



Llywodraeth Cymru
Welsh Government

Mark Parkinson
Joint Secretary
Commission on Devolution in Wales
1 Caspian Point
Cardiff CF10 4DQ

19 September 2013

Dear Mark

I am writing in response to your letter of 30 July. The attached Annex sets out our response to the questions in your Annex.

Turning to the second paragraph in your letter, a transfer of resources should in principle be cost-neutral. However, in negotiations the Welsh Government can be at a disadvantage because we lack the full budgetary information, and/or information about unfunded pressures and risks which may be transferred when powers are devolved.

That is why the Welsh Government's evidence said (paras 26 and 27) that all transfers of responsibilities from the UK Government to the Welsh Government flowing from recommendations by the Commission must be accompanied by full budgetary transfers, and that these should be subject to independent scrutiny. In addition, as we said in para 14, there should be recognition of the need to build and extend capacity and expertise in order to support the exercise of the new powers.

Your penultimate paragraph asked about the implications for financial management of a bigger devolved budget. In advance of the devolution of justice, the budgets associated with additional powers we are seeking would represent a manageable increase in our financial responsibilities. So there would not be a major impact on central services such as financial management. As you suggest, there could be opportunities for saving and prioritisation within a larger budget.

As explained in the evidence the devolution of criminal justice would have a more substantial effect, involving a transfer of some £900 million (based on published figures), which is why our evidence proposed its devolution as a longer term objective.

Our proposal to restructure the Welsh settlement on a Reserved powers model also has capacity implications (as mentioned in para 8 of our evidence). In our view, this would free up staff resources currently engaged in dealing with the complexity and constraints of the current settlement. These potential savings cannot be quantified but we are confident they would be significant.

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The First Minister has seen this letter in draft and has approved it.

I am copying this letter to Glynne Jones at the Wales Office.

Yours sincerely

Carys Evans

Carys Evans
Deputy Director
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Annex

DCMS/Broadcasting: if as some have advocated S4C were devolved and on the basis of its existing funding arrangements, it might be assumed that there would be a transfer of the existing DCMS grant to S4C and a transfer of the associated DCMS administration costs; we are not aware of significant additional costs for the Welsh Government. Is this the case?

The Welsh Government is not seeking the devolution of S4C, so we have made no estimates of the cost implications.

Were devolution to be proposed, a detailed analysis would need to be undertaken of every element of DCMS's role in relation to S4C. For example, DCMS currently leads on the process for appointing Members to the S4C Authority as well as receiving S4C's Annual Report and the obligations involved with this, including tabling the report to Parliament. These are likely to involve administrative costs which would need to be taken into account if the DCMS grant were to be transferred.

Under the Broadcasting Act 1990 (as amended by the Public Bodies Act 2011) the Secretary of State for Culture, Media and Sport has a statutory duty to ensure that S4C receives a "sufficient" amount to enable it to fulfil its remit and provide its public services. This duty would need to be taken into account if any transfer of grant were to be proposed in future.

In addition, as reflected by S4C's submission to the Commission, a number of other complex legal and financial issues would need be considered if the devolution of S4C were to be proposed.

DfT/Transport: we have heard the case for transfers of powers in relation to ports, rail franchises, the rail network, bus and taxi regulation. We assume there would be transfers from DfT both in respect of the programme costs and administrative costs. We would be grateful for your estimate of these transfers and any additional costs. In addition we would be grateful to know what, if any, unfunded risks would be transferred

Further devolution of rail functions is subject to current discussion with the UK Government.

The management of the current Wales and Borders franchise operated by Arriva Trains Wales is the responsibility of the Welsh Ministers under a Joint Parties Agreement signed by the Department for Transport in 2006. The initial settlement, subsequently normalised into the block settlement to Wales, was £145.8million. In 2013/2014, the cost of the franchise for Welsh services will be in the region of £178million. This figure includes the necessary service enhancements that have been required during current franchise period. By 2018/2019, it is expected that the cost of the franchise, allowing for inflation, will increase to £206.8million.

If the Welsh Ministers assume responsibility as the Franchising Authority in respect of the Wales and Borders franchise area, and depending on when the changes take effect, then the current franchise cost provides a reasonable sense of the order of magnitude of funding that we would anticipate being required.

Additional expertise and capacity would be required within the Welsh Government to discharge the additional functions appropriately.

In any devolved settlement, the rail infrastructure would continue to be owned by Network Rail, but oversight of the Welsh Route *could* be part of a devolved settlement to the Welsh Ministers. If this were the case, then it is possible that responsibility for specifying and funding network outputs via the Office of Rail Regulation would be provided by the Welsh Ministers. Again, costs associated with this function have not been quantified, so a detailed assessment of the quantum of funding required would need to be undertaken prior to a final and formal agreement being reached.

Buses

The Welsh Government is seeking competence in relation to bus regulation. We anticipate that the key funding implications would be in terms of staff resources and capacity and could be of the order of at least £100,000.

It is expected that the cost of bus registrations would be met from registration fees but further work is required to establish the detailed costs of a separate regulatory regime and Traffic Commissioner in Wales.

Ports

The Welsh Government is seeking competence in relation to ports in order to maximise their economic development potential and therefore stimulate growth and jobs. Competence could encompass harbour revision orders and oversight of Trust ports.

We anticipate that the key funding implications would be in terms of staff resources and capacity. Based on the position in Scotland, we estimate an additional requirement of around £150,000. With a small programme allowance to support data collection and analysis; assessment of applications and wider policy support we would estimate a minimum requirement of around £500,000 to support a ports policy function in Wales.

Taxis

The Welsh Government is seeking competence in relation to taxi licensing in order to enable it to promote greater consistency of standards across local authority areas where appropriate to contribute to sustainable integrated transport systems in Wales.

Again, based on the arrangements in Scotland, we estimate a requirement of around £60,000 for dedicated staff resources.

HO/Policing: we assume that if policing were devolved, there would be a transfer of the existing Home Office police grant to Welsh police forces, and associated HO HQ administrative costs. It might be assumed that the National Crime Agency would not be devolved (it is not in Scotland). In respect of the police college, police complaints and regulation, and police pay and pensions, it is assumed that the two Governments would need to agree the most cost effective arrangements, which might involve sharing of facilities. We would be grateful for estimates of any net additional costs to the Welsh Government on this basis.

Yes, if policing were devolved we would expect a full transfer of the existing Home Office Police Grant and associated revenue and capital provision to the Welsh Government. As set out in our evidence, a policing team would be needed within the Welsh Government to support Ministers in exercising their powers. We estimate that this would cost between £2-3 million a year.

As we have said, we would not envisage any change to the non-devolved status of the National Crime Agency, given its current UK remit. However, there are other costs for specialist and centralised services which the Home Office also meets centrally, notably for the Airwave digital communications system, but also for a number of other specialist services (national databases such as the Police National Computer for example). Arrangements for these would also have to be negotiated and agreed, but we would almost certainly wish to retain access to existing systems, as it is unlikely to be desirable or practical to try to set up separate arrangements for Wales and it is recognised information sharing is crucial to the effective delivery of policing across the UK.

We understand the Home Office intend the National College of Policing to become self funding, through charges to police forces for their services, so there may not be any requirement for a significant transfer of costs. Our priority would be to ensure Welsh forces continued to be able to access College services. In relation to inspection and complaints arrangements (delivered by HMIC and IPCC), we would seek transfer of the costs of providing these services in Wales. Initially we would probably require HMIC and IPCC to continue to deliver these services in Wales.

In relation to matters such as specialist services, HMIC, and IPCC, there is no reason for Welsh Government to incur additional net costs in maintaining services as they exist at the point of transfer, provided an agreement is reached which ensures continued access to these services. It would then be a matter for the Welsh Government to make decisions about the delivery of these services going forward.

We would seek to negotiate cost effective arrangements for pay and pensions: this would be likely to include participating in national mechanisms for determining police pay.

Defra/Water: if sewerage policy were devolved, we would be grateful to know what the public sector funding implications would be bearing in mind that we understand this is a private sector function. Similarly we would be grateful to know of any public sector cost implications if there were devolution boundary changes for devolved competence beyond what has been agreed in the Water Bill, as proposed in the Welsh Government's evidence

We do not envisage any significant public sector cost implications associated with the devolution of sewerage policy and licensing for water and sewerage. The majority of costs associated with sewerage management are met through the water industry and customer bills and we would not expect this to change as a result of devolving this policy area fully to the National Assembly. There is likely to be some modest additional administrative cost for the Welsh Government to ensure that any new responsibilities and requirements are managed appropriately, but it is too early to quantify this precisely.

Similarly, we do not envisage significant public sector cost implications if there were devolution boundary changes both in relation to the existing functions conferred upon Welsh and UK Government Ministers as well as in relation to the legislative competence conferred upon the National Assembly for Wales. The Welsh Government already sets the policy

direction for water and sewerage in Wales and all new policies would continue to be subject to appropriate scrutiny and consultation. There will be some administrative costs to the public sector, for both the Welsh and UK Governments, as a result of changes to the devolution boundary, and we intend to progress work with the water industry and regulatory bodies to better understand the practical issues that will need to be addressed in changing the devolution boundary. Ahead of this it is not possible to be precise, but as we have said we do not expect these costs to represent a significant permanent increase in our existing water team.

DWP/Employment programmes: it has been suggested to us that the DWP employment programme might be devolved. We would be grateful to know if this would involve a significant net additional cost for the Welsh Government

The Welsh Government is not seeking the devolution of the DWP employment programmes (which we take to mean their contracted employment provision i.e. Work Programme and Work Choice) so we have not attempted to estimate the costs involved. A full estimate would require details of current programme and administrative costs which are not available to us. If the Commission were to recommend devolution, our position would be that set out in our evidence (and reaffirmed in this letter) in relation to any other transfer of powers.-The costs would depend on the precise programmes being transferred. In the absence of specific recommendations on the programmes to be transferred, we are not able to estimate additional costs with any precision.

DECC/Energy: it has been suggested to us that the Welsh Government should have powers similar to the Scottish Government, including in respect of renewable energy consents and obligations. We assume there would be a transfer of associated administrative costs from DECC to the Welsh Government. We would be grateful to know what transfers and additional costs there might be

A number of factors inform the amount of funding which would need to be transferred to cover the administrative costs of consenting large scale energy generation (excluding nuclear). These include the exact nature of the functions and consenting regime being transferred, the number of estimated energy projects which would be considered in Wales on an annual basis, the existing costs for administering these functions and the amount of cost recovery (through applicant fees) within any existing consenting regime (the existing consenting regimes recover around 60% of their administrative costs, with the funding gap being covered by central government funding).

Taking these various elements into account, focussing in particular on the Nationally Significant Infrastructure Project regime administered for the UK Government by the Planning Inspectorate (responsible for onshore projects above 50MW and offshore above 100MW) and the Marine Management Organisation (covering offshore projects between 1-100MW), and making some assumptions about the number of large scale onshore and offshore projects in Wales, we estimate that the current non-recoverable administrative costs of consenting large scale energy generation (excluding nuclear) projects in Wales is of the order of £0.4-0.5million. A transfer of this amount would therefore be needed to support the devolution of these powers.

In relation to renewable obligations, we estimate, based on the experiences of the Scottish Government, that a transfer of up to £100,000 would address the additional administrative costs of administering the renewable obligation in Wales.

A number of MoJ issues have been suggested to us as follows:

MoJ/Prisons: HMG estimate that developing the prison estate in Wales to be self-sufficient would cost an extra £80-£100 million per annum to build and run the additional prisons required (based upon the cost of building three separate PFI funded prisons). Additionally, using the example of the Scottish Prison Service HMG estimate that it would cost approximately £10 million more per annum to manage a separate prison service in Wales. However since then HMG have announced plans to build a new prison in north Wales, which we assume would turn Wales into an importer of prisoners from England. We would be grateful for revised and more detailed figures, including any assessment you have made of how a cross border charging system might work if there were a net imbalance of prisoners between the two prison services ie there might be two possible scenarios, one a self contained devolved Welsh prison service and the other a net importing devolved Welsh prison service, each with different costs and benefits

This is primarily a matter for the UK Government, as these questions relate to their estimates of additional costs as well as their subsequent decision to locate a new prison in North Wales. However, the 'self-contained' scenario seems to us to be unlikely, because even if the new North Wales prison resulted in excess capacity for adult male prisoners in Wales as a whole, there would still be no capacity for female prisoners. It is also likely Welsh prisoners requiring high security (category A) accommodation would continue to be held in English prisons, as there would not be sufficient Welsh demand, for this and for other types of specialist provision, to provide the necessary facilities in Wales. An analogy can be drawn with health, where a Welsh patient with certain highly specialist needs is treated in an English hospital, because it is not viable to provide the necessary services in Wales for the very small numbers of Welsh patients likely to require them. The mechanism by which any charging system would operate for Welsh prisoners housed in England (and vice versa) would need to be developed, but the Ministry of Justice already produce statistics on the unit costs of holding prisoners and of maintaining prison places for various types of accommodation.

MoJ/Probation: HMG note that the provision of probation services in Wales is contracted to the Wales Probation Trust (WPT) by the National Offender Management Service on behalf of the Secretary of State for Justice. WPT's budget for 2012-2013 is £51.8 million. This funds a wide range of programmes, including integrated offender management, intensive alternatives to custody and a variety of accredited programmes designed to help offenders reform their lives, such as substance misuse and domestic abuse. We assume this sum would transfer if devolved. However HMG say that this figure does not reflect the total cost of probation provision in Wales as not all probation services are provided by WPT. Some offender services are contracted and managed centrally across England and Wales, such as electronic monitoring, bail accommodation support services, attendance centres and prisoners escort and custody services contacts. We assume that there would be an agreed transfer of funds to cover these and if these contracts continued, the Welsh Government would use the transfer to fund their share of the contracts. We would be grateful for further details of additional costs and the contract lengths

We agree the funding for Wales Probation Trust would need to transfer alongside any transfer of responsibility for probation services in Wales. Many of the services WPT provide are very closely aligned to policies for which Welsh Government already has responsibility.

The requested information in relation to services such as electronic monitoring and prisoner escort relates to the evidence provided by the UK Government and is therefore primarily a matter for them. We recognise there are contractual arrangements for the services described, the cost of which are met centrally, but we do not hold information on the details of these contracts beyond any information which may be published in Ministry of Justice accounts. The arrangements for these would need to be negotiated with the Ministry of Justice. Arrangements for other centrally managed support functions (such as the Prisons and Probation Inspectorates) would also need to be agreed.

MoJ/Youth justice: HMG estimate that there would be a small cost implication as a result of establishing a separate youth justice system in Wales, which would include provision of functions currently delivered centrally from which the youth justice system in Wales benefits. We would be grateful to have estimates of amounts transferring and any additional costs

We cannot comment on the UK Government's assessment of cost implications. However, we estimate that establishing a separate youth justice system would require a transfer of costs of approximately £18 million which includes:-

Current Youth Justice Board (YJB) Cymru staffing of 0.9 WTE (£0.5 million).

Community budget of £7.5m to the 18 YOTs (not including what is currently provided by Welsh Government through local authorities and health).

Revenue budget for secure establishments, Parc £4.2m and Hillside £3.5m.

£2.2m central costs for IT, research, management and placements.

All of these functions can be transferred to the Welsh Government. We recognise we would become responsible for future cost pressures, including for provision of secure accommodation. We currently have 81 secure places in Wales, with at the end of March 2013, only 50 Welsh young people in custody.

We would not agree entirely with the suggestion that the youth justice system in Wales benefits from centrally delivered functions. Programmes such as Intensive Fostering which receives £2m from the Ministry of Justice and the Troubled Families Programme (the exact amount the Ministry of Justice contributes to this UK Government wide programme is unknown, but is believed to be tens of million) are not available to young people in the youth justice system in Wales. Therefore Wales misses out on the additional investment or any opportunity to participate in these programmes.

Courts: HMG note that there are no specific practical operational issues or complexities with establishing a separate courts and tribunals' administration system in Wales, but they estimate that a formal separation of the current system would incur additional costs of some £13 million per annum from running separate courts and tribunals (both currently devolved and non-devolved) in Wales. We would be grateful for further details of these calculations.

We have no comments to offer at this stage.

Judiciary: HMG estimate that establishing a separate Welsh judiciary would result in the creation of a new Welsh Judicial Office, which they estimate would cost approximately £1.5 million per annum (taking into account small savings to an English Judicial Office). In addition, they estimate that the annual running cost of a separate Welsh Judicial Appointments Commission and Judicial Appointments and Complaints Ombudsman would be at least £500,000. Again further details would be welcome.

Again, we have no comments to offer.

HMG say that separating the current England and Wales judicial system would require separate contractual arrangements. The cost to cross-border providers would increase, as they would presumably need to bid for separate contracts for each jurisdiction. If these include the Welsh Government, HMCTS, LSC, the police, local government, the Children And Family Court Advisory and Support Service (CAFCASS); Cymru, Children's Commissioner for Wales and the NHS, such providers opted to focus only on England, as the larger jurisdiction, there could be knock on implications for the sustainability of supply in Wales and the cost of purchasing legal aid services. For example, for family public law care proceedings, the only area where we have regional fees, the solicitor fixed fee cost for Wales is second only to London. Again it would be helpful to have any estimates of additional costs.

There are currently a number of areas where contractors are active both in England and in Wales (as a result of devolved powers), but we are not aware of any particular, significant or unique difficulties in this regard.

WO/conferred/reserved powers model. We have received evidence in support of a reserved powers model. We assume any legislative costs of introducing this would be absorbed. We would be grateful to know of any other costs or savings eg what the cost of the recent Supreme Court hearing was for HMG and WG and whether the choice of model would have a systematic bearing on future such costs.

The legislative costs of introducing a reserved powers model would be absorbed. In addition, a clearer and simpler reserved powers model would result in less litigation. No legislation made by the Scottish Parliament or the Northern Ireland Assembly has been referred by the UK Government to the Supreme Court. However, since only 2011 (when Part 4 of the Government of Wales Act 2006 came into force), there have been two such referrals of Assembly Bills. The Byelaws Bill case resulted in costs to the Welsh Government in the region of £30,000. Under a reserved powers model, fewer legislative resources would need to be applied to either deliberating competence issues with the UK Government or managing Supreme Court litigation.

Any other cost estimates. We would be grateful of any other cost estimates which you might have available in relation to transfers of powers which have been proposed to the Commission, for example by the UK or Welsh Governments eg in relation to devolving teachers pay.

We understand that DfE are producing a costing for the potential devolution of Teachers' Pay and Conditions to Wales. It is important that the Welsh context is taken into account in formulating the estimated cost, and that the Welsh Government have opportunity to examine the calculation in detail to ensure that any differing circumstances or systems have

been captured. The estimated cost will need to take into account the need for a potentially different data collection model and the associated legislative and transitional costs that would entail, and the implications for local authorities and schools. The estimate will also need to take into account the current role that the Treasury, BIS and the School Teachers Review Board perform.