

Constitutional and Legislative Affairs Committee

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22 June 2015

Meeting time:
14.30

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



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Agenda

1 Introduction, apologies, substitutions and declarations of interest

**2 UK Government's Proposals for Further Devolution to Wales –
Evidence Session (Panel) (Pages 1 – 69)**

Professor Thomas Glyn Watkin
Emyr Lewis, Blake Morgan LLP
Professor Adam Tomkins, University of Glasgow (via video-link)

**CLA(4)–17–15 – Paper 1 – Powers for a Purpose: Towards a Lasting Devolution
Settlement for Wales.**

CLA(4)–17–15 – Paper 2 – Research Briefing

**3 Instruments that raise no reporting issues under Standing Order 21.2
or 21.3 (Pages 70 – 73)**

CLA(4)–17–15 – Paper 3 – Statutory instruments with clear reports

Negative Resolution Instruments

CLA541 – The National Independent Safeguarding Board (Wales) Regulations 2015
Negative procedure; Date made: 4 June 2015; Date laid: 9 June 2015; Coming into force date: 1 October 2015.

CLA542 – The Safeguarding Boards (General) (Wales) Regulations 2015
Negative procedure; Date made: 4 June 2015; Date laid: 9 June 2015; Coming into force date: 6 April 2016

CLA547 – The Care and Support (Population Assessments) (Wales) Regulations 2015
Negative procedure; Date made: 5 June 2015; Date laid: 12 June 2015; Coming into force date: 6 April 2016

Affirmative Resolution Instruments

CLA543 – The Safeguarding Boards (Functions and Procedures) (Wales) Regulations 2015
Affirmative procedure; Date made: 2015 Date laid: Not stated; Coming into force: 6 April 2016

CLA544 – The Adult Protection and Support Orders (Authorised Officer) (Wales) Regulations 2015
Affirmative procedure; Date made: Not stated; Date laid: Not stated; Coming into force: 6 April 2016

CLA545 – The Social Services and Well-being (Wales) Act 2014 (Social Enterprise, Co-operative and Third Sector)
Affirmative procedure; Date made: Not stated; Date laid: Not stated; Coming into force: 6 April 2016

CLA546 – The Care and Support (Partnership Arrangements for Population

Assessments) (Wales) Regulations 2015

Affirmative procedure; Date made: Not stated; Date laid: Not stated; Coming into force: 6 April 2016

4 Statutory Instrument Consent Memorandum (SICM) 5 – The Hazardous Waste (Miscellaneous Amendments) Regulations 2015 (Pages 74 – 90)

CLA(4)–17–15 – Paper 4 – Letter from the Minister for Natural Resources, Carl Sargeant AM

CLA(4)–17–15 – Paper 5 – Regulations

CLA(4)–17–15 – Paper 6 – Consent Memorandum

5 Proposal for European Regulation on GMOs (Pages 91 – 97)

Proposal for a Regulation of the European Parliament and of the Council Amending Regulation (EC) no 1829/2003 as regards the possibility for the Member States to restrict or prohibit the use of genetically modified food and feed on their territory.

CLA(4)–17–15 – Paper 7 – Legal Advice Note – Subsidiarity and Proportionality

6 Paper to note (Pages 98 – 102)

CLA(4)–17–15 – Paper 8 – Letter from the Minister for Natural Resources, Carl Sargeant AM on the Environment (Wales) Bill.

7 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:

(vi) the Committee is deliberating on the content, conclusions or recommendations of a report it proposes to publish; or is preparing itself to take evidence from any person;

8 Consideration of Evidence

9 Draft Report: Environment (Wales) Bill (Pages 103 – 119)

CLA(4)–17–15 – Paper 9 – Draft Report



HM Government

POWERS FOR A PURPOSE: TOWARDS A LASTING DEVOLUTION SETTLEMENT FOR WALES

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**POWERS FOR A PURPOSE:
TOWARDS A LASTING DEVOLUTION SETTLEMENT
FOR WALES**

Presented to Parliament
by the Secretary of State for Wales
by Command of Her Majesty

February 2015

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Contents

	Foreword
	Executive Summary
Chapter 1	Introduction
Chapter 2	The Silk Commission's Recommendations
	2.1 The Model of Devolution for Wales
	2.2 Constitutional Matters
	2.3 Intergovernmental Relations
	2.4 Natural Resources
	2.5 Transport
	2.6 Health
	2.7 Employment and Skills
	2.8 Broadcasting
	2.9 Justice and Equality
	2.10 Welsh Language
	2.11 Other Recommendations
	2.12 Costs
Chapter 3	The Smith Commission Agreement
Chapter 4	Funding and Fiscal Devolution in Wales
Chapter 5	Looking Ahead
Annex A	Silk Commission Recommendations: Political Consensus
Annex B	The Areas Where Reservations Would Be Needed: An Illustrative List
Annex C	An Example of Reservations Under a Reserved Powers Model
Annex D	Issues to be Considered in moving from a Conferred to a Reserved Powers Model

Foreword



The United Kingdom is the most successful political union the world has ever known. The decision made by the people of Scotland on 18 September 2014 to remain part of that union represented a unique opportunity to reshape and secure the future of the UK, and the Prime Minister made it clear that he wanted to see Wales at the heart of that debate. This paper fulfils that commitment and continues the existing process already underway in Wales. It sets out the path to a clear, robust and lasting devolution settlement for Wales.

This coalition Government has a strong record of taking forward devolution in Wales reflecting public opinion. In 2011, we delivered a referendum which saw the Assembly acquire full law making powers across its devolved policy areas. We also passed the Wales Act 2014, devolving a comprehensive package of tax and borrowing powers to the Welsh Government to allow it to grow the Welsh economy. That Act implemented almost all of the recommendations in the first report of the 'Silk Commission', the Commission on Devolution in Wales.

The second report from the Silk Commission, Silk II, considered the boundaries of the current Welsh devolution settlement; that report provides the foundation for the work that underpins this paper. In addition to the Silk II recommendations the paper considers what the new powers proposed for the Scottish Parliament by the Smith Commission might mean for Wales.

The final tranche of work outlined in this paper relates to fiscal devolution and funding in Wales, building on the Wales Act 2014 and the investments in the Welsh economy under this Government. In order to empower the Welsh Government to deliver for the people of Wales, we will introduce a floor in the level of relative funding provided to the Welsh Government with the expectation that the Welsh Government will call a referendum on income tax powers in the next Parliament.

I want to establish a clear devolution settlement for Wales which stands the test of time. I firmly believe that there should always be a clear purpose for devolving new powers to the Assembly, and that the Assembly and the Welsh Government should use any new tools and levers to put Wales in a stronger position to develop as a nation.

In order to achieve this I have led a cross-party process to secure political consensus on further devolution to Wales. I am grateful to the Westminster representatives of the Welsh political parties for the positive and constructive

way in which they approached our discussions; to the Welsh Assembly leaders; the Welsh Government; the Presiding Officer and to business and academic representatives for their participation. Discussions will continue as we move to implement this agreement, particularly with regards to developing the reserved powers model. I believe we now have a strong blueprint for a new Wales Bill in the next Parliament.

It is in the best interests of the people of Wales that we have a clear devolution settlement which gives them a stronger voice over their own affairs within a strong and successful United Kingdom. This paper sets out the path to achieving that.

A handwritten signature in black ink, reading "Stephen Crabb". The signature is written in a cursive style with a large initial 'S'.

The Rt Hon Stephen Crabb MP
Secretary of State for Wales

Executive Summary

This Command Paper sets out a blueprint for the future of devolution in Wales to make the Welsh settlement clearer, and more stable and long-lasting.

The paper is divided into three main chapters. Chapter 2 describes the UK Government's response where there is political consensus to agree the recommendations made by the Commission on Devolution in Wales (the 'Silk' Commission) in its second report ("Silk II"). A summary of that consensus is at Annex A.

The key recommendation made in Silk II is that the model of Welsh devolution should change: Wales should adopt a reserved powers model, making clear the powers reserved to the UK Parliament. Anything not reserved would be devolved, and the National Assembly for Wales would be able to pass laws in those areas.

The UK Government is committed to implementing a reserved powers model for Wales, and has begun a programme of work to prepare the model. An illustrative list of the areas in which reservations would be needed is at Annex B, and examples of the reservations that would be included in the model are at Annex C. Annex D lists the issues that would need to be considered in moving to a reserved powers model.

The UK Government will implement many other Silk II recommendations, devolving a range of additional powers to the Assembly in areas such as energy, transport and the environment. The Assembly will also gain new powers to decide matters relating to its operation and organisation, including what it should call itself.

Chapter 3 confirms the non-fiscal recommendations for Scotland in the Smith Commission Agreement which the UK Government intends to consider and analyse further for Wales. The UK Government has decided to commit now to devolve to the National Assembly a similar package of constitutional powers as are being devolved to the Scottish Parliament. This includes Assembly elections, and the Assembly's electoral structure. It has also decided to devolve the licensing of onshore oil and gas extraction underlying Wales. A number of other Smith recommendations will be examined in order to decide whether they should be implemented for Wales.

Chapter 4 examines fiscal devolution and funding in Wales. The UK Government has already delivered a significant programme of fiscal devolution in Wales and committed to big investments in the Welsh economy since coming to power in 2010.

Building on this, in order to empower the Welsh Government to deliver for the people of Wales, the UK Government will introduce a floor in the level of relative funding it provides to the Welsh Government, in the expectation that

the Welsh Government will call a referendum on income tax powers in the next Parliament.

Funding arrangements beyond the next Parliament will need to take full account of the Welsh Government's new powers and responsibilities, given the significant impact that tax devolution could have on its funding. The UK Government will work with the Welsh Government to develop sustainable long term funding arrangements within a robust fiscal framework that reflects the changes made.

The UK Government will also enable the Welsh Government to issue bonds to borrow for capital expenditure. Additionally, it will consider the case and options for devolving further powers to the Assembly over Air Passenger Duty (APD), informed by a review of potential options to mitigate the impacts of APD devolution on regional airports.

The changes set out in this paper provide a solid foundation for legislation early in the next Parliament. There will be further work on how best to deliver this package, and in particular to seek agreement with interested parties, including the Welsh Government and the Assembly Commission, on a reserved powers model for Wales.

Chapter 1: Introduction

1.1 In September 2014, the Prime Minister committed to Wales being at the heart of the debate on the future of devolution in the United Kingdom. Following the referendum on Scottish independence, the UK Government established a Cabinet Committee on devolution to look at devolved powers for Wales, alongside those for England and Northern Ireland, and new powers for Scotland.

1.2 The Secretary of State for Wales is a member of that Committee and under its auspices and oversight announced the Wales Devolution Programme on 17 November 2014, fulfilling the Prime Minister's pledge. The Secretary of State committed to announcing the outcome of the Programme by St David's Day 2015, and the Programme has since become known as the St David's Day process.

1.3 This paper sets out that outcome, and the UK Government's plans for a clearer and more stable and long-lasting devolution settlement for Wales.

1.4 The Secretary of State held discussions with the four main political parties in Wales¹, focusing on the recommendations made by the independent Commission on Devolution in Wales (the 'Silk' Commission) in its second report², published in March 2014. Known as "Silk II", the Commission's report made 61 recommendations on the powers of the National Assembly for Wales ("the Assembly") and modifications to the devolution boundary. The outcome of those discussions is at Annex A.

1.5 The views of party leaders in the Assembly and of the Welsh Government fed into those discussions, as did those of other interested parties, including the Assembly's Presiding Officer, Welsh business³ and civil society in Wales.

1.6 This paper describes how the UK Government intends to implement those Silk II recommendations on which there was consensus. It also sets out the non-fiscal Smith Commission recommendations for Scotland which the UK Government intends to analyse further for Wales, and looks at fiscal devolution and funding in Wales.

1.7 This is a strong package of new powers for Wales, founded on a new model of Welsh devolution. It devolves additional powers to the Assembly and the Welsh Government where there is a clear purpose for doing so. It also sets a clear course for legislation early in the next Parliament to implement a new and lasting devolution settlement for Wales.

¹ Discussions were held with Westminster representatives of the political parties.

² Empowerment and Responsibility: Legislative Powers to Strengthen Wales, Commission on Devolution in Wales, March 2014.

³ Including through business representatives on the Secretary of State's Economic Advisory Board.

1.8 In working up the legislation, care must be taken to consult and engage with all interested parties in Wales, and in particular Welsh business.

1.9 The Equality Act 2010 sets out a duty for public authorities to consider how their policies or decisions affect people who are protected under the Act – the Public Sector Equality Duty (PSED)⁴. The proposals in this paper will not cause any change in powers at this immediate point. Any subsequent legislation brought forward by the UK Government would not cause any equality change as the UK Government is transferring powers and functions to the Assembly and the Welsh Government intact.

1.10 In relation to this, the UK Government has also taken account of the following:

- at the point of devolution, the Welsh Government would be subject to the PSED in relation to new powers;
- the Welsh Government has consistently shown due regard for equality in its activity⁵; and
- the overall reservation on the Equality Act 2010 means that the Welsh Government would not be able to lower the protections found in the Equality Act.

⁴ <https://www.gov.uk/equality-act-2010-guidance>

⁵ <http://wales.gov.uk/topics/people-and-communities/equality-diversity/?lang=en>

Chapter 2: The Silk Commission's Recommendations

2.0.1 In this chapter we set out the UK Government's response on those Silk Commission recommendations where there is a cross-party consensus in favour of implementation.

2.0.2 We do not discuss those recommendations where there is no consensus. The outcome of the cross-party discussions is set out at Annex A.

2.1 The Model of Devolution for Wales

2.1.1 There was consensus to accept the following Silk recommendation:

Number	Silk Commission's Recommendation
1	The existing conferred powers model should be replaced by a reserved powers model. The two Governments should agree a process and a timetable for developing and agreeing the new legislation setting out the powers reserved to Westminster.

A Reserved Powers Model for Wales

2.1.2 The UK Government agrees that the devolution settlement for Wales should be based on a reserved powers model. This is the model that underpins the devolution settlement in Scotland. A reserved powers model would provide a more coherent, stable and better functioning devolution settlement for Wales: one that works in the interests of Wales and of the United Kingdom as a whole.

The Current Model of Devolution in Wales

2.1.3 Wales currently has a *conferred* model of devolution. The model lists the subjects devolved to the Assembly, with everything else the responsibility of the UK Parliament. It is given effect by Schedule 7 to the Government of Wales Act 2006 (GoWA), which lists the subjects devolved to the Assembly and any exceptions to the Assembly's powers within those subjects for which the UK Parliament is responsible. For example, traffic management and regulation are devolved, but specific aspects of traffic management, such as road traffic offences, are not devolved.

2.1.4 In contrast, Scotland has a reserved powers model of devolution, which means that legislative competence is devolved to the Scottish Parliament in all areas except those specifically reserved to the UK Parliament in statute.

2.1.5 The initial model of Welsh devolution was set by statute in 1998⁶. It shared some similarities with the models used in Scotland and Northern Ireland in establishing a devolved body responsible for functions devolved from the UK level. It also differed from those models in that it was a form of executive devolution, and conferred only those powers specifically described by the legislation itself. In practice, many of the Assembly's executive powers were previously exercised by the Secretary of State for Wales.

2.1.6 The start of Welsh devolution was of course of great historic, constitutional and cultural importance, both for Wales and for the UK as a whole, but it did not have the same breadth or depth as devolution elsewhere in the UK.

2.1.7 Important changes were made in GoWA⁷. These reconfigured the structures of Welsh devolution, and established a separate legislature (the Assembly) and executive (known then as the Welsh Assembly Government). Powers were conferred on the Assembly to make primary legislation for the first time. Those powers, however, were also limited in ways not known in the other devolution settlements, not least by the requirement to seek the approval of Parliament on a case-by-case basis for any extension of the Assembly's powers⁸.

2.1.7 This incremental approach to Welsh devolution has meant that the initial form of the Welsh settlement has not changed: although the Assembly was given broader, more significant legislative powers following the 2011 Assembly referendum, the foundations of the devolution model itself were unchanged.

2.1.8 The Assembly, with ever increasing powers, relied on a devolution model which had its basis in executive powers exercised pre-devolution. What was originally conceived as, and designed to be, a system for conferring limited executive powers was extended to apply to a fully fledged legislature. That resulted in the piecemeal conferral of particular powers, often described in general terms, instead of devolving everything not specifically reserved (the reserved powers model).

2.1.9 Following the 2011 referendum on Assembly powers the Assembly now exercises legislative competence in all twenty of the subjects devolved to Wales. But the conferred subjects remain general in their description, and Schedule 7 is silent on many policy areas which would ordinarily be considered not to be devolved. The exceptions were never designed to be a complete list of what is not devolved⁹; they were only intended to clarify what

⁶ In the Government of Wales Act 1998. The first elections to the National Assembly for Wales were held in May 1999.

⁷ Most of these changes applied from the start of the Third Assembly in May 2007.

⁸ Legislative competence was conferred on the Assembly by Legislative Competence Orders (LCOs) and through so-called "framework" powers in Acts of Parliament.

⁹ The UK Government's 1997 White Paper on Welsh devolution listed subjects as non-devolved that do not appear as exceptions in Schedule 7 (A voice for Wales: the Government's proposals for a Welsh Assembly 1997, paragraph 1.9. Cm 3718).

might otherwise be interpreted as being included within the conferred subjects.

2.1.10 The way in which devolution in Wales developed meant, in effect, more powers were added to old foundations which were simply not designed for them. Devolution was not rebuilt on updated foundations to reflect the Assembly's new legislative powers. The stability and clarity of those foundations have, as a consequence, been subject to increasing debate and challenge. We believe that fundamental reform of the foundations of Welsh devolution is now needed.

The Structural Limitations of the Current Model

2.1.11 The existing conferred model of devolution has important structural limitations. The boundaries of the settlement are not always clearly identifiable, and it is not always clear what the Assembly and the UK Parliament are responsible for. This is because many policy areas are not listed in the conferred model¹⁰. We believe this is unhelpful, and makes it more difficult to hold decision-makers to account.

2.1.12 No model of devolution is perfect. But it is our view that a reserved powers model would deliver more predictable results by making clear what is *not* devolved.

2.1.13 The implications of these structural limitations could not have been foreseen when devolution was established, but have become more visible and important over time. The particular problem arises where Assembly legislation relates both to a subject which is devolved and a subject on which Schedule 7 is silent.

Supreme Court Judgment on the Agricultural Sector (Wales) Bill

2.1.14 In July last year the Supreme Court decided, in a case relating to the regulation of agricultural wages, that legislation is within the Assembly's competence if it fairly and realistically relates to a devolved subject, even if it also relates to one on which Schedule 7 is silent.

2.1.15 The Court was deciding the case before it, but its judgment applies more generally: to all Assembly legislation on a devolved subject which could also relate to a subject on which Schedule 7 is silent. The conferred powers model was not designed to deliver this level of uncertainty in the devolution boundary.

2.1.16 The judgment established where the power to pass one particular

¹⁰ These have been termed by some commentators as the "silent subjects": subjects which are not expressly listed in Schedule 7 to GoWA as ones on which the Assembly has legislative competence or as exceptions to that competence.

piece of legislation sat: legislation on agricultural wages. It set out principles but it did not, and could not, provide an answer for all future cases¹¹.

Box 1: The Supreme Court Judgment

In July 2014, the Supreme Court handed down a judgment on the interpretation of the conferred powers model of devolution in Wales. The Court was asked to determine the subject matter of the Assembly's Agricultural Sector (Wales) Bill, which provided for an agricultural wages regime in Wales.

The Court recognised that the Bill was capable of relating to both "agriculture" (expressly devolved in Schedule 7 to GOWA) and "employment" (a 'silent subject'; not expressly devolved or excepted in Schedule 7).

However, the Court held that the Bill was within competence on the grounds that it "fairly and realistically satisfies" the test in GOWA by relating to a devolved subject and not falling within an exception. It did not matter that the Bill could also relate to a subject not mentioned in Schedule 7.

2.1.17 There are no easy answers to the issue of 'silent subjects' in the current model of Welsh devolution, but the ambiguity and uncertainty inherent in the current model is clear.

2.1.18 The UK Government believes therefore it is time to reset the devolution settlement for Wales. To develop a new way of thinking on devolution and a new model on the basis of reserved powers. This would bring more clarity and consistency to the Welsh settlement, make future referrals to the Supreme Court less likely and so help consolidate a more stable settlement for the longer-term.

Preparing a Reserved Powers Model for Wales

2.1.19 The UK Government is looking afresh at the current Welsh devolution settlement with a view to moving to a reserved powers model. Annex B sets out an illustrative list of the main areas where we expect that reservations will be needed.

2.1.20 Concurrent with the St David's Day process, we have been working to prepare a reserved powers model for Wales, based on the areas listed in Annex B.

2.1.21 This work is complex. Wales has a highly integrated border and a single legal jurisdiction with England. Wales's history and geography mean that its institutions are more interwoven with that of its neighbour. This complexity is reflected in Wales's devolution settlement.

¹¹ The Supreme Court published its judgment on the Recovery of Medical Costs for Asbestos Diseases (Wales) Bill on 9 February 2015. The Bill was referred to Court by the Counsel General.

2.1.22 The new model will not, and could never be, simply a restatement of the current *conferred* model in reserved powers terms because it will necessarily include the subjects on which the current model is silent (such as defence).

2.1.23 A great deal of work has been done to date to prepare the new model and there is more work to do. An area we have been looking at is set out at Annex C, providing an example of what reservations within a reserved powers model would look like.

2.1.24 Once this work is completed we will discuss the proposed model with interested parties, including the Welsh Government and the Assembly Commission. The issues that need to be considered in moving from a conferred to a reserved model are set out in a checklist at Annex D.

2.1.25 The UK Government’s aim is to secure broad agreement on a reserved powers model which delivers stability in the devolution settlement for Wales, and that would be ready to include in legislation early in the next Parliament.

2.1.26 Moving to a reserved powers model should in itself be cost neutral. If any cost of funding issues do arise, they will be resolved in line with paragraph 2 12.1 in this paper.

Minister of the Crown Functions

2.1.27 There was consensus that the UK Government should consider potential Minister of the Crown powers in Assembly Bills promptly, and with a presumption of consent. There was no consensus in favour of a general transfer of pre-devolution Minister of the Crown functions to Welsh Ministers.

Number	Silk Commission’s Recommendation
2	There should be a general transfer of pre-devolution Minister of the Crown powers to Welsh Ministers, subject to any necessary exceptions. In the meantime, consideration of potential Minister of the Crown powers in National Assembly Bills should be done promptly by the UK Government and with a presumption of consent.

2.1.28 Minister of the Crown functions are functions exercised by UK Government Ministers conferred by Acts which extend to England and Wales. Under GoWA, some Minister of the Crown functions in the twenty areas devolved to the Assembly have been transferred to Welsh Ministers on a case-by-case basis with the consent of the Secretary of State. Otherwise, they remain non-devolved, and the responsibility of the UK Government.

2.1.29 Under current arrangements the Assembly and the Welsh Ministers cannot, without the consent of the Secretary of State, legislate to:

- remove or modify any *existing* “pre-commencement” function of a Minister of the Crown; or
- confer or impose any *new* function on a Minister of the Crown.

2.1.30 A “pre-commencement” function is a function exercisable by the Secretary of State before 5 May 2011 - the day on which the Assembly assumed its full law-making powers following the 2011 Assembly referendum. All UK legislation after 5 May 2011 reflects the current devolution settlement by conferring functions in devolved areas on the Secretary of State in relation to England and on Welsh Ministers (with their consent) in relation to Wales.

2.1.31 The UK Government agrees that there should be a presumption in favour of consent to a provision in an Assembly Bill that removes or modifies a pre-commencement Minister of the Crown function in a devolved area. We also agree that any such requests from the Welsh Government should be considered promptly, and to deadlines agreed between the two Governments. We will review the guidance for UK Government Departments¹² to ensure that this is in place.

2.2 Constitutional Matters

2.2.1 There was consensus to accept the following Silk Commission recommendations:

Number	Silk Commission’s Recommendation
42	The administration and conduct of local government elections should be devolved.
49	A range of options should be considered in the short term for increasing the capacity within the existing National Assembly, including greater flexibility on the number and size of committees, increased numbers of research staff and better use of Assembly Members’ time.
50	The size of the National Assembly should be increased so that it can perform its scrutiny role better. The practical implications, and those for the electoral system, will need further consideration.
51a	The National Assembly and Secretary of State should agree appropriate engagement on the UK Government’s legislative programme, rather than one based on the legislative requirement for the Secretary of State’s appearance before the National

¹² Devolution Guidance Note 9, which can be found at:
<https://www.gov.uk/government/publications/devoluiton-guidance-notes>

	Assembly;
51b	The unused right for the Secretary of State to participate in the proceedings of the National Assembly should be removed;
51c	The Secretary of State's powers to prevent Assembly Bills proceeding for Royal Assent should be aligned with those in Scotland; and
52	Obligations and restrictions on the National Assembly in the Government of Wales Act 2006 should be reviewed and amended or repealed where no longer appropriate. This should be done on the basis of the detailed memorandum provided to us by the Presiding Officer. In particular, there should be a presumption in favour of adopting changes that bring the National Assembly in line with the Scottish Parliament.
53	If the National Assembly wishes to change its name to the Welsh Parliament, this should be respected.
54	On the relationship between the National Assembly and UK Parliament, we recommend: <ul style="list-style-type: none"> a. there should be improved inter-parliamentary cooperation to increase mutual understanding of the work of the National Assembly and both Houses of Parliament, especially in terms of committee-to-committee cooperation (including attendance by Ministers from each administration at Committees of the other legislature); information-sharing should be improved; Assembly Members should be given parliamentary passes; and the Legislative Consent Motion procedure should be formalised and apply as widely as the same procedure does in Scotland; b. there should be a detailed statement published with every UK Government-proposed Parliamentary Bill on its implications for Wales; and there should be a similar practice in respect of Assembly Bills in relation to any implications for the wider United Kingdom.
56	It should be recognised that the National Assembly is permanent, so long as that is the will of the majority of the people of Wales.

2.2.2 There was also consensus that, in light of the recommendations of the Smith Commission for Scotland, matters relating to the operation of the Assembly and the way in which the Assembly organises itself should be devolved to the Assembly.

2.2.3 The UK Government agrees that the Assembly should be able to decide how it operates. The Assembly is now some sixteen years old and, with full law-making powers since 2011, is a fully fledged legislature. It is trusted with passing laws that affect the lives of millions of people in Wales,

and it is right that it should be responsible for deciding how it conducts its own affairs and regulates its own proceedings.

Permanence of the Assembly

2.2.4 The UK Government agrees that the Assembly should be formally recognised as permanent and that the Assembly and Welsh Government are permanent parts of the United Kingdom's constitutional arrangements. This should be enshrined in legislation.

Operation of the Assembly and Welsh Government

2.2.5 The UK Government shares the view that the legislative framework governing how the Assembly carries out its business should be streamlined. Many of the legislative provisions contained in GoWA restrict the Assembly's ability to take its own decisions and reflect an earlier stage of devolution. These include restrictions governing the way in which the Assembly sets out its standing orders, the composition of Assembly committees and giving the Assembly more discretion to regulate its own standards of conduct. These restrictions can, and should, be removed.

2.2.6. The Assembly should also be responsible for deciding the internal processes and procedures it adopts in order to do its work, and matters relating to Assembly Members (including how those Members are elected). The Assembly should also be able to change its name if it so wishes.

2.2.7 Similarly, we agree that the direct involvement of the Secretary of State for Wales in Assembly proceedings is no longer necessary. Currently, GoWA requires the Secretary of State to attend the Assembly as part of the process of consultation on the UK Government's legislative programme. The Secretary of State also has the right to participate in proceedings of the Assembly (but does not have the right to vote). This right has never been exercised.

2.2.8 These provisions were included in the 2006 Act when the Assembly was still finding its feet, and the distinction between the Assembly's legislative role and the Welsh (Assembly) Government's executive functions had yet to be implemented. The Assembly is now well established, with clear lines of engagement between it and the UK Government. These provisions are no longer needed in that context.

2.2.9 We will also provide that the Presiding Officer, rather than the Clerk of the Assembly, should submit Assembly legislation for Royal Assent. This reflects the process in the Scottish Parliament. As part of our work to prepare a reserved powers model we will need to consider any modifications which may be necessary to the Secretary of State's powers to intervene in an Assembly Bill being submitted for Royal Assent.

Elections to the National Assembly for Wales

2.2.10 The Silk Commission considered the electoral arrangements of the Assembly to be outside its terms of reference, and made no recommendations relating to Assembly elections.

2.2.11 There was a strong consensus that the Assembly should, nevertheless, be responsible for Assembly elections, in line with the recommendations made in the Smith Commission Agreement for the Scottish Parliament to have all powers in relation to elections to the Scottish Parliament. The Assembly currently has no legislative competence in relation to Assembly elections. Welsh Ministers are responsible for funding Assembly elections and for developing the legislation on who is disqualified from election to the Assembly.

2.2.12 The UK Government agrees that there is a strong case in favour of devolving full legislative and executive competence in relation to the conduct of Assembly elections to the Assembly and the Welsh Government. We believe that the devolution of Assembly elections fits well with the wider package of reforms to the operation of the Assembly set out earlier in this chapter.

2.2.13 We support therefore the devolution of powers relating to Assembly elections. This includes deciding the electoral system; the number of constituencies, their boundaries and the ratio of regional Assembly Members to constituency Assembly Members; the timing of elections and therefore election terms; matters relating to the requirements of candidates to stand for election and the conduct of the elections themselves; and the circumstances in which a sitting Assembly Member can be removed.

2.2.14 The Assembly should have control of campaign expenditure by political parties, controlled expenditure by third parties and party political broadcasts in relation to Assembly elections. The Assembly should not however be able to decide to hold Assembly elections on the same day as general elections to the UK Parliament, European Parliament or local government elections in Wales. The regulation of political parties, including donations to political parties, would remain reserved.

2.2.15 The UK Government agrees that the Assembly should decide the franchise for Assembly elections, including the ability to lower the voting age to 16 if it wishes. The Assembly already has the power to lower the voting age to 16 for a referendum on devolving income tax powers¹³.

2.2.16 The Electoral Commission should continue to operate on a UK-wide basis, with the Assembly having competence over the functions of the Electoral Commission in relation to Assembly elections and local government elections in Wales.

¹³ Section 13 of the Wales Act 2014.

2.2.17 The Boundary Commission for Wales should continue to operate as a UK public body. Powers in relation to Assembly constituency boundaries should be devolved to the Assembly. Detailed transitional arrangements would need to be discussed with the Assembly Commission and the Welsh Government.

Super-majority

2.2.18 Decisions taken by the Assembly on issues of fundamental constitutional importance should be supported by a broad consensus of the Assembly itself. The Silk Commission made no recommendations in this respect, but there is a strong precedent already established in the Assembly for a two-thirds majority on issues of constitutional importance¹⁴. This also reflects the recommendation made by the Smith Commission in relation to Scotland.

2.2.19 To provide an adequate check on Assembly legislation proposing changes to the franchise for Assembly or local government elections in Wales, the electoral system or the ratio of constituency and regional Assembly members, the UK Government's firm view is that such legislation should be passed by a two-thirds majority of all Assembly Members. We believe there would be broad support in Wales for these safeguards, and in the Assembly itself.

Local government elections in Wales

2.2.20 The UK Government agrees that the conduct and administration of local elections in Wales should be devolved. The Assembly currently has limited powers over Welsh local government elections, including being able to decide the number of councillors to be elected and the number and boundaries of electoral wards. Almost all other aspects of local government in Wales are however devolved.

2.2.21 The Assembly's powers would include the ability to decide the franchise for local government elections in Wales.

Other elections

2.2.22 All aspects of elections to the House of Commons and the European Parliament, and the election of Police and Crime Commissioners in Wales will remain the responsibility of the UK Government and Parliament.

¹⁴ Under the GoWA, the Assembly vote which triggered the 2011 referendum on Assembly powers required a two-thirds majority of Assembly Members to vote in favour. The same majority is required to trigger an income tax referendum under the Wales Act 2014.

2.3 Intergovernmental Relations

2.3.1 The Silk Commission included a wide range of recommendations on improving intergovernmental relations between the UK Government and the Welsh Government. There was consensus on the need for solid and robust inter-governmental machinery to underpin the Welsh devolution settlement.

Number	Silk Commission's Recommendation
3	The two Governments should identify and circulate guidance on good practice on intergovernmental relations and areas for development by drawing on examples provided to us. They should also review existing guidance notes and adherence to them.
4	A statutory Code of Practice on intergovernmental relations should be provided for in a new Government of Wales Act
5	It would be helpful for the National Audit Office and the Wales Audit Office jointly to audit intergovernmental relations. This audit could be reported to the Welsh Affairs Committee and the corresponding National Assembly committee which could then, from time to time, jointly review intergovernmental communication and engagement
6	<p>The Welsh and UK Governments should establish a Welsh Intergovernmental Committee, supported by separate sub-committees if needed. It should oversee the operation of the Welsh settlement by:</p> <ul style="list-style-type: none"> a. seeking to simplify the existing devolution model, and taking forward the process of moving to a reserved powers model; b. considering detailed proposals for changes to devolved responsibilities raised in the future; c. considering disagreements without invoking the full dispute resolution process; d. monitoring EU developments impacting on Wales; and e. resolving cross-border issues.
7	There should be an arbitration mechanism for resolving disagreements between the Welsh and UK Governments in relation to legislative competence of Bills passed by the National Assembly before a referral to the Supreme Court is contemplated.
8	<p>To improve evidence-based outcomes, the two Governments should:</p> <ul style="list-style-type: none"> a. collaborate with the Scottish Government and the Northern Ireland Executive to publish more comprehensive and consistent comparative data and analysis on public service and economic

	<p>outcomes across the countries and regions of the United Kingdom. This should be built on existing data sources as far as possible; and</p> <p>b. identify and learn from each other what works well in policy and delivery to improve public services and the economy, especially building on the work of the Wales Audit Office and National Audit Office.</p>
10	<p>Given that the border is administrative not economic, and given their shared ambition for economic growth, the UK and Welsh Governments should take account of each other's policies in a coherent way when developing their economic strategies for Wales. This would include a better-coordinated approach to business investment and economic development.</p>
45	<p>On higher education and research, there should be a formal intergovernmental committee to ensure a coherent approach to policy and to assess the impact of decisions taken at a United Kingdom level on Higher Education Institutions in Wales.</p>

2.3.2 The Silk Commission placed great emphasis on the need for the two Governments in Wales to work together more effectively. The UK Government too believes that it is in the best interests not only of the people of Wales but of people across the UK that all the Devolved Administrations¹⁵ and UK Government work well together for the benefit of the whole of the UK. Changes to inter-governmental working therefore will be developed collaboratively by the UK Government and the three Devolved Administrations.

2.3.3 This work has already begun. The Joint Ministerial Committee met on 15 December 2014 and the Prime Minister, the First Ministers of Scotland and of Wales and the First Minister and the deputy First Minister of Northern Ireland agreed to commission work on a revised Memorandum of Understanding.¹⁶

2.3.4 This work is complex and it is important that we get it right. Changes to the Joint Ministerial Committee structure, and governance arrangements between the UK Government and the Devolved Administrations, as well as Parliamentary oversight, will underpin future governmental working across the UK.

2.3.5 The recommendations made by the Silk Commission to improve the way the Welsh Government and the UK Government work together will be considered (without prejudice) as part of this process.

¹⁵ The Devolved Administrations are the Welsh Government, the Scottish Government and the Northern Ireland Executive.

¹⁶<https://www.gov.uk/government/news/joint-ministerial-committee-communique-december-2014>

2.3.6 Intrinsically linked to this work are the recommendations to improve the implementation of the current Concordat on European Union Policy Issues covering UK representation to the EU. Discussions on this will be taken forward as part of the wider work on revising inter-governmental relations and changes will be made in parallel. Together, this will lead to stronger and more collaborative governance of the UK, to the advantage of all citizens.

Inter-parliamentary cooperation

2.3.7 The Silk Commission recommended that there should be increased cooperation between the Assembly and the UK Parliament to encourage mutual understanding of the operation of both legislatures.

2.3.8 The UK Government¹⁷ welcomes close cooperation between the UK Parliament and the Devolved Legislatures, including the Assembly. However, these are largely matters on which the parliamentary institutions themselves take the lead. The Speakers and Presiding Officers of the four legislatures meet several times a year to discuss matters of common interest. The Welsh Affairs Committee of the House of Commons already has the power to meet jointly with a Committee of the Assembly, and other parliamentary Select Committees have visited and taken evidence in Wales¹⁸.

Legislative Consent

Number	Silk Commission's Recommendation
54	The Legislative Consent Procedure should be formalised and apply as widely as the same procedure does in Scotland.

2.3.9 By convention, the UK Parliament will not normally legislate with regard to matters devolved to Wales without the consent of the Assembly. The Assembly grants consent through a Legislative Consent Motion (LCM), and the Silk Commission called for this procedure to be formalised.

2.3.10 We agree that the convention should be formalised, and placed on a statutory footing, in a substantively similar manner as the Government intends in regard to the Sewel Convention in Scotland.

¹⁷ The Secretary of State for Wales met the Presiding Officer of the Assembly, and corresponded with the Acting Clerk of the House of Commons, to confirm the nature of inter-parliamentary cooperation.

¹⁸ The most recent instance was the visit of the Political and Constitutional Reform Committee to the Assembly in December 2014 as part of its inquiry into *The Future of Devolution after the Referendum*.

2.4 Natural Resources

2.4.1 There was consensus to agree the following Silk Commission's recommendations:

Number	Silk Commission's Recommendation
15	<p>To encourage the development of energy projects in Wales, we recommend:</p> <ul style="list-style-type: none"> a. the responsibility for all energy planning development consents for projects up to 350MW onshore and in Welsh territorial waters should be devolved to the Welsh Government; b. there should be a statutory obligation for the UK Government to consult the Welsh Government and take account of Welsh planning policies when granting consents for projects over 350MW; c. associated development consents should be aligned with responsibility for the main project; d. responsibility for issuing marine licences in Welsh offshore waters should be devolved; and e. Wales should have parity with Scotland and Northern Ireland for the proposed Contracts for Difference (CfD) that will replace Renewables Obligations Certificates from 2017 as part of the wider Electricity Market Reform.
16	<p>On water we recommend:</p> <ul style="list-style-type: none"> a. powers over sewerage should be devolved to the National Assembly for Wales; b. the boundary for legislative competence for water should be aligned with the national border. We recognise the need for further consideration of the practical implications of alignment, with particular regard for the interests of consumers, and involving the regulator, consumer representatives, water companies and both Governments; c. a formal intergovernmental protocol should be established in relation to cross-border issues; and d. the Secretary of State's existing legislative and executive powers of intervention in relation to water should be removed in favour of mechanisms under the inter-governmental protocol.
18	<p>The existing executive responsibilities of Welsh Ministers for marine conservation and licensing in the Welsh inshore area should be extended to the Welsh offshore area.</p>
40	<p>Welsh Ministers should be able to make building regulations in respect of all buildings in Wales.</p>

Energy

2.4.2 The Silk Commission recommended that consenting responsibility for energy generation projects below 350MW should be devolved to Wales. This would replace the current fragmented regime for consenting to energy projects in Wales, which has different thresholds on land and at sea, with a single, common threshold that applies to all energy development. The UK Government also believes that consenting responsibility for all electricity generating stations below 350MW should be devolved.

2.4.3 The Commission further recommended that the body responsible for consenting to an energy project should also be responsible for any consents to associated development. Associated consents are currently decided by local planning authorities in Wales. The UK Government agrees that this would further streamline the current system. Associated consents for electricity generating stations below 350MW would continue to be decided in Wales.

2.4.4 The UK Government believes that setting a common consenting threshold of 350MW would provide the Welsh Government with important new tools to help deliver its energy policy and the transition to a low carbon economy. It would provide Welsh Ministers with the powers to more effectively deliver the Welsh Government's renewable energy targets because most renewable energy generating schemes proposed in Wales would be decided in Wales.

2.4.5 Applications for electricity generating projects at 350MW and above would continue to be decided at the UK level. The Secretary of State would continue to decide on larger renewable and non-renewable energy generating schemes in Wales.

2.4.6 The Secretary of State is responsible for making sure the UK has secure supplies of energy and for the specific areas of policy which help ensure this - including the generation, supply, transmission and distribution of electricity. A threshold of 350MW makes clear the projects which would make a strategic contribution to the Britain's energy needs, and ensure that major generation projects in Wales are decided from a UK-wide, strategic perspective.

2.4.7 For major projects in Wales that the UK Government remains responsible for there should be a statutory obligation to consult the Welsh Government, and to take into account planning policies in Wales, when consenting to the project.

2.4.8 The UK Government also agrees that responsibility for consents for marine licensing in Welsh offshore waters should also be devolved. The

Welsh Ministers already decide such consents for inshore waters¹⁹ around Wales.

2.4.9 The Silk Commission recommended that Wales should have parity with Scotland and Northern Ireland for the Contracts for Difference.

Box 2: Contracts for Difference

The Government's Electricity Market Reform (EMR) will deliver the greener energy and reliable supplies that the country needs, at the lowest possible cost. It will transform the UK electricity sector to one where low-carbon can compete with conventional, fossil-fuel generation.

A key aspect of EMR is the transition to Contracts for Difference (CfD), the new support mechanism for low-carbon electricity generation, including renewables, nuclear, and Carbon Capture and Storage. CfDs opened to applicants in mid-2014. From mid-2014 to 31 March 2017 the Renewables Obligation (RO) - the existing support mechanism - and CfD will both be open for applications from new renewable generating capacity. The RO will close to new generating capacity in March 2017.

2.4.10 The UK Government is responsible for CfD policy in Great Britain. CfDs are not devolved to either Scotland or Wales. There is therefore parity in approach between the two nations. CfD policy is however devolved in Northern Ireland. Wales also has parity with mainland Scotland in relation to the strike price for CfD schemes.

2.4.11 The UK Government agrees that Welsh Ministers should be able to make building regulations in respect of all buildings in Wales. Currently Welsh Ministers have the power to make building regulations in relation to most buildings in Wales, but do not have powers to make building regulations in respect of energy infrastructure (so called "excepted energy buildings"²⁰).

Water

2.4.12 The Silk Commission highlighted that water and sewerage issues in England and Wales are complex, particularly in relation to the devolution boundary and cross-border matters. The appointment areas of water and sewerage undertakers do not follow the Wales England border, but instead reflect the river catchments and the existence of water pipes and sewers owned by the undertakers which relate to those catchments.

2.4.13 The Assembly can legislate on some aspects of water and flood defence. It has competence for appointing and regulating water undertakers (water companies) in Wales, but not for those whose area is partly in Wales

¹⁹ Welsh inshore waters include the sea adjacent to Wales out as far as the seaward boundary of the territorial sea (12 nautical miles).

²⁰ As defined in the Welsh Ministers (Transfer of Functions) (No.2) Order 2009.

but mainly in England. It may also legislate to regulate licensed water suppliers operating in those undertakers' areas on the same basis, but does not have competence for licensing any of the licensees. In contrast, most executive functions are devolved, and are exercised by Welsh Ministers on a "wholly or mainly" basis.

2.4.14 The Silk Commission concluded that the current devolution boundary had anomalous effects: Parliament has legislative authority over water undertakers in some parts of Wales²¹ but not others, and Welsh Ministers have executive competence over some areas of England served by water undertakers mainly in Wales²². Customers of these undertakers in England have no representative voice in the Assembly or the Welsh Government.

2.4.15 The Silk Commission recommended aligning the boundary for legislative competence for water with the national border. In practice, this would mean removing the powers of Parliament in respect of Severn Trent Water's area in Wales. The Commission recognised that this would be complex and noted the need for further work on the practical implications.

2.4.16 The UK Government is clear that any change to the current devolution boundary for water should be with the interests of consumers of water and sewerage services on both sides of the border in mind. We have decided therefore to establish a Joint Governments Review Programme to examine the implications of aligning the legislative competence for water with the national border, with a view to implementing the recommendation if it is reasonably achievable to do so.

2.4.17 The Programme will be chaired and managed jointly by the UK Government and the Welsh Government, who will seek the involvement of representatives of the water and sewerage industries and their regulators (including OFWAT, the Environment Agency, Natural Resources Wales and the Chief Inspector of Drinking Water), consumer representatives and any other relevant stakeholders. The Programme remit will be to investigate the likely effects that implementing the recommendation would have on the efficient delivery of water and sewerage services, consumers and the water undertakers themselves.

2.4.18 We aim to establish the Programme as soon as possible, with a meeting planned in March to agree terms of reference. Further detailed planning will then determine the timeframe for reporting its findings.

2.4.19 The UK Government agrees with the consensus reached that powers over sewerage should be devolved. This is on the basis of the current "wholly or mainly" devolution boundary pending the outcome of the Programme's work.

²¹ The catchment of Severn Trent Water in mid Wales.

²² Those areas of England served by Dwr Cymru / Welsh Water and Dee Valley Water.

2.4.20 The Silk Commission’s recommendations for a formal inter-governmental protocol on water in relation to cross-border issues, and to remove the Secretary of State’s powers of intervention in favour of mechanisms under the protocol, should be considered in taking forward the findings of the Programme.

Marine Conservation

2.4.21 The UK Government agrees that Welsh Ministers’ existing responsibilities for marine conservation and licensing in the Welsh inshore area should be extended to the offshore area. Welsh Ministers are the marine planning authority for both the Welsh inshore and offshore areas and this change would ensure that they are responsible for marine planning, marine conservation and fisheries in the same maritime area.

2.5 Transport

2.5.1 There was consensus to accept the Silk Commission’s recommendations set out below. There was no consensus to take forward the recommendations to devolve the funding of Network Rail in relation to the Wales network (recommendation 12c) or to devolve drink drive limits (a further aspect of recommendation 12d).

Number	Silk Commission’s Recommendation
12	The following should be devolved: <ul style="list-style-type: none"> a. port development, including harbour orders and the oversight of Trust ports; b. the Wales and Border rail franchise; d. speed limits; e. bus regulation, including the relevant functions of the Traffic Commissioner; and f. taxi regulation.
13	While responsibility for inter-city cross-border rail franchises (Great Western, CrossCountry and Virgin Trains) should remain non-devolved, the Welsh Government should have a greater role in the consultation process for appointing a new franchise operator for these routes.
14	There should be close coordination between the two Governments to ensure good quality cross-border routes. Matters to be considered should include: <ul style="list-style-type: none"> a. improvement of the Trans-European Network along the M4 and the A55 corridors; b. the future of the Severn Crossings tolls; and;

	c. roads that straddle the border, including a formal process for decisions on proposed route improvements on either side of the border that takes full account of the strategic importance of the route for Wales.
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Ports

2.5.2 In terms of port development, the Government agrees that the devolution of ports policy fits well with the existing responsibilities of the Assembly and the Welsh Government in areas such as economic development, transport and tourism. Ports policy is currently not devolved, except for small harbours used mainly for the fishing industry and for leisure.

2.5.3 The devolution of ports policy would enable the Welsh Government to consider the development of Welsh ports as part of its wider strategies for economic growth and ensure port development was fully integrated into plans to improve Wales's transport infrastructure.

2.5.4 Trust ports²³ are independent statutory bodies, each governed by their own unique statutes and controlled by a local independent board. There are no shareholders or owners and any surplus is reinvested into each port for the benefit of its stakeholders. The Secretary of State for Transport appoints the chairs, and in some cases non-executive members, to the boards of 5 trust ports considered to be nationally significant, including Milford Haven in Wales.

2.5.5 The UK Government is currently carrying out a study of trust ports, focussing on the largest trust ports in England and Wales. The study is examining the effectiveness of the current trust port model, and will produce options for change if needed. The devolution of trust ports in Wales would be taken forward in light of the study's recommendations.

Rail

2.5.6 The Silk Commission recommended that the Welsh Ministers should become the franchising authority in respect of the Wales and the Borders rail franchise. The Government is already implementing this recommendation.

2.5.7 The Prime Minister announced on 21 November 2014 that the UK Government had reached an agreement with the Welsh Government to ensure both the Valley Lines Electrification and Great Western Mainline Electrification schemes can proceed. As part of this announcement he also confirmed that the UK Government will devolve the Wales and Borders franchise.

²³ The Trust ports in Wales are Caernarfon, Milford Haven, Neath, Newport (Usk) and Saundersfoot. The remaining ports in Wales are privately run, principally by Associated British Ports and Stena Line or owned by local authorities.

2.5.8 The Welsh Government will have full responsibility for specifying and procuring a rail franchise to deliver services after the existing Wales and Borders franchise expires in 2018. The Department for Transport (DfT) is already working closely with the Welsh Government to ensure that Welsh Ministers are solely responsible for letting and managing the new franchise (see Box 3).

2.5.9 The UK Government agrees that the Welsh Government should be fully consulted on the specification of inter-city franchises to and from Wales. Train services which start, end or stop at stations in Wales, are designated 'Welsh Services' and the Secretary of State for Transport has a duty to consult the Welsh Government on them. There is regular and ongoing engagement between the Government and the Welsh Government, and as much information as possible is shared.

2.5.10 The Government will review how it consults on these services to determine whether there is a need to strengthen the arrangements for engaging with the Welsh Government.

Box 3: Devolution of the Wales and Borders Franchise

The UK Government is devolving executive franchising functions to the Welsh Government, to enable them to lead on the procurement and management of the next Wales and Borders franchise.

The Welsh Government will therefore make a final decision on arrangements for the next franchise. We continue to work with the Welsh Government on the details of the devolved franchise, including how cross-border routes are procured and managed. Cross-border routes are vital for passengers on both sides of the border and having sufficient safeguards in place to protect all cross-border rail users is extremely important. In order for the Secretary of State for Transport to ensure proper accountability, it is likely that services primarily serving English markets will be placed into other franchises for which the Secretary of State for Transport is the franchising authority.

Road Transport

2.5.11 The UK Government agrees that speed limits should be devolved to Wales, but existing powers to designate the vehicle purposes able to exceed speed limits (such as emergency vehicles attending incidents) would remain reserved.

2.5.12 The UK Government also agrees that the power to regulate buses (in respect to bus service registration) and taxis in Wales should be devolved. Both can be considered to be local services, and enabling the Assembly to decide the regulatory framework in Wales would complement existing devolved powers over transport policies.

2.5.13 The legislative framework for registering local bus services is not currently devolved, but other aspects of bus policy are, including the regulation of concessionary fares and the ability to provide subsidies.

2.5.14 The Traffic Commissioner for Wales²⁴ is currently responsible for overseeing the registration of local bus services in Wales. Devolving bus service registration would allow the Assembly to legislate to determine how this function should be carried out in future.

2.5.15 The Commissioner would continue to undertake their remaining reserved functions in relation to Wales (including licensing the operators of buses). The UK Government also undertakes to consult the Welsh Government in respect of future appointments to the post of Traffic Commissioner for Wales.

2.5.16 The UK Government also agrees with the consensus that the registration of taxis and private hire vehicles in Wales should be devolved. Currently, the Welsh Government is responsible for confirming byelaws applying to taxis and private hire vehicles made by Welsh local authorities. Those authorities set their own policies and standards for licensing taxis and private hire vehicles, informed by best practice guidance published by the DfT.

2.5.17 The UK Government agrees that there should be close coordination to ensure good quality cross-border routes. In addition to the two Trans-European Network (TEN-T) roads in Wales (the M4 and A55), there are four routes on the Strategic Road Network that cross the border between England and Wales²⁵.

2.5.18 The Highways Agency has completed a series of route strategies to inform the Investment Plan included in the Government's first Road Investment Strategy, which was published in December 2014. In developing the route strategies, the Highways Agency sought input from the Welsh Government on its transport priorities and took account of other factors such as access to strategic ports and major development sites.

2.5.19 The UK Government works closely with the Welsh Government to ensure that it is aware of any opportunities to bid for funds from the TEN-T programme. Cross-border roads are also the subject of regular discussions between transport ministers in both Governments.

2.5.20 The Severn Crossings are used by more than 25 million vehicles each year and are critically important transport arteries for Wales. The level of tolls was set by the Severn Bridges Act 1992, which provides for tolling to continue until the concessionaire has recovered its costs. It also provides for the recovery of additional costs including Government debt and maintenance costs through tolls.

²⁴ The Traffic Commissioner for Wales is also the Traffic Commissioner for the West Midlands.

²⁵ These are the A40, A458, A483 and the A5.

2.5.21 Based on current predictions, the Severn Crossings will return to public ownership in 2018, and the Government committed in its Road Investment Strategy (RIS) to work with the Welsh Government and others to determine the long-term future of the Crossings. Any future plans should both ensure the long-term maintenance of the bridges and provide the best support to the local economies in Wales and England.

2.6 Health

2.6.1 There was consensus to accept the Silk Commission's recommendations on health. On recommendation 37b, in relation to individual health protocols, NHS bodies along the border can already agree arrangements amongst themselves where they wish to do so.

Number	Silk Commission's Recommendation
36	There should be no change to the devolution settlement in relation to health.
37	<p>There should be equitable cross-border access for patients and a strategic approach to joint delivery of health services. This should be delivered through:</p> <ul style="list-style-type: none"> a. regular and frequent review by the Welsh Intergovernmental Committee of the UK Government and Welsh Government protocol on cross-border healthcare; b. individual protocols developed between each border Local Health Board in Wales and neighbouring NHS Trusts in England; and c. a cooperative and coherent approach to joint delivery of health services, particularly highly specialist facilities, and joint efficiency savings.

2.6.2 The UK Government considers equitable cross-border access to healthcare essential. To a large extent, Wales and England meet their own healthcare needs but from time to time their residents need to access services in the other country and the terms on which that happens need to be clearly understood.

2.6.3 The protocol on cross-border healthcare deals, for the most part, with the specific topic of which body should commission secondary care for residents of one country registered with a GP practice in the other country²⁶. The UK Government has put on record its concern that the arrangements currently made by the protocol do not respect the facts that English NHS bodies are responsible for commissioning secondary care for

²⁶ Around 15,000 Welsh residents and 20,000 English residents are affected.

English residents and that English residents have certain rights under the NHS Constitution in relation to secondary care (such as the right to choice of provider).

2.6.4 The Department of Health, NHS England and the Welsh Government are reviewing the protocol to ensure that future arrangements meet the needs of people and health services on both sides of the border. These future arrangements will not necessarily take the form of a protocol, but the UK Government is clear that they must ensure that the rights of English residents are respected.

2.6.5 More broadly, the Silk Commission noted the importance of a cooperative and coherent approach to the joint delivery of health services, and the UK Government commits to continuing the cooperative approach that ensures that the NHS in Wales and the NHS in England can work together on specific national initiatives or more locally.

2.6.6 It is important that bodies on both sides of the border are committed to this approach. Changes to services on one side of the border, whether due to the temporary disruption to services²⁷ or longer-term service configuration, can have an important impact on the other side of the border. Both are issues that local bodies need to address together.

2.6.7 The UK Government will also consider any recommendations made by the Welsh Affairs Select Committee following its inquiry into cross-border healthcare.

2.7 Employment and Skills

2.7.1 There was consensus to accept the Silk Commission recommendations 9 and 38. In reaching consensus on Recommendation 9, it was recognised that the recommendation is already being taken forward by the inter-governmental Access to Employment Working Group.

Number	Silk Commission's Recommendation
9	The UK and Welsh Governments should provide a clearer and better-coordinated approach to employment and training policies. This should include considerations of the role of the Welsh Government in the administration of Department for Work and Pensions employment programmes.
38	The social security system in Wales should remain non-devolved.

²⁷ For example, a hospital not accepting A & E patients.

2.7.2 Employment and training is a vitally important area where the boundary between devolved and non-devolved services needs to be managed effectively.

2.7.3 Employment matters in Wales are not devolved, and are the responsibility of the UK Government. Helping people to find, and stay in, work is a key part of our long-term economic plan. Jobcentre Plus, the Work Programme and the effective operation of the UK benefit system have an important role to play in ensuring high levels of employment in Wales.

2.7.4 The Welsh Government is responsible for developing skills in Wales, and Welsh Ministers have powers (concurrently with UK Ministers) to organise training in Wales with the aim of supporting particular groups. This includes programmes to help people without jobs to develop their skills in order to find work.

2.7.5 The Silk Commission highlighted the need for better co-ordination between the two Governments on employment programmes in order to manage the boundary between devolved and non-devolved services effectively. In particular, there should be close coordination between the UK Government's Department for Work and Pensions and Jobcentre Plus, and the Welsh Government, to ensure employment programmes are delivering the right opportunities for people in Wales.

2.7.6 The UK Government agrees fully with the consensus reached. We established the Access to Employment Working Group in February 2013, bringing together the two Governments and their representative bodies to ensure employment and training programmes in Wales are effectively co-ordinated. The Group has developed a better mutual understanding of the specific support offered by the DWP Work Programme in Wales and programmes of support offered to job seekers by the Welsh Government, funded by European structural funds.

2.7.7 The extent to which structural funds provide funding in Wales is very different to England. There has therefore been regular engagement between the two Governments and the Welsh European Funding Office to explore how a more comprehensive service can be offered to job seekers on the Work Programme in Wales, taking into account differences in provision.

2.7.8 The Working Group is preparing its final recommendations, and it is anticipated that these will focus on ways in which closer coordination between the two Governments can continue to improve access to employment and skills provision for job seekers in Wales.

2.8 Broadcasting

2.8.1 There was consensus to accept the Silk Commission recommendations set out below. There was no consensus to accept recommendation 21 on S4C.

Number	Silk Commission's Recommendation
19	The regulation of broadcasting should remain the responsibility of the UK Government.
20	<p>On the BBC, we recommend:</p> <ul style="list-style-type: none"> a. the creation of a devolved governance body within the UK Trust framework with powers to provide oversight and scrutiny of BBC outputs in Wales; b. the appointment of the representative of Wales to overall BBC governance body should be by formal agreement between the Welsh and UK Governments.
22	The interests of Wales should be represented on the Ofcom board through a board member with specific responsibility for representing Wales.
23	Public service broadcasters of specific content to Wales should provide an annual report on performance to the National Assembly for Wales, including more transparent data on trends in Welsh broadcasting output.

2.8.2 The Silk Commission concluded that there was no case to devolve the regulation of broadcasting given the UK-wide nature of the broadcasting market. The Commission considered however that the Assembly and the Welsh Government should have an enhanced role to improve the accountability of broadcasters in Wales.

2.8.3 The UK Government agrees that broadcasting should be regulated at the UK-level given the important role broadcasters play in the cultural life of the United Kingdom and the scale at which the sector operates in the digital age. But we also recognise the need for broadcasting to reflect the different national and regional identities within the UK, including, in Wales, the key role that Welsh language broadcasting plays in sustaining and developing the use of the language.

2.8.4 The UK Government welcomes the consensus relating to BBC governance, but notes that any decisions on changes to the governance structures of the BBC should be considered as part of the forthcoming review of the BBC Charter²⁸. The Government has said the Charter Review will not start until after the 2015 General Election.

²⁸ The BBC is established by Royal Charter. The Charter sets out how the BBC is constituted, its purposes and the respective roles of the BBC Trust and the Executive Board. The current Royal Charter expires on 31 December 2016.

2.8.5 Ofcom is the UK-wide independent communications regulator overseeing television, radio, telecoms, mobiles, postal services and the airwaves. It has an office in Wales and an Advisory Committee for Wales to take account of views from Wales in developing its policies and carrying out its work.

2.8.6 The UK Government agrees that the interests of Wales in developing Ofcom policies could be strengthened further. This should be done by conferring a power on Welsh Ministers to appoint one member of the Ofcom board who is capable of representing the interests of Wales. The Welsh Ministers would be required to consult the Secretary of State before making the appointment. This would help ensure the board continues to function effectively as a whole.

2.8.7 The appointment would be subject to the existing regulatory framework for appointments to the boards of public bodies, which is set out in the Code of Practice issued by the Commissioner for Public Appointments. The appointee would have the same UK-wide responsibilities as other non-executive members of Ofcom.

2.8.8 In view of Welsh Ministers' new role, Ofcom should be required to send a copy of its annual report to them (to be laid in the Assembly) and the Comptroller and Auditor General would be required to send a copy of Ofcom's statement of accounts to Welsh Ministers (again, to be laid in the Assembly). These arrangements mirror those that will be made in Scotland in relation to the Ofcom board as a result of the Smith Commission Agreement.

2.8.9 There was consensus to accept the principle of Silk Commission Recommendation 23 - that public service broadcasters of specific content to Wales should provide an annual report on performance to the Assembly - but there was also a concern that accepting the recommendation would place an additional and onerous burden on broadcasters to produce a specific annual report for the Assembly.

2.8.10 The UK Government shares that concern, but we recognise the legitimate interest of the Assembly in the Welsh content of public service broadcasters. We would therefore seek a commitment from the BBC and S4C that they should send their annual reports and accounts for laying in the Assembly.

2.9 Justice

2.9.1 Consensus was reached on the following Silk Commission recommendations on justice:

Number	Silk Commission's Recommendation
27	<p>There should be further administrative devolution in the court system, including by the following means:</p> <ul style="list-style-type: none"> a. the various divisions of the High Court should sit in Wales on a regular basis to hear cases that arise in Wales, other than highly specialist cases; c. the divisions of the Appeal Court should continue to sit in Wales on a regular basis to hear cases that arise in Wales; and d. High Court and Appeal Court judges should be allocated to sit in Wales only if they satisfy the Lord Chief Justice that they understand the distinct requirements of Wales.
29	<p>There should be at least one judge on the United Kingdom Supreme Court with particular knowledge and understanding of the distinct requirements of Wales.</p>
30	<p>Welsh Ministers should continue to have competence on tribunals in devolved areas of policy; there should be clarity and coherence in the relationship between devolved and non-devolved tribunals; the process of appointment, training and terms and conditions of employment should be consistent; and tribunals should be seen to be independent of government.</p>
31	<p>Until and unless legal aid is devolved, the UK Government should fully consult the Welsh Government and other key stakeholders to ensure that the operation of the legal aid system reflects Welsh circumstances.</p>
35	<p>A Welsh Criminal Justice Board, bringing together both Governments and their relevant agencies, should be created.</p>
44	<p>The two Governments should work together to reduce the complexity of the present family welfare system. This should be based on the principle that the National Assembly should be able to legislate in relation to the powers and responsibilities of public authorities in connection with vulnerable adults and children.</p>

2.9.2 Justice is not a devolved subject²⁹, but the Welsh Government plays an important role in supporting the delivery of justice services in Wales. There is a good deal of cooperation and good practice between devolved and non-devolved bodies in Wales to ensure that those using the justice system encounter a seamless process.

²⁹ Some tribunals within the wider justice system are devolved.

2.9.3 The family welfare system is a part of the justice system where the responsibilities of the two Governments interact closely, given the Assembly's legislative competence for social welfare (including vulnerable adults and children). The UK Government agrees that this system should operate in a way that minimises complexity. We will continue to work with the Welsh Government to ensure this is the case.

2.9.4 We agree that effective consultation is an important part of the two Governments working together effectively on justice matters. In particular, we are committed to engaging with the Welsh Government at official and, where appropriate, Ministerial level, when bringing forward proposals on any legal aid matters with a particular Welsh dimension.

2.9.5 Clear definition of the roles of devolved and non-devolved tribunals is also important. We will explore with the Welsh Government whether there are any areas in which the roles of the two Governments could be made clearer.

2.9.6 The All Wales Criminal Justice Board was established in 2011. It brings together those UK Government departments and agencies involved in justice delivery in Wales³⁰, and the Welsh Government, to improve the efficiency and effectiveness of criminal justice services in Wales. The UK Government will continue to liaise with the Welsh Government on the effective operation of the Board.

2.9.7 Wales benefits from the large pool of legal expertise and experience which being part of a single England and Wales legal jurisdiction brings. Sittings of all divisions of the high court and the Court of Appeal take place regularly in Wales. There is also a clear understanding and agreement that Welsh Administrative Court cases will be heard in Wales whenever possible. We agree that this should continue.

2.9.8 Turning to the Commission's recommendation about representation on the UK Supreme Court, the bulk of the law which applies to Wales is law which applies to both England and Wales. As a body of distinct Welsh law develops, and vacancies arise at the Court, thought will be given to how best to ensure that Supreme Court Justices continue to have knowledge of, and experience of practice in, the law of each part of the United Kingdom.

2.9.9 The allocation of judges to Supreme Court cases is a matter for the judiciary. The President of the Court has said that where a case involves an appeal relating to Welsh devolved issues, the Supreme Court will, if possible, include a judge who has specifically Welsh experience and knowledge. Accordingly the Lord Chief Justice has been invited to sit as an Acting Judge on the last two references about legislation passed by the Assembly.

³⁰ These include representatives from the Police, Her Majesty's Court and Tribunals Service (HMCTS), Youth Justice Board, Crown Prosecution Service, National Probation Service, National Offender Management Service (NOMS) and Legal Aid Agency.

2.9.10 The Law Commission is separately considering how access to the law in devolved areas can be improved as the Silk Commission recommended, and the UK Government supports this aim.

2.9.11 There was consensus around the Commission's recommendation that the High Court and Appeal Court judges should be allowed to sit in Wales only if they satisfy the Lord Chief Justice that they understand the distinct requirements of Wales. We support the principle of this, and will continue to discuss with the Lord Chief Justice how it could be implemented.

2.9.12 Following discussion with the Lord Chief Justice, the Judicial Appointments Commission (JAC) included an understanding of the specific needs of Wales as a criterion in a recent selection exercise for judicial appointments. The Lord Chief Justice is exploring with the JAC and the Ministry of Justice how a similar requirement might be implemented and made compulsory for future appointments to the judiciary in Wales, where it is appropriate.

2.9.13 We will also continue to work with the judiciary and delivery arms of the justice system in Wales to ensure that it is properly equipped to deal with the integration of Assembly legislation, including through judicial training and advice for court staff.

2.10 Welsh Language

2.10.1 There was consensus to accept the following Silk Commission recommendation:

Number	Silk Commission Recommendation
39	The UK Government and Welsh Government should systematically assess and keep under review the way in which the Welsh language is used across government, in particular with a view to amending any United Kingdom legislation that does not give equal status to the Welsh language in Wales.

2.10.2 The UK Government is fully committed to the Welsh language and to providing Government services in the Welsh language. We believe that it is vitally important to deliver our services in the Welsh language where there is demand for them. Welsh speakers can already access a number of UK Government services through the medium of Welsh, including registering to vote, applying for carer's allowance and booking a practical driving test.

2.10.3 The Welsh Language Act 1993³¹ established the principle that the Welsh and English languages should be treated on the basis of equality, as far as is appropriate and reasonably practicable, within the conduct of public business and the administration of justice in Wales.

2.10.4 Welsh language schemes are the basis for UK Government Departments' delivery of Welsh language services. The adoption of schemes by Government departments has done a great deal to expand the use of Welsh in the provision of UK Government services, and has greatly increased opportunities to transact with the UK Government and to access key services through the medium of Welsh.

2.10.5 The UK Government is committed to developing and enhancing its Welsh language provision by ensuring a more rigorous application of Welsh language schemes under the 1993 Act.

2.10.6 The Wales Office is currently undertaking a review of Government services provided in Welsh to determine how they can better meet the needs of Welsh speakers. The findings of this review will help inform how the future provision of Welsh language services can be improved.

2.10.7 The UK Government further accepts the principle that legislation which does not give equal status to the Welsh language in Wales should be amended. We agree that enabling the public to use their preferred language, be that English or Welsh, is a matter of good practice.

³¹ Welsh language is now a devolved subject, and the Assembly's Welsh Language (Wales) Measure 2011 makes provision about promoting and facilitating the use of the Welsh language, and for treating the Welsh language no less favourably than the English language.

2.10.8 Concerns have been expressed about the registration in Welsh of births, marriages and deaths. The UK Government is committed to a programme of civil registration reform in the next Parliament. As part of this wider reform we will seek to ensure that forms relating to important life-events and civic duties can be completed in Welsh.

2.10.9 The Welsh language is a devolved subject, but the Wales Office leads on Welsh language matters within the UK Government. It will continue to support other Departments in delivering their Welsh language services, and proactively seek opportunities to raise the profile of the Welsh language across Government.

2.11 Other Recommendations

2.11.1 There was consensus to accept the following Silk Commission recommendations:

Number	Silk Commission's Recommendation
11	The two Governments should improve the collection of Welsh economic data and economic modelling capacity.
17c & d	On the Crown Estate we recommend: c. the existing memorandum between the Crown Estate and Welsh Government should be published and regularly updated; and d. emphasis should be given by the Crown Estate to the Welsh supply chain, especially in developing offshore energy in Wales.
R. 41	The two Governments should ensure that there is a clear understanding of their respective roles in relation to civil contingencies and emergencies. There should be an agreed transfer of executive powers if that is necessary to ensure resilience.
R.43	On equal opportunities, we recommend that legislative competence should be devolved in respect of specific equality duties for the Welsh devolved public sector.
R.48	The First Minister should be able to make a recommendation for a Lord Lieutenant directly to the Prime Minister.
R. 57	The Welsh Government should continue to be supported by civil servants who are members of the Home Civil Service; secondments should be encouraged and facilitated; and there should be increased flexibility for the Welsh Government to manage staff.
R. 58	The two Governments should seek to develop the capacity of the Welsh public sector (both devolved and non-devolved) to deliver

	more efficient and better-integrated public services and economic growth.
R. 59	The capacity of Whitehall Departments for dealing with Welsh matters should be strengthened, and Departments should be clearer about the extent of their responsibilities for the different parts of the United Kingdom; and devolution coordinators' and champions' roles and contact details should be publicly available.

Economic Data and Modelling Capacity

2.11.2 Building on the UK Government's response to the Silk Commission's first report, the Office for National Statistics is already leading a working group across all four administrations to consider what economic data is needed both to comply with statutory reporting and to support further devolution. It is for the Welsh Government to consider its economic modelling capacity, in particular whether this will need to increase with the devolution of further tax powers.

Crown Estate

2.11.3 The Crown Estate is a commercial organisation, tasked by Parliament with enhancing the value of the £9.4 billion property portfolio it manages and generating a profit for the benefit of the nation.

2.11.4 In 2013/14, the Crown Estate in Wales generated a gross surplus revenue of £9.4 million, and the Crown Estate regularly invests and reinvests into assets in Wales.

2.11.5 The Crown Estate works closely with devolved services in Wales. It has agreed Memorandums of Understanding with the Welsh Government and Natural Resources Wales. The UK Government has discussed the recommendations with the Crown Estate and agrees that its memorandum with the Welsh Government should be published and updated annually.

2.11.6 The Crown Estate will continue to support the Welsh supply chain, to the extent consistent with applicable laws, as part of its work in helping to ensure the UK remains one of the most attractive markets for investment in offshore renewables and that the UK benefits from the opportunities created by a thriving low carbon economy.

Civil Contingencies and Emergencies

2.11.7 The complex nature of civil contingencies and emergencies, and their potentially unpredictable and wide-ranging consequences, mean that the UK Government and non-devolved bodies, such as the police or the armed forces, must work closely with the Welsh Government and devolved bodies, such as the health service, to ensure an effective response.

2.11.8 The nature of this cooperation clearly depends on the nature of the incident but, in general, if an emergency occurs in a devolved area then it is for the relevant responder, with the Welsh Government, to manage.

2.11.9 A number of Welsh bodies support the response to incidents in Wales, including the Wales Civil Contingencies Committee and the Emergency Co-ordination Centre (Wales) - a facility established by the Welsh Government to gather and disseminate information in Wales on developing emergencies.

2.11.10 There was consensus to accept the Silk Commission recommendation that there be a clear understanding of respective roles in relation to civil contingencies and emergencies. The UK Government agrees with this and will work with the Welsh Government to ensure clarification as part of the move to a reserved powers model.

Equalities

2.11.11 The Assembly already has powers over equal opportunities in relation to a wide range of devolved public bodies. Wales is also represented by its own statutory committee within the Equality and Human Rights Commission, chaired by a designated Commissioner. This Committee has powers to advise the Welsh Government about the effect of legislation or changes to legislation on matters that affect Wales.

2.11.12 The UK Government agrees that legislative competence should be devolved to the Assembly in respect of the socio-economic duty, in Part 1 of the Equality Act 2010, for the devolved public sector in Wales. This excludes cross-border public bodies.

Higher Education and Research

2.11.13 The Silk Commission recommended that the Research Councils and Technology Strategy Board (now Innovate UK) should ensure that they are aware of Welsh needs, especially in relation to economic development, and designate a council member with relevant expertise to represent the interests of Wales and be a conduit for the exchange of information (Recommendation 46). The Commission noted that Wales has consistently received considerably less funding from Research Councils than its relative population share of the UK.

2.11.14 There is clearly a need for the Research Councils and Innovate UK to ensure that they are aware of the needs of Wales, and indeed of all parts of the UK. But as the Commission itself pointed out, they should continue to allocate funding on the basis of competitive excellence.

2.11.15 There was consensus that the issue needed to be addressed though there was no consensus to accept the recommendation. The UK

Government also does not believe that designating members of these bodies to represent the interests of Wales provides the right solution to the issue. Higher education is a devolved subject, and we invite the Welsh Government to consider how higher education institutions in Wales can gain a greater proportion of UK-wide research funding through ensuring excellence in the proposals they put forward.

Lord Lieutenancies

2.11.16 The UK Government agrees that it is sensible for the First Minister to recommend the appointment of Lord Lieutenants in Wales directly to the Prime Minister (who in turn makes a recommendation to Her Majesty the Queen). Currently, the First Minister informs the Secretary of State for Wales of the name of an individual for appointment as a Lord Lieutenant for recommendation by the Secretary of State to the Prime Minister. This change aligns the process for appointing Lord Lieutenants in Wales with that for Scotland.

Government Capability and Efficiency

2.11.17 The UK Government agrees that the Welsh Government should continue to be supported by staff who are members of the Home Civil Service. There are significant benefits in Welsh Government staff sharing the same ethos, values and apolitical status of the Home Civil Service. It also helps in the secondment of staff between the two governments, and further interchange should be encouraged.

2.11.18 The UK Government is committed to delivering non-devolved public services as efficiently as possible in Wales and across the UK. We will also continue to work closely with the Welsh Government and its devolved public services in the many areas where non-devolved and devolved public services in Wales need to work together seamlessly.

2.11.19 The Cabinet Office leads on raising awareness of devolution within the UK Government. It is currently reviewing how awareness raising takes place in UK Government Departments, with a view to improving the understanding of devolution across Whitehall. This review will continue to consider how the capacity of Departments for dealing with Welsh matters could be strengthened.

2.12 Costs

2.12.1 Prior to any devolution of functions, the funding to be transferred to the Welsh Government from existing UK Government departmental budgets will need to be agreed, in line with established Machinery of Government principles. HM Treasury's Statement of Funding Policy sets out the approach for dealing with additional costs.

Chapter 3: The Smith Commission Agreement

An Enduring Settlement for Wales

3.1 This Command Paper takes forward most of the recommendations in the Silk Commission's second report. It will mean a stronger, clearer, more robust and lasting devolution settlement for Wales based on a reserved powers model. These changes, and the significant fiscal powers that are being devolved to Wales, will result in an Assembly with increased powers, based on solid foundations, and being more accountable to the electorate in Wales.

3.2 The Wales Act 2014 will devolve a significant package of tax and borrowing powers to the Assembly and Welsh Ministers, implementing almost all the recommendations in the Silk Commission's first report. It enables the Assembly to trigger a referendum on the devolution to Wales of an element of income tax, and devolves landfill tax and stamp duty land tax. This is a package tailored for Wales and the specific circumstances of Welsh devolution. It is the UK Government's view that the Welsh Government should entrench these advantages by calling an early referendum on the devolution of income tax powers³².

3.3 Alongside this, people in Wales continue to benefit from being part of a strong United Kingdom with, for example, our single currency, single market and unified pensions system.

3.4 Taken together, these changes are a step-change in Welsh devolution. But there may be scope for further changes, arising from the Smith Commission Agreement on for further devolution to Scotland. The UK Government believes that the Smith Commission Agreement can help inform, but not determine, the debate in Wales. We therefore committed, as part of the St David's Day process, to examine the Smith Commission's recommendations and decide which warrant consideration and analysis for Wales.

3.5 We have borne in mind the recent developments in devolution in Wales in looking at the Smith Commission Agreement, in particular the fiscal devolution provided for in the Wales Act 2014. Like the provisions for Wales in that Act, the Smith package similarly has been tailored to reflect the particular circumstances in Scotland.

The Smith Commission

3.6 Following the Scottish Independence Referendum on 18 September 2014, the Prime Minister asked Lord Smith of Kelvin to convene all five of Scotland's main political parties in discussions aimed at reaching an

³² Section 13 of the Wales Act 2014 enables the Assembly to trigger a referendum on the devolution of some income tax.

agreement on further devolution to Scotland. The Smith Commission Agreement³³ was published on 27 November 2014, and provides a significant and cohesive package of new powers for the Scottish Parliament.

3.7 The UK Government published a Command Paper³⁴, including draft clauses responding to the Agreement, on 22 January. These clauses make it possible for the Agreement to be translated quickly into law at the beginning of the next Parliament.

Smith Commission Agreement and Wales

3.8 Careful thought will need to be given before a decision is reached on which non-fiscal elements of the Smith Commission Agreement might be appropriate for Wales. The fiscal elements of the Government's package for Wales are discussed in the next chapter. What is right for further devolution to Scotland is not necessarily right for further devolution to Wales. Indeed, all three devolved nations - Wales, Scotland and Northern Ireland - have different devolved settlements, reflecting the different history, geography, culture and institutional arrangements between them.

3.9 There was consensus, however, that Wales would benefit from a similar devolution of powers to those recommended by the Smith Commission in relation to the operation of the Scottish Parliament and Scottish Government, including the devolution of elections to the Scottish Parliament. The UK Government agrees that these proposals should be implemented for the Assembly, as set out in Chapter 2.

3.10 The Smith Agreement included a recommendation to devolve to the Scottish Parliament the licensing of onshore oil and gas extraction underlying Scotland. The Government published a draft clause to this effect in its response to the Agreement. The clause will devolve to Scottish Ministers the current regime for the licensing of exploration and extraction of oil and gas. The licensing of offshore oil and gas extraction, and all aspects of the taxation of oil and gas receipts, will remain reserved.

3.11 The political discussions demonstrated strong consensus for the same powers to be devolved to Wales. The UK Government agrees with the consensus that the licensing of onshore oil and gas extraction in Wales should be devolved. These powers would complement the Assembly's existing planning powers, and would allow the Welsh Ministers to take strategic view of future licensing in Wales.

3.12 Further work will be required to determine whether implementing the other non-fiscal parts of the Smith Agreement for Wales would be in the best

³³ http://www.smith-commission.scot/wp-content/uploads/2014/11/The_Smith_Commission_Report-1.pdf

³⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/397079/Scotland_EnduringSettlement_acc.pdf

interests of Wales and of the United Kingdom as a whole. There would need to be clarity about the purpose for which a power was being devolved. Consideration and analysis of relevant Smith recommendations in the Welsh context should be undertaken over the coming months to enable decisions to be taken early in the next Parliament on which might be implemented for Wales.

3.13 Some Smith recommendations will not be considered: for example those which have already been examined as part of the Silk II process (such as speed limits and The Crown Estate) and those where differences between the Welsh and Scottish devolution settlements would make implementation impractical (such as devolving the management and operation of reserved tribunals).

Chapter 4: Funding and Fiscal Devolution in Wales

4.1 In addition to a reserved powers framework, the Silk II recommendations, and Smith's non-fiscal recommendations for Scotland, the UK Government has also considered:

- which of Smith's recommendations for fiscal devolution in Scotland³⁵ might warrant further analysis and consideration in the Welsh context; and
- funding arrangements in Wales.

4.2 It is worth noting that this Government has already delivered a significant programme of fiscal devolution in Wales and committed to big investments in the Welsh economy since coming to power in 2010. In doing so, the Government has shown that when further fiscal devolution is the right thing to do for Wales, within a strong UK, it will deliver.

4.3 The Wales Act 2014 gained Royal Assent last December. Amongst a range of other non-fiscal measures, it provides that a referendum can be held to give Welsh Ministers the power to vary income tax, and gives the Welsh Government control of stamp duty land tax and landfill tax, plus new borrowing powers. In advance of those new powers coming online, the Welsh Government will also have early access to existing limited borrowing powers to use for M4 improvements.

4.4 Alongside this legislation, the UK and Welsh Governments recently agreed the arrangements to implement the full devolution of business rates from April 2015. While the Welsh Government already has legislative competence in relation to business rates in Wales³⁶, the revenue generated does not directly affect the level of funding available to the Welsh Government. Instead, the Welsh Government's budget is currently set with reference to spending funded by business rates in England (via the Barnett Formula). Fully devolving business rates, as recommended by the Silk Commission, means that the Welsh Government's budget will be directly affected by the amount of business rates revenues generated in Wales.

4.5 As a result, the Welsh Government will have another direct lever to support and encourage growth in the Welsh economy and to reap the rewards in doing so. The Assembly will be responsible for 10% of all taxes collected in Wales ahead of a referendum on income tax. The introduction of Welsh Rates of Income Tax would make it responsible for twice as much or approximately

³⁵ 'Fiscal' in this context includes Smith's tax and welfare recommendations.

³⁶ Heading 12 in Part 1 of Schedule 7 to GoWA includes "local government finance" in the list of subjects on which the Assembly can legislate. This includes non-domestic (business) rates and council tax.

another £2bn in revenue. The Assembly also controls over half the spending in Wales³⁷.

4.6 This programme of fiscal reform has been designed for a purpose: to empower the Welsh Government with the tools and levers it needs to deliver more growth and be more accountable to the people of Wales by raising more of the money they spend.

4.7 Alongside this programme, the UK Government has consistently backed the Welsh economy to build a stronger Wales. Since 2010, the UK Government has granted over £1.3bn additional spending power to the Welsh Government. Commitments such as funding the upgrade of the Swansea-London mainline and paying almost half of an estimated £500m to electrify the Valley Lines have also reinforced the UK Government's support for improving infrastructure in Wales. A new prison will be built in Wrexham, a £212 million pound investment which will support over one thousand jobs, bringing £23 million into the local economy each year. As part of our £1.7 billion package to bring superfast broadband to 95% of homes and businesses across the UK, the UK Government has provided nearly £70 million to the Welsh Government for Superfast Cymru.

4.8 This Government wants to empower the Welsh Government to deliver for the people of Wales. It is time to move the debate forward and encourage the Welsh Government to use the powers it already has, and the powers it is now gaining, to grow its economy.

Funding

4.9 The UK Government has engaged with the Welsh Government to discuss options to achieve this outcome. To this end, the UK Government has agreed to introduce a floor in the level of relative funding it provides to the Welsh Government. The precise level of the floor, and the mechanism to deliver it, will be agreed alongside the next Spending Review.

4.10 The UK Government has legislated in response to the recommendations of Silk I to allow for the holding of a referendum on income tax varying powers in Wales, and by ensuring there is no lockstep provision has met the concerns previously expressed by the Welsh Government. In order to bring long term certainty to future funding for Wales, the UK Government believes it is important that the people of Wales have their say. This agreement is therefore in the expectation that the Welsh Government will call a referendum on income tax powers in the next Parliament.

4.11 Funding arrangements beyond the next Parliament will need to take full account of the Welsh Government's new powers and responsibilities, given

³⁷ Figures are for 2013-14 and derived from Public Expenditure Statistical Analyses (PESA), Her Majesty's Revenue and Customs' publications on the disaggregation of tax receipts, and Welsh Government Statistics. Spending classed as "non-identifiable" in PESA, such as defence, has been allocated using a population share.

the significant impact that tax devolution could have on its funding. The implementation of Welsh rates of income tax, for example, would double the amount of tax revenue controlled by the Assembly. The UK Government will work with the Welsh Government to develop sustainable long-term funding arrangements within a robust fiscal framework that reflects the changes made.

Bonds

4.12 The new borrowing powers for the Welsh Government, set out in the Wales Act 2014, will be extended to enable the Welsh Government to issue bonds to borrow for capital expenditure.

Air Passenger Duty (APD)

4.13 In the next Parliament, the UK Government will consider the case and options for devolving further powers to the Assembly over APD. In advance of this, there will be a review of potential options to mitigate the impacts of APD devolution on regional airports. As part of this review, a discussion paper will be published by the summer examining the devolution and variation of APD rates within England, and the provision of aid for regional airports including Bristol Airport.

Chapter 5: Looking Ahead

5.1 The outcomes of the St David's Day process set out in this document provide a blueprint for a clearer and more stable devolution settlement for Wales. The UK Government hopes that their implementation would help bring stability to the devolution settlement in Wales, and enable the devolved institutions in Wales to focus their efforts on delivering economic growth, jobs and more efficient public services.

5.2 The commitments to further devolution in this paper are based on the outcomes of cross-party discussions. This consensus provides a firm foundation for moving forward early in the next Parliament to legislate for a new devolution settlement for Wales, whichever party forms the Government after the General Election on 7 May.

5.3 There is further work to do following publication of this document. The UK Government is working to prepare a reserved powers model based on the illustrative list at Annex B. We intend to discuss the list and, when drafted, the model, with the Welsh Government, the Assembly Commission and other interested parties to seek agreement for implementation early in the next Parliament.

5.4 We also intend to further consider and analyse the recommendations made by the Smith Commission in relation to Scotland to establish whether there is a strong case for implementing any of them for Wales.

5.5 We are aware that the Welsh Government favours devolution in some other areas which were not considered by the Silk Commission. We will give careful consideration to any case made by the Welsh Government for further devolution following the St David's Day process.

5.6 The UK Government hopes and expects the new devolution settlement for Wales to be in place as early as possible in the new Parliament.

Annex A

Silk Recommendations Discussed by Political Parties

No.	Recommendation	Accept recommendation
1	Implement Reserved Powers Model.	Consensus
2	Transfer of pre-devolution Minister of the Crown powers to Welsh Ministers. Presumption of consent to Assembly requests in the interim	No consensus on general transfer. Consensus on presumption of consent
3	Two Governments to identify guidance on good practice on intergovernmental relations and areas for development.	Recommendations being considered as part of the review of inter-governmental machinery
4	Statutory Code of Practice on intergovernmental relations should be provided for in a new GOWA.	
5	National Audit Office and the Wales Audit Office jointly to audit intergovernmental relations.	
6	Welsh and UK Governments should establish a Welsh Intergovernmental Committee	
7	Arbitration mechanism	
8	Collaboration between the Devolved Administrations and UKG on comparable economic data and sharing best practice.	Consensus
9	Clearer and better-coordinated approach to employment and training policies.	Consensus
10	UK and Welsh Governments to take account of each other's economic policies.	Recommendation being considered as part of the review of inter-governmental machinery
11	Two Governments to improve collection of Welsh economic data and economic modelling capacity.	Consensus
12a	Devolve port development.	Consensus
12c	Devolve funding of Network Rail in relation to the Wales network	No consensus
12d	Devolve speed limits	Consensus
12d	Devolve drink drive limits	No consensus
12e	Devolve bus regulation, including functions of the Traffic Commissioner	Consensus
12f	Devolve taxi regulation.	Consensus
13	Welsh Government to have greater role in consultation process for cross-border franchises.	Consensus
14	Close coordination between the two Governments on cross-border routes.	Consensus
15a	Devolve the responsibility for all energy planning development consents for projects up to 350MW onshore and in Welsh territorial waters.	Consensus
15b	Statutory obligation for UKG to consult WG and take account of Welsh planning policies when granting consents for projects over 350MW.	Consensus
15c	Associated development consents should be aligned with responsibility for the main project.	Consensus
15d	Responsibility for issuing marine licences in Welsh offshore waters should be devolved.	Consensus
15e	Wales should have parity with Scotland and Northern Ireland for proposed	Consensus (on the basis

	Contracts for Difference (CfD).	of parity with Scotland)
16a	Powers over sewerage should be devolved to the National Assembly for Wales.	Consensus
16b	The boundary for legislative competence for water should be aligned with the national border.	Consensus in principle (noting the need for further work on practical implications)
16c	A formal intergovernmental protocol should be established in relation to cross-border water issues.	To be considered as part of further work on R.16b
16d	Remove SofS's existing legislative and executive intervention powers in relation to water, in favour of intergovernmental mechanisms.	
17a	Welsh Crown Estate Commissioner, to be appointed in consultation with the Welsh Government.	No consensus
17b	Crown Estate office should be established in Wales.	No consensus
17c	Existing memorandum between Crown Estate and WG should be published and regularly updated.	Consensus
17d	Emphasis given by the Crown Estate to the Welsh supply chain, especially in developing offshore energy in Wales.	Consensus
18	Extend responsibilities of Welsh Ministers for marine conservation and licensing to Welsh offshore area.	Consensus
19	The regulation of broadcasting should remain the responsibility of the UK Government.	Consensus
20a	Creation of a devolved governance body within the UK Trust framework of BBC with powers to provide oversight and scrutiny of BBC outputs in Wales.	Consensus in principle, subject to BBC Charter Review
20b	Appointment of representative of Wales to overall BBC governance body by formal agreement between the Welsh and UK Governments.	
21a	Devolve responsibility for funding public expenditure element of S4C to Assembly.	No consensus
21b	Appointment of S4C authority members should be agreed with Welsh Government.	No consensus
22	Interests of Wales to be represented by member on Ofcom board through a board member with specific responsibility for representing Wales.	Consensus
23	Public service broadcasters of specific content to Wales should provide an annual report on performance to the National Assembly.	Consensus in relation to existing annual reports
24a	Devolve policing and related areas of community safety and crime prevention.	No consensus to devolve policing
24b	Maintain existing levels of cross-border police cooperation once devolved.	
24c	Powers in respect of arrest, interrogation and charging of suspects should not be devolved	
24d	The National Crime Agency should not be devolved	
24e	Devolution of police pay (but not pensions)	
24f	Agree charging systems and terms of service provision for the Police College, IPCC and HM Inspectorate of Constabulary, and common services, once policing devolved.	
25	Devolution of youth justice.	No consensus
26a	Devolve prison and probation after feasibility study.	No consensus to devolve criminal justice
26b	Formal mechanism for Welsh Ministers to contribute to policy on adult offender	

	management in the meantime.	
27a	High Court should sit in Wales on regular basis.	Consensus
27b	High Court office to be established in Wales.	No consensus
27c	Divisions of Appeal Court to continue to sit in Wales on a regular basis.	Consensus
27d	High Court and Appeal Court judges to sit in Wales only if the Lord Chief Justice is satisfied they understand requirements of Wales.	Consensus
28	Review within ten years of case for devolving court service, sentencing, legal aid, CPS and judiciary	No consensus
29	There should be at least one Judge on Supreme Court with particular knowledge and understanding of Wales.	Consensus (existing legislation can provide for this)
30	Clarify relationship between devolved and non-devolved tribunals;	Consensus
31	Consult with WG to ensure the operation of the legal aid system reflects Welsh circumstances	Consensus
34	Periodic reports on access to justice, and regular dialogue between the Lord Chief Justice and Welsh Ministers on the administration of justice.	No consensus on periodic reports Consensus on regular dialogue
35	Create Welsh Criminal Justice Board	Already in operation
36	No change to devolution settlement relating to health	Consensus
37a	Regular review of cross-border health protocol.	Consensus, noting the current review.
37b	Individual protocols between each border Local Health Board in Wales and neighbouring NHS Trusts.	Consensus
37c	Cooperative approach to joint delivery of health services.	Consensus
38	Social security system to remain non-devolved.	Consensus
39	Two Governments to review the way in which Welsh language used across government, in particular with a view to amending any UK legislation not giving equal status to the Welsh language in Wales.	Consensus
40	Welsh Ministers to make building regulations for all buildings in Wales.	Consensus
41	Two Governments to ensure clear understanding of civil contingency roles	Consensus
42	Devolution of local government elections	Consensus
43a	Devolve competence over equality duties for devolved public sector.	Consensus
43b	Devolve competence on accountability of Equality and Human Rights Commission in devolved areas.	No consensus
44	Two Governments to work together to reduce complexity in the family welfare system	Consensus
45	Formal Intergovernmental committee on Higher Education and research.	To be considered as part of the review of inter-governmental machinery
46	Member with relevant expertise on Research Councils and Technology Strategy Board.	Consensus that the issue needed to be addressed but not to accept the recommendation
47	Devolution of teachers' pay and conditions. Responsibility for pensions should remain with the UK Government	No consensus on pay Consensus on pensions
48	First Minister to make recommendations for Lord Lieutenancies.	Consensus

50	Increase size of National Assembly.	Consensus to devolve decision
51a	Remove requirement for SofS to appear before Assembly	Consensus
51b	Remove right of SofS to participate in Assembly proceedings.	Consensus
51c	Align process with Scotland for Assembly Bills receiving Royal Assent.	Consensus
52	Review obligations and restrictions on Assembly in the Government of Wales Act 2006 and repeal / amend as appropriate.	Consensus
53	Respect Assembly wishes to change its name.	Consensus
54b	Detailed statement with each Bill on implications for Wales.	Consensus
56	Recognise that National Assembly is permanent.	Consensus
57	WG to continue to be supported by civil servants who are members of the Home Civil Service. Secondments from and to WG to be encouraged and facilitated.	Consensus
58	Two governments should seek to develop capacity of the Welsh public sector to deliver more efficient and better-integrated public services and economic growth	Consensus
59	Capacity of Whitehall departments to deal with Welsh matters should be strengthened	Consensus

Silk Recommendations Not Considered

No.	Recommendation	Reason not Considered
12b	Devolve the Wales and Border rail franchise.	Agreement to devolve announced 21 November 2014
32	Welsh Ministers able to propose projects to Law Commission on a similar basis to UK Government Ministers.	Implemented in Wales Act 2014
33	Improved access to legislation in devolved areas through publication of a consolidated body of Welsh primary and secondary legislation.	For the National Assembly
49	Consider options for increasing capacity in Assembly in short term.	For the National Assembly
51d	Annual financial statement to Assembly should be presented by the Welsh Government not Secretary of State.	Implemented in Wales Act 2014
54a	Improved cooperation between Assembly and Parliament.	For Assembly and Parliament
54c	Border MPs who wish to raise cross-border issues should be accorded the same courtesies by Welsh Ministers as Assembly Members receive.	For the Welsh Government
55	House of Lords to ensure adequate consideration of Welsh matters.	For Parliament
60	Recommendations implemented in a ten year programme of reform	For the next parliament
61a	Transfers of powers should be accompanied by transfers of funding which have been agreed by the two Governments in each case, and by agreed changes to the Barnett formula comparability factors.	Subject to established machinery of government principles
61b	Any additional costs to Welsh Government should be minimised or, if problematic, discussed by two Governments before devolution is agreed.	
61c	Welsh Government to use any opportunities to increase efficiency which devolution might bring.	For the Welsh Government
61d	Stronger focus by two Governments on reducing spending through more efficient public service delivery.	Taken forward in R.58
61e	Effect on third parties should be subject to careful impact assessments to ensure costs are minimised during implementation.	Matter for implementation

Annex B**The Areas Where Reservations Would Be Needed: An Illustrative List**

This illustrative list sets out the UK Government's thinking of the main areas in which reservations would be needed in a reserved powers model. Reservations would be needed for areas in which the UK Parliament exercises legislative competence. The list reflects the current devolution settlement, and not any proposals for further devolution set out in this paper. The Assembly has legislative competence over aspects of policy in some of these areas, and in those cases specific exceptions to the reservations would be needed. The list is not exhaustive, and reservations would also be needed in other areas. The areas are not listed in any order of priority.

The areas are:

The Constitution	Criminal records
The Civil Service	Money Laundering
Political Parties	Private security industry
Elections and Referendums	Riot damages
Civil Law and Procedure	Anti-social behaviour
Criminal Law and Procedure	Regulation of CCTV and other surveillance camera technology
Foreign Affairs	Modern slavery
Defence	
Fiscal, Economic and Monetary Policy	Licensing of the sale and supply of alcohol
The Currency	Provision of entertainment and late night refreshment
Financial Services	Misuse of and dealing in drugs
Financial Markets	
Nationality and immigration	Broadcasting and other media
Registration of births, marriages, civil partnerships and deaths	Classification of film and video Recordings
Extradition	Betting, gaming and lotteries
Firearms	Public Lending Right
Regulation of scientific procedures on live animals	Government Indemnity Scheme
National security, interception of communications, official secrets and terrorism	Property accepted in satisfaction of tax
Emergency powers	Safety at sports grounds
Public order	
Policing (including police forces and Police and Crime Commissioners)	Control of dangerous dogs and hunting with dogs
Prevention and detection of crime and powers of arrest and detention in connection with crime or criminal proceedings	Business Associations
	Insolvency and winding up
	Competition
	Intellectual Property
	Regulation of Imports and Exports

Protection of Trading and Economic Interests	Welfare Foods
The movement of food, animals and plants within the UK	Health and Safety
Consumer Protection	Development of Land including national infrastructure projects
Product Standards, Safety and Liability	Land Registration
Weights and Measures	Land Charges
Time	Ordnance Survey
	Lieutenancies
Telecommunications and wireless telegraphy, internet services and electronic encryption	Regulation of the legal profession and legal services
Postal Services	Regulation of claims management
Research Councils	Administration of Justice
Designation of Assisted Areas	Offender Management
Water, sewerage and marine matters	Legal Aid
Non-Energy Minerals	Mental Capacity
Electricity	Information Rights
Oil and Gas	Family Law
Coal	Inter-Country Adoption
Nuclear Energy	
Energy Conservation	
Transport and transport security	
Social Security Schemes	
Child Support	
Occupational and Personal Pensions (including public service pensions)	
Armed Forces Compensation	
Regulation of the Professions	
Employment and Industrial Relations	
Job search and support	
Teachers Pay	
Sale of Student Loans	
Equal Opportunities	
Abortion	
Xenotransplantation	
Embryology, Surrogacy and Genetics	
Medicines, Medical Supplies and Poisons, including veterinary products	

Annex C

An Example of Reservations Under a Reserved Powers Model

This example reflects the current devolution boundary.

1. **Road transport**
 - 1.1 Registration of local bus services, and the application and enforcement of traffic regulation conditions in relation to those services.
 - 1.2 Road freight transport services in the United Kingdom (including goods vehicles operator licensing).
 - 1.3 Regulation of the construction and equipment of motor vehicles and trailers, and regulation of the use of motor vehicles and trailers on roads.
 - 1.4 Road traffic offences.
 - 1.5 Driver licensing (including training, testing and certification).
 - 1.6 Driving instruction.
 - 1.7 Insurance of motor vehicles.
 - 1.8 Drivers hours.
 - 1.9 Traffic regulation on special roads.
 - 1.10 Pedestrian crossings.
 - 1.11 Traffic signs.
 - 1.12 Speed limits.
 - 1.13 International road transport services for passengers or goods.
 - 1.14 Public service vehicle operator licensing.
 - 1.15 Documents relating to vehicles and drivers for the purposes of travel abroad and vehicles brought temporarily into Wales by persons resident outside the United Kingdom.
 - 1.16 Vehicle excise duty and vehicle registration.
 - 1.17 Taxi and private hire vehicle licensing.
 - 1.18 Private hire vehicle operator licensing.
 - 1.19 The traffic commissioners.

Annex D

Issues to be Considered in moving from a Conferred to a Reserved Powers Model

This checklist sets out what needs to be considered in preparing a reserved powers model for Wales. This is not an exhaustive list.

- What subjects need to be delivered on a UK-wide basis to ensure that citizens throughout the UK are subject to the same obligations and receive the same rights and protections?
- What subjects are listed as conferred in Schedule 7 to GoWA? What are the exceptions to those subjects reserved to the UK Parliament? Does the drafting of the reservation need to take account of developments in these areas since they were first drafted?
- What other subjects are considered to be the sole responsibility of the UK Parliament, even if not listed as an exception in GoWA? (the “silent” subjects)
- What exceptions are needed within the reservations to reflect any overlap between the Assembly’s legislative competence set out in Schedule 7 and subjects which are otherwise reserved?
- Are any “carve-outs” needed from those exceptions to accurately reflect the scope of the reservation?
- What are the Minister of the Crown functions in devolved areas which have not been transferred to Welsh Ministers? Should these be set out in a reservation?
- What statutory evidence is there (in parliamentary and Assembly Acts, and Assembly Measures) to support a subject being reserved or devolved?
- What other evidence is there from each legislature in support of a subject being reserved or devolved?
- How does the interpretation of legal judgements have an impact on the boundary of the devolution settlement?
- How will the interactions between devolved and reserved functions work in reality? Is the boundary coherent and workable?
- Is there reasonable alignment between legislative competence and executive competence in any subject area?
- What are the views of interested parties (including the UK Government, the Welsh Government and the Assembly Commission) about whether a subject should be devolved or reserved?

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted

Agenda Item 3

Constitutional and Legislative Affairs Committee
Statutory Instruments with Clear Reports
22 June 2015

CLA541 – The National Independent Safeguarding Board (Wales) Regulations 2015

Procedure: Negative

The National Safeguarding Board (“the Board”) was established by section 132 of the Social Services and Well-being Act 2014. These Regulations set out arrangements for appointment to, and proceedings of the Board including the establishment of supplementary groups, consultation with those affected by the work of the Board and arrangements for the Board’s annual report to the Welsh Ministers.

These Regulations are to be read in conjunction with the Safeguarding Boards (General) (Wales) regulations 2015 and the Safeguarding Boards (Functions and Procedures) (Wales) Regulations 2015.

CLA542 –The Safeguarding Boards (General) (Wales) Regulations 2015

Procedure: Negative

These regulations relate to the Safeguarding Children Boards established under section 134(4) of the Social services and Well-being Act 2014 (“the Act”) and Safeguarding Adults Boards established under section 134(5) of the Act (collectively referred to as Safeguarding Boards).

The purpose of the Regulations is to provide a coherent, common footprint for the establishment of safeguarding boards by setting out the lead partners for adults and children respectively and require the lead partners to establish a Safeguarding Board for their areas.

These Regulations are to be read in conjunction with the National Independent Safeguarding Board (Wales) Regulations 2015 and the Safeguarding Boards (Functions and Procedures) (Wales) Regulations 2015.

CLA543 –The Safeguarding Boards (Functions and Procedures) (Wales) Regulations 2015

Procedure: Affirmative

These Regulations provide for the functions and procedure of Safeguarding Children Boards and Safeguarding Adults Boards established under section 134 of the Social Services and Well-being Act 2014. They include the criteria to be applied by a Board in determining whether to conduct a practice review relating to the steps to be taken to achieve improvements in multi-agency child and adult protection practice.

These Regulations are to be read in conjunction with the National Independent Safeguarding Board (Wales) Regulations 2015 and the Safeguarding Boards (General) Regulations 2015.

CLA544 – The Adult Protection and Support Orders (Authorised Officer) (Wales) Regulations 2015

Procedure: Affirmative

Section 127(9) of the Social Services and Well-being Act 2014 enables the Welsh Ministers to make regulations restricting the persons or categories of persons who may be authorised by a local authority to apply for an Adult Protection and Support order under section 127.

These Regulations provide that a local authority should only authorise a person having relevant experience of working in the field of social care with adults who are, or may be, at risk to apply for an Adult Protection and Support Order. A person so authorised must also have undertaken appropriate training and be an officer of the authorising local authority.

CLA545 – The Social Services and Well-being (Wales) Act 2014 (Social Enterprise, Co-operative and Third Sector) (Wales) Regulations 2015

Procedure: Affirmative

Section 16 of the Social services and Well-being (Wales) Act 2014 (“the Act”) requires local authorities to promote social enterprises, co-operative organisations, co-operative arrangements and third sector organisations to provide care and support and preventative services in their areas.

These Regulations detail the sorts of organisations or arrangements which fall into those different categories and provide for what constitutes activity which might be reasonable considered to be carried on for the benefit of society.

CLA546 –The Care and Support (Partnership Arrangements for Population Assessments) (Wales) Regulations 2015

Procedure: Affirmative

These Regulations prescribe how local authorities and Local Health Boards should jointly undertake the population assessment of care and support needs and carers’ needs required by section 14 of the Social services and Well-being Act 2014.

The Regulations require partnership arrangements to be put in place to undertake the assessment and allowing for the production of a combined population assessment thus allowing local authorities and Local Health Boards to identify how to meet needs collaboratively.

The Regulations should be read in conjunction with the Care and Support (Population Assessments) (Wales) 2015.

CLA547 – The Care and Support (Population Assessments) (Wales) Regulations 2015

Procedure: Negative

These Regulations require local authorities and Local Health Boards jointly to produce a population assessment of care and support needs and carers' needs which is to inform planning and operational decisions, and facilitate prevention and early intervention. As part of the assessment, local authorities and Local Health Boards will also need to identify the range and level of preventative services necessary to meet those purposes.

The Regulations should be read in conjunction with the Care and Support (Partnership Arrangements for Population Assessments) (Wales) Regulations 2015.

Agenda Item 4

Carl Sargeant AC / AM

Y Gweinidog Cyfoeth Naturiol
Minister for Natural Resources



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref

David Melding AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
Cardiff. CF99 1NA.

10th June 2015

Dear David

I am writing to inform you that I have laid a Statutory Instrument Consent Memorandum (Memorandum) in relation to The Hazardous Waste (Miscellaneous Amendments) Regulations 2015 (“the Regulations”) which were made by the Secretary of State for Environment, Food and Rural Affairs on 5 June. The regulations include amendments to the Environmental Protection Act 1990 which include provisions for Wales. I wish to make you aware that, while I have laid the Memorandum, I do not intend to table a Statutory Instrument Consent Motion.

The Regulations relate to the transposition of new EU legislation that updates the list of hazardous waste properties and the list of waste, to change the way hazardous waste is assessed and classified. The Regulations contain amendments to section 62A of the Environmental Protection Act (EPA) 1990 for England and Wales, which are consequential on the updating of the list of hazardous waste properties and the list of waste. The Memorandum (a copy of which is enclosed) explains in more detail the background to the amendments to the EPA which are technical in nature.

I have laid the Memorandum in accordance with the requirement under Standing Order (SO) 30A for “a member of the government ..[to].. lay a memorandum (“a statutory instrument consent memorandum”) in relation to any relevant statutory instrument laid before the UK Parliament by UK Ministers”. I consider the Regulations to be a relevant statutory instrument because they make provision in relation to Wales amending primary legislation within the legislative competence of the Assembly, and are not incidental or consequential provisions relating to matters that are not within the Assembly’s legislative competence.

The Regulations are subject to negative procedure in Parliament, and therefore they were made before they were laid, and provided no Member of Parliament prays against, they will come into force on 1 July. It is for you to decide whether you wish, as the responsible committee referred to under Standing Order 30A, to consider and report on the Memorandum.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff

Page 74

Wedi'i argraffu ar bapur wedi'i ailgylchu (100%)

English Enquiry Line 0300 0603300
Llinell Ymholiadau Cymraeg 0300 0604400
Correspondence.Carl.Sargeant@wales.gsi.gov.uk

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I have considered carefully whether I should proceed to table a Statutory Instrument Consent Motion under SO 30A.10, to be debated after the 35 days allowed for scrutiny by the responsible committee has elapsed. There is no requirement for the Welsh Government to do so, of course, but normally we would table a motion so that the Assembly can give its consent, or not, before the relevant statutory instrument is made.

In this case, as the Regulations have already been made, I have decided that I will not proceed to lay a motion, as that would result in the Assembly debating and deciding whether to give its consent after the relevant statutory instrument has been made. Each case would have to be considered on its merits, but in these Regulations the amendments in question are technical in nature and do not of themselves make substantive changes to policy. I do not think there is merit in holding an Assembly debate on whether consent should be given to provision in Regulations which have already been made, and where the provision in question is consequential in nature and not a substantive policy change. It is of course still open to any Assembly Member, if they feel strongly that the Memorandum should be debated, to lay a motion to debate this in Plenary.

The Committee will, of course, have the full opportunity to scrutinise the changes that we make to our legislation to implement the EU changes when we lay the Hazardous Waste (Miscellaneous Amendments) (Wales) Regulations 2015 around 20 June 2015.

I trust that the information will be helpful.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'Carl Sargeant'.

Carl Sargeant AC / AM
Y Gweinidog Cyfoeth Naturiol
Minister for Natural Resources

2015 No. 1360

ENVIRONMENTAL PROTECTION

**The Hazardous Waste (Miscellaneous Amendments) Regulations
2015**

<i>Made</i> - - - -	<i>5th June 2015</i>
<i>Laid before Parliament</i>	<i>9th June 2015</i>
<i>Coming into force</i> - -	<i>1st July 2015</i>

The Secretary of State makes these Regulations in exercise of the powers conferred by—

- (a) section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972(a) (“the ECA 1972”); and
- (a) section 2 of, and Schedule 1 to, the Pollution Prevention and Control Act 1999 (“the PPCA 1999”)(b).

The Secretary of State has been designated for the purposes of section 2(2) of the ECA 1972 in relation to the environment(c) and batteries and accumulators(d).

These Regulations make provision for a purpose mentioned in section 2(2) of the ECA 1972 and it appears to the Secretary of State that it is expedient for the references to the European Union instrument mentioned in regulations 2(b), 3(4), 5(b), 7(3)(a)(i), 8(2) and 9 to be construed as references to that instrument as amended from time to time.

The Secretary of State has in accordance with section 2(4) of the PPCA 1999 consulted—

- (a) the Environment Agency;
- (b) such bodies or persons appearing to the Secretary of State to be representative of the interests of local government, industry, agriculture and small businesses respectively as the Secretary of State considers appropriate; and
- (c) such other bodies or persons as the Secretary of State considers appropriate.

(a) 1972 c.68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7). Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 and was amended by Part 1 of the Schedule to the European Union (Amendment) Act 2008 and by S.I. 2007/1388. Under paragraph 5 of Schedule 3 to the Government of Wales Act 2006 (c.32), despite the transfer to the Welsh Ministers of functions in relation to implementing obligations under EU law in relation to devolved matters, the Secretary of State retains power to exercise such functions as regards Wales. Under section 57 of the Scotland Act 1998 (c.46), despite the transfer to the Scottish Ministers of functions in relation to implementing obligations under EU law in respect of devolved matters, the function of the Secretary of State in relation to implementing those obligations continues to be exercisable as regards Scotland.

(b) 1999 c.24; section 2 was amended by section 62(13) of the Water Act 2014 (c.21) and by S.I. 2013/755 (W.90). Schedule 1 was amended by S.I. 2005/925, 2011/1043 and 2012/2788.

(c) S.I. 2008/301.

(d) S.I. 2007/3471.

Citation, commencement and application

1.—(1) These Regulations may be cited as the Hazardous Waste (Miscellaneous Amendments) Regulations 2015 and come into force on 1st July 2015.

(2) Regulations 7 to 9 and 11 apply to England only.

Amendment of the Environmental Protection Act 1990

2. In section 62A of the Environmental Protection Act 1990(a) (lists of waste displaying hazardous properties)—

- (a) in each of subsections (1)(b) and (2)(b), for “Directive 2008/98/EC”(b), substitute “Directive 2008/98/EC”;
- (b) in subsection (3), for “Commission Decision 2000/532/EC”(c), substitute “Commission Decision 2000/532/EC, as amended from time to time”.

Amendment of the Hazardous Waste (England and Wales) Regulations 2005

3.—(1) The Hazardous Waste (England and Wales) Regulations 2005(d) are amended as follows.

(2) For paragraph (1)(a) of regulation 2(e) (the Waste Directive and the meaning of waste), substitute—

“(a) “the Waste Directive” means Directive 2008/98/EC of the European Parliament and of the Council on waste;”.

(3) In paragraph (a) of regulation 3(f) (Annex III to the Waste Directive), omit “, as that Annex is set out in Schedule 3”.

(4) For paragraph (1) of regulation 4(g) (the List of Wastes), substitute—

“(1) In these Regulations, “the List of Wastes” means the list of wastes established by Commission Decision 2000/532/EC replacing Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste, as amended from time to time.”.

(5) In paragraph (2) of regulation 8 (specific waste to be treated as hazardous), for “Article 3 of the List of Wastes Decision”, substitute “Article 7(2) of the Waste Directive”.

(6) In paragraph (2) of regulation 9 (specific waste to be treated as non-hazardous), for “Article 3 of the List of Wastes Decision”, substitute “Article 7(3) of the Waste Directive”.

(7) Omit Schedule 3(h) (Annex III to the Waste Directive).

(8) For Schedule 8 (form of consignee’s return to producer or holder), substitute the text at Schedule 1 (new Schedule 8).

(a) 1990 c.43; section 62A was inserted by S.I. 2005/894 and amended by S.I. 2011/988.

(b) OJ No L 312, 22.11.2008, p.3, as last amended by Commission Regulation (EU) No 1357/2014 (OJ No L 365, 19.12.2014, p.89). The effect of section 20A of the Interpretation Act 1978 (c.30) is that the updated references to Directive 2008/98/EC are to the Directive as last amended by Commission Regulation (EU) No 1357/2014.

(c) OJ No L 226, 6.9.2000, p.3, as last amended by Commission Decision 2014/955/EU (OJ No L 370, 30.12.2014, p.44).

(d) S.I. 2005/894, amended by S.I. 2011/988; there are other amending instruments but none is relevant.

(e) Regulation 2 was substituted by S.I. 2011/988.

(f) Regulation 3 was substituted by S.I. 2011/988.

(g) Paragraph (1) of regulation 4 was amended by S.I. 2011/988.

(h) Schedule 3 was substituted by S.I. 2011/988.

Amendment of the Batteries and Accumulators (Placing on the Market) Regulations 2008

4. For the definition of “appliance” in paragraph (1) of regulation 2 of the Batteries and Accumulators (Placing on the Market) Regulations 2008(a) (interpretation), substitute—

““appliance” means any electrical or electronic equipment, as defined by Directive 2012/19/EU of the European Parliament and of the Council on waste electrical and electronic equipment (WEEE)(b), which is fully or partly powered by batteries or accumulators or is capable of being so;”.

Amendment of the Cremation (England and Wales) Regulations 2008

5. In regulation 29 of the Cremation (England and Wales) Regulations 2008(c) (incineration of body parts)—

(a) in paragraph (1), for “listed in code 18 01 02 or 18 01 03 of Schedule 1 to the List of Wastes Regulations”, substitute “falling within the description of code 18 01 02 or 18 01 03 in the List of Wastes”;

(b) in paragraph (2), for the definition of “List of Wastes Regulations”, substitute—

““List of Wastes” means the list of wastes established by Commission Decision 2000/532/EC replacing Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste, as amended from time to time;”.

Amendment of the Waste Batteries and Accumulators Regulations 2009

6. For the definition of “appliance” in paragraph (1) of regulation 2 of the Waste Batteries and Accumulators Regulations 2009(d) (interpretation), substitute—

““appliance” means any electrical or electronic equipment, as defined by Directive 2012/19/EU of the European Parliament and of the Council on waste electrical and electronic equipment (WEEE), which is fully or partly powered by batteries or is capable of being so;”.

Amendment of the Environmental Permitting (England and Wales) Regulations 2010

7.—(1) The Environmental Permitting (England and Wales) Regulations 2010(e) are amended as follows.

(2) In regulation 3 (interpretation: Directives)—

(a) for the definition of “the Waste Framework Directive”(f), substitute—

““the Waste Framework Directive” means Directive 2008/98/EC of the European Parliament and of the Council on waste;”;

(b) for the definition of “the WEEE Directive”, substitute—

““the WEEE Directive” means Directive 2012/19/EU of the European Parliament and of the Council on waste electrical and electronic equipment (WEEE).”.

(a) S.I. 2008/2164, to which there are amendments not relevant to these Regulations.

(b) OJ No L 197, 24.7.2012, p.38.

(c) S.I. 2008/2841, to which there are amendments not relevant to these Regulations.

(d) S.I. 2009/890, to which there are amendments not relevant to these Regulations.

(e) S.I. 2010/675, amended by S.I. 2011/988; there are other amending instruments but none is relevant.

(f) The definition of “the Waste Framework Directive” in regulation 3 was substituted by S.I. 2011/988.

(3) In Part 1 of Schedule 3 (exempt facilities: descriptions and conditions)—

(a) in paragraph 1 of chapter 1—

(i) in sub-paragraph (1), at the appropriate place insert—

““List of Wastes” means the list of wastes established by Commission Decision 2000/532/EC replacing Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste, as amended from time to time;”;

(ii) for sub-paragraph (2), substitute—

“(2) In this Part, a six digit code used to refer to a waste is a reference to the waste specified by the six digit code in the List of Wastes except insofar as the waste in this Part in relation to such a code does not include some of the types of waste specified by the code in the List”;

(b) in section 2 of chapter 3—

(i) in paragraph 1—

(aa) in sub-paragraph (3)(e), for “dangerous substance”, substitute “hazardous substance”;

(bb) for sub-paragraph (5), substitute—

“(5) In this paragraph, “hazardous substance” means a substance classified as hazardous as a consequence of fulfilling the criteria laid down in Parts 2 to 5 of Annex I to Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures(a).”;

(ii) in the second column of the row beginning “160504*” in the table at sub-paragraph (2) of paragraph 15, for “dangerous substances”, substitute “hazardous substances”;

(c) in section 2 of chapter 5, in the second column of the row beginning “150202*” in the table at sub-paragraph (2) of paragraph 1, for “dangerous substances”, substitute “hazardous substances”.

(4) In Schedule 12 (waste electrical and electronic equipment)—

(a) in sub-paragraph (1) of paragraph 2, for “Article 3(b)”, substitute “Article 3(1)(e)”;

(b) in paragraph 3—

(i) in sub-paragraph (1), for “Article 6(1) first paragraph and Article 6(3) and (4)”, substitute “Articles 8(1) to (3) and 9(3)”;

(ii) for sub-paragraph (2), substitute—

“(2) But when interpreting the WEEE Directive for the purposes of this paragraph, ignore the following words in Article 9(3)—

(a) “or the registration referred to in paragraphs 1 and 2”; and

(b) “and for the achievement of the recovery targets set out in Article 11”.

Amendment of the Waste (England and Wales) Regulations 2011

8.—(1) The Waste (England and Wales) Regulations 2011(b) are amended as follows.

(2) In paragraph (1) of regulation 3(c) (interpretation), at the appropriate place insert—

““the List of Wastes” means the list of wastes established by Commission Decision 2000/532/EC replacing Decision 94/3/EC establishing a list of wastes pursuant to

(a) OJ No L 353, 31.12.2008, p.1, as last amended by Commission Regulation (EU) No 1297/2014 (OJ No L 350, 6.12.2014, p.1).

(b) S.I. 2011/988; relevant amending instruments are S.I. 2013/755 and 2014/656.

(c) Regulation 3 was amended by S.I. 2013/755.

Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste, as amended from time to time;”.

(3) In paragraph (2)(a) of regulation 35(a) (waste information), omit “(England) Regulations 2005 or, as the case may be, the List of Wastes (Wales) Regulations 2005”.

(4) For sub-paragraph (3)(b) of paragraph 11 of Schedule 1 (waste prevention programmes and waste management plans), substitute—

“(b) naturally occurring material falling within the description of code 17 05 04 in the List of Wastes.”.

Amendment of the Controlled Waste (England and Wales) Regulations 2012

9. In paragraph 1 of Schedule 1 to the Controlled Waste (England and Wales) Regulations 2012(b) (household, industrial and commercial waste), for paragraph (c) of the definition of “offensive waste”, substitute—

“(c) falls within the description of code 18 01 04, 18 02 03 or 20 01 99 in the list of wastes established by Commission Decision 2000/532/EC replacing Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste, as amended from time to time;”.

Revocations

10. The following Regulations are revoked—

- (a) the List of Wastes (England) Regulations 2005(c);
- (b) the List of Wastes (England) (Amendment) Regulations 2005(d).

Transitional provisions

11. Schedule 2 (modifications to permits etc.) has effect.

5th June 2015

Rory Stewart
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

SCHEDULE 1

Regulation 3(8)

New Schedule 8

“SCHEDULE 8

Regulation 54

Form of consignee’s return to producer or holder

-
- (a) Paragraph 2 of regulation 3 was amended by S.I. 2014/656.
 - (b) S.I. 2012/811, to which there are amendments not relevant to these Regulations.
 - (c) S.I. 2005/895, amended by S.I. 2005/1673, 2011/988 and 2013/141.
 - (d) S.I. 2005/1673.

Hazardous waste producer returns form

1. Consignee details

Name of consignee	Postcode	Consignee hazardous waste i.d. code	Date ^(a)

2. Waste return

Consignment note number	Date received	Mode of transport	Frequency of collection ^(b)	Six digit code(s) ^(c)	Hazard code(s) ^(d)	Physical form ^(e)	Quantity (kg)	Mode of disposal/recovery ^(f)

^(a)Date of submission of the return by the consignee.

^(b)Where relevant.

^(c)The six digit code(s) must correspond to the relevant code(s) in the list of wastes. There may be more than one waste stream for each consignment note. All relevant six digit codes must be recorded.

^(d)**Hazard code:** the hazard code must correspond to the list below. Each individual six digit code may have more than one hazard code. Each appropriate hazard code for a particular six digit code must be entered. Choose all of the appropriate hazard codes for the particular waste. If a waste contains a substance listed in Annex IV to Regulation (EC) No 850/2004 on persistent organic pollutants, and the concentration limit in that Annex is exceeded, the code "POP" must be recorded.

Hazard code	Description
HP 1	Explosive
HP 2	Oxidising
HP 3	Flammable
HP 4	Irritant – skin irritation and eye damage
HP 5	Specific Target Organ Toxicity (STOT)/ Aspiration Toxicity
HP 6	Acute Toxicity
HP 7	Carcinogenic
HP 8	Corrosive
HP 9	Infectious
HP 10	Toxic for reproduction
HP 11	Mutagenic
HP 12	Release of an acute toxic gas
HP 13	Sensitising
HP 14	Ecotoxic
HP 15	Waste capable of exhibiting a hazardous property listed above not directly displayed by the original waste
POP	Persistent Organic Pollutant

^(e)**Physical form:** Choose one option from the following list as appropriate.

Gas
Liquid
Mixed
Powder
Sludge
Solid

^(f)**Mode of disposal/recovery or rejected:** use the appropriate Dxx/Rxx code for the operation performed on the waste or insert REJ if the waste has been rejected.

Code	Disposal operation
D01	Deposit into or onto land
D02	Land treatment
D03	Deep injection
D04	Surface impoundment
D05	Specially engineered landfill
D06	Release into a water body except seas/oceans
D07	Release into seas/oceans including seabed insertion
D08	Biological treatment not specified elsewhere which results in final compounds or mixtures which are disposed of by any of the operations numbered D01 to D12
D09	Physic-chemical treatment not specified elsewhere which results in final compounds or mixtures which are disposed of by any of the operations numbers D01 to D12
D10	Incineration on land
D11	Incineration at sea
D12	Permanent storage
D13	Blending or mixing prior to submission to any of the operations numbered D01 to D12
D14	Repackaging prior to submission to any of the operations numbered D01 to D12
D15	Storage pending any of the operations numbered D01 to D14 (excluding temporary storage, pending collection, on the site where it is produced).
	Recovery operation

R01	Use principally as a fuel or other means to generate energy
R02	Solvent reclamation/regeneration
R03	Recycling/reclamation of organic substances which are not used as solvents (including composting and other biological transformation processes)
R04	Recycling/reclamation of metals and metal compounds
R05	Recycling/reclamation of other inorganic materials
R06	Regeneration of acids or bases
R07	Recovery of components used for pollution abatement
R08	Recovery of components from catalysts
R09	Oil refining or other re-uses of oil
R10	Land treatment resulting in benefit to agriculture or ecological treatment
R11	Use of wastes obtained from any of the operations numbered R01 to R10
R12	Exchange of wastes for submission to any of the operations numbered R01 to R11
R13	Storage of wastes pending any of the operations numbered R01 to R12 (excluding temporary storage, pending collection, on the site where it is produced)

”

SCHEDULE 2

Regulation 11

Modifications to permits etc.

Modifications relating to hazardous waste codes

1.—(1) Any reference in a permit or standard rule to an outdated hazardous waste code is taken to be a reference to the equivalent updated code in accordance with the following correlation table—

<i>Outdated code</i>	<i>Updated code</i>
H1 (explosive)	HP1 (explosive)
H2 (oxidizing)	HP2 (oxidising)
H3-A (highly flammable)	HP3 (flammable)
H3-B (flammable)	HP3 (flammable)
H4 (irritant)	HP4 (irritant – skin irritation and eye damage)
H5 (harmful)	HP5 (specific target organ toxicity (STOT)/aspiration toxicity); and HP6 (acute toxicity)
H6 (toxic)	HP5 (specific target organ toxicity (STOT)/aspiration toxicity); and HP6 (acute toxicity)
H7 (carcinogenic)	HP7 (carcinogenic)
H8 (corrosive)	HP8 (corrosive)
H9 (infectious)	HP9 (infectious)
H10 (toxic for reproduction)	HP10 (toxic for reproduction)
H11 (mutagenic)	HP11 (mutagenic)
H12 (waste which releases toxic or very toxic gases in contact with water, air or an acid)	HP12 (release of an acute toxic gas)
H13 (sensitizing)	HP13 (sensitising)
H14 (ecotoxic)	HP14 (ecotoxic)
H15 (waste capable by any means, after disposal, of yielding another substance, e.g. a leachate, which possesses any of the characteristics listed above)	HP15 (waste capable of exhibiting a hazardous property listed above not directly displayed by the original waste)

(2) In this paragraph—

“outdated hazardous waste code” means a code or description of a code set out in Annex III to Directive 2008/98/EC of the European Parliament and of the Council on waste (properties of waste which render it hazardous), as adopted on 19th November 2008(a);

“updated code” means a code or description of a code set out in Annex III to Directive 2008/98/EC of the European Parliament and of the Council on waste, as amended by Commission Regulation (EU) No 1357/2014 replacing Annex III to Directive 2008/98/EC of the European Parliament and of the Council on waste(b).

Modifications relating to list of wastes codes

2.—(1) Any reference in a permit or standard rule to a six-digit code in the outdated List of Wastes is taken to be a reference to the equivalent six-digit code in the updated List.

(2) In sub-paragraph (1)—

(a) OJ No L 312, 22.11.2008, p.3.

(b) OJ No L 365, 19.12.2014, p.89.

“outdated List of Wastes” means—

- (a) the EU List of Wastes, as adopted on 3rd May 2000(a);
- (b) the EU List of Wastes, as amended by Commission Decision 2001/118/EC amending Decision 2000/532 as regards the list of wastes(b);
- (c) the EU List of Wastes, as last amended by Commission Decision 2001/119/EC amending Decision 2000/532/EC replacing Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste(c);
- (d) the EU List of Wastes, as last amended by Council Decision 2001/573/EC amending Commission Decision 2000/532/EC as regards the list of wastes(d); or
- (e) any of those lists as they were from time to time set out in the List of Wastes (England) Regulations 2005;

“six-digit code” means a six-digit code or a description of a six-digit code;

“updated List” means the list established by the EU List of Wastes, as last amended by Commission Decision 2014/955/EU amending Decision 2000/532/EC on the list of waste pursuant to Directive 2008/98/EC of the European Parliament and of the Council(e).

(3) In sub-paragraph (2), “the EU List of Wastes” means Commission Decision 2000/532/EC replacing Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste.

Meaning of permit and standard rule

3. In this Schedule—

“permit” has the meaning given to “environmental permit” in regulation 13(1) of the Environmental Permitting (England and Wales) Regulations 2010(f) and includes a marine licence granted under Part 4 of the Marine and Coastal Access Act 2009(g);

“standard rule” means any rule published under regulation 26(5) of the Environmental Permitting (England and Wales) Regulations 2010.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to enactments which concern hazardous waste or cross-refer to other enactments or European Union instruments concerning hazardous waste.

Directive 2008/98/EC of the European Parliament and of the Council on waste (Directive OJ No L 312, 22.11.08, p.3) (“the Directive”) was amended on 19th December 2014 by Commission Regulation (EU) No 1357/2014 (OJ No L 365, 19.12.14, p.89). Accordingly, paragraph (a) of regulation 2 updates references to the Directive in subsections (1)(b) and (2)(b) of section 62A of the Environmental Protection Act 1990 (c.43) (“the EPA 1990”). Other enactments are similarly updated (regulations 3(2) and 7(2)(a)).

On 30th December 2014 Commission Decision 2000/532/EC replacing Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of

(a) OJ No L 226, 6.9.2000, p.3.

(b) OJ No L 47, 16.2.2001, p.1.

(c) OJ No L 47, 16.2.2001, p.32.

(d) OJ No L 203, 28.7.2001, p.18.

(e) OJ No L 370, 30.12.2014, p.44.

(f) S.I. 2010/675, to which there are amendments not relevant to these Regulations.

(g) 2009 c.23.

Council Directive 91/689/EEC on hazardous waste (OJ No L 226, 6.9.2000, p.3) (“the List of Wastes”) was amended by Commission Decision 2014/955/EU (OJ No L 370, 30.12.2014, p.44). Paragraph (b) of regulation 2 amends subsection (3) of section 62A of the EPA 1990 such that the reference to the List of Wastes is a reference to that List as amended from time to time. Other enactments are amended with like effect (regulations 2(b), 3(4), 5(b), 7(3)(a)(i), 8(2) and 9).

Regulations 4, 6 and 7(2)(b) and (4) amend enactments as a consequence of Directive 2012/19/EU of the European Parliament and of the Council on waste electrical and electronic equipment (WEEE) (OJ No L 197, 24.7.2012, p.38). Regulation 10 revokes the List of Wastes (England) Regulations 2005 (S.I. 2005/895) and the List of Wastes (England) (Amendment) Regulations 2005 (S.I. 2005/1673). Schedule 2 contains transitional provisions.

An impact assessment has not been done for this instrument as no impact on business, the voluntary sector or the public sector is foreseen.

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Pack Page 87

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STATUTORY INSTRUMENT CONSENT MEMORANDUM

The Hazardous Waste (Miscellaneous Amendments) Regulations 2015

1. This Statutory Instrument Consent Memorandum is laid under Standing Order (“SO”) 30A.2. SO 30A prescribes that a Statutory Instrument Consent Memorandum (SICM) must be laid and a Statutory Instrument Consent Motion may be tabled before the National Assembly for Wales (“Assembly”) if a UK Statutory Instrument makes provision in relation to Wales amending primary legislation within the legislative competence of the Assembly.
2. The Hazardous Waste (Miscellaneous Amendments) Regulations 2015 were laid before Parliament on 9 June 2015 and come into force on 1 July 2015. The Regulations can be found at:

<http://www.legislation.gov.uk/ukxi/2015/1360/contents/made>

Summary of the Regulations and their objective

3. The Hazardous Waste (Miscellaneous Amendments) Regulations 2015 amend The Hazardous Waste (England and Wales) Regulations 2005, revoke The List of Wastes (England) Regulations 2005, and amend other statutory instruments, in order to implement changes to EU legislation on hazardous waste and how it is classified and other related matters:
 - a. Commission Regulation 2008/1272/EC, the Classification, Labelling and Packaging Regulation (CLP) changes the way chemicals are classified and introduce a system based on hazard classes, categories and statement codes. The new CLP adopts and aligns existing EU legislation to the United Nations’ Globally Harmonised System on the classification and labelling of chemicals across all European Union countries, for example, the definition of dangerous substance is now replaced by a definition of hazardous substance;
 - b. Commission Regulation 1357/2014 replaces Annex III of the EU Waste Framework Directive (2008/98/EC) (“the Waste Directive”) and makes changes to how hazardous waste is coded and assessed; and
 - c. Commission Decision 2014/955/EU make changes to the EU List of Waste Decision (2000/532/EC) (the “List of Waste Decision”) to align with the CLP and Annex III of the Waste Directive. The new changes also include criteria to classify waste containing persistent organic pollutants (POPs) as hazardous once the concentration limit in the waste is exceeded and amends several existing waste codes. Three new waste codes relating to metallic mercury red mud from alumina production have also been added to the List.
4. The Commission Regulation is binding and has direct effect in the UK. However, changes need to be made to UK legislation to give proper effect to the EU legislation, in part because domestic legislation is drafted in

such a way that it will not be automatically updated as relevant EU legislation changes.

5. As a result of the changes in EU law, the Hazardous Waste (Miscellaneous Amendments) Regulations 2015 amongst other things, make consequential amendments to section 62A of the Environmental Protection Act 1990 (“the Act”) for England and Wales.
6. The Hazardous Waste (Miscellaneous Amendments) Regulations 2015 apply in relation to England, save for the amendments set out in regulations 2 and 4 to 6, which extend to England and Wales.

Provision to be made by the Regulations for which consent is sought

7. Section 62A of the Act is amended by regulation 2, as follows. The references to the Waste Framework Directive (2008/98/EC) in subsections (1)(b) and (2)(b) are updated to reflect the changes to Annex III of the Directive (Properties of waste which render it hazardous). Amendment of subsection 3 creates an ambulatory reference to the EU List of Waste Decision (2000/532/EC) so that future amendments to this section of the Act will not be necessary every time there is a change to the List of Waste Decision at European level.
8. It is the view of the Welsh Government that the provision described in paragraph (7) above falls within the legislative competence of the National Assembly for Wales in so far as it relates to environmental protection, including pollution, nuisances and hazardous substances, and prevention, reduction, collection, management, treatment and disposal of waste under paragraph 6 (Environment) of Part 1, Schedule 7, to the Government of Wales Act 2006.

Why is it appropriate for the Regulations to make this provision?

9. The amendment is necessary as a result of the changes to EU legislation and is of a minor and technical nature. It is necessary to give effect to the EU legislation outlined in paragraph 3. The terms of the Commission Regulation or the amendment to the List of Wastes Decision do not afford any discretion in terms of policy or drafting as between Wales and England.
10. It is the view of the Welsh Government that it is appropriate to deal with the amendment of section 62A in these Regulations as it provides the most practical and expedient approach to making this technical amendment for both England and Wales.
11. Previous Statutory Instrument Consent Memorandums have related to Statutory Instruments which are subject to the affirmative procedure in the UK Parliament and where they must be approved by both the House of Commons and the House of Lords to become law. This is the first SICM in the Assembly that relates to Regulations laid in Parliament under the

negative procedure which automatically become law unless there is an objection from a member of either House. That being the case, the regulations would come into force on 1 July 2015.

Financial implications

12. There are no anticipated financial implications for the Welsh Government.

Carl Sargeant AM
Minister for Natural Resources
June 2015

Agenda Item 5

Paratowyd y ddogfen hon gan gyfreithwyr Cynulliad Cenedlaethol Cymru er mwyn rhoi gwybodaeth a chyngor i Aelodau Cynulliad a'u cynorthwyywyr ynghylch materion dan ystyriaeth gan y Cynulliad a'i bwyllgorau ac nid at unrhyw ddiben arall. Gwnaed pob ymdrech i sicrhau fod yr wybodaeth a'r cyngor a gynhwysir ynddi yn gywir, ond ni dderbynir cyfrifoldeb am unrhyw ddibyniaeth a roddir arnynt gan drydydd partion.

This document has been prepared by National Assembly for Wales lawyers in order to provide information and advice to Assembly Members and their staff in relation to matters under consideration by the Assembly and its committees and for no other purpose. Every effort has been made to ensure that the information and advice contained in it are accurate, but no responsibility is accepted for any reliance placed on them by third parties

Constitutional and Legislative Affairs Committee

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING REGULATION (EC) NO 1829/2003 AS REGARDS THE POSSIBILITY FOR THE MEMBER STATES TO RESTRICT OF PROHIBIT THE USE OF GENETICALLY MODIFIED FOOD AND FEED ON THEIR TERRITORY

Legal Advice Note – Subsidiarity and Proportionality

Legal Context

1. The principles of subsidiarity and proportionality are enshrined in Article 5 of the Treaty on European Union –

Article 5

(ex Article 5 TEC)

1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.

2. Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.

3. Under the **principle of subsidiarity**, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States,

either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol.

4. Under the **principle of proportionality**, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.

The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. EN C 83/18 Official Journal of the European Union.”

2. Its application is governed by the Protocol on the Application of the Principles of Subsidiarity and Proportionality, the relevant part of which for our purpose is the first paragraph of Article 6 –

“Any national Parliament or any chamber of a national Parliament may, within eight weeks from the date of transmission of a draft legislative act, in the official languages of the Union, send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity. It will be for each national Parliament or each chamber of a national Parliament to consult, where appropriate, regional parliaments with legislative powers.”*[our emphasis]*

Commission Proposals

3. On the 22nd April 2015, the Commission published its proposal for a new Directive on the use of genetically modified food and feed. This proposal arose from the failure of the Council of Ministers to achieve the necessary qualified majority in favour or against proposals on the subject, leaving decisions to be taken by the European Commission.

4. The Commission’s summary of its proposal is annexed at the end of this note. The first paragraph reads as follows –

“The Commission proposal amends Regulation (EC) No 1829/2003, under the ordinary legislative procedure, to introduce new provisions allowing Member States to restrict or prohibit the use of GMOs and GM food and feed covered by the GMO legal framework, in part or all of their territory, in complement to the possibilities already offered to Member States with respect to GMOs for cultivation by Directive (EU) 2015/412.” [our emphasis]

5. An Explanatory Memorandum has been prepared by the UK Government for the Parliamentary Committees on European issues. In its consideration of subsidiarity, the Memorandum stated as follows–

“MINISTERIAL RESPONSIBILITY

7. Responsibility lies with the Secretary of State for Environment, Food and Rural Affairs. Whilst the Food Standards Agency (FSA) is the UK competent authority for GM food and feed, including the negotiation and operation of the EU decision-making process under Regulation (EC) No 1829/2003, the Defra Secretary of State is the lead Minister for GM issues. In practice, the FSA and Defra are working together closely to determine and take forward the UK Government’s position on this proposal.

INTEREST OF THE DEVOLVED ADMINISTRATIONS (DAs)

8. The FSA and Defra are currently discussing with the DAs what implications the proposal has for devolved decision making in the UK. The DAs have been consulted in the preparation of this Explanatory Memorandum.” ...

“SUBSIDIARITY

11. In its subsidiarity assessment for the proposal (section 4.3.1 of COM(2015) 177 final), the Commission notes that:

the authorisation of GM food and feed products is currently subject to a fully harmonised process, the general objective of which is to ensure a high level of safety throughout the EU;

under the current EU regime, Member States have limited scope to take measures on GM food and feed on the basis of non-safety considerations;

the proposal would give Member States a new discretion to adopt measures on GM food and feed for reasons unrelated to safety, provided they are in accordance with EU law. This is on the assumption that national or local decision-making is the most appropriate approach in this context.

12. The Government concurs with the Commission's assessment that decisions on the marketing and use of GM food and feed products are currently an issue of EU competence, and that the proposal would introduce a new element of subsidiarity by giving Member States the discretion to ban or restrict the use of EU-approved GM products on non-safety grounds. “

6. The proposal would clearly permit a decision to be taken to restrict or prohibit the use of genetically modified food or feed in all or part of a Member State. The UK Government's Explanatory Memorandum gives no indication that the devolved administrations will be able to take their own decisions in relation to their territories. Whilst the Commission proposal appears to comply with the principle of subsidiarity, it is important to establish how that subsidiarity would operate within the United Kingdom.

7. However, the Thüringen (Germany) State Parliament has already raised concerns under the subsidiarity process which it has summarised in English as follows–

“Bearing in mind the very strict legal requirements set out by the Commission in its proposal, it is highly questionable whether it is actually possible for a Member State to adopt opt-out measures in compliance with EU-law, especially with regards to the international obligations of the Union. Questionable is also to what extent the involvement of all 28 EU states in the mandatory notification and control procedure contributes to fulfil the intended objectives.”

8. The Committee is invited to consider whether it wishes to invite the Welsh Government to explain –

- whether it expects to take its own decision for Wales under the proposed Regulation and what discussions on that issue have taken place with the UK Government;
- to what extent, if at all, it agrees with the concern expressed by Thuringen.

Legal Services

National Assembly for Wales

June 2015

ANNEX – Extract from the Commission proposal

“4.1. Summary of the proposal

The Commission proposal amends Regulation (EC) No 1829/2003, under the ordinary legislative procedure, to introduce new provisions allowing Member States to restrict or prohibit the use of GMOs and GM food and feed covered by the GMO legal framework, in part or all of their territory, in complement to the possibilities already offered to Member States with respect to GMOs for cultivation by Directive (EU) 2015/412.

The additional powers granted to Member States under this proposal will only concern the possibility to adopt measures in accordance with the Treaty to restrict or prohibit the use of GMOs and GM food and feed on their territory after these products have been authorised. It will thus not affect the procedural and substantial conditions of the authorisation of GMOs and GM food and feed under Regulation (EC) No 1829/2003, which will remain valid for the whole territory of the Union.

The measures adopted by Member States need to be compatible with the internal market, and in particular Article 34 TFEU which prohibits measures of equivalent effects to quantitative restrictions to the free movement of goods.

That is why the Member States making use of this proposal will need to justify the measures taken based on grounds to be in accordance with Article 36 TFEU and the notion of overriding reasons of public interest as developed by the case-law of the Court of justice. In addition, the measures envisaged will need to be reasoned and to be compatible with the principles of proportionality and non-discrimination between national and non-national products. Finally these measures will need to comply with the international obligations of the Union.

It will be up to each Member State wanting to make use of this "opt-out" to justify the restriction or prohibition on a case-by-case basis, taking into account the GMO in question, the type of measure envisaged, and the specific circumstances at national or regional level that justify such an opt-out.

As for Directive (EU) 2015/412, Member States will not be allowed to use justifications linked to the assessment of risks to health or to the environment

which are comprehensively addressed in the authorisation decision and by the procedures already available in Regulation (EC) No 1829/2003, to address new risks (e.g. “emergency measures” under Article 34 or “supervision” under Articles 9 and 21).

The new possibility offered by the proposal does not cover the placing on the market and use of products not labelled as genetically modified, in accordance with labelling thresholds set under the GMO legal framework (e.g. under Articles 12 and 24 of Regulation (EC) No 1829/2003 food and feed containing an adventitious or technically unavoidable presence of GM material up to 0,9% by ingredient are not labelled).

The Member States which will restrict or prohibit the use of GMOs and GM food and feed already on the market will also have to preserve the rights of the operators, by providing them a reasonable period of time to allow the phasing out of the products concerned.”

Agenda Item 6

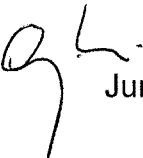
Y Gweinidog Cyfoeth Naturiol
Minister for Natural Resources



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref LF CS 0561 15

David Melding AM
Chair of the Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA


June 2015

Dear David,

I am writing following my appearance before the Constitutional and Legislative Affairs Committee on 1 June to provide evidence on the Environment (Wales) Bill. I committed to supply further information to help explain the provisions of the Bill and how I am intending them to work in practice.

Section 22 – power to suspend statutory requirements for experimental schemes

Where it is likely to contribute to the sustainable management of natural resources, section 22 gives the Welsh Ministers power, in specific circumstances, to suspend a provision or provisions in legislation. This will enable Natural Resources Wales ('NRW'), where necessary, to undertake an experimental scheme (as provided for in section 23 of the Bill).

The suspension means, in effect, that a person is exempted from a statutory requirement, or that the requirement is relaxed as it applies to a person.

The Bill provides a number of checks and balances for the appropriate application of this power.

- The power may only be exercised by the Welsh Ministers following a detailed application by NRW.
- The suspension must relate to a specific scheme and therefore to the application of a provision in relation to the party or parties involved in the scheme. It is not by any means a 'blanket' suspension.
- A suspension may not be provided for unless it is necessary to facilitate the scheme. The scheme itself must be relevant to the exercise of NRW's statutory functions.
- A three-year time limitation applies, as does an obligation to consult and the the Affirmative resolution procedure.

Furthermore, the power relates only to legislation in which NRW is responsible for the application of a statutory provision, or the statutory provision applies to NRW and the way in which, or the purposes for which, natural resources are managed or used. The power is therefore limited to legislation relating to the specific functions of NRW.

My department will be working closely with NRW to ensure it has the necessary clarity on the process for making an application to the Welsh Ministers. I would expect that any application by NRW would include the following:

- Details on what the proposed experimental scheme would entail, its objective and expected duration;
- Why, or in what way, the provision(s) they have identified provides a legal barrier to the scheme it intends to undertake;
- Information on the parties involved in the scheme, including how they are to be involved;
- An assessment of how the suspension of the provision(s) will assist in the sustainable management of natural resources; and
- Information on how the scheme will be monitored.

The Welsh Ministers would then consider the application. As noted, Welsh Ministers would need to be fully satisfied that the suspension is necessary to enable an experimental scheme to be carried out, and that that scheme is likely to contribute to the sustainable management of natural resources. As part of that consideration, the Welsh Ministers must consult with the persons who would be affected by the provision and also the persons affected by the experimental scheme.

If the Welsh Ministers are satisfied that it will, in fact, contribute to the sustainable management of natural resources, the use of the power would then be subject to the agreement of the Assembly via the Affirmative procedure.

The suspension is temporary: limited to three years with the potential to extend, on no more than one occasion, for a further period of no more than three years. In this case the suspension would be in place for a maximum of six years.

For more information on what kind of circumstances under which NRW may wish to make such an application, I refer you to the Explanatory Memorandum, and the Statement of Policy Intent and the examples provided in its Annex.

The policy intent relating to climate change and carbon units, and further information on carbon trading

As I mentioned in Committee on 1 June, our understanding of climate change and the mechanisms to address it are constantly evolving, and it is vital that we are able to respond to these developments quickly. The provisions in the Bill have been drafted in a way that allows us to do this.

Sections 33 and 34 of the Bill outline how we will calculate 'Welsh emissions', which is achieved by the establishment of a 'net Welsh emissions account'.

The 'net Welsh emissions account' is calculated in part by the addition and subtraction of carbon units.

Section 36 enables 'carbon units' to be defined in regulations but this power is limited to three kinds of carbon unit. It includes an amount of greenhouse gas emissions already regulated within an emissions trading scheme to be defined as a carbon unit for the purposes of the 'net Welsh Emissions account'.

At the time of writing, it is intended, that the definition will be units of carbon that can be traded, for example, as in the EU Emission Trading Scheme (EU ETS). The EU ETS works on the 'cap and trade' principle. A 'cap', or limit, is set on the total amount of certain greenhouse gases that can be emitted by the factories, power plants and other installations in the system. The cap is reduced over time so that total emissions fall.

The EU ETS operates in phases, and is subject to regular review by the European Commission. Changes introduced by the Commission could necessitate changes to carbon accounting under the Bill, which is one of the examples that these sections can provide for.

In drafting the relevant provisions of the Bill, we were mindful that any regulatory mechanisms to tackle climate change need to be adaptable to account for new scientific and technological discoveries come to light and new agreements are made at the international and sub-national level. One example will be the 2015 United Nations Framework Convention on Climate Change ('UNFCCC') Conference in Paris in December this year (known as 'COP21'). The UN's forward work programme on Reducing Emissions from Deforestation and forest Degradation ('REDD') may also lead to new binding international agreements. Domestically, the UK Woodland Carbon Code and the pilot UK Peatland Code are good examples of areas where there may be future developments on which we may need to consider how this impacts on the net Welsh emissions account.

These are just a few examples, and with the certainty that there will be more examples looking ahead, it did not seem appropriate to fix a definition on the face of the Bill. Doing so would mean that we would be able to modify the definition to take account of changes at the international, European or domestic level.

As noted in the Statement of Policy Intent, I would wish to make these regulations as soon as is practicable. This work would be necessarily technically complex, and warrants needs careful consideration and analysis. My department would, however, be undertaking this work alongside that in relation to the setting of setting of the five-year carbon budgets.

Current operation of Welsh law in relation to charges to carrier bags as applicable to sellers in England and the Memorandum of Understanding with the UK Government

The carrier bag charge will continue to apply to sellers in England in the same way it applies now. The only difference in the proposed legislation is that the term "seller" will now be defined on the face of the Bill rather than in the regulations. Section 55 of the Bill applies in relation to Wales and, therefore, falls within section 108(4)(b) of the Government of Wales Act 2006.

Sellers, in so far as they operate in Wales, must comply with Welsh law. Supermarkets in England or, for that matter, any businesses elsewhere in the world who deliver goods to households in Wales, will continue to be required to charge for any new carrier bags they supply.

At the Committee session on 1 June, reference was made to the 2013 Memorandum of Understanding and Supplementary Agreements between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee. The principle of good communication between administrations is a

specific commitment in that Memorandum, particularly where one administration's work may have some impact on the responsibilities of another administration.

While this is an agreement in place between Governments, and not specifically with Local Authorities, the Welsh Government has worked closely with the Local Government Association ('LGA') in England as well as with UK Government departments to ensure that any sellers operating in Wales comply with Welsh law. This has included writing to the LGA to clarify the role of home and primary authorities in England when advising large retailers and to raise awareness of the Welsh Government's enforcement guidance.

I would also like to take this opportunity to confirm my position on section 57 in regards to legislative competence. To be clear, I am satisfied that this provision is appropriate for giving effect to the carrier bag charging regime and therefore falls within section 108(5)(a) of the Government of Wales Act 2006. This being the case there is no requirement to demonstrate that charitable purposes must relate to one or more subjects in Schedule 7 to that Act.

The appeal process in section 74 of the Bill (power to serve notices for protection of European marine sites) and its relationship with the European Convention of Human Rights

Section 5 of the Sea Fisheries (Shellfish) Act 1967 currently allows the Welsh Ministers to determine a Several or Regulated shellfishery if certain matters are occurring, such as if the fishery is not being properly cultivated.

The Welsh Ministers are under obligations (arising pursuant to the Habitats Directive) to protect European Marine Sites ('EMs') in Wales. There is a concern at present that the powers in section 5 of the 1967 Act may not always be sufficient to ensure that the Welsh Ministers can comply with their European obligations in this regard.

The amendments to the 1967 Act made by sections 74 and 75 of the Bill will allow the Welsh Ministers to take the action necessary to protect EMs, if shellfisheries created after the coming into force of the Bill are causing harm to such a site, or are threatening to do so. This will ensure that the Welsh Ministers can comply with their Habitats Directive obligations.

The new powers will enable the Welsh Ministers to serve a Site Protection Notice on the grantee of the fishery in question requiring that it is operated (or not operated) in a particular way. The Welsh Ministers can, subsequently, adjust or revoke the Several or Regulating Order in order to reflect the terms of the Site Protection Notice. These new powers will only apply to Several or Regulating Shellfish Orders made after the Bill provisions have come into force. The new provisions will not, consequently, affect any property rights in shellfisheries that currently exist. Any property rights which are created by such Orders after the coming into force of the Bill will have been created subject to the new powers to adjust or interrupt the same.

Whilst the new powers will enable the Welsh Ministers to adjust or revoke a Several or Regulating Shellfishery Order where that is in the public interest (i.e. in order to protect the marine environment where necessary to comply with the Welsh Ministers obligations under the Habitats Directive), the Welsh Ministers are, of course, under a duty to comply with the European Convention on Human Rights and with that in mind, the new section 5C of the 1967 Act (inserted by section 74 of the Bill) provides an appropriate appeal mechanism which will help ensure that any interference with the property rights is proportionate, and thus providing sufficient protection of property rights.

An appeal may be brought, in relation to a Site Protection Notice, before the First-tier Tribunal which has the power to confirm, vary or cancel the Site Protection Notice, and

order the Welsh Minister to pay compensation if appropriate. The First-tier Tribunal also has the power to suspend or vary a Site Protection Notice until the appeal is concluded.

The Welsh Ministers power to amend or revoke a Several or Regulating Order is undertaken by way of Statutory Instrument which will also be subject to Assembly scrutiny under the Negative procedure. That instrument can only reflect the terms of the Site Protection Notice and can only be made after any period within which an Appeal in relation to the same has expired or the appeal has been determined. The Appeals mechanism set out in section 74 is also, therefore, effective in providing sufficient protection for any property rights affected by the making of an amending or revoking Order under section 75 of the Bill.

I believe that sections 74 and 75 of the Bill will enable the Welsh Ministers to adjust or revoke a Several or Regulating Shellfishery Order where that is in the public interest – i.e. in order to comply with Habitats Directive obligations – and that the new appeals mechanism will help to ensure that any interference with property rights that results from those new powers will be proportionate. I am satisfied that these provisions provide sufficient protection of property rights.

I hope that these explanations are helpful. If you would like any further information on the Bill and how I see it functioning, please contact me. I am copying this letter to the Chair of the Environment and Sustainability Committee.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Carl Sargeant'.

Carl Sargeant AC / AM
Y Gweinidog Cyfoeth Naturiol
Minister for Natural Resources

CC: Alun Ffred Jones AM, Chair of the Environment and Sustainability Committee

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