all tax bands and thresholds above the personal allowance (for ‘earned income’). Scotland also keeps 100% of income tax revenue raised from Scottish tax-payers. This gives Scotland greater leverage over the income tax system than Wales. The Senedd can set income tax rates at basic, higher and additional level, but cannot vary

the tax thresholds or introduce new rates. Wales also keeps only part of the income tax revenue collected from Welsh tax-payers.

- On VAT, legislation was passed in 2016 for half of VAT revenue in Scotland to be assigned to the Scottish Government (with no ability to vary how VAT operates). This reform has not been implemented due to difficulties in establishing how to estimate Scottish VAT revenues.
- Air Passenger Duty was also fully devolved via the Scotland Act 2016, and the Scottish Parliament legislated to replace this tax with a new Air Departure Tax. However, this change has not been implemented either due to disagreement around proposed exemptions for flights to remote parts of Scotland. Long-haul APD, meanwhile, was devolved to Northern Ireland in 2012.
- The devolution to Scotland of Aggregates Levy, which is levied on the commercial exploitation of crushed rock, sand and gravel, has also been legislated for but not yet implemented.

- Wales and Scotland both also have devolved control of local taxes (council tax, business rates), and taxes on landfill and building transactions. The latter two are not devolved to Northern Ireland. Wales and Scotland also have the power to introduce new devolved taxes, with the agreement of the UK Parliament.
- Wales has fewer borrowing powers than the other devolved nations. Wales can borrow £150m per year for capital spending up to a total of £1bn. Both Scotland and Northern Ireland can borrow up to £3bn. Scotland also has a greater facility than Wales to borrow for resource spending, to mitigate forecasting errors (though not to run a structural fiscal deficit).
- However, the broad reservation of international affairs has not prevented the devolved governments from establishing their own small international development programmes, such as Scotland's International Development Fund³⁷ and the Welsh Government's Wales and Africa grant scheme.³⁸ In the Scottish case, this forms part of a broader Global Affairs Framework, supported by an expanding network of overseas offices.³⁹

The international departments

- Finally there are three international departments where no part of the departmental budget is on functions devolved to Wales, Scotland or Northern Ireland. These are the Foreign, Commonwealth and Development Office, the Ministry of Defence and the Department for International Trade.
- There are no obvious gaps to highlight in terms of the functions of these departments, since the devolution statutes make explicit the wholesale 'reservation' to Westminster of foreign affairs, defence of the realm, the armed forces, and international trade.

Conclusion

This paper has compared the Welsh devolution settlement with the equivalent constitutional arrangements in other parts of the UK – primarily Scotland and Northern Ireland. The analysis has drawn particular attention to powers and functions that are devolved elsewhere but not to Wales.

These 'gaps' in Welsh devolution fall principally within the domains of policing, justice, welfare, transport and energy policy. Both Scotland and Northern Ireland hold a wider array of legislative and executive powers across these areas than currently fall within the remit of Senedd Cymru and the Welsh Government. There are also smaller differences in other policy areas, many of which are consequences of the lack of justice devolution to Wales.

The purpose of this paper has not been to make the case for or against any particular reforms but simply to draw attention to areas where further devolution could be considered, subject to more detailed analysis and consideration. It is hoped that this analysis will prove useful to the Commission as it proceeds with its work.

Expert Panel

September 2022

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- 1 Much of the paper is based on comparison of relevant provisions of the Government of Wales Act 2006, the Scotland Act 1998 and the Northern Ireland Act 1998, taking into account subsequent Acts that have amended these three foundational statutes. The paper also makes occasional reference to powers devolved to certain English cities and regions via various pieces of primary and secondary legislation.
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- 3 www.legislation.gov.uk/ukpga/2006/32/schedule/7A
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- 5 www.legislation.gov.uk/ukpga/2020/27/part/6/enacted
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- 7 www.gov.uk/government/publications/uk-shared-prosperity-fund-prospectus/delivery-geographies
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- 26 [/www.legislation.gov.uk/ukpga/2002/40/section/132](http://www.legislation.gov.uk/ukpga/2002/40/section/132)
- 27 As discussed by the Thomas Commission, https://gov.wales/sites/default/files/publications/2019-10/Justice%20Commission%20ENG%20DIGITAL_2.pdf, pp.84-86.
- 28 <https://law.gov.wales/constitution-and-government/administration-justice/tribunals-and-welsh-tribunals>
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Appendix 10

Welsh primary legislation since 2011

Paper by the Welsh Government

Evidence to the Independent Commission on the Constitutional Future of Wales – A list of Welsh laws passed since power to make legislation was devolved to the National Assembly for Wales / Senedd Cymru – September 2022

Welsh laws passed since 1999

Despite their only brief existence as a legislature and government in Wales,

- the National Assembly for Wales/Senedd Cymru has passed 72 Measures or Acts since 2007. This figure represents 22 Measures of the National Assembly for Wales; 44 Acts of the National Assembly for Wales and six Acts of Senedd Cymru to date; and
- nearly 6,000 Welsh Statutory Instruments have been made including those made by the National Assembly for Wales from 1999 to 2007 and the Welsh Ministers since 2007. This figure includes both local and general Welsh Statutory Instruments, and approximately 36% of Welsh Statutory Instruments are local in nature which include temporary road traffic orders.

The Acts and Measures of Senedd Cymru and the National Assembly for Wales are detailed in the tables below (Tables 1-3). The hyperlinks to the Acts and Measures of Senedd Cymru and the National Assembly for Wales include links to explanatory memoranda and explanatory notes which provide summaries of the legislation, their policy intent and legislative purpose and effect. Should it be helpful to the Commission for the Welsh Government to provide any further explanatory detail on any specific pieces of Welsh legalisation we would be happy to do so.

Table 1: Acts of Senedd Cymru

Acts of Senedd Cymru
Curriculum and Assessment (Wales) Act 2021
Renting Homes (Amendment) (Wales) Act 2021
Welsh Elections (Coronavirus) Act 2021
Local Government and Elections (Wales) Act 2021
Wild Animals and Circuses (Wales) Act 2020
Health and Social Care (Quality and Engagement) (Wales) Act 2020

Table 2: Acts of the National Assembly for Wales

Acts of the National Assembly for Wales	Acts of the National Assembly for Wales	Acts of the National Assembly for Wales
Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020	Public Health (Wales) Act 2017	Agricultural Sector (Wales) Act 2014
National Health Service (Indemnities) (Wales) Act 2020	Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017	Education (Wales) Act 2014
Senedd and Elections (Wales) Act 2020	Tax Collection and Management (Wales) Act 2016	Social Services and Well-being (Wales) Act 2014
Legislation (Wales) Act 2019	Nurse Staffing Levels (Wales) Act 2016	Control of Horses (Wales) Act 2014
Public Services Ombudsman (Wales) Act 2019	Historic Environment (Wales) Act 2016	National Health Service Finance (Wales) Act 2014
Renting Homes (Fees etc.) (Wales) Act 2019	Environment (Wales) Act 2016	Further and Higher Education (Governance and Information) (Wales) Act 2014
Childcare Funding (Wales) Act 2019	Regulation and Inspection of Social Care (Wales) Act 2016	Active Travel (Wales) Act 2013
Public Health (Minimum Price for Alcohol) (Wales) Act 2018	Renting Homes (Wales) Act 2016	Mobile Homes (Wales) Act 2013
Regulation of Registered Social Landlords (Wales) Act 2018	Local Government (Wales) Act 2015	Human Transplantation (Wales) Act 2013
Law Derived from the European Union (Wales) Act 2018 (repealed)	Qualifications Wales Act 2015	Local Government (Democracy) (Wales) Act 2013
Additional Learning Needs and Education Tribunal (Wales) Act 2018	Planning (Wales) Act 2015	Public Audit (Wales) Act 2013
Abolition of the Right to Buy and Associated Rights (Wales) Act 2018	Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015	Food Hygiene Rating (Wales) Act 2013
Trade Union (Wales) Act 2017	Well-being of Future Generations (Wales) Act 2015	School Standards and Organisation (Wales) Act 2013
Landfill Disposals Tax (Wales) Act 2017	Higher Education (Wales) Act 2015	Local Government Byelaws (Wales) Act 2012
	Housing (Wales) Act 2014	National Assembly for Wales (Official Languages) Act 2012

Table 3: Measures of the National Assembly for Wales

Measures of the National Assembly for Wales	Measures of the National Assembly for Wales
Education (Wales) Measure 2011	Red Meat Industry (Wales) Measure 2010
Safety on Learner Transport (Wales) Measure 2011	Social Care Charges (Wales) Measure 2010 (repealed)
Housing (Wales) Measure 2011	Children and Families (Wales) Measure 2010
Local Government (Wales) Measure 2011	Education (Wales) Measure 2009
Domestic Fire Safety (Wales) Measure 2011	National Assembly for Wales Commissioner for Standards Measure 2009
Rights of Children and Young Persons (Wales) Measure 2011	Healthy Eating in Schools (Wales) Measure 2009
Welsh Language (Wales) Measure 2011	Local Government (Wales) Measure 2009
Waste (Wales) Measure 2010	Learning and Skills (Wales) Measure 2009
Mental Health (Wales) Measure 2010	Learner Travel (Wales) Measure 2008
Playing Fields (Community Involvement in Disposal Decisions) (Wales) Measure 2010	NHS Redress (Wales) Measure 2008
Carers Strategies (Wales) Measure 2010 (repealed)	
National Assembly for Wales (Remuneration) Measure 2010	

Appendix 11

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Welsh Language Act 1967 c.66 – UK Public General Acts

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