

UK Government's Evidence to the Commission on Devolution in Wales

Part II: The Welsh Devolution Settlement



Wales Office
Swyddfa Cymru



HM Government

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Contents

1. Introduction	Page 3
2. Agriculture, Forestry, Animals, Plants and Rural Development	Page 16
3. Ancient Monuments and Historic Buildings	Page 20
4. Culture	Page 20
5. Economic Development	Page 24
6. Education and Training	Page 35
7. Environment	Page 40
8. Fire, Rescue Services and Fire Safety	Page 46
9. Food	Page 47
10. Health and Health Services	Page 48
11. Highways and Transport	Page 56
12. Housing	Page 62
13. Justice	Page 63
14. Local Government	Page 71
15. National Assembly for Wales	Page 73
16. Public Administration	Page 75
17. Security and Policing	Page 80
18. Social Welfare	Page 88

19. Sport and Recreation	Page 95
20. Tourism	Page 96
21. Town and Country Planning	Page 97
22. Water and Flood Defence	Page 103
23. Welsh Language	Page 113

1. Introduction

1.1 The UK Government welcomes the opportunity to provide evidence to Part II of the Silk Commission's work.

1.2 We believe in devolution, and have demonstrated a strong commitment to taking devolution forward because it gives people choice and a real say over their own affairs. The decentralisation of power is one of our core aims, and we believe firmly that there are benefits in taking decisions at local level within a strong United Kingdom.

1.3 Devolution in the United Kingdom is asymmetric, reflecting the different circumstances, history and institutions of each nation within the UK. The devolution settlements continue to evolve, and we are proud of the UK Government's record of devolving powers to the most appropriate level within the UK family of nations. Key decisions are taken in Wales to address local priorities and needs, while Wales also benefits from collective decision-making and collective endeavour at the UK level.

1.4 When the coalition was formed in 2010 we made three specific commitments in relation to Wales, which we set out in our Programme for Government: to take forward the Housing Legislative Competence Order (LCO); to introduce a referendum on the powers of the National Assembly for Wales ("the Assembly"); and to establish a process for the Assembly similar to the Commission on Scottish Devolution (the 'Calman' Commission). The Housing LCO was made in July 2010 and a referendum on the Assembly's powers was held in March 2011, resulting in law-making powers for the Assembly in all twenty subject areas devolved to Wales.

1.5 We established the Commission on Devolution in Wales - the 'Silk' Commission - in October 2011 to review the present financial and constitutional arrangements in Wales. The Commission is undertaking its work in two parts, and reported on its Part I remit - looking at the case for the devolution of fiscal powers to the Assembly - in November 2012. We welcome that report, and the consensus with which the Commission made its recommendations. We will respond to those recommendations in the spring.

1.6 The UK Government also welcomes the support of all four political parties in the Assembly for the Commission, and is pleased to contribute to that spirit of co-operation in providing evidence to help inform the Commission's work on Part II of its remit.

1.7 In Part II, the Commission is looking at the powers of the Assembly, and will recommend modifications to the boundary between what is devolved and non-devolved if it considers that they would make the Welsh devolution settlement work better. Recommendations which the Commission makes should be likely to have a wide degree of support.

1.8 This review is important for Wales. It will help to map a course for the future of devolution in Wales by carrying out a thorough analysis of which powers are best undertaken in Cardiff Bay, and which at Westminster, and making recommendations accordingly on where the current settlement could be modified.

1.9 The UK Government is proud of delivering our commitments on devolution in Wales. The evidence in this document demonstrates that, on the whole, the Welsh settlement is satisfactory and works well in practice. We do not believe there is a case for radical change to the boundary of the settlement. Nevertheless, there are areas in which modifications to the boundary could be made, and we are open to proposals, supported by robust evidence, to modify the settlement to strengthen devolution in Wales.

1.10 The UK Government looks forward to the Commission considering the devolution boundary in Wales and stands ready to support the Commission in its work.

Terminology Used in our Evidence

1.11 The subjects about which the Assembly can legislate, and exceptions to and restrictions on those subjects, are listed in Schedule 7 to the Government of Wales Act 2006. For reasons of brevity, we refer to this Act as “GoWA” in our evidence.

1.12 The Welsh devolution settlement differs from those for Scotland and Northern Ireland in that the subjects devolved to the Assembly are specified. Anything not listed in the Schedule is not devolved¹. In this evidence we use the terms “devolved” and “non-devolved” in relation to the Welsh settlement. The devolution settlements for Scotland and Northern Ireland specify the functions reserved, and in the case for Northern Ireland, excepted, to the UK Parliament rather than specifically listing those which are devolved. In our evidence we therefore use the term “reserved” to denote subjects which are not devolved more generally, across two or more of the settlements.

¹ The Assembly can legislate in relation to non-devolved subjects if the provisions are incidental or consequential to the devolved subjects being legislated for, or if the provision provide for the enforcement of a devolved provision, or is otherwise appropriate for making a devolved provision effective.

Devolution within the United Kingdom

1.13 The National Assembly for Wales was established in 1999, following the affirmative referendum vote in 1997 and the Government of Wales Act 1998.

1.14 The Assembly was established as a body corporate with executive and scrutiny responsibilities but, unlike in Scotland, with no primary law making powers. Nearly all the powers of the Secretary of State for Wales were transferred to the Assembly on its establishment.

1.15 The lack of a separation in the Assembly between executive and scrutiny functions caused obvious difficulties and, in 2006, GoWA replaced the corporate body with a new Assembly which no longer exercised the functions of government. Instead, it established a separate executive, the “Welsh Assembly Government”, comprising Ministers who are members of, and accountable to, the Assembly itself. The Assembly became a legislature, with the powers to pass legislation known as Assembly Measures, in relation to matters within its legislative competence. Under this system, law-making powers were conferred on the Assembly, with the consent of Parliament, in any of the twenty areas devolved to Wales.

1.16 GoWA also provided for a referendum to be held in Wales on whether the Assembly should assume primary law-making powers in all twenty devolved areas. A referendum took place in March 2011, resulting in a yes vote and conferring on the Assembly the ability to pass primary legislation, via Acts of the Assembly, in any of the subjects listed under the twenty areas without the need to seek the agreement of Parliament.

1.17 The UK Government respects the boundaries of the devolution settlements, and does not normally legislate at Westminster on subjects devolved to Wales without the Assembly’s consent.

1.18 The Welsh devolution settlement has evolved greatly over the last sixteen years, and is now wide-ranging. The Assembly and the Welsh Government are responsible for a broad range of domestic policy subjects, ranging from housing, planning and local government to health, education and the Welsh language.

1.19 Welsh devolution has ensured that decision making on these subjects reflects the democratic voice of people in Wales and, within the framework of the United Kingdom, allows the Assembly and the Welsh Government to develop policies distinct to other parts of the UK.

1.20 At the same time, Wales benefits from being part of a strong United Kingdom, and Parliament and the UK Government are responsible for matters which benefit from a UK-wide, GB-wide or England & Wales approach, or where a common approach benefits everyone in the country collectively, such as economic policy, defence, security and foreign affairs.

Role of the Secretary of State in the Devolution Settlement

1.21 The Secretary of State has a range of functions, specified in GoWA, to ensure that the devolution settlement runs smoothly. For the most part, these functions act either to ensure good communication between the UK Government and the Welsh Government on matters relating to devolution or to provide mechanisms to ensure the Assembly legislates within its legislative competence.

1.22 The Secretary of State for Wales must consult the Assembly about the UK Government's legislative programme as soon as practicable after the beginning of each session of Parliament, and participate in proceedings of the Assembly in order to do so. In practice, the Secretary of State for Wales attends an Assembly debate on the UK Government's programme, shortly after the Queen's Speech, to explain the Government's programme and how it relates to Wales, and hear the views of Assembly Members on it.

1.23 The Secretary of State also has specific functions under Part 4 of GoWA in relation to Bills passed by the Assembly. The Secretary of State may make an order, subject to parliamentary approval, prohibiting the Clerk from submitting a Bill for Royal Assent if (s)he has reasonable grounds to believe it contains provisions which:

- would have an adverse effect on any matter not listed under any of the headings in Part I of Schedule 7 (or falls within any of the exceptions);
- might have a serious adverse impact on the quality of water resources in England, water supply in England or the quality of water in England;
- would have an adverse effect on the operation of the law as it applies in England; or
- would be incompatible with any international obligations or the interests of defence or national security.

1.24 The Secretary of State has not exercised this power to date.

1.25 The Attorney General (or the Counsel General) may refer to the Supreme Court the question of whether of an Assembly Bill, or any provision of a Bill, would be within the Assembly's legislative competence.

1.26 Her Majesty may by Order in Council amend Schedule 7 to GoWA to modify the legislative competence of the Assembly. Any recommendation to make an order is subject to the approval of Parliament, and the Assembly. In practice, an Order would be brought forward for approval by the Secretary of State for Wales, and two such Orders have been made to date². Orders in Council may also transfer Ministerial functions, from Ministers in the UK Government to the Welsh Ministers, the First Minister or the Counsel General which are exercisable by UK Government Ministers³.

² Orders were made in 2007 and 2010 under Section 109 of GoWA.

³ Orders made under section 58 of GoWA and sections 22 and 24 of the Government of Wales Act 1998 have been used to transfer functions to the Assembly and to Welsh Ministers.

1.27 The Secretary of State may by order, subject to parliamentary approval, make changes to UK legislation needed as a consequence of legislation made by the Assembly.

1.28 The UK Government believes that these functions ensure that the Welsh devolution settlement operates robustly, and in accordance with the boundaries of the settlement. It provides for flexibility to modify the boundary where necessary and essential checks and balances to ensure clarity in the Assembly's legislative competence.

Finance

1.29 Part 5 of GoWA describes the Welsh Consolidated Fund. It sets out how the Welsh Consolidated Fund is administered, and the manner in which the Assembly and Welsh Ministers decide spending plans, make payments from the fund and keep accounts.

1.30 The Secretary of State for Wales is responsible for transferring grant payments into the Welsh Consolidated Fund and is required to lay a written Finance statement annually before the Assembly. The Finance statement shows the total amount of payments that the Secretary of State estimates will be made in the financial year; and the amount of the payments which the Secretary of State estimates will be made to the Welsh Ministers, the First Minister or the Counsel General for the financial year by Ministers of the Crown and government departments.

1.31 The Finance statement must be laid before the Assembly no later than four months before the end of the financial year. In practice, the Secretary of State has no influence over the content of the statement, which is drawn up by the Welsh Government and details the payments made to the Assembly and the Welsh Government. The Secretary of State's duty to report payments to the Assembly could be seen as an historical anomaly, and the Commission may wish to examine which body is best placed to report to the Assembly on estimated payments.

Relations between the UK Government and the Welsh Government

Memorandum of Understanding

1.32 The way in which the UK Government and all three Devolved Administrations (including the Welsh Government) work together is set out in a Memorandum of Understanding (MOU)⁴. The MOU, and supplementary agreements, set out the principles which underpin relations between the four administrations.

1.33 The MOU is a statement of political intent rather than a binding agreement; it is not a statutory document. In it, the four administrations commit themselves to the principle of good communication with one another, especially where one administration's work may have a bearing on the responsibilities of another, with

⁴<http://www.cabinetoffice.gov.uk/resource-library/devolution-memorandum-understanding-and-supplementary-agreement>

confidentiality being observed in appropriate cases. The primary aim is not to constrain the discretion of any administration, but to allow administrations to make representations to each other in sufficient time for those representations to be fully considered.

1.34 The MOU is reviewed on an annual basis, with the most recent version dating from September 2012.

Joint Ministerial Committee (JMC)

1.35 The MOU also provides for a Joint Ministerial Committee (JMC), consisting of Ministers from the UK Government, Welsh Government, Scottish Government and Northern Ireland Executive. The JMC provides central co-ordination to the relationship between the four administrations, underpinning the regular, day-to-day contact which the four administrations have with each other⁵.

1.36 Its terms of reference are:

- to consider non-devolved matters which impinge on devolved responsibilities, and devolved matters which impinge on non-devolved responsibilities;
- where the UK Government and the Devolved Administrations so agree, to consider devolved matters if it is beneficial to discuss their respective treatment in the different parts of the United Kingdom;
- to keep the arrangements for liaison between the UK Government and the devolved administrations under review; and
- to consider disputes between the administrations.

1.37 The JMC⁶ meets in a range of formats, with plenary meetings chaired by the Prime Minister (or his representative) at least once a year. There is also a domestic session (JMC(D)), to discuss domestic matters, and an European session (JMC(E)) to discuss matters relating to the EU. UK Government Ministers chair both these formats. A joint secretariat of officials from the four administrations supports the Committee.

1.38 We believe that the formal structures for relations between the UK and the Devolved Administrations are working well, and support constructive communications between the four administrations.

The International Context

1.39 The UK Government's Foreign and Commonwealth Office (FCO) ensures that the UK has a strong, global presence, acting in the interests of all UK citizens and businesses. We have a strong set of bilateral and multilateral alliances built up over time, helping us to further our interests. Our diplomatic, consular and UK Trade and

⁵ Concordats between UK Government Departments and the Welsh Government are at: <http://wales.gov.uk/about/organisationexplained/intergovernmental/concordats/?lang=en>

⁶ The most recent JMC annual report details the activities of the JMC in 2010-11 (<http://www.number10.gov.uk/news/joint-ministerial-committee-communique/>).

Investment network is one of the largest and most respected in the world, with around 270 diplomatic posts in 170 countries, employing 14,000 staff. This essential infrastructure supports UK citizens, UK businesses and UK foreign policy objectives worldwide.

1.40 Foreign affairs are non-devolved and the case for reservation remains. The UK is a highly respected force in the world's leading multilateral organisations. We therefore need to speak with a single voice to our international partners, whether in the EU, the UN Security Council, the Commonwealth or other international bodies. The international challenges facing the UK are greater than ever – including in the fields of the global economy and financial stability, defence, security and counter-terrorism, energy and climate change, and human rights and tackling global poverty. A unified response is vital to securing our national interests for all parts of the UK. The FCO Devolution Unit provides a link between the FCO and the Wales Office and Welsh Government, to ensure that the particular interests of the people in Wales are reflected in and promoted through the UK's foreign policy.

Welsh Representation Overseas

1.41 In total, the Welsh Government has an existing network of 10 overseas offices. Four of these offices are based in UK Embassies, High Commissions or Consulate-Generals.

1.42 These are located in:

- US – New York (British Consulate-General) and Washington (British Embassy)
- China – Beijing, Shanghai and Chongqing
- India – New Delhi (High Commission), Mumbai and Bangalore
- Japan – Tokyo
- UAE – Dubai (British Embassy)

1.43 There is also an EU office in Brussels which represents the Welsh Government's European interests.

1.44 The Foreign Office through its missions in Brussels, Dubai, Washington, New York and New Delhi are in contact with the local Welsh Government office staff. Our diplomatic representatives work closely with the Devolved Administrations (DAs) to ensure that their responsibilities are fully taken into account, especially at the European Union level. Our single authoritative voice represents Welsh interests whilst also representing those of the UK as a whole.

1.45 For example the Welsh Government has an active representative based in New York with a US-wide remit, who organises the annual Wales Week USA. The week-long festival is held mainly in New York City around St David's Day and promotes modern Wales. The British Consul-General in New York hosts at least one of these events, and the wider Consulate supports Wales Week as part of its work to promote the whole of the UK as a great place to invest in, trade with, study in and visit.

European Representation

1.46 Relations with the EU are non-devolved. The Government's representation to the European Union in Brussels (UKRep), like all our other diplomatic Posts, works for the interests of the UK as a whole. UKRep works closely with the Welsh Government office in Brussels on issues which touch on the devolved responsibilities of the Welsh Government.

1.47 UKRep Brussels promotes UK policy in the EU by shaping thinking in Brussels, and by negotiating and lobbying so that decisions reflect UK interests. To that end:

- It monitors and analyses developments in the EU, particularly in the Commission and European Parliament, and among Member States;
- It contributes to the development of UK policy towards the EU;
- It lobbies the Commission, European Parliament, Member States and other smaller EU institutions such as the Committee of the Regions and the Economic and Social Committee;
- It negotiates for the UK in the Council of Ministers; and
- It negotiates with the Commission on UK-specific issues.

1.48 The Welsh Government office in Brussels works closely with UKRep on the activities set out above with specific regard to issues of interest to Wales.

1.49 The UK is a major player within the European Union, and England, Wales, Scotland and Northern Ireland benefit from our considerable collective influence.

Consultation on UK Policy Formation

1.50 The formal relationship between the UK Government and the Devolved Administrations are set out in the Memorandum of Understanding and the Concordat on Coordination of EU Policy.

1.51 The Government involves Welsh Ministers as directly and fully as possible in decision making on EU matters which touch on devolved areas (including non-devolved matters which impact on devolved areas, and non-devolved matters which have a distinctive impact or importance in Wales). This process is overseen by the Joint Ministerial Committee (Europe) (JMC(E)) which meets every quarter to discuss the UK Government's and Devolved Administrations' priorities in Europe, and the cooperation between them. A Welsh Minister attends the JMC(E) which is chaired by a Foreign Office Minister, ensuring that the needs of Wales are represented in the development of the UK government position on European policy issues. The Welsh Minister is also responsible for ensuring that all developments concerning Europe are communicated to the Assembly's European and External Affairs Committee.

1.52 The Devolved Administrations receive, and are invited to comment on, all draft Explanatory Memorandums to the Westminster Parliament on EU proposals on issues that relate to devolved responsibilities, giving them early sight of proposals, and an important opportunity to contribute to the policy process at an early stage – typically just after the publication of a proposal from the European Commission. Day

to day coordination on EU policy matters takes place at all levels between the UK Government and the DAs. Officials in Whitehall consult their colleagues in Cardiff on all issues where the Welsh Government has devolved responsibility or where there are particular Welsh interests at stake. Through these processes, the Government ensures that its policy approaches represent the interests of the UK as a whole.

Direct representation

1.53 Wales, Scotland and Northern Ireland are also represented directly in the EU institutions. Of the UK's current 73 MEPs, Wales has 4, Scotland 6 and Northern Ireland has 3.

1.54 Similarly Wales, Scotland and Northern Ireland send elected representatives to the 24-Member UK delegation to the Committee of the Regions (Wales 2, Scotland 4 and Northern Ireland 2). The Devolved Administrations nominate their Members directly.

1.55 The Memorandum of Understanding between the Government and the Devolved Administrations contains provisions for attendance at European Council of Ministers meetings. Decisions on Ministerial attendance are taken on a case-by-case basis by the lead Government Minister. Ministers from the Devolved Administrations may also request to speak at Council meetings. In reaching decisions on the composition of the UK team, and who will represent the UK Government, the lead Minister will take into account that the Devolved Administrations should have a role to play in meetings of the Council of Ministers at which substantive discussion is expected on matters likely to have a significant impact on their devolved responsibilities.

Regional languages

1.56 To aid the representation of Wales in Europe and better reflect the devolution settlement, the UK Government has in close cooperation with the Welsh Government negotiated arrangements for the limited use of Welsh at EU level. Under the arrangements, Welsh may be used:

- By UK representatives in speeches to the Council of Ministers (not working Groups) and the Committee of the Regions (plenary sessions) (both passive interpretation only);
- In any written correspondence (including from members of the public) with the Council of Ministers, European Parliament, European Commission, Committee of the Regions, and the EU Ombudsman (translation of both the correspondence and reply); and
- For the deposit of EU legislation adopted by co-decision by the Council and European Parliament (a certified translation into the Council archives).

Trade and Investment

1.57 International trade (export) development and Foreign Direct Investment (FDI) support are already devolved, although HMG retains "concurrent powers" in this area (see section 5).

1.58 There are no additional aspects of trade development or FDI support to devolve. All support that is not for the benefit of the UK as a whole (other than those services of specific relevance to England only) is already devolved.

1.59 The UK Government's concurrent powers enable UK Trade and Investment (UKTI) to promote the UK as a whole overseas and give Welsh companies (and those in Scotland and Northern Ireland) access to UKTI's overseas network (part of the UK's diplomatic service) and other nationally-available services. UKTI also provides a coordinated UK approach to FDI that strengthens the UK's message to investors and limits damaging competition.

1.60 Companies based in Wales benefit from having access to UKTI's network of more than 1,200 staff in over 100 overseas markets working to support UK businesses and overseas investors alongside the Welsh Government's trade and investment team, which provides its own support and programmes to meet the needs of exporters in Wales and for promoting Wales to foreign investors. This includes having their own overseas representation (supplementary to UKTI's overseas network) where the Welsh Government considers that it makes sense to do so (the Welsh Government currently has representation in five markets overseas).

The FCO Consular network

1.61 Consular assistance overseas remains a very high priority – during 2010/11, there were over 55 million trips overseas by British nationals and over 43,400 British nationals needed some form of consular assistance. During the various national disasters and political unrest in early 2011, the FCO helped over 6,300 people with assisted departures or evacuations. All UK citizens benefit from access to the support this worldwide network can offer.

International Development

1.62 International Development is non-devolved, and is the responsibility of the UK Government. In 2006, the (then) Welsh Assembly Government, wishing to create an identifiably Welsh contribution to international development, produced its "Wales for Africa" framework. This framework was of a limited scope and restricted activity to areas which "promote the advancement and interests of Wales" and thus could be undertaken with the powers granted under the GoWA.

1.63 This means that the Welsh Government focuses on small scale activities that promote understanding and awareness of international development issues within Wales. In 2011/12 the Welsh Government's spending on international development was around £850k, dispersed over a range of small projects. These include encouraging public sector placements, promoting and encouraging international sustainable development volunteering and promoting best practice in fair trade.

1.64 There is a special emphasis on the links with Lesotho. Dolen Cymru ("Wales Link") is a charity working to build links between Wales and Lesotho in the fields of education, health, governance and civil society. Since 2005, the Welsh Government

(the Assembly before 2007) has provided funding to Dolen Cymru for a programme offering professional development opportunities for teachers from Wales in Lesotho. The programme also enables teachers from Lesotho to visit Wales.

1.65 In 2011-12, total UK aid was £9.0bn. The UK is a strong supporter of effective aid and development cooperation, firmly committed to the principles and commitments agreed at the OECD High Level Forum on Aid Effectiveness in Busan in 2011. As Co-Chair (together with Nigeria and Indonesia) of the new Global Partnership for Effective Development Cooperation, the UK is playing a lead role in driving reform and improvement of the way aid and other forms of development finance are spent globally. The large size of the UK's aid budget is a significant factor in making aid more effective and delivering country-led results based on developing countries' priorities.

Defence

1.66 Defence is a matter for the UK Government; it is not devolved to any of the Devolved Administrations. As a part of the United Kingdom, Wales benefits from strong and effective defence which is planned, organised, resourced and managed on a UK basis to meet the needs of the UK as a whole.

1.67 The case for a national UK-wide approach to defence is as strong today as it was when devolution was first established. The National Security Strategy and Strategic Defence and Security Review, both published in 2010, restated the case for expeditionary Armed Forces able to contribute to the security of the UK by strengthening peace and stability overseas. The current high level of deployment on operations overseas highlights the importance of a strong military chain of command operating under a single national political authority and a single defence policy.

1.68 The UK Armed Forces are part of our national heritage. Not only is the Ministry of Defence a formal institution that reaches out across all the nations of the UK, the bonds between Service personnel, veterans and their families touch a large proportion of people and demonstrate the clear interconnections across the country.

The Defence Interest in Wales

1.69 Wales plays an important role in the UK's defence capability, and the defence presence in Wales brings significant mutual benefit. Wales is home to a range of crucial defence capabilities. For the Royal Navy, Wales is home to a Royal Naval Reserve unit as well as a Royal Marines Reserve unit. For the Army, it includes a brigade headquarters and three regular regiments, as well as Territorial Army Centres in over 20 locations and 180 Cadet Force Units across the whole of Wales. The Army also has a large infantry training area at Sennybridge, which is used extensively by a variety of units throughout the year. For the RAF, it includes one of the main fast-jet training bases, RAF Valley, which is also the home of one of the Search and Rescue squadrons. The RAF will be establishing a new Royal Auxiliary Air Force Squadron in Wales in the near future. There are also two Joint Service mountain training centres in Wales at Capel Curig in Snowdonia and the Training Ship Indefatigable based around the village of Llanfair Pwllgwyngyll on Anglesey.

1.70 This presence provides significant employment and economic benefits in Wales. As at 1 April 2012, there were nearly 2,800 Regular Armed Forces personnel located in Wales, and over 1,300 MOD civilian personnel – a total of just over 4,100 posts. All across Wales they make a significant contribution to their local economies and support additional jobs directly and indirectly.

Operating within a devolved framework

1.71 Although defence itself is non-devolved, some of the legislative and regulatory framework within which defence is managed is the responsibility of the Welsh Assembly and Welsh Ministers. Examples include the range of social and other provision that affect the welfare of service personnel, their families and veterans, as well as matters such as the environment and the Welsh Language.

1.72 The Ministry of Defence (MoD) maintains a strong, cooperative relationship with all three Devolved Administrations, including the Welsh Government. This relationship is governed by a concordat, which was first signed between the MOD and the Welsh Assembly in 1999. The concordat was refreshed and updated in 2010 to reflect developments in the devolution settlement. For the most part, these arrangements work well, as evidenced by the Armed Forces Covenant.

1.73 The Armed Forces Covenant was published in May 2011. It recognises that the whole nation has a moral obligation to the Armed Forces Community and it establishes how they should expect to be treated. It was published together with 'The Armed Forces Covenant: Today and Tomorrow', which details the steps being taken by the UK Government to support the Armed Forces Community.

1.74 In response to the publication of the Service Personnel Command Paper⁷ in 2010, the Welsh Government set up a biannual experts' meeting which is chaired by the Welsh Minister for Local Government. The Group is similar in its scope to the Cabinet Office Covenant Reference Group, in that it monitors the implementation of the Covenant in Wales. The Group includes senior representatives from the Armed Forces in Wales, the MOD's Covenant Team, representatives from each of the Services' respective Families Federations as well as the Soldiers, Sailors, Airmen and Families Association (SSAFA), the British Legion, the Service Personnel and Veterans Agency (SPVA) and the Welsh Government. The Group plays a leading role in ensuring that Service personnel are not disadvantaged during their time in Wales.

1.75 The Welsh Government has made particular advances in the education of Service children through the annual assessment and long-term monitoring of Service children, allowing families to register in a catchment area for a school on receipt of their posting notice and, from 2014, making sure that Specialist Educational Needs support is not interrupted when families move.

⁷ The Service Personnel Command Paper was the precursor to the Armed Forces Covenant and set out the Cross-Government Support to the Armed Forces, their Families and Veterans and it set the standard for the level and scope of support our Service personnel can expect.

1.76 The overriding priority of the UK Government is to ensure that the defence of the nation is never compromised. We take our defence relationship with the Devolved Administrations very seriously. It depends on close, constructive working relationships at all levels. To some extent it is a work in progress and needs continuing attention, but generally we believe it is working well. The issues at stake are too important for it not to do so.

2. Agriculture, Forestry, Animals, Plants and Rural Development

2.1 Under paragraph 1 of Schedule 7 to GoWA, the following are devolved: agriculture, horticulture, forestry, fisheries and fishing; animal health and welfare; plant health; plant varieties and seeds; and rural development.

2.2 There are some explicit exceptions within the subjects which are non-devolved. These include hunting with dogs, the regulation of scientific or other experimental procedures on animals, import and export controls of relevant goods, and authorisations of veterinary medicines and medicinal products.

2.3 The Welsh Ministers' executive powers fit closely with the Assembly's legislative competence.

Common Agricultural Policy

2.4 The Common Agricultural Policy (CAP) is the framework under which European farmers operate. It sets out a range of farming, environmental and rural development activities as well as controlling EU agricultural markets. It is the largest common policy across the EU.

2.5 The UK Government wants to see a very substantial reduction in the size of the CAP budget. This makes sense from both an agricultural and a fiscal perspective. The UK's key aims for the CAP reform negotiations are:

- To increase the resilience, market orientation and international competitiveness of EU agriculture;
- To improve CAP capacity to deliver environmental outcomes; and
- To simplify CAP for farmers and authorities.

2.6 Implementation of agricultural policy, including administration of CAP payments, in the UK is devolved. However, in common with other policy areas, international negotiations including those on the reform of the CAP, are reserved matters and conducted by the UK Government. Negotiating positions are discussed with the Devolved Administrations and the UK Government advances many issues which are specific to particular parts of the UK. There are many shared positions on CAP Reform. The UK has in particular advocated policy areas which are important to Wales, such as arguing for a more proportionate move from historical to flat rate, area-based payments to farmers.

2.7 The UK Government has also been pressing to ensure that all the CAP regulations can be implemented regionally according to Member States' own constitutional arrangements. This is important to ensure there is certainty that the Devolved Administrations can implement the new rules.

2.8 Under the Common Agriculture Policy, the Single Common Market Organisation Regulation (SCMO Regulation) sets out standards and controls at European level which govern various aspects of production, processing, marketing

and trade for specific commodities. The UK Government takes the lead on activities under these rules in EU management committees and negotiations, acting on behalf of the Devolved Administrations where they have an interest and ensuring UK interests are addressed. These activities include adjusting tariffs or quotas, and policy discussions relating to these controls. Administration and enforcement of the rules/schemes in Wales is devolved.

Animal Health

2.9 Policy on Animal Health is devolved to Wales, as is much of the related funding. On disease control, it is important that all the administrations in the UK work closely together and those in Great Britain particularly as the delivery agency, the Animal Health and Veterinary Laboratories Agency (AHVLA), is a GB organisation. To help with this there are a number of things in place. The Chief Veterinary Officers (CVOs) of the four administrations meet regularly to update each other on developments in each administration. Animal health policy is discussed and agreed by the Animal Disease Policy Group – a group made up of officials from each of the administrations together with other interested parties such as Cabinet Office, Department of Health and the Health Protection Agency.

2.10 The UK Government (through the Department for Environment, Food, and Rural Affairs (Defra)) lead on EU negotiations on animal health, for example on the rules which govern the identification and movements of farmed livestock. The interests of all Agriculture Departments and livestock farmers throughout the UK are taken into account in arriving at a formal UK negotiating position. The Welsh Government, and the other Devolved Administrations, are responsible for the implementation, delivery and enforcement of EU wide requirements governing Livestock ID and movements within their respective countries. In recognition of the fact that animal diseases (both endemic and exotic) do not respect national boundaries, all UK administrations work collaboratively within an agreed, common framework to ensure a consistent approach.

Plant and Tree Health, and Forestry

2.11 Plant health is devolved. However, at the request of the Welsh Government, inspection and enforcement activity is undertaken by the Food and Environment Research Agency, a Defra executive agency. This arrangement has been working successfully for a number of years. Defra represents the UK in negotiations on the EU Plant Health regime and is working closely with the Welsh Government to agree a negotiating position for the review of the regime due to begin later this year. The situation on tree health is more complex, and Forestry Commission GB is the competent authority in Great Britain for the protection of forest trees and timber and has powers to act on a GB basis.

2.12 Forestry is also devolved, and on 1 April 2013 will become the responsibility of a new body, Natural Resources Wales, established by the Welsh Government. The Forestry Commission, which has managed forestry in Wales, will then become an England/Scotland body, but is assisting with the transition to the new body through the provision of administrative support and services and by developing longer-term agreements on shared services.

Fisheries

EU Regulations

2.13 The Common Fisheries Policy (CFP) is the framework within which EU Member States manage their fisheries. The current process to reform the CFP seeks to overcome its longstanding structural failures. The UK continues to play a lead role in negotiating genuine fundamental reform of this policy.

2.14 The UK is committed to radical reform to achieve healthy fish stocks, a prosperous fishing industry and a healthy marine environment, by tackling the waste of discards, moving away from ineffective, centralised micro-management and replacing the inflexible, short-termist quota and effort management rules.

2.15 The UK Government (through Defra) leads on EU negotiations, but the interests of all Fisheries Administrations⁸ and fishermen throughout the UK are taken into account in arriving at the formal UK negotiating line.

Quota management

2.16 Until recently, the Fisheries Administrations undertook a joint approach to quota management, with quota allocated under jointly agreed rules at a UK level. As from 2013 it is proposed that the Welsh Government will be responsible for managing the quotas of all Welsh vessels under a Fisheries Concordat agreed by the Fisheries Administrations in 2012. This will be done using the Welsh Ministers' existing powers.

In-shore and off-shore fisheries

2.17 Legislative competence is devolved in relation to inshore fisheries (to 12 nautical miles) and non-devolved in the offshore area (the area beyond 12 nautical miles up to British Fisheries Limits). Most executive functions connected with fishing, fisheries and fish health in the offshore area (otherwise known as the 'Welsh zone') were however transferred to Welsh Ministers in 2010.

2.18 There is some uncertainty about the scope of the Welsh Ministers' power to license Welsh vessels fishing beyond the Welsh zone. We are liaising with the Welsh Government on the need to clarify the position so that it is clear that Welsh Ministers can do this.

Freshwater and migratory fisheries

2.19 Policy on freshwater and migratory fisheries is devolved. There are a number of cross-border rivers where joint working and composite legislation is required, and the UK Government and Welsh Government work closely on freshwater fisheries work. Some functions exercisable by the Environment Agency are being transferred to Natural Resources Wales by an order under the Public Bodies Act 2011.

⁸ The Fisheries Administrations are the UK Government and the three Devolved Administrations.

Seafish Levy Board

2.20 Seafish is a UK-wide, levy-funded NDPB. It carries out its statutory functions at arm's length from its joint sponsors, the four Fisheries Administrations. Ministers in each administration are accountable to their respective Parliament or Assembly for all matters relating to Seafish. The Welsh element comprises about 1% of the total levy.

Enforcement

2.21 Part 8 of the Marine and Coastal Access Act 2009 enables the Marine Management Organisation (MMO) and Welsh Ministers to appoint marine enforcement officers to enforce sea fisheries, marine licensing and nature conservation legislation.

2.22 The MMO's compliance and enforcement functions relate predominantly to English waters. However, the MMO also has responsibility for monitoring the activities of UK vessels fishing outside BFL and for the implementation in the UK of controls required to prevent the import into the UK of products obtained from Illegal, Unreported and Unregulated (IUU) fishing activities. It also liaises with the Welsh Government on enforcement against English vessels fishing in Welsh waters and against Welsh vessels in English waters.

Inland water policy: Water Framework Directive, out to 1 nautical mile

2.23 The EU Water Framework Directive (2000/60/EC) is implemented separately in each nation of the UK using a broadly common approach within differing legislative frameworks, except in the case of England and Wales where the legislative framework is the same.

2.24 Some changes are emerging as a result of the formation of Natural Resources Wales, which is merging the Environment Agency Wales with the Countryside Council for Wales and the Forestry Commission, with their functions (and some others) transferred to the new body. Separate Statutory Instruments effect transposition of the Directive in river basin districts that straddle the border between Scotland and England.

2.25 We provide joint responses to Commission enquiries to the UK and on infraction cases, and jointly make arrangements for UK representation on technical working groups at EU level. Technical work relating to implementing the Directive is also on a UK basis through a UK Technical Advisory Group that reports to the administrations through a UK Steering Group.

3. Ancient Monuments and Historic Building

3.1 Ancient monuments and historic buildings are devolved. The Assembly has legislative competence over archaeological remains, ancient monuments, buildings and places of historical or architectural interest, and historic wrecks. The Assembly and Welsh Government are responsible for designating scheduled ancient monuments, listed buildings and protected wreck sites in Wales and Welsh waters, as well as granting associated consents. The UK Government considers the devolution boundary in respect of these subjects to be clear cut and functioning well for both administrations.

4. Culture

4.1 Most aspects of culture are devolved to Wales. The Assembly has legislative competence in respect of arts and crafts, museums and galleries, libraries, archives and historical records and cultural activities and projects.

4.2 The Assembly's competence is subject to five specific exceptions in Schedule 7 to GoWA, which are non-devolved. These include Government indemnities for objects on loan (the "Government Indemnity Scheme") although functions of the Secretary of State in relation to the Scheme (under sections 16 and 16A of the National Heritage Act 1980) are exercised by the Welsh Ministers in relation to Wales.

4.3 The other specific exceptions to the Assembly's legislative competence are the public lending right; broadcasting; classification of films and video recordings; and payments to Her Majesty's Revenue and Customs in respect of property accepted in satisfaction of tax, apart from property in which there is a Welsh national interest.

Public Lending Right

4.4 The Public Lending Right (PLR) is the right of authors to receive compensatory payment for the loans of their printed books from public libraries in the UK. The Public Lending Right Act 1979 established this right, and the rules of operation (the PLR Scheme) were set out in secondary legislation in 1982.

4.5 The Department for Culture, Media and Sport (DCMS) funds PLR, the public body managing the scheme. The PLR Funding Agreement sets out the organisation's priorities and how they will be delivered. On 14 October 2010, DCMS announced a proposal to abolish the existing public body and transfer its functions to another organisation, the preferred option being the British Library. A summary of responses to the public consultation on the proposal was published in October 2012, and the Government response will follow shortly.

4.6 PLR is non-devolved in Wales and reserved in Scotland, but devolved in Northern Ireland. In practice, however, the Scheme is administered by PLR for the

UK as a whole, in accordance with the existing legislation as no changes have been made to the legislative framework in Northern Ireland.

Broadcasting

4.7 There are good reasons why broadcasting was not devolved in the devolution settlements and there is no evidence to suggest that devolution of broadcasting policy or a different approach to funding the BBC would benefit licence fee payers. Essentially, the country as a whole benefits from pooling the licence fee, advertising revenue and subscription fees that go to fund the excellent broadcasting output of this country. This pooling of resources allows major investment to be made in a range of programmes that we can all enjoy – whether they are made in Scotland, England, Wales or Northern Ireland. There is a greater net benefit to the nation and all its constituent parts in having broadcasting reserved.

4.8 In addition, a UK-wide approach to broadcasting allows all parts of the country to benefit from significant economies of scale. Cooperation between broadcasters and infrastructure providers across the home nations' borders allows for the pooling of costly resources and ensures that benefits do not solely flow to more densely populated parts of the UK. The infrastructure required to deliver a digital terrestrial signal (e.g. Freeview) across the UK is complex and costly – transmitters, maintained by Arqiva, serve 15 regions across the UK. Each broadcaster has to pay Arqiva for every transmitter that they want to broadcast from, including the BBC. Therefore, it costs more for broadcasters to reach some parts of the UK and viewers than others. Without the cooperative arrangements, coverage to more remote parts of the UK may suffer.

4.9 Ofcom is the independent broadcasting regulator for the whole of the UK.

S4C

4.10 S4C was established by the 1980 and 1981 Broadcasting Acts and is now regulated by the Communications Act 2003 and the Broadcasting Act 1990. S4C was established to provide a broad range of high quality and diverse programming, in which a substantial proportion of the programmes shown are in Welsh. Its corporate governance structure includes the S4C authority and management team. The Authority provides regulatory oversight and strategic direction, and the management team oversees day-to-day running of S4C including management, commissioning and editorial roles.

S4C: Future Funding Arrangements

4.11 S4C has undergone a process of reform since the October 2010 Spending Review. These changes were set out in S4C's settlement letter which announced a 24.4% cut to S4C's funding in real terms over the 4 years of the Spending Review period from 2011-12 to 2014-15. Currently, the UK Government funds S4C through grant-in-aid, but from April 2013 the BBC will become S4C's majority funder, using licence fee revenue. The change in funding arrangements was implemented through the Public Bodies Act 2011, which gives the Secretary of State the responsibility of ensuring that S4C is sufficiently funded to fulfil its public service remit. The BBC has

agreed funding levels with S4C up until the end of this Charter period in 2017, giving S4C a full five years of funding security.

4.12 The Public Bodies Act 2011 makes clear that the Secretary of State must ensure S4C has sufficient funding to carry out its public remit. The UK Government considers therefore that S4C's interests are appropriately safeguarded. Following the Chancellor's Autumn Statement on 5 December 2012 a budget cut of 1% and 2% has been applied to S4C's resource baselines for 2013-14 and 2014-15 respectively, consistent with DCMS's other funded bodies. However, this reduction to Grant in Aid funding represents a reduction of only 0.1% in overall funding (including the licence fee contribution) and this does not have any bearing on the majority of S4C funding which, as a result of the partnership with the BBC, is no longer met through exchequer funding.

S4C: Future Governance Arrangements

4.13 To facilitate the new funding arrangements, the BBC and S4C are entering into a governance partnership. The key elements of the governance arrangements are:

- S4C will continue to be overseen by the S4C Authority;
- S4C's current statutory remit to provide high quality Welsh language programming will remain as now, overseen by the S4C Authority;
- The BBC Trustee for Wales will become a member of the Authority and the BBC will have a role, alongside S4C, and the UK and Welsh Governments, in the selection of Authority members. The BBC Trust and S4C will establish an operating agreement for the S4C service, setting out the scope of the service to be provided by the licence fee;
- The operating agreement will be the key accountability document between the S4C Authority and the BBC Trust, and the Trust will report publicly each year on S4C's achievement against it;
- S4C will have an independent management board consisting solely of S4C executives;
- S4C and BBC Wales will work together to deliver efficiencies in administrative and back office functions so that both S4C and BBC Wales can spend more money on programmes; and
- S4C will continue to commission programming from the independent sector, as now.

4.14 Under these arrangements, the Secretary of State for Culture, Media and Sport remains responsible for appointing Authority members, in consultation with Welsh Government Ministers. The UK Government runs the appointment process and the Welsh Government is represented on the selection panel, as was the case before the new agreement.

4.15 The S4C Authority and the BBC Trust have both finalised and published an operating agreement. This will ensure that Welsh-language television has a secure future as S4C moves to being primarily funded by the BBC until at least 2017 (when the current BBC Charter and Agreement and licence fee settlement expire) and protect the editorial, managerial and operational independence of S4C. The

agreement also outlines appropriate processes of accountability to the BBC Trust for licence fee funding allocated to the channel. This agreement follows a public consultation process launched by the BBC Trust and the S4C Authority last year.

4.16 The UK Government consulted over the summer of 2012 on whether further legislation is needed to support S4C's new governance and operating agreements. Following this, it was concluded that there is no need at the moment to make secondary legislation under the Public Bodies Act 2011.

Press Regulation

4.17 Press regulation is non-devolved in Wales. The body proposed to recognise a press self-regulator, in light of the Leveson Inquiry, would cover England and Wales (whether or not that body operates also in Scotland and Northern Ireland). This would include both English and Welsh language press.

5. Economic development

5.1 Economic development is devolved, and is a key subject in terms of the Welsh devolution settlement. The scope of the Assembly's legislative competence includes economic regeneration and development, the social development of communities and the promotion of business and competitiveness.

5.2 Significant aspects of economic development however are non-devolved, and Schedule 7 to GoWA includes a number of exceptions relating to macro-economic policy, anti-competitive practices, insolvency, product standards, consumer protection and trade, and business regulations, where there is a clear interest in preserving a single market conducive to business at the UK-wide, GB-wide or England and Wales levels.

5.3 Underpinning the Assembly's competence are a number of executive functions that are devolved to Welsh Ministers including grant-awarding powers and the broad power under section 60 of GoWA which enables Welsh Ministers to do anything they consider appropriate to achieve the promotion or improvement of the economic and social well-being of Wales, and the promotion or improvement of its environmental wellbeing. Welsh Ministers have used their executive functions extensively, principally to set up business and employment support schemes and to invest in infrastructure.

Competition Policy

5.4 The regulation of anti-competitive practices and agreements, abuse of a dominant position and monopolies and mergers is a non-devolved matter and the UK Government is responsible for domestic law. This applies for two reasons:

- The UK operates as a single marketplace for many businesses and consumers. Inconsistent rules and prohibitions on abuse would increase costs for business and uncertainty (and lack of trust) for consumers. This would be a risk to economic growth across the country; and
- EU competition law applies directly in the UK. It is enforceable by the EU Commission against undertakings where trade is affected across the EU, and the UK competition authorities are required to apply EU and UK competition law in a manner which is consistent with EU rules and the decisions of the Commission.

5.5 The aim of Government competition policy is to encourage and enhance the competitive process to benefit the UK economy. The need for consistency of approach in applying the law across the UK (and EU), and the impact of competition law on the competitiveness of markets across the UK, means that competition policy would not be suitable to devolve.

5.6 Competition cases are both highly complex and relatively infrequent. In terms of enforcement, the Government is concerned that the sector regulators have not been sufficiently proactive and that case management needs to be improved. It is

therefore introducing a package of reforms, through the Enterprise and Regulatory Reform Bill, to strengthen concurrency and the arrangements for competition between the competition authorities, and to give the new Competition and Markets Authority a stronger role in promoting competition in the regulated sectors.

5.7 By way of an example, water and sewerage regulation is one area where the boundary of responsibilities in Wales is complex. Certain sector regulators, including Ofwat (the water and sewerage regulator in England and Wales), have regulatory duties and powers to promote competition; concurrent powers with the Office of Fair Trading to enforce the Competition Act 1998 prohibitions; and powers held concurrently under the Enterprise Act 2002 to refer markets to the Competition Commission for in depth investigation.

5.8 At the same time, certain aspects of the regulation of water supply and sewerage are within the Assembly's legislative competence. The Welsh Government also enforces some aspects of the water and sewerage regime.

5.9 The boundary issue that is particularly difficult is the extent to which Ofwat (and the Welsh Government as enforcement authority) is obliged to consider Competition Act enforcement before undertaking enforcement action under the regulatory regime. Under the Water Industry Act 1991, the enforcement authority is obliged to enforce against breaches of licence conditions, except where it considers Competition Act enforcement would be more appropriate. This arrangement includes an implicit obligation on Ofwat and the Welsh Ministers to consider whether the use of Ofwat's Competition Act powers would be more appropriate before taking enforcement action. Under the Enterprise and Regulatory Reform Bill currently before Parliament, Ofwat will be explicitly required to consider Competition Act enforcement before taking licence enforcement action.

5.10 We do not believe it would be within the Assembly's competence to legislate to remove the existing requirements that enforcement action be taken only where the regulator is satisfied that it is not more appropriate to use its Competition Act powers.

Consumer Policy

5.11 Consumer protection is non-devolved in Wales, reserved in Scotland and transferred to Northern Ireland, and any legislation changing the substantive rules affecting consumers is made at the UK-level. This is for two reasons:

- Great Britain (and often the UK) operates as a single marketplace for many businesses and consumers. Applying different rules and levels of consumer protection to different parts of that market place could risk increasing costs for business and uncertainty for consumers; and
- Consumer protection measures directly influence the operation of markets, and different standards could discourage entry into a market for new businesses.

5.12 The Assembly (and the Scottish Parliament) has legislative competence in relation to the protection of the interests of consumers in relation to food (see section 9).

5.13 Two areas where the devolution boundary is not clear cut are responsibility for consumer law enforcement and representation of consumer interests in Wales.

- Consumer law enforcement - is mostly done by local authorities' trading standards services. Although the substantive rules under which these services operate are set at GB-level, prioritisation and funding decisions are made by the relevant local authority; and
- Consumer Representation - is currently offered in Wales by a division of Consumer Focus. The proposal, through the Public Bodies Act, to abolish Consumer Focus and transfer its work to the Citizens Advice Service prompted much debate. The House of Commons Welsh Affairs Select Committee produced a report on the subject in December 2011, recommending that the Silk Commission consider the matter. We understand that the Welsh Government is content with the development of Citizens Advice Cymru and a Wales office of the Regulated Industries Unit (both from April 2013). The Welsh Government, and the Welsh Local Government Association, are looking at the provision of trading standards services in Wales.

5.14 The whole question may be of interest to the Silk Commission, in terms of the balance between local authority prioritisation of funding and wider consumer protection. The possibility that different consumer protection standards would discourage consumers in both England and Wales from, for example, online shopping, would be a crucial issue for both Governments. Likewise, the risks of increasing compliance costs for business and distorting competition should not be discounted.

Employment Law and Relations

5.15 While some matters that we would consider part of employment law including occupational and personal pension schemes, compensation for loss of office or employment and the regulation of the National Minimum Wage are specific exceptions in Schedule 7 to GoWA, there is no comprehensive exception in relation to employment law. The Commission may wish to consider whether the devolution boundary around employment law could be clarified with a more specific exception.

Better Regulation

5.16 The Better Regulation Delivery Office (BRDO), a directorate of the Department of Business, Innovation and Skills (BIS), works in England and Wales, and operates the Primary Authority Scheme which improves regulatory advice for multi-site businesses. Through a Welsh Government-funded programme BRDO work in partnership to ensure a consistent approach to delivering better regulation in Wales, whilst taking account of the respective policies of the UK and Welsh Governments. The relationship between the UK Government and the Welsh

Government is set out in a Memorandum of Understanding. The Welsh Government is represented on all the BRDO expert panels and on its Representative Steering Group.

5.17 Delivering regulatory reform in the context of devolution presents significant challenges due to the mix of devolved and non-devolved responsibilities. There are also proposed different service delivery models for local authority regulatory services in Wales - trading standards on a collaborative regional model, and environmental health by each of the 22 local authorities. Through the BRDO-coordinated Welsh Regulators Forum, which comprises national and local regulators in Wales, there is opportunity and ambition to develop a co-ordinated and consistent approach to regulation.

Company Law

5.18 Company Law regulates corporations formed under the Companies Act 2006. It is largely designed to mediate the rights and duties among shareholders, employees, creditors and directors. It includes mechanisms to ensure directors' accountability. A significant amount of legislation under company law is derived from Europe. Company Law is a non-devolved matter in Wales and a reserved matter in Scotland, ensuring a common set of rules for companies in Great Britain. Although devolved in Northern Ireland, historically Northern Ireland has typically implemented changes agreed at Westminster for Great Britain.

Postal Services

5.19 Postal services policy is not devolved. The UK Government has a legal obligation to provide a universal postal service throughout the United Kingdom in accordance with the requirements of the EU Postal Services Directive 97/67 EC, as amended ("the Directive").

5.20 The Postal Services Act 2011 made provision for a new regulatory framework governing postal services throughout the UK and set down the minimum requirements for a universal postal service, which includes a 6 day delivery and collection postal service at a uniform rate throughout the UK.

5.21 UK postal services regulator, Ofcom, has recently put in place a new national regulatory system based on general authorisation (to replace the previous licensing regime). In accordance with the requirements of the Directive, Ofcom, as the national regulatory authority, has designated Royal Mail as the universal service provider for the UK and has set down regulatory requirements for the delivery of a universal service throughout the UK.

Intellectual Property

5.22 Intellectual property is not devolved. The UK Intellectual Property Office (IPO) processes patent, trademarks and designs applications for the entire UK. It also, with a BIS minister, sets policy for the UK and leads the UK's contribution to EU and international policy making on intellectual property (IP). In 2011 the IPO processed 570 patent applications from Wales (out of 15,343 for the UK) and granted 82 of

them (from a UK total of 2,992).

5.23 The principle benefits of the current system are:

- Economies of scale. For example, examining and granting patents requires expertise in all the possible fields of technology - from chemistry and biotechnology to telecoms and electronics. Through one central office for the UK economies of scale make this service cost effective for users; and
- Service to business users. Most businesses want to trade throughout the UK. Having one central IP office and IP policy hub means they only need to apply to one organisation once and comply with one set of policies. With the rise of online shopping, this is getting more important.

International Trade & Inward Investment

5.24 International trade (export) development and Foreign Direct Investment (FDI) support are devolved, although the UK Government has concurrent powers in this area. These powers enable UKTI to promote the UK as a whole overseas and give Welsh companies access to UKTI's overseas network (part of the UK's diplomatic service) and other nationally-available services. UKTI also provides a coordinated UK approach to FDI that strengthens the UK's message to investors and limits damaging competition.

5.25 The Welsh Government, through its trade and investment team provides its own support and programmes (and also access to UKTI national support) to meet the needs of exporters in Wales and for promoting Wales to foreign investors. This includes having its own overseas representation (supplementary to UKTI's overseas network) where the Welsh Government considers it makes sense to do so (the Welsh Government currently has representation in five markets overseas).

Structural & Cohesion Funds

5.26 Structural and Cohesion Funds (SCFs) are an EU instrument for promoting growth and reducing economic disparities between regions in the EU. The Funds are negotiated and allocated in 7 year time blocks.

5.27 The UK receives approximately €10.6bn in SCFs in 2007-13: €6.1bn from the European Regional Development Fund (ERDF) to support innovation, competitiveness and enterprise and €4.5bn from the European Social Fund (ESF) to support skills and social inclusion. Of this, Wales receives €1.3bn ERDF and €900m ESF, of which over 90% in both cases goes to West Wales and the Valleys. Funds have to be matched with domestic funding in order to be spent, normally at 50:50, but at 75% EU funds to 25% domestic funding in less developed regions (including West Wales and the Valleys).

5.28 SCF policy is non-devolved; economic development is devolved. The UK Government leads on EU Structural and Cohesion Funds policy and is responsible

for negotiating the regulations that govern the management of the funds. The Devolved Administrations are responsible for management of the funds.

5.29 Policy on using the funds as an instrument of economic development is closely allied to thinking on the areas supported under the EU Budget, and the negotiation of SCF policy links closely to overall negotiations on the EU Budget (led by HM Treasury). The Welsh Government is closely involved in the development of UK policy on Structural Funds during the negotiations.

Energy

5.30 The majority of energy and climate policy is non-devolved with respect to Wales. Schedule 7 to GoWA includes specific exceptions to the Assembly's legislative competence on economic development to cover the generation, transmission, distribution and supply of electricity; oil and gas; nuclear energy and nuclear installations; and coal, apart from environmental matters.

5.31 These issues overlap and interact with subjects that are devolved, such as environmental protection, economic development and some aspects of planning. The Welsh Ministers also have executive powers in some non-devolved areas, including powers under the Climate Change Act 2008.

5.32 This means that in practice, the UK Government and the Welsh Government work together closely to ensure a coherent policy framework is in place, which respects respective roles and responsibilities, and delivers for the people of Wales and the United Kingdom.

5.33 Given the nature of energy policy, which involves matters of national importance reaching across Great Britain and the UK, this ensures that the management and strategic direction of energy policy is determined by the UK Government. Our domestic goals require major investment in energy infrastructure - much of that investment will be sourced internationally - and a consistent framework for energy policy attracts potential investors to our energy industry..

5.34 International engagement on energy and climate change is undertaken at a UK level, with the weight and influence that the UK Government brings, whilst working closely with all the Devolved Administrations to inform our approach, particularly on matters that overlap with devolved competence.

Ofgem and Market Regulation

5.35 Great Britain's gas and electricity market is regulated by Ofgem, an independent body accountable to Parliament. Ofgem's principal objective is to protect consumers by promoting competition, wherever appropriate, and to regulate the monopoly companies which run the gas and electricity networks. Participation in both the gas and electricity industry is by licence. Ofgem issues and enforces these licences, which contain a number of conditions that ensure, for example, consumer protection and security of supply.

5.36 The Government believes that a single market and regulatory regime across Great Britain is an effective way of ensuring competition and provides a consistent regulatory framework which is important for investors.

International Energy and Climate Change Negotiation

5.37 International negotiations, including engagement with the European Union (EU), are non-devolved. The UK Government leads on such negotiations, in consultation, as appropriate, with the Devolved Administrations. The Government greatly values the cooperation and support it receives from all three Devolved Administrations, and is committed to continuing the close working relationship, both because it ensures a stronger voice for the UK and in recognition of the interest the Devolved Administrations have in many of the policy areas under discussion.

5.38 The Department for Energy and Climate Change (DECC) is the UK Government's lead department in climate change negotiations, and plays a key role on the global stage in brokering and reaching climate change agreements.

Renewables Policy

5.39 Renewables are key to our strategy to tackle climate change and help achieve a low-carbon future energy sector. The UK Government is responsible for the overall strategic approach to renewables and associated policies, and the Welsh Government plays a key role in encouraging investment to deploy renewable technologies in Wales. Wales has significant renewable resource and will play an important part in helping to meet the UK target of having 15% of all energy in 2020 coming from renewable sources.

5.40 Maintaining a strategic, single, GB-wide approach is key to ensuring a stable long-term policy framework to facilitate necessary private sector investment. Investors will need a clear understanding of, and confidence in, the policy and regulatory framework.

5.41 The Renewables Obligation (RO) is currently the Government's main financial incentive for large-scale renewable electricity generation. Bands are reviewed periodically to ensure that support levels are set as cost-effectively as possible. The banding allows development of a wide range of renewable energy technologies, and helps to bring them forward at the capacity needed in an affordable way, delivering value for money.

5.42 The RO system works on the basis of three complimentary obligations, one covering England and Wales and one each for Scotland and Northern Ireland. Banding levels in Scotland and Northern Ireland are set by the Scottish Government and Northern Ireland Executive respectively. For England and Wales banding levels are set by the Secretary of State for Energy and Climate Change and must be approved by Parliament.

5.43 Through the Electricity Market Reforms (EMR) contained in the Energy Bill, the UK Government is introducing Contracts for Difference (CfDs) to support

renewables and other forms of low carbon generation from 2014. CfDs will provide a guaranteed price to generators for the electricity they generate.

5.44 We are aware that the Welsh Government has raised some concerns about the apparent disparity in powers between Wales and the other Devolved Administrations with respect to the current RO, arguing that Wales has been disadvantaged as a result. However, we believe that the current arrangements should result in a competitive market across the UK, particularly in light of the changes in RO subsidy levels announced last year following the comprehensive RO Banding Review, delivering a more consistent level of support for renewable technologies across the UK as a whole. The RO is due to close to new generation in 2017, and the future approach under CfDs will be taking a unified approach for the UK.

5.45 We believe a consistent approach across the UK is important. Our key aim is ensuring an attractive investment environment for electricity generation in all parts of the UK, by putting in place arrangements which are as consistent as possible, while respecting devolved competencies and minimising market distortions. Through EMR, the Welsh Government alongside the other Devolved Administrations, will be statutory consultees on the design and delivery of the CfD, and will have a consultative role within the accompanying institutional framework.

5.46 Similarly, with respect to the Feed-in Tariffs (FiTs) scheme and the Renewable Heat Incentive (RHI), which provide support for small-scale renewable electricity generation and renewable heat respectively, we believe there should be a single scheme with consistent levels of support across Great Britain.

Generation of Electricity and Transmission, Distribution and Supply of Electricity and Gas

5.47 The generation of electricity and transmission, distribution and supply of electricity and gas are non-devolved matters, and are specifically excepted in Schedule 7 to GoWA. We consider it important these issues are dealt with strategically and on a GB basis, particularly in light of the UK's transition to a low carbon energy mix, which requires significant investment in energy infrastructure across the country.

Nuclear

5.48 The UK Government undertakes work across the whole spectrum of nuclear energy, from ensuring that the UK has a continued supply of energy through encouraging companies to invest in new nuclear power stations to managing the UK's existing nuclear energy liabilities through waste management and decommissioning. We are also responsible for nuclear security at the existing nuclear power sites in the UK.

5.49 Given the need to undertake this work on behalf of the UK as a whole, the current devolution boundary on nuclear power should remain, with nuclear energy and nuclear installations being non-devolved. It is, however, critical that the UK and

Welsh Governments continue to work together closely as we look to ensure new investment in new nuclear, particular at the Wylfa site on Anglesey.

5.50 The Energy Bill will make a small amendment to Schedule 7 to GoWA to include the “Office of Nuclear Regulation” in the exceptions under paragraph 4. This will ensure that health and safety functions, which are currently the responsibility of the Health and Safety Executive (HSE), will continue to be excepted when they are transferred to the Office of Nuclear Regulation. This amendment has been agreed with the Welsh Government and does not change the existing devolution boundary.

Oil and Gas

5.51 Licensing of oil and gas exploration and production activities and related consenting decisions are non-devolved. In addition, oil and gas activities are exempt from licensing arrangements under the Marine and Coastal Access Act 2009. DECC is the consenting authority for offshore pipelines (approved under the Petroleum Act 1998) on the UK Continental Shelf (UKCS) and within territorial waters. Certain environmental aspects of oil and gas exploration and production (e.g. the control of pollution arising from these activities) are devolved in Welsh territorial waters.

Coal

5.52 Coal, including mining and subsidence, is non-devolved. The UK Government has two main areas of work in relation to coal. One aspect is overseeing the current coal industry in the UK and managing the environmental impacts of current and previously active coal mines. This is mostly achieved through the Coal Authority, a Non-Departmental Public Body sponsored by DECC. The second aspect is managing the UK Government’s responsibilities and liabilities arising from the previously nationalised coal industry, such as the rights of retired miners.

5.53 The Coal Authority effectively manages the UK’s coal industry and is a small public body with considerable expertise. It undertakes work to oversee the industry, and it is important to retain a single regulatory regime. Similarly, given that when the coal industry was nationalised it was on a UK-wide basis, it follows that managing the responsibilities and liabilities arising from this industry should remain non-devolved.

Energy Efficiency

5.54 Under Schedule 7 to GOWA, energy conservation is non-devolved, except for the encouragement of energy efficiency otherwise than by prohibition or regulation. Responsibility for improving energy efficiency by regulation or prohibition therefore rests with the UK Government. We believe this is appropriate because much of this work is delivered through licence conditions and obligations on energy suppliers, enforced by Ofgem, the GB regulator.

5.55 Schemes to encourage energy efficiency without prohibition or regulation are a devolved matter, and can complement the steps taken at the national level.

Green Deal and ECO

5.56 The Green Deal is a pioneering energy efficiency scheme operating throughout Great Britain, enabling households and businesses to increase their properties' energy efficiency at no upfront cost. This will be accompanied by the Energy Company Obligation which will provide additional support for hard-to-treat properties and low income and vulnerable households.

Smart Meters

5.57 Smart Meters, which will be rolled-out across Great Britain by 2019, are the next generation of gas and electricity meters and they can offer a range of intelligent functions. Consumers will have near real time information on their energy consumption to help them control and manage their energy use, save money and reduce emissions. Smart meters will also provide consumers with more accurate information and bring an end to estimated billing. Longer term, the introduction of smart meters will mean energy networks will have better information upon which to manage and plan current activities, and the move towards smart grids which support sustainable energy supply.

Broadband and Telecoms

5.58 Telecommunications policy, including broadband, is non-devolved and is an exception under Schedule 7 to GoWA.

5.59 Telecommunications networks operate and are regulated at the UK-wide level, with the EU Regulatory Framework for Electronic Communications providing the over-arching Framework within which Member States and National Regulatory Authorities operate. Sufficient scope exists for the Devolved Administrations to implement their own broadband policies using executive functions relating to economic well-being (Section 60 of GoWA) and all have, or are implementing, digital strategies, including Wales.

5.59 Telecommunications markets, particularly traditional landline systems, tend to be dominated by monopoly suppliers due to the high fixed costs associated with supplying services over large geographical areas. Large, dominant suppliers benefit from economies of scale, and their average costs fall as they get bigger. Fragmentation of UK telecoms markets would increase the average costs faced by firms such as BT, which may in turn lead to a decrease in investment and innovation in the network, as well as higher prices for consumers.

Broadband Delivery

5.60 Broadband Delivery UK (BDUK), part of DCMS, allocated £56.9m to the Welsh Government in July 2011 to deliver superfast broadband in Wales, allowing many remote rural communities to enjoy the benefits of superfast access. The Welsh Government is now implementing the project, which aims to deliver 95% superfast broadband availability and universal standard broadband of at least 2Mbps.

5.61 The funding allocation for Wales is large relative to the size of population, due to geography and number of remote communities, which requires proportionately more public subsidy than other parts of the UK.

Broadband Support Package

5.62 The broadband support package, which the UK Government announced in September, contains a number of measures designed to cut red tape, reduce the cost, and speed up the deployment of, superfast broadband in order to provide certainty to allow the market to take investment decisions, and ensure public funds are efficiently invested. The measures include amending some primary and secondary legislation (e.g. the Communications Act 2003), and cover devolved and non-devolved issues – for example, planning is devolved, so the measures to allow installation of street cabinets without prior approval will not apply in Wales without the necessary changes to planning legislation in Wales.

6. Education and Training

6.1 Education and training are devolved. Schedule 7 to GoWA identifies education, vocational, social and physical training and the careers service as devolved subjects. This includes higher and further education, the development of skills and apprenticeships. The promotion of advancement and the application of knowledge are also devolved, with the exception of research councils. The Welsh Ministers' executive powers fit closely with the Assembly's legislative competence.

6.2 Policy on, and the regulation of, qualifications is devolved. The UK Government will continue to discuss proposals for qualification reform in England with the Devolved Administrations so that, where different qualifications are offered, they are well understood and no students are disadvantaged.

Teachers Pay and Pensions

Teachers Pay

6.3 The Welsh Government is responsible for education in Wales; it sets the initial teacher training intake targets, standards for teachers in Wales and teacher appraisal arrangements as well as the provision of funding to local authorities. Under the Education Act 2002, the statutory pay and conditions of service of school teachers in England and Wales is a matter for the Secretary of State for Education. Changes to teachers' pay and conditions in maintained schools are ordinarily made following a referral of matters by the Secretary of State to the independent School Teachers' Review Body (STRB). The Secretary of State's evidence to the STRB in relation to proposed changes to pay and conditions applies to both England and Wales. In 2012, the Welsh Government submitted its own evidence to the STRB given the potential consequences of reform for Wales. The Welsh Government's evidence argued against any move towards greater regional or local pay and questioned whether a link between teachers' pay and performance is necessary.

6.4 The school systems in the two countries are diverging at a growing rate, and it could be argued that devolving the pay and conditions of teachers in Wales is a logical consequence of deregulating teachers' pay and conditions in England and should be explored. The legal process to make changes to the School Teachers Pay and Conditions Document (STPCD) would be through an Order under section 122 of the Education Act 2002 made by the Secretary of State; because this is currently a function of a Minister of the Crown, it could either be devolved by the Secretary of State consenting to the provision in an Assembly Act in relation to this area or by the UK Government legislating in a Parliamentary Act to confer the function on Welsh Ministers (by amending the 2002 Act).

6.5 The UK Government's objectives for pay reform include, amongst other things, developing arrangements for teachers' pay which reward good performance and giving schools greater freedom to spend their money as they see fit. The Welsh Government has previously said it does not want teachers' pay and conditions devolved to Wales. In the Welsh Government's evidence to the STRB, in the context of local pay bargaining, it said that a national system of pay and conditions for teachers is a better, fairer and more cost effective system to administer than

local/school determined pay. It expressed concern that there would be higher overhead costs for the Welsh Government, local authorities and schools arising, for example, from a need to deploy staff to replicate the functions already fulfilled by staff at the STRB secretariat and the Department for Education.

6.6 Under the current arrangements, bureaucratic legal processes have to be used to allow the Welsh Government to make subsidiary changes that only affect teachers' pay and conditions in Wales. For example, the Welsh Government would like to be able to prescribe that for schools in Wales, 'INSET' days are used for literacy and numeracy training. For this to be achieved, the Secretary of State would have to consent to the power being ceded to the Welsh Government.

6.7 The UK Government would welcome the Commission considering the subject of teachers' pay and conditions.

Teachers' Pension Scheme (TPS)

6.8 The Secretary of State is responsible for a single pension scheme covering teachers and lecturers in England and Wales. The UK Government has set out the proposed scheme design for the TPS, which will be implemented in April 2015. As part of these reforms, the Government has expressed its belief that no further reform to public service pensions should be necessary for the next 25 years, hopefully longer.

6.9 The planned reforms represent a fundamental change to the scheme's benefits structure, regulations, finances, governance and administration, and there are significant regulatory, financial and delivery risks associated with their implementation. The mechanism for controlling costs in the future has already been determined by HM Treasury, and a separate scheme in Wales would increase risks without delivering any benefits. The administration of the scheme has been outsourced to Capita for 16 years under three separate contracts and is a well-established, efficient and modern outsourced operation, which provides significant economies of scale and very high standards of administration.

6.10 The UK Government proposes that teachers' pensions remain non-devolved.

International Issues

6.11 There are a number of issues that relate to education, training and adoption on which the UK Government leads in presenting a UK position internationally, and the Secretary of State for Education represents the UK at EU and international level. Specifically, these are:

- Responding to the EU and other multi-lateral organisations such as the OECD, on education matters;
- Serving as the "UK State Party" co-ordinator for the United Nations Convention on the Rights of the Child; and
- The handling of non-Hague intercountry adoption for Wales. The numbers involved are extremely low (the Department for Education handled only one adoption application from Wales in 2012; none in 2011; and three in 2010).

Higher Education Funding

6.12 Higher Education (HE) is devolved and Higher Education institutions operate as independent entities in Wales, overseen by the Higher Education Funding Council for Wales (HEFCW). The administration and delivery of student finance in Wales is currently undertaken by Welsh local authorities and the Student Loans Company (SLC), which operates on a UK wide basis. Welsh local authorities process applications for student finance while the SLC provides a wide range of services, including the payment of student support, production of publication materials and a call centre service. Both the SLC and HMRC are jointly responsible for the collection of Welsh student finance loans. There are plans to centralise student finance administration in Wales, with the work currently undertaken by local authorities to be transferred to the SLC by 2015-16.

6.13 SLC works closely with officials in the Welsh Government, the UK Government's Department for Business, Innovation and Skills (BIS), the Northern Ireland Executive and the Scottish Government to deliver annual HE student funding policies for each nation. It may be worth noting that the Welsh Government directly funds SLC for its share of the Company's administration costs (in 2012-13 this amounted to £5.8m, representing approximately 5% of SLC's overall administration funding), as well as providing loan and grant funding for onward disbursement to Welsh students.

6.14 The SLC is a NDPB of BIS and also a company limited by shares with the Secretaries of State for BIS and for Scotland currently holding 5 shares apiece. In order to link SLC ownership to the funding contribution made by each UK administration, there is currently a proposal for the Welsh Government to become a 5% shareholder of the SLC; the Northern Ireland Executive and the Scottish Government, who would each own a 5% share as well. The UK Government would own the remaining 85%.

Science & Research

6.15 Science & research policy is complex, with key elements non-devolved but some aspects devolved. Specifically:

- Research Councils (including university research funding provided by Research Councils) are non-devolved and operate throughout the UK. Research Councils provide funding to researchers in higher education Institutions (HEIs) UK-wide, on the basis of merit; operate wholly-owned research institutes (some of which are located in Wales, such as the Centre for Ecology and Hydrology in Bangor); provide national facilities for use by all UK researchers and negotiate/pay subscriptions to international scientific facilities (such as CERN, space/telescopes, environmental research) on behalf of UK-wide researchers.
- University research (where part of HEI policy) is devolved, and the UK Government is responsible for policy and funding in England only (through the Higher Education Funding Council for England (HEFCE)).

6.16 Some research, for example medical research, may be commissioned and funded from a wider variety of sources.

Medical Research

6.17 Functions relating to research councils are non-devolved under the current settlement; research councils are specifically excepted in Schedule 7 to GoWA. Medical research in the UK is commissioned and funded from a wide variety of sources, to which Wales has access along with other parts of the UK. Welsh Ministers are able to fund and carry out any type of medical research by virtue of paragraph 13 of Schedule 1 to the NHS (Wales) Act 2006, and the Welsh Government already funds medical research in Wales through its National Institute for Social Care and Health Research (NISCHR), which is closely modelled on the English National Institute for Health Research (NIHR).

6.18 The UK Government is currently proposing to legislate in this area, with the creation of a new non-departmental public body - the Health Research Authority (HRA) - to replace the Special Health Authority of that name. The provisions have been carefully crafted to work within the existing structures of how research operates.

6.19 In establishing the HRA, a key objective is to promote a more consistent approach to research approvals across the UK. The draft Bill, which is currently undergoing pre-legislative scrutiny in Parliament, would place the HRA under a duty to promote the co-ordination and standardisation of practice in the UK in relation to the regulation of research and impose a duty on the Devolved Administrations to cooperate with the HRA. The Bill would also allow for a devolved administration to arrange for the HRA to exercise relevant functions (those which correspond to the functions of the HRA) on its behalf.

Skills and Training

6.20 The Welsh Government is responsible for the development of skills in Wales and, using its concurrent powers under the Education and Training Act 1973 (see section 18 - social welfare), pays Training Allowances (TAs) to trainees on courses for which it is responsible. By agreement, the UK Government (DWP) calculates and pays the TAs using the income-based Jobseekers Allowance (JSA) Payment System. The Welsh Government reimburses the monies paid out (including an additional Training Premium) and contributes to the administrative costs.

6.21 The UK Government and the Welsh Government share many common aims in terms of employment and training. The UK Government's Department for Work and Pensions (DWP) and the Welsh Government have a Concordat which commits to good mutual communication, and to alert each other as soon as practicable to proposals for new policy initiatives and changes to existing policies where there is a direct or indirect impact on the other's areas of responsibility.

6.22 The Welsh Government also runs programmes designed to help people get into work by re-skilling or developing existing skills. Jobcentre Plus advisers working

in the 63 Jobcentres across Wales help signpost eligible people to programmes such as Jobs Growth Wales, the Redundancy Action Scheme II (ReAct II) and Graduate Opportunities Wales (GO Wales), as well as European Social Fund (ESF) programmes.

Apprenticeships & Skills

6.23 Apprenticeships and vocational training are devolved, and the Welsh Government funds post nineteen education and skills training in Wales. The Welsh Government also exercises powers under Section 2 of the Employment and Training Act 1973 (see section 18, Social Welfare) to provide training allowances to those looking for work over and above Job Seeker's Allowance, which is paid by the Department for Work and Pensions. In England, the Chief Executive of Skills Funding is responsible for funding post 19 education and training provision up to, but not including, Higher Education, and is supported in this role by the Skills Funding Agency. Inspection of all education and skills training providers in Wales is carried out by Estyn, the independent inspectorate for schools and further education institutions in Wales; the inspection regime is wholly devolved.

6.24 In terms of cross border co-operation, an arrangement is in place whereby the Skills Funding Agency funds provision for learners travelling from Wales to study and work in England and vice versa. In addition, the Chief Executive of the Skills Funding Agency has powers under s107 of the Apprenticeships, Skills, Children and Learning Act 2009 to provide services to individuals and organisations who exercise education and training functions, including to the devolved administrations. This can include providing support services such as information management systems and procurement services on their behalf. Such services may include the provision of accommodation and other facilities appropriate to the delivery of that service. Employers with sites in both England and Wales do have separate systems and arrangements to administer, which can result in additional bureaucracy, but no issues in recent years have proved irresolvable.

7. Environment

Environment and Conservation Issues

7.1 Under paragraph 6 of Schedule 7 to GoWA most environmental functions are devolved. These include environmental protection (including pollution, nuisances and hazardous substances); prevention, reduction, collection, management, treatment and disposal of waste; land drainage and land improvement; countryside and open spaces (including the designation and regulation of national parks and areas of outstanding natural beauty); nature conservation and SSSIs; protection of natural habitats, coast and marine environment (including the seabed); biodiversity; GMOs; small holdings and allotments; common land; town and village greens; and burial and cremation (except coroners' functions).

7.2 These are clearly wide ranging powers. Many of these areas are governed by EU law which requires the consistent application of policy in many respects, but the means by which EU legal obligations are met can clearly diverge between different administrations.

7.3 It is important to note that the provisions and exceptions mentioned elsewhere in Schedule 7 constrain the meaning of paragraph 6. The UK Government therefore takes the view that this paragraph does not cover, for example, the water and flood defence provisions set out in paragraph 19.

7.4 The Welsh Ministers also have specific executive functions which sit outside the legislative competence of the Assembly, for example in terms of making regulations in relation to a trading scheme for greenhouse gas emissions under the Climate Change Act 2009.

7.5 At the working level, there have always been strong relationships between the UK Government and the Welsh Government on environmental issues. Up to the establishment of Natural Resources Wales (see section 2), both England and Wales shared a number of important delivery bodies on environmental matters, such as the Environment Agency and the Forestry Commission. England and Wales also share a number of delivery bodies in devolved policy areas such as the Food Standards Agency, the Chemicals Regulation Directorate (within HSE), the Drinking Water Inspectorate and the Consumer Council for Water.

7.6 The creation of Natural Resources Wales will require on-going close working relationships between officials in that body and their opposite numbers in England to ensure the delivery of the objectives of UK and Welsh Ministers, and to comply with EU law.

Environmental Protection

7.7 Air pollution, noise and nuisance and local environmental quality are devolved. There are significant EU requirements in terms of air quality and environmental noise, industrial pollution control and fluorinated gases, and the UK

Government negotiates within the EU on behalf of the UK as a whole; but implementation of EU requirements in Wales is devolved.

Waste

7.8 Schedule 7 to GoWA specifies that the prevention, reduction, collection, management, treatment and disposal of waste is devolved. The Welsh Government is responsible for delivering its waste policies under the revised EU Waste Framework Directive (2008/98/EC), with the principal objective of preventing harm to human health and protecting the environment. Defra and the Welsh Government work together to ensure the implementation of this Directive.

7.9 Transboundary movements of waste to and from the UK is not devolved. The EU Shipments of Waste Regulations stipulate that there can be only one Competent Authority of Transit for each Member State. For the UK, this is currently the Secretary of State, but will shortly transfer to the Environment Agency via an amendment to the domestic Transfrontier Shipment of Waste Regulations.

The Marine Environment

7.10 The UK's marine environment comprises internal waters, territorial seas, the Renewable Energy Zone and British Fisheries Limits (BFLs), a space extending up to 200 miles from the high water mark of the UK coast, including the tidal reach of the sea in estuaries. It is expected that the Renewable Energy Zone⁹ and British Fisheries Limits will be incorporated into the Exclusive Economic Zone¹⁰ once it is agreed.

7.11 To get the best possible benefits from the marine area we have been developing a holistic approach to the management and regulation of its use. In 2002 "Safeguarding Our Seas" published by the UK Government and Devolved Administrations set out our shared vision of "clean, healthy, safe, productive and biologically diverse oceans and seas".

7.12 This was followed in 2005 by Charting Progress 1 and in 2010 by Charting Progress 2, which gave assessments of the state of the UK seas at those points indicating increasing pressures on the UK seas as they continue to provide significant resources, including fisheries, aggregates, renewable energy and shipping. The UK is a world leader in many aspects of marine management and protection and is at the forefront of the development of many new and nationally important uses of the marine area, such as renewable energy production.

⁹ The area beyond the territorial sea over which the UK asserts rights under Part V of UN Convention on the Law of the Sea (UNCLOS) with respect the production of energy from water or winds. The area is designated by an Order in Council made under s.84 of the Energy Act 2004.

¹⁰ Section 41 of the Marine and Coastal Access Act 2009 provides a power for an EEZ to be declared by an Order in Council. Part V of UNCLOS provides that an EEZ is an area, normally extending to a maximum of 200 nautical miles from baseline, within which a state has extensive rights to natural resources and jurisdiction for protecting the natural environment, but subject to international rights of navigation, over flight and cable laying.

Marine Planning and Sustainable Use of the Marine Environment

7.13 The Marine and Coastal Access Act 2009 (MCAA) provided for the introduction of marine planning systems across the UK marine area, which will contribute to the effective management of marine activities and more sustainable use of our marine resources.

7.14 The MCAA provides the legislative basis for a UK-wide Marine Policy Statement (MPS), adopted and published in 2011 by the UK Government and the Devolved Administrations. The MPS sets the policy framework for the preparation of all UK marine plans and for decisions affecting the marine area. It will be applied and locally expressed through a series of marine plans. The Marine Management Organisation (MMO) has delegated responsibility for the preparation of marine plans in England, and is working to complete all the English Marine Plans by 2021. The Devolved Administrations are each working to deliver plans for their areas to differing timetables.

7.15 In Wales, the Welsh Ministers are the marine planning authority in the Welsh inshore and offshore regions under the MCAA. Similar arrangements apply, or are being put in place, in the other Devolved Administrations. For all devolved administrations though there are certain restrictions relating to the ability to plan for non-devolved functions. Apart from such functions, marine planning is executively devolved to Welsh Ministers.

7.16 Welsh Ministers are responsible for terrestrial and marine planning and are able to consider management of coastal areas in an integrated and holistic way, making a significant contribution to Integrated Coastal Zone Management (ICZM). ICZM is particularly important in areas with high levels of human activity and numerous competing demands for space and marine / coastal resource, such as Pembroke Harbour.

Marine Environmental Protection

7.17 The Marine Policy Statement includes a commitment to implement the Marine Strategy Framework Directive (MSFD).

7.18 The overarching aim of the MSFD is for EU Member States to put in place measures to achieve Good Environmental Status (GES) in their marine waters by 2020. Member States must develop Marine Strategies for their waters consisting of:

- an initial assessment of the current status of their waters;
- characteristics, targets and indicators of GES;
- monitoring programmes for measuring progress towards GES, and;
- programmes of measures to achieve or maintain GES.

7.19 These requirements were transposed into national legislation through the Marine Strategy Regulations 2010 (covering England, Scotland, Wales and Northern Ireland). Under the regulations, Welsh Ministers are designated as the competent authority for relevant inshore waters and as the “devolved policy authority”. This includes responsibility for the development of monitoring programmes and provision

of information in support of assessing marine waters and defining GES in devolved marine areas. Defra and the Devolved Administrations are working together to ensure the Directive is implemented in a coordinated way across all four UK Administrations.

Marine Protected Areas

7.20 The MCAA enables the creation of Marine Conservation Zones (MCZs) to complement existing marine protected areas designated under European legislation such as the Habitats Directive and the Wild Birds Directive.

7.21 The UK Government (through Defra) and the Devolved Administrations are working closely together to ensure MCZs designated in their respective jurisdictions constitute an appropriate UK contribution to an ecologically coherent network of MPAs (based on biogeographic regions, which differ from administrative ones).

7.22 Defra is part-way through a process of establishing MCZs in the Welsh offshore area and similarly the Welsh Government is part-way through a process of designating MCZs in the Welsh inshore region. Designation of MCZs in off-shore areas of Scotland is devolved, subject to agreement by the Secretary of State for the Environment, Food, and Rural Affairs.

Marine licensing

7.23 The Welsh Government is responsible for licensing in the inshore area, apart from most activities concerning the exploration for, or production of, petroleum, oil and gas (there are some exceptions) and any defence activities (again, there are some exceptions). Most sensitive development tends to take place in the inshore area.

7.24 Welsh Ministers have no licensing functions in the Welsh offshore zone and no functions in relation to offshore generating stations under either the Electricity Act or the Planning Act. They also have no functions in relation to non-fishing harbours. However, relatively little development subject to licensing takes place in the offshore area.

EU Emissions Trading Scheme (ETS)

7.25 Emissions trading is the UK's carbon price instrument of choice and a key component in a comprehensive UK policy framework to effectively mitigate climate change. The EU ETS already covers approximately half of the UK and EU's carbon dioxide emissions, including emissions from electricity production and major industrial sectors. Responsibility for the EU ETS is executive devolved, with the UK Government leading on EU negotiations and implementation of legislation. The UK Government in practice works closely with the Welsh Government, and agrees negotiating positions with all three Devolved Administrations. Welsh Ministers exercise the function of "authority". Functions are conferred by the Secretary of State under EU ETS Regulations scrutinised by Parliament. In practice this means the Welsh Ministers exercise functions in relation to installations in Wales, and aircraft operators who have their registered offices in Wales. The corresponding function of

“regulator” (currently performed by the Environment Agency in relation to England and Wales) is being transferred to Natural Resources Wales.

7.26 Certain UK-wide functions in relation to EU ETS are reserved to the Secretary of State, including in relation to the free allocation of allowances, the designation of aircraft operators as operators to be administered by the UK and the application for an aircraft operating ban.

Carbon Capture and Storage (CCS)

7.27 Carbon Capture and Storage (CCS) is a mitigation technology which can remove carbon dioxide (CO₂) emissions created by the combustion of fossil fuels in power stations and in a variety of industrial processes, and transport it for safe permanent storage deep underground, for example deep under the North and Irish Seas.

7.28 The UK Government is responsible for the overall strategic approach to energy, including the role of CCS. However, emissions of carbon dioxide are a devolved matter under paragraph 5 of Schedule 7 to GOWA (pollution and waste disposal). On this basis the capture and storage of carbon dioxide are devolved matters.

7.29 The Secretary of State is the licensing authority for carbon dioxide storage in the territorial sea adjacent to Wales and in the Gas Importation and Storage Zone beyond that. By virtue of secondary legislation made by the Secretary of State,¹¹ the Welsh Ministers are now the licensing authority for CO₂ storage onshore in Wales and in adjacent inshore waters. However, in the UK, it is expected that carbon dioxide would be stored offshore, beneath the sea bed.

7.30 A CCS project would be a complex infrastructure project, some aspects of which would be devolved if they took place in Wales, while others would not. For example, development consent for the power station element of the project would be the responsibility of the Secretary of State, while depending on its length the construction of a pipeline onshore to convey carbon dioxide might require development consent from the Secretary of State, or planning permission from local authorities or the Welsh Ministers. The storage of carbon dioxide in the territorial sea adjacent to Wales (though unlikely for technical reasons) would currently require not only a licence under s.18 of the Energy Act 2008 from the Secretary of State, but also a Marine Licence under the Marine and Coastal Access Act 2009, for which the Welsh Ministers are the appropriate licensing authority.

7.31 The Government is committed to developing CCS and to working with industry to create a new world leading cost-competitive UK CCS industry in the 2020s. Developing CCS is a substantial undertaking as the technology has not yet been deployed at commercial scale in the UK. It requires significant financial support. The UK Government is offering (on a UK-wide basis): £1bn capital funding for the current UK competition; fixed revenue CfDs through the Electricity Market

¹¹ The Storage of Carbon Dioxide (Amendment of the Energy Act 2008 etc.) Regulations 2011, SI 2011/2453.

Reforms (see section 5) to provide further support to projects and £125m to support research and development.

7.32 We believe it is appropriate and necessary for the UK Government to support the development of CCS technology on a UK-wide basis. The unique spatial characteristics of capture, transport and storage of CO₂ over great distances mean development of the industry benefits from a UK approach.

7.33 The UK Government is committed to working with the Welsh Government where appropriate in relation to CCS in Wales. We consider that the existing devolution boundary is appropriate, and reflects the fact that a “full chain” CCS project is likely to involve both energy and environmental matters. In principle, if not in every detail, it is consistent with the position in Scotland.

8. Fire and Rescue Services and Fire Safety

8.1 Legislative competence in respect of most aspects of fire and rescue in Wales is devolved. Schedule 7 to GoWA lists the following as devolved subjects: fire and rescue services, the provisions of automatic fire suppression systems in newly constructed and newly converted residential premises and the promotion of fire safety otherwise than by prohibition and regulation. Fire and rescue services include fire and rescue authorities in Wales.

8.2 The Fire and Rescue Services Act 2004 (the '2004 Act') specifies that a county council or county borough council in Wales is the fire and rescue authority for the relevant area, and that functions under the Act are the responsibility of the Welsh Ministers in respect of Wales, and the Secretary of State in respect of England.

8.3 The 2004 Act allows fire and rescue authorities to operate outside their areas (and this includes operating across the Welsh/English border). It also obliges authorities to group together, so far as practicable, to provide mutual assistance, and to enter into arrangements for the provision of assistance by other fire fighters.

8.4 The Fire Service College is in the process of being sold as a going concern to Capita, and we expect the sale will be completed soon. The terms of the sale stipulate that Capita continue to operate the College as a national training centre for Fire and Rescue Authorities, including those in Wales, and to offer wider national resilience and emergency services exercises.

8.5 Responsibility for promoting fire safety in Wales is devolved. However, the power to prohibit and regulate in the context of fire safety is non-devolved. In practice, this means that the Welsh Ministers promote fire safety and fire prevention within a common statutory framework for England and Wales.

8.6 That framework is set out in the Regulatory Reform (Fire Safety) Order 2005, which simplified the legislative landscape by consolidating the statutory requirements on fire safety and gave effect to a number of European Council Directives¹² designed to improve the safety and health of workers at work.

8.7 The Order minimises unnecessary administrative burdens on business and clarifies their duties on what 'general fire safety' precautions may be required. It provides business with the flexibility to decide, on the basis of a risk assessment, what fire safety measures are appropriate and cost effective in their specific circumstances. This risk-based approach is consistent with all the UK's wider health and safety legislation. Given that many businesses operate across England and Wales, a consistent and clear legislative regime on fire safety provides clarity and minimises unnecessary costs.

¹² Notably Framework Directive 89/391/EEC and its "daughter" Directives, especially the Workplace Directive 89/654/EEC.

9. Food

9.1 Paragraph 8 of Schedule 7 devolves the following to the Assembly: food and food products (including drink); food safety (including packaging and other materials which come into contact with food); and the protection of the interests of consumers in relation to food. This also covers the residues of veterinary medicines which are found in food.

9.2 This means that the Assembly is responsible for the legislative framework for food in Wales, and ensuring a high level of protection of human health and consumers' interests in relation to food. However, as the regulation on General Food Law has been developed under the single market aspects of the European treaties, this legislation by-and-large emanates from the European Union. Therefore the Assembly, in common with the other UK legislatures, simply enacts the legislative powers to enforce the legislation. The Assembly also has to enforce the legislation.

9.3 Where there is the possibility of derogations from the legislation the Assembly is able to develop powers that reflect the situation in Wales, but these instances are few. Moreover the issues affecting Wales will be common to the other administrations in the UK and any derogations required by the Assembly would be similar to those in other parts of the UK. There are formal liaison Committees for Government officials from all the administrations in the UK on food, food labelling and nutrition and the Food Standards Agency has responsibility for food safety and the enforcement of food legislation.

10. Health and Health Services

10.1 Legislative competence for the vast majority of health subjects is devolved to the Assembly. Specifically, subjects devolved to the Assembly include:

- the promotion of health;
- the prevention, treatment and alleviation of disease, illness, injury, disability and mental disorder and the control of disease;
- Family planning;
- Provision of health services, including medical, dental, ophthalmic, pharmaceutical and ancillary services and facilities;
- Clinical governance and standards of health care; and
- Organisation and funding of national health service.

10.2 The Settlement also includes exceptions to these subjects which are non-devolved. These include:

- Abortion;
- Human genetics, human fertilisation, human embryology, and surrogacy arrangements;
- Regulation of health professionals;
- Human medicines and medicinal products, including authorisations for use and regulation of prices;
- Standards for, and testing of, biological substances (that is, substances the purity or potency of which cannot be adequately tested by chemical means); and
- Welfare foods.

10.3 Welsh Ministers also exercise some specific functions in non-devolved areas. Three examples are certain executive functions under the Abortion Act 1967, including approval of independent sector clinics and the regulation of abortion certificates.¹³ (However, there are joint England & Wales regulations, and the UK Government's Department of Health processes abortion notification forms and publishes abortion data for Wales.)

10.4 Welsh Ministers have the power¹⁴ to enforce the provisions of the Medicines Act 1968, and of statutory instruments made under it. They do not have this power in relation to European Union (EU) obligations, which now make up the majority of UK medicines legislation. In practice, by agreement, the Secretary of State for Health enforces all medicines legislation in Wales on behalf of Welsh Ministers.

10.5 The Mental Capacity Act 2005 covers England and Wales and its subject matter is not devolved. However, it confers power on Welsh Ministers to make

¹³ The function of the Secretary of State to approve independent sector clinics was transferred to the National Assembly of Wales (National Assembly of Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1). The notice of terminations in Wales is provided to the Chief Medical Officer for Wales: regulation 4(2)(b) Abortion Regulations 1991, SI 1999/499 as amended.

¹⁴ Under section 108 of the Medicines Act 1968 and by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999 and paragraph 30 of Schedule 11 to GOWA.

secondary legislation for Wales, including concerning the operation of Deprivation of Liberty Standards (see paragraph 10.23).

How Devolution Works in Practice

10.6 Health is, essentially, a devolved subject, with certain aspects being non-devolved where it has made sense to take an UK-wide or GB-wide approach.

10.7 For historical reasons, the Welsh devolution boundary in regard to health differs from those that apply in relation to Scotland (where some aspects of health professional regulation are devolved) and Northern Ireland (where different legislation applies, for example on abortion).

10.8 The devolution boundary has, over the years, meant that the Welsh Government and the UK Government have adopted different policies. For example:

- in Wales - but not in England - all NHS prescriptions are free and the NHS offers free car-parking;
- the NHS in Wales and the NHS in England sometimes reach different conclusions about the routine funding of particular medicines; and
- the decision in England to have a clear division between providers and commissioners of NHS services, and to transfer some public health functions to local authorities from 1 April 2013, is not reflected in arrangements in Wales.

10.9 The UK Government wants strong co-operation between the NHS in England and the NHS in Wales. A Protocol for Cross-Border Healthcare has been in place for several years. It clarifies arrangements for a patient who lives on one side of the border and is registered with a GP on the other or who receives elective treatment in a hospital.

10.10 Legal responsibility to provide healthcare is based in England on GP practice registration (and anyone who is usually resident in the area of a Primary Care Trust (PCT) and who is not registered with a practice in another PCT), and in Wales on residence. Hence, responsibility for providing healthcare to patients resident in Wales and registered with an English GP could fall on the Local Health Board (LHB) in Wales in whose area they are resident and on the PCT in England in whose area they are registered with a GP. The protocol is therefore supported by an annual transfer of funds (£5.8 million in 2011-12) from the Department of Health to the Welsh Government to cover the costs of providing secondary care to the excess number of patients who live in England but have a GP in Wales.

10.11 The current protocol for a reciprocal transfer of commissioning responsibilities has been in place since April 2005. Discussions about extending the scope and purpose of the agreement are ongoing as part of the preparations for 1 April 2013, when in England PCTs will be abolished and clinical commissioning groups (CCGs) and the NHS Commissioning Board will take on its full set of responsibilities under the Health and Social Care Act 2012. CCGs will take on many of the responsibilities of PCTs.

10.12 Regulations¹⁵ make provision for the scope of CCG and NHS Board commissioning arrangements for health services introduced by the 2012 Act. From 1 April, the 2013 Regulations specifically provide that a person registered with a GP in England, but resident in Wales, is not the responsibility of the CCG (disapplying the usual rule that a CCG is responsible for the patients of its member practices).

10.13 The Department of Health represents the UK internationally on health related matters and, as the UK lead for the purposes of the World Health Organisation, shares information to be discussed at the World Health Assembly and its Executive Board with the Devolved Administrations. The Department of Health also pays European Economic Area (EEA) countries for Welsh patients seeking treatment on the basis of European Health Insurance Cards and retains the money paid by overseas visitors in relation to treatment in Wales.

Medicines Licensing

10.14 The legislative framework for licensing medicines is mostly provided by European legislation, implemented where necessary through UK regulations (mostly via the Human Medicines Regulations 2012). There are some non-EU derived provisions in the Medicines Act 1968 and statutory instruments made under it. UK Ministers and NI Ministers are jointly the licensing authority for the UK. In practice, their functions are carried out by the Medicines and Healthcare products Regulatory Agency (MHRA), an executive agency of DH. The same principles apply for medical devices, where the Medical Devices Regulations 2002 implement the provisions of three European Directives.

10.15 Welsh Ministers have certain executive functions for enforcing the Medicines Act 1968. The bulk of the Act, and various statutory instruments made under it, were repealed when most medicines legislation was consolidated into the Human Medicines Regulations 2012. This had the effect of removing Welsh Ministers' enforcement powers in some areas. In May 2012, MHRA agreed with the Welsh Government to review the position and to arrange to restore any former enforcement powers if appropriate. The intention is to undertake this work this year. A review will be done in parallel with the Scottish Government to ensure consistency of approach. It is not envisaged that this review will change enforcement practice, so MHRA would continue to enforce on behalf of Welsh Ministers.

Medicines Pricing

10.16 In the UK, the prices of branded medicines are regulated by the 2009 Pharmaceutical Price Regulation Scheme (PPRS), which is a voluntary scheme negotiated between DH and the pharmaceutical industry. A statutory pricing scheme exists for pharmaceutical companies that are not members of the voluntary scheme. The Transparency Directive 89/105/EEC sets a number of procedural requirements to enable the pharmaceutical industry to verify that national pricing and

¹⁵ The NHS (Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 and the NHS (Clinical Commissioning Group – Disapplication of Responsibility) Regulations 2013.

reimbursement measures do not create barriers to trade incompatible with the rules of the Treaty on the Functioning of the European Union relating to the Single Market. There would be potential risks to the free trade in medicines between Member States if there were to be different regulatory frameworks in different parts of the UK, and extra costs in replicating processes and machinery.

10.17 The Government is currently undertaking work on new pricing arrangements for branded medicines, including value-based pricing for new medicines, to be implemented from January 2014. The new arrangements are expected to be a UK-wide model that respects the Devolved Administrations' responsibilities for decision-making about which drugs are used in their respective health systems. The Department of Health is working with the Devolved Administrations on the new arrangements. Similarly, the maximum selling prices of generic medicines is a non-devolved matter; however, the current arrangements respect the Devolved Administrations' responsibilities for decision-making about the price at which generic medicines are reimbursed.

Standards for, and Testing of, Biological Substances

10.18 These functions relate to the standardisation and control of biological medicines, such as vaccines. Standardisation refers to the development of the tests and associated reference materials needed to measure the potency and quality of these medicines. These tests and reference materials need to be harmonised globally.

10.19 This function is exercisable by the Secretary of State and Northern Ireland Ministers for the whole of the UK, acting alone or jointly. In practice, it is carried out by the National Institute for Biological Standards and Control (NIBSC).¹⁶ NIBSC's standardisation work is at the heart of the international system, co-ordinated by the World Health Organisation, that provides this harmonisation, and it has facilities and expertise to carry out this task that are not found anywhere else in the world. We therefore believe there is benefit in maintaining the current arrangements.

Regulation of Health Professionals

10.20 Legislation governing the regulation of health professionals is generally UK wide¹⁷, and all four administrations in the UK are committed to making the UK-wide approach to regulation of the health care professions work well. We consider there is a strong case for maintaining the current exception. Different regulatory frameworks in different parts of the UK would result in added complication in ensuring free movement of workers, and extra costs in replicating regulators and machinery. Divergence of systems for regulating health care professionals would also create a

¹⁶ Currently within the Health Protection Agency, but due to move to MHRA on 1 April 2013.

¹⁷ In Scotland a small number of classes of health professionals are within the competence of the Scottish Parliament. The regulation of health care professionals in Northern Ireland is within the competence of the Northern Ireland authorities. However, as a general principle, both those devolved administrations are content for the Westminster Parliament to continue to legislate on a UK-wide basis.

number of complexities in relation to European Law, including managing the UK's interests in respect of the Professional Qualifications Directive.

Ethical Issues

10.21 The Government believes that for sensitive topics of ethics there is value in having a single system that applies a common framework across either Great Britain or the whole of the United Kingdom. On specific topics:

- *Abortion:* The Abortion Act 1967 sets out a statutory framework for abortion that applies throughout Great Britain. Legalised abortion remains a sensitive subject, and we consider that it remains appropriate to have a common statutory framework on abortion across Great Britain;
- *Human genetics, human fertilisation, human embryology, surrogacy arrangements:* The Human Fertilisation and Embryology Act 1990 (amended by the Human Fertilisation and Embryology Act 2008 to take account of technological developments and changes to society) applies throughout the UK, and the Government believes it is right to have a common UK-wide statutory framework.

The Human Fertilisation and Embryology Authority (HFEA) is the UK-wide public body charged with licensing and monitoring fertility clinics and research in the UK involving human embryos. Following a consultation, the Government has decided not to transfer the functions of the HFEA. It will continue as a UK-wide body.

- *Xenotransplantation:* The development of advanced therapies such as stem cell and gene therapies means that xenotransplantation is not such a live issue as it once was. The legislative framework that applies to advanced therapy medicinal products (ATMPs) is laid down at European level (Regulation (EC) No 1394/2007). Under the Regulation, there are exemptions which must be authorised by the Member State and this is done by the MHRA for the UK.
- *Organ donation:* Current law on consent to human tissue and organ donation for transplantation in England, Wales and Northern Ireland is in the Human Tissue Act 2004. That Act requires 'appropriate consent' given by the deceased whilst alive, for example by adding their name to the organ donor register, or by a nominated representative or someone in a qualifying relationship as defined in law after death. Scotland has similar legislation requiring authorisation to donation.

In December 2012, the Welsh Government introduced a Bill in the National Assembly covering the donation of organs and tissues for transplantation from deceased and living donors and the introduction of an opt-out system for deceased adult donors ordinarily resident and dying in Wales. The Welsh Government aims to obtain Royal Assent by summer 2013 and to bring the main provisions of the Act into effect in 2015. The Bill replaces certain sections of the Human Tissue Act 2004 directly related to consent for the

purposes of transplantation in Wales. In addition, should the Bill receive Royal Assent, the UK Government has agreed to the modification of a function of the Secretary of State in order that certain powers currently exercisable by him under the 2004 Act can be conferred on the Welsh Ministers.

Mental Capacity

10.22 The Mental Capacity Act 2005 covers England and Wales, and confers specific executive functions on the Welsh Ministers, but the Assembly does not have legislative competence in this area. Mental capacity is a separate and discrete area of law which affects a wide range of subjects, only one of which is health. It would not be helpful if different capacity tests applied to different subjects, or if a different test applied in England and Wales (because this could lead to very serious practical difficulties if a person without capacity moved from England to Wales or vice versa). Paragraph 9 of Schedule 7 to GoWA is silent in relation to capacity, and we therefore think that the Commission should consider the need for a specific exception to be inserted in the Schedule.

Deprivation of Liberty Safeguards (DOLS)

10.23 The "Deprivation of Liberty Safeguards" (DOLS) were introduced in England and Wales in response to the finding of a breach of Article 5 of the ECHR by the UK in the case of *HL v UK* (2004). Mr L was found not to have been deprived of his liberty in accordance with a procedure prescribed by law, and with no means to apply quickly to a court to challenge the lawfulness of the deprivation. The Mental Capacity Act 2005 was amended by the Mental Health Act 2007 to incorporate these safeguards.

10.24 DOLS require authorisation to be sought before a hospital or care home can deprive a person who lacks capacity of their liberty other than by detaining them under the Mental Health Act 1983. DOLS do not authorise treatment. Any treatment given to a person who is deprived of their liberty must be authorised in accordance with the other provisions of the Mental Capacity Act. The purpose of the DOLS is to ensure that a person's civil liberties and human rights are protected, and for this reason the protections should be consistent throughout the single jurisdiction of England and Wales. The safeguards are not currently covered by an exception to paragraph 9 of Schedule 7 to GoWA, and the Commission may wish to consider the need to insert a specific exception.

Welfare Foods

10.25 The legislative basis for the two welfare food schemes is provided by social security legislation, which covers GB (in each case, there are parallel regulations in Northern Ireland). Eligibility for the schemes is linked to social security entitlement. To take each scheme in turn:

Healthy Start

10.26 Healthy Start provides vouchers so that pregnant women and children under four years old can access milk, fruit, vegetables and vitamins. It targets families on

income-based benefits and tax credits (which are being replaced by Universal Credit). Legislation on the overall scheme is GB-wide, but DH is required to consult the Devolved Administrations in Wales and Scotland before varying it. However, the power to determine the range of foods included in, and the nature of health advice given through, the scheme is devolved, in line with the devolution of health promotion and health services. The Welsh Government pays for vouchers used in Wales, but does not contribute to the administrative costs of running the scheme.

10.27 A key current priority for the Government is to develop plans for integrating Universal Credit during the initial stages of its implementation into Healthy Start qualifying criteria. All the Devolved Administrations are involved in this process.

Nursery Milk

10.28 The Nursery Milk Scheme currently funds free milk for around 1.5 million children under five years old in 55,000 childcare settings throughout GB. The Welsh Government funds milk supplied through the scheme to children in Wales, but the administrative costs of the scheme are met by DH.

10.29 The UK Government is committed to retaining the Nursery Milk Scheme. However, in recent years, the prices claimed for milk purchased under the scheme have risen significantly, with a corresponding increase in the total cost of the scheme. DH has completed a GB-wide consultation on the “Next Steps for Nursery Milk” in order to improve the operation of the scheme, to contain costs and improve value for money, while ensuring that all eligible children under five in childcare settings continue to be entitled to receive free milk. The Government is considering responses to the consultation.

Health Protection

10.30 Health protection functions are currently undertaken by the Health Protection Agency (HPA), a UK-wide body. The Health and Social Care Act 2012 provides for abolition of the HPA and confers new health protection functions on the Secretary of State which will be exercised by Public Health England, an executive agency of DH. In general health protection functions in relation to Wales revert to Welsh Ministers, but it has been agreed, through agency arrangements made under GoWA, that the public health radiation protection functions currently within the legislative competence of the Assembly but carried out by the HPA, should be conferred on the Secretary of State (section 58 of the 2012 Act).

Tobacco Control

10.31 The UK Government recently carried out a consultation on the potential to standardise the packaging of tobacco products. While health policy is devolved, the consultation was conducted by the UK Government on a UK-wide basis with the agreement of the Devolved Administrations.

10.32 DH has received several hundred thousand responses, and has made them available to the Devolved Administrations. A summary report on the consultation will be published in due course.

10.33 The UK Government has an open mind on this issue. Any decisions to take policy action on tobacco packaging will be taken only after consideration of the consultation responses, evidence and other relevant information. If it is decided to pursue a policy that would require legislation, further consideration would be given to the most appropriate approach, including whether the relevant measures would be devolved or non-devolved.

Health and Safety

10.34 The UK Government's Health and Safety Executive (HSE) is sponsored by the Department for Work and Pensions. There is a Concordat between HSE and the Welsh Government which extends in particular to areas of common interest, such as health, agriculture and education. We view the principal benefits of GB-wide health and safety regulation as:

- HSE's authoritative position as an effective regulator;
- HSE's role overseeing, guiding and supporting the occupational health and safety work done by local authorities;
- Consistency of standards; and
- Economies of scale (e.g. single corporate functions).

10.35 It is important that there continue to be responsive arrangements between HSE and the Welsh Government, acknowledging the degree of overlap there is between occupational health and safety and devolved matters, such as public health. Recent outbreaks of Legionnaires Disease in England, Scotland and Wales are a case in point.

11. Highways and Transport

11.1 Highways and transport are devolved subjects under Schedule 7 to GoWA, including bridges and tunnels, streetworks, traffic management and regulation, and transport facilities and services. The Welsh Government is responsible for the transport strategy within Wales for those matters devolved. Where policy is reserved to Westminster the strategy is set by the UK Government for the whole of the UK, for example on aviation, or England and Wales (where matters are devolved to Scotland) – for instance on ports.

11.2 However, many areas within these subjects are non-devolved by virtue of being exceptions in Schedule 7. These cover significant areas of policy including, for the most part, aviation, shipping, rail, ports and harbours and transport security; a number of areas relating to drivers and vehicles, including driver licensing, driving instruction and speed limits; and detailed, technical exceptions relating to the regulation of the construction and equipment of motor vehicles and trailers and their use on roads.

11.3 In relation to rail, the exceptions under Schedule 7 cover the provision and regulation of railway services, apart from financial assistance in specific circumstances, transport security and railway heritage. The legislative competence of the Assembly in rail is, therefore, limited to providing some forms of financial assistance. The Welsh Government has some executive competence in relation to rail franchising by virtue of the Railways Act 2005 (see section on rail below for further information).

Ports

11.4 Ports policy is non-devolved in Wales, except for small fishing and leisure harbours, whereas it is devolved in Scotland and Northern Ireland. Ports in Wales are included in the scope of the National Policy Statement (NPS) for Ports, which reaffirms the Government's market-oriented approach and is applicable both to nationally significant port infrastructure projects and to smaller applications that are dealt with by the Marine Management Organisation (MMO). The NPS does not therefore direct port strategy in detail in Wales, but permits ports to respond to local conditions for economic development.

11.5 The UK Government believes that the present devolution boundary works satisfactorily. Welsh ports compete with those in the rest of Britain on an even footing. The main economically significant ports in Wales are Milford Haven (a trust port¹⁸) and private company ports in the ABP South Wales group and at Holyhead;

¹⁸ A trust port is not a 'trust' in the legal sense but, like all statutory harbour authorities, has its own constitution under private Act of Parliament and/or harbour orders under the Harbours Act 1964. This legislation provides powers for the operation and maintenance of the harbour and appointment of harbour master, as well as setting its constitution (such as the rules for appointment of Board members). A trust port is in some ways analogous to a company limited by guarantee, and its surpluses are retained in the business, which has no external owner. Under the Ports Act 1991, there are powers for a trust port to sell its business or for the Secretary of State to direct it to do so. For the present, Ministers have signalled no intention to exercise this power, and an application by Dover Harbour Board was recently rejected.

but there are numerous smaller private, trust and municipal ports around the coast, which are within the ambit of UK Government policy.

11.6 The boundary between non-devolved ports policy and areas of devolved policy can be complex, but is workable in practice. The Welsh Government is responsible for marine planning in the Welsh marine area, and marine licensing in the Welsh inshore area (apart from certain energy activities). In practice, this does not create significant difficulties in respect of ports policy. Similarly, the fact that policy on matters such as inland transport connections and economic development is largely devolved, and policy on ports is non-devolved, has not created practical difficulties. This is no doubt in part because of the permissive nature of the NPS on ports.

11.7 The Welsh Government has from time to time favoured ports policy being devolved. One focus of interest has been in relation to the future ownership and governance of Milford Haven, a 'trust port' and the most economically important in Wales.

11.8 The Commission may wish to examine the devolution boundary in respect of ports, noting that the UK Government should remain responsible for supranational matters.

Rail

11.9 The provision and regulation of rail services is non-devolved, apart from the provision of financial assistance in specific circumstances. However, in terms of executive competence, the Secretary of State for Transport and the Welsh Ministers are joint signatories to the Wales and Borders rail franchise, currently operated by Arriva Trains Wales (ATW). The division of responsibilities between the two Governments is governed by the Joint Parties Agreement.

11.10 In particular, the UK Government is responsible for:

- specifying and funding the ATW services that operate wholly in England;
- re-letting the franchise (the current franchise runs to 2018);
- serving as the Operator of Last Resort;
- improving the accessibility of selected stations in England and Wales; and
- rolling stock enhancements for ATW England-only services.

11.11 The Welsh Government is responsible for:

- specifying and funding the ATW services that operate wholly in Wales and across the Wales-England border (together, the majority of the ATW franchise);
- the day to day management of the franchise including on the England only services; and
- rolling stock increases for services run by ATW within Wales and across the border (from the Welsh Government's own budget).

11.12 The Welsh Government also has powers to purchase additional services for Wales via franchises let by the Department for Transport (DfT), and to invest in infrastructure in Wales or England for 'Welsh purposes'.

11.13 The Joint Parties Agreement between the UK Government and the Welsh Government, which came into force on 1 April 2006, stipulates that the UK Government is responsible for re-letting the franchise; being the Operator of last resort; and for Efficient Operator Reviews and enforcement issues.

11.14 The current devolution boundary in respect of the Wales and the Border franchise means that the in-franchise financial risk sits with the Welsh Government but the financial risk of a new franchise (and catastrophic failure) remains with the UK Government. We believe this is undesirable. The Welsh Government has expressed a keen interest in the transfer of the UK Government's residual rail responsibilities in respect of the franchise, as set out in the Joint Parties Agreement.

11.15 As a consequence, DfT is in discussion with the Welsh Government to assess the feasibility of devolving franchise responsibilities, the financial and legal requirements of doing so and how the UK Government's interests in services affecting locations in England could be protected. Any complete transfer of franchise responsibilities could necessitate limited changes to the franchise map.

11.16 The Government would welcome the Commission's consideration of the current devolution boundary for railways, and the potential for changes to those arrangements.

Traffic

11.17 The following matters in relation to vehicle standards and traffic management are non-devolved: provisions on car tax, car standards and safety and regulation of motorways and roads standards, driver, learner driver and driving instructor licensing, insurance and licensing of public service vehicles and heavy goods vehicles drivers and safety issues and road traffic offences.

11.18 In general, ensuring compliance with EU law is a reserved responsibility of the UK Government. The UK Government believes that there are advantages in maintaining co-ordinated strategies in respect of vehicle standards across the UK as the most effective way to deliver our international commitments, and therefore provides national systems in accordance with EU legislation.

11.19 The Driver and Vehicle Licensing Agency (DVLA) provides services in relation to vehicle licensing in the UK and driver licensing in Great Britain. It also implements EU legislation, ensuring consistency of interpretation of Directives and efficiency in having this done by a single body.

11.20 The Driving Standards Agency (DSA) is a national (Great Britain) organisation with responsibility for setting the standards and testing drivers, riders and driver trainers. DSA devolves services to Northern Ireland.

11.21 The Vehicle and Operator Services Agency (VOSA) provides a range of licensing, testing and enforcement services with the aim of improving the roadworthiness standards of vehicles, ensuring the compliance of operators and drivers, and supporting the independent Traffic Commissioners. VOSA devolves services to Northern Ireland.

11.22 The Vehicle Certification Agency is the UK's national approval authority for new on and off-road vehicles and their systems and components, ensuring that these have been designed and constructed to meet internationally agreed standards of safety, security and environmental protection.

11.23 Responsibility for some aspects of road traffic is devolved in Scotland. Scottish Ministers are able to determine the level of the Scottish national speed limits (except for the national limit of 30mph on restricted roads) and, with the agreement of the Secretary of State, to make regulations to specify traffic signs to indicate that limit. However, most road traffic legislation and regulations applies across the whole of Great Britain, including that applying to the standard of driving, driver licensing, insurance and pedestrian crossings.

11.24 Providing certain national standards for using the integrated road network across Great Britain helps ensure motorists travelling across a common land mass in the same country do not have to adhere to a variable set of standards and requirements in their road use. It helps road users not to unwittingly breach those standards and requirements, and the consistency of those standards across the country supports both road safety and record accuracy. The powers and responsibilities to maintain, manage, operate and improve roads are devolved and are often a local, rather than national, responsibility.

Roads

11.25 Responsibility for all categories of roads in Wales is devolved, including motorways and any bridges and tunnels on those roads. Streetworks are also devolved. From an operational perspective, the Welsh Government is responsible for the provision and maintenance of roads in Wales, and the Highways Agency (HA) fulfils the equivalent functions in England for the strategic road network. The HA has an agreement with the Welsh Government that HA traffic officers provide services to the whole of the Severn Crossing - including that part that lies in Wales. On general maintenance, each jurisdiction maintains its own roads up to the border unless specific local arrangements have been negotiated.

11.26 Two routes through Wales form part of the trans-European road network: the M4 and feeder roads (A48 and A40) to Fishguard in the south, which form part of the route from Felixstowe to Ireland, and the A55 in the north, which forms part of the route from Holyhead to Immingham. The Commission may wish to consider whether current arrangements for the maintenance and upgrade of these routes in Wales could be improved, particularly in the context of responsibilities for large-scale projects to upgrade and improve these routes.

Bus Services

11.27 Under the current system - a deregulated and mostly privatised system introduced by the Transport Act 1985 - bus operators throughout Great Britain are allowed to provide bus services as they choose, subject to meeting certain safety and competency standards. The regulation of bus services that does exist is either not devolved or only partially devolved.

Public Service Vehicle Operator Licensing

11.28 Operator licensing is not devolved and is a specific exception in Schedule 7 to GoWA. Operator licenses are issued by the Traffic Commissioners and enforcement activity is undertaken with support from the Vehicle & Operator Services Agency. The Traffic Commissioner responsible for Wales is also responsible for the West Midlands and can investigate bus companies who are not meeting their licensing obligations and impose sanctions.

Registration of Bus Services

11.29 The registration of local bus services is not devolved and is again a specific exception in Schedule 7. An operator must register proposed services (routes and timings), give notice of changes and meet punctuality standards set by the Traffic Commissioners. The Traffic Commissioner responsible for Wales and the West Midlands can investigate bus companies who are not running services in accordance with their registration and impose sanctions.

Alternatives to a Deregulated Bus Market

11.30 As an alternative to a deregulated bus market, Quality Contract Schemes (QCS) allow a local authority to suspend the deregulated local bus market and instead allow only services provided under contract. Quality Partnership Schemes (QPS) allow local authorities to restrict the use of 'facilities' (bus stops, bus lanes etc) to bus operators that provide services of a prescribed quality – as long as those facilities are improved commensurately.

11.31 These schemes are set out in the Transport Act 2000 which applies to both England and Wales. However, changes made by the Local Transport Act 2008 mean that while the Secretary of State no longer has a role to play in approving QCS in England, Welsh Ministers remain responsible in Wales.

11.32 The Commission may wish to investigate the devolution, or further devolution, of the regulation of local bus services and operators in Wales.

Concessionary Travel

11.33 The Concessionary Bus Travel Act 2007 (the CBT Act) extends to England and Wales. It establishes a national concession in England (local authorities and the Devolved Administrations can be more generous if they fund enhancements locally) and it provides for reciprocal arrangements so that passes from Wales, Scotland and Northern Ireland could be mutually recognised at an unspecified future date. It

provides for the Secretary of State for Transport and Welsh Ministers to have flexibility in deciding which categories of concessionaire will receive which form of concession in England and Wales.

11.34 There are differences in the national schemes in England and in Wales and in bus pass design in each country, so before mutual recognition could be pursued there would need to be careful consideration of the practical arrangements, including finding a suitable mechanism for reimbursement of bus operators providing the free travel concession.

11.35 The CBT Act does not define the age of entitlement to the statutory travel concession. The Devolved Administrations may make, and have made, the concession available at an earlier age of entitlement to that implemented in England.

Aviation

11.36 International engagement on cross-border negotiations relating to aviation and marine transport matters is best undertaken at a UK level, with the UK Government leading on policy and working closely with the Devolved Administrations on matters that overlap with devolved competence. We believe it is important that the management and strategic direction is determined at the UK level.

11.37 Aviation, air transport, airports and aerodromes are non-devolved with some specific exceptions that relate to the provision of financial assistance to providers or proposed providers of air transport services or airport facilities or services; the publication of strategies about the provision of air services; and the regulation of the use of aircraft carrying animals.

11.38 The Welsh Government also has executive powers to provide financial assistance in relation to air transport services (i.e. services for the carriage by air of passengers or cargo) under section 11 of the Transport (Wales) Act 2006, where it doesn't believe the service/facilities would be delivered without that assistance.

11.39 We believe the devolution boundary in respect of aviation is in the right place. The main aviation-related focus in Wales is on Cardiff Airport, as the country's only airport of commercial significance. Some significant issues relating to the operation of commercial air services from Cardiff Airport, such as State Aid and public service obligations, are closely linked to European legislation and, we suggest, there is little to consider in terms of the devolution settlement. The Welsh Government recently announced plans to acquire Cardiff Airport.

11.40 The UK Government is keen to ensure the views of the Devolved Administrations are represented in UK aviation policy. Specifically, our recent consultation on the draft Aviation Policy Framework for the UK provided an opportunity for Devolved Administrations to submit their views on the Government's high-level aviation strategy.

11.41 In addition, the Government has asked Sir Howard Davies to chair an independent commission tasked with identifying and recommending to the Government options for maintaining the UK's status as an international hub for

aviation. Details of the Commission's membership and its terms of reference were announced on 2 November. The Devolved Administrations will be able to submit their views to the Commission.

Accident Investigation Services

11.42 The accident investigation branches of the Department for Transport cover the whole of the UK and investigate accidents affecting UK interests across the world. This enables them to pool information and ensure that safety improvements can be identified, recommended and instituted on the widest base of data. The three independent investigation bodies, covering air, rail and marine accidents, also provide expertise and training to various bodies in the transport industry and provide evidence to fatal accident inquiries.

Severn Crossings

11.43 The Severn Crossings are major transport links between Wales and England, and are currently run by a private concessionaire, Severn River Crossings plc (SRC). The current concession with SRC is expected to end in 2018. After the end of the current concession, the Government will need to continue to toll in order to recover its costs.

11.44 Whilst the future of the Severn Crossings is a matter of importance to the Welsh economy, the UK Government does not believe that it raises any issues in terms of the devolution or otherwise of powers to the Assembly or the Welsh Government. As such, we consider that this issue is best considered outside the Commission's work.

12. Housing

12.1 The Assembly has wide ranging legislative competence on housing, including most aspects of housing finance (other than schemes funded by the UK Government which relate to social security or the provisions of benefits), encouragement of home energy efficiency and conservation (otherwise than by prohibition or regulation), regulation of rent, homelessness and residential caravans and mobile homes. We consider that there is little scope for further devolution in the area of housing.

13. Justice

13.1 Justice is non-devolved under the Welsh devolution settlement. The Assembly exercises no legislative competence in terms of justice, and the Welsh Ministers have no executive powers directly in relation to the justice system. However, Acts of the Assembly can create offences and Welsh Ministers have executive powers in relation to devolved tribunals.

13.2 The justice system in Wales is administered by the Ministry of Justice (MOJ). This includes the courts, prisons, probation services and youth justice. The Government is committed to protect the public and reduce reoffending; provide a more effective, transparent and responsive criminal justice system for victims and the wider public (on which we published our plans for reform in July 2012¹⁹); and provide fair and simple routes to civil and family justice.

13.3 Whilst justice is not devolved, the Welsh Government does play a role in the delivery of justice services in Wales. MoJ's responsibilities interact to a degree with those of the Welsh Government, and there is a good deal of co-operation and good practice on the ground. In particular, MOJ responsibilities for offender management, youth justice and criminal, civil, family and administrative law and justice interrelate strongly with the Welsh Government's responsibilities in respect of education and training, health and health services, housing, local government and social welfare.

Single Legal Jurisdiction

13.4 England and Wales share a single legal jurisdiction, which has continued to evolve over hundreds of years to meet the changing needs of British society. We support the continuation of the current unified system, which in our view works well whilst offering scope for close working between devolved and non-devolved partners in delivering justice services in Wales. We believe that a separate Welsh legal jurisdiction would offer questionable tangible practical benefits to people living in Wales and could complicate the system unnecessarily for those who need to use it. We note that it would also result in substantial additional cost, which we estimate to be £105-£125 million²⁰ per annum.

13.5 Distinct aspects of the coherent justice system in England and Wales cannot easily be considered separately. In the following paragraphs, we consider in turn a number of elements of the system, but the analysis should be viewed in the round.

¹⁹ Swift and Sure Justice: The Government's Plans for Reform of the Criminal Justice System, July 2012 www.justice.gov.uk/downloads/publications/policy/moj/swift-and-sure-justice.pdf?type=Finjan-Download&slot=000002B0&id=000002AF&location=0A64420F

²⁰ This estimate assumes there would be a need to replicate many existing justice structures (notably prisons) and arrangements which currently apply across the border.

The Criminal Justice System

The Prison Service

13.6 Prisons across England and Wales are linked at the strategic level, with common, overarching management and support of the prison estate, and operationally, with placement and movement of prisoners around the estate managed to provide the correct interventions to address offending behaviour.

13.7 At the end of September 2012, there were just over 2,100 prisoners originating from Wales who were being held in establishments in England. Based on current numbers, a distinct Welsh prison system, which sought to accommodate exclusively all Welsh offenders, would be short of at least 1,500 prison places.

13.8 Some of the challenges in establishing a separate Welsh prison estate include:

- There is no male prison in North Wales – the courts in North Wales are currently served by HMP Altcourse near Liverpool as it is not practical logistically to serve them from South Wales prisons.
- There is no female prison in Wales – the majority of the female prisoners originating in Wales (of which there are over 200) are currently held at HMP Eastwood Park in Gloucestershire.
- There is no high security prison in Wales.
- HMP Usk and Prescoed operates as a national resource, providing specialist Sex Offender and category D training accommodation for prisoners from across England and Wales.

13.9 Prisons in Wales also benefit from national support in the event of an incident, with access to the national gold command structure and tornado teams. Training of prison staff is centralised.

13.10 We 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 we estimate that it would cost approximately £10 million more per annum to manage a separate prison service in Wales.

13.11 We recognise the benefits of joined-up working with the Welsh Government in relation to prisoners. In particular, the Welsh Government is responsible for the provision of healthcare and learning opportunities within prisons, and this means the prison service in Wales works closely with devolved bodies such as Local Health Boards and Further Education colleges and training providers at a local level. The Welsh Government funds Local Health Boards, for example, to provide mental health services for young people within the criminal justice system in Wales and young offenders housed in Parc Prison in Bridgend.

13.12 On 10 January 2013 the UK Government announced that feasibility work would start on what would be Britain's biggest prison as part of a major programme

of updating the country's prison estate. One of the sites under consideration for the new prison is in North Wales; with the other two sites being considered in London and the North West of England.

The Probation Service

13.13 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. However, 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.

13.14 There is a great deal of joint-working between devolved and non-devolved partners in Wales, for example between WPT, youth offending teams, police and local authorities. Health issues including mental health, addiction and substance misuse are closely linked to offending behaviour in many cases and strong relationships have developed between WPT, the Welsh health service, local authorities and the Welsh Government to deliver these support services.

13.15 On 9 January 2013 the UK Government published a consultation that sets out proposals to reform the management and rehabilitation of offenders in the community. The outcome of this consultation will be used to inform the future delivery of probation services in England and Wales.

Youth Justice

13.16 The youth justice system is distinct from the adult system and is overseen by the Youth Justice Board for England and Wales. The principal aim of the youth justice system is the prevention of offending by children and young people. There is no equivalent overriding statutory aim for adult offenders. It covers 10-17 year olds and includes a separate sentencing framework with a range of disposals, a dedicated youth court with specially trained magistrates, a distinct under 18 youth secure estate and a dedicated children and young persons' workforce. Youth Offending Teams (YOTS) are responsible for the delivery of youth justice services locally such as the assessment of offenders, provision of court duties and supervision of community-based sentences, with the assistance of their statutory partners and other organisations.

13.17 The Government considers that youth justice services work well, and indeed are a model of effective service provision with close working between devolved and non-devolved partners. There are in particular close links between youth justice services and devolved children's services.

13.18 There are arguments for and against devolving youth justice. On the one hand separating youth justice in Wales, but retaining the England and Wales criminal justice system, could make transitioning young offenders into adult services more challenging. However, this could be balanced to some extent by even closer interchange between childrens' and youth justice services and a reduction in the time that Youth Justice Board Wales staff spend adapting centralised services to reflect fully the position in Wales.

13.19 We 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.

13.20 Challenges specific to custodial provisions which could flow from establishing a separate Welsh youth justice system include:

- there are currently no Secure Training Centres in Wales;
- there are no secure establishments in North Wales;
- there is no provision for older girls; and
- there are no specialist units in Wales, so a separate Welsh system may not be able to cater for all the needs of young people in Wales without purchasing places as necessary in England.

13.21 The system currently operates across England and Wales; Welsh young people are placed in secure establishments in England and vice versa depending on their need, the type of establishment required and capacity across the estate.

13.22 The Ministry of Justice is reviewing its youth secure estate and the needs of young people in Wales are being considered as part of this.

13.23 In the context of community provisions, although the work of Youth Offending Teams (YOTs) is non-devolved, they sit within local authorities and three of the five statutory partners are devolved. In addition, YOTs work very closely with devolved services, for example children's services. There are only 18 Welsh YOTs in total and secure placements catering for 81 young people. In principle, devolution of youth justice community provision could be straight forward, but it is closely connected with the criminal justice system and the number of young people involved is small.

13.24 The Youth Justice Board and Welsh Government work closely together. The Wales Youth Justice Advisory Panel, whose primary purpose is to assist the Welsh Government and the Youth Justice Board in implementing policy, is jointly convened by both. The Welsh Government has recently consulted on proposals to improve services in Wales to better meet the needs of children and young people who are at risk of entering, or are already in, the youth justice system and the Youth Justice Board Wales was heavily involved in this process.

Courts and Tribunals Administration

13.25 HM Courts and Tribunals Service (HMCTS) Wales has an established and discrete identity within Wales and works effectively with operational partner agencies (both devolved and non-devolved) such as CAF/CASS Cymru, local authorities, Wales Probation Trust, Youth Justice Board Wales and the Administrative Justice Unit in the Welsh Government.

13.26 The larger tribunals – dealing with Social Security and Child Support, Immigration and Asylum, Employment and Tax – are not devolved, and fall inside the UK wide First-tier and Upper tribunal structure. These tribunals make up the vast majority of caseloads for the tribunals operating in Wales, and allow for flexible membership, independence from departments whose decisions are at question and consistency in development of procedural rules.

13.27 There are also a number of tribunals in Wales adjudicating in devolved policy areas, for example schools admissions, mental health and property valuation for council tax purposes. These tribunals have not been reformed, and lack the features of tribunals in the UK wider unified structure: Welsh Ministers have executive functions enabling them to write rules of procedure, appoint members, and determine terms and conditions of service. Administrative functions are exercised by the Welsh Government rather than HMCTS in these cases. The relationship between the devolved and non-devolved tribunals is complicated and may benefit from consideration by the Commission to provide further clarity.

13.28 The Welsh Committee of the Administrative Justice and Tribunals Council (AJTC) carried out a review of tribunals operating in Wales which reported in 2010. The reforms recommended were accepted by the Welsh Government and work is in train to reform the existing tribunal system. MOJ has recognised that there is still much work to be done in this area and has agreed to continue funding a non-statutory body to replace the Welsh Committee once the AJTC is abolished (subject to Order of Parliament under the Public Bodies Act 2011).

13.29 Specific courts for Welsh cases now sit in Wales, with competence in relation to claims of larger value or greater complexity. Such changes include: the creation of a Mercantile Court for Wales; the Administrative Court for most judicial review cases involving decisions of Welsh public authorities (including the Assembly) and regular sittings of the Court of Appeal Civil/Criminal Division in Cardiff.

13.30 We think that joint working between devolved and non-devolved agencies is important; as is the development of a distinct Welsh identity within the existing structure. There are no specific practical operational issues or complexities with establishing a separate courts and tribunals' administration system in Wales, but we 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.

13.31 The current system of UK wide tribunal administration on non-devolved subjects provides consistency for users, and integration and joined-up working

between First-tier tribunals. A Welsh Tribunal Contact Group has been established to provide a forum for members of both devolved and non-devolved tribunals to discuss common issues and best practice.

13.32 As we noted earlier, Acts of the Assembly can create criminal offences. However, in doing so there is nothing to require the Assembly, the Welsh Government or any Assembly Member or Assembly Committee bringing forward a Bill, to have regard for the likely costs being imposed on HMCTS (as well as the wider justice system, for example prisons) when the new offences come into effect. This is in contrast to UK Government Departments, who must obtain the approval of the Justice Secretary before creating new offences. The Commission might wish to consider this issue, and whether it is best dealt with administratively (for example, via a protocol) or in legislation.

The Judiciary

13.33 The Government believes that the benefits of retaining a single judiciary for England and Wales would be significant; separate jurisdictions could have important practical and logistical impacts in respect of judicial appointments, deployment, training and specialist skills, and the roles of the Lord Chancellor and Lord Chief Justice, including:

- Limited exposure to hearing the most serious, complex and/or difficult cases that are usually dealt with by the High Court or Court of Appeal in Wales. If there were a separate jurisdiction, only one or two judges might hear all these types of cases in Wales over a 5-10 year period.
- A Welsh judiciary's loss of interaction with, and insights from, other judges gained when sitting across Circuit boundaries or attending Judicial College training events. These contribute to a consistency of approach and development of professional standards amongst the judiciary.
- Wales might lose some higher calibre judicial candidates to England. Given the relatively few judicial appointments made each year in Wales, candidates often apply outside of Wales for their first appointment. Appointments under a separate jurisdiction may reduce the ability for judges to transfer across Circuit boundaries.

13.34 Establishing a separate Welsh judiciary would result in the creation of a new Welsh Judicial Office, which we estimate would cost approximately £1.5 million per annum (taking into account small savings to an English Judicial Office). In addition, we 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.

13.35 Currently HMCTS provides an annual contribution to the UK Supreme Court budget. This is calculated relative to the number of cases the Supreme Court hears from England and Wales and therefore a separate Welsh jurisdiction would be required to contribute towards the Supreme Court.

13.36 It might be expected that the creation of a separate Welsh judiciary would enable the provision of a more comprehensive bilingual service for Welsh court users, but this would be limited (as now) by both the number of the judiciary and solicitors and barristers competent to conduct cases in Welsh, and the number of litigants or defendants who require this. That said, good progress is being made under the current England and Wales system; for example, the Judicial College works effectively with HMCTS's Welsh Language Unit to provide judicial training in Welsh. The Welsh judiciary is developing guidance on improving the provision of a bilingual service within the current (unitary) arrangement.

Family Justice

13.37 Overlaps exist within the public law family justice system in Wales due to the nature of responsibilities of the UK and Welsh Governments. In particular, whilst family justice, including the family court system, is non-devolved the Welsh Government is responsible for social welfare in Wales, and as a consequence Cafcass Cymru is accountable to Welsh Ministers.

13.38 Both the private and public family justice system in Wales works well, with good cooperation between devolved and non-devolved partners, for example Cafcass Cymru and HMCTS Wales. The Family Justice Network, established by the Welsh Government, brings together the key players within the family justice system in Wales²¹ to improve services and outcomes for children and families in Wales. The Network has the same remit as the Family Justice Board and compliments the work of the Board by ensuring that it takes full account of Welsh perspectives on non-devolved family justice issues. Four Local Family Justice Boards in Wales bring together the key players at a local level to improve the delivery of family justice. Current arrangements already allow integration between the activities of public bodies engaged in the protection of children to take place.

13.39 A Single Family Court (SFC) for England and Wales has been recommended by the Family Justice Review and is currently the subject of legislation before the UK Parliament. The SFC is designed to simplify the court process for users and allow for more effective resource allocation.

Legal Aid

13.40 Legal aid is administered on an England and Wales basis. Whilst the Legal Services Commission (LSC) has a small Wales office that provides contract management functions and all Wales-based engagement, including working with the Welsh Government, services are procured centrally and Wales does not have a separate procurement function or capability.

13.41 Separating the current England and Wales 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

²¹ 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.

Equalities

13.42 Equality [of opportunity] is largely non-devolved. The Equality Act 2010 provides a comprehensive legal framework in relation to discrimination on the basis of specified protected characteristics. There are a few exceptions to the non-devolved nature of the Equality Act:

- the power for Welsh Ministers to prescribe specific equality duties for public bodies in Wales (The equality duty comprises a General Duty which applies equally across GB, and specific duties (regulations) which are devolved); and
- the socio economic duty which requires public authorities to have due regard to reducing the inequalities of outcome from socio economic disadvantage. We have announced our intention to repeal this duty (which has never been commenced) in respect of GB-wide and English authorities. We are working with the Welsh Government to agree an approach which allows Wales to commence the duty for Welsh bodies (as specified in the Equality Act 2010).

13.43 The 2006 Equality Act established a decision-making committee for Wales to advise the Equality and Human Rights Commission about the exercise of its functions. The committee sets the strategic direction of the Commission's work in Wales. Ann Beynon OBE was reappointed as Welsh Commissioner in December 2012. The EHRC's funding is not nation-specific, and it is for the Commission to determine how much resource it allocates to Wales (but the EHRC is legally required to ensure that the Committee receives a share that is sufficient to enable it to exercise its functions.)

14. Local Government

14.1 The Assembly is able to legislate on the constitution and structure of local government, local electoral arrangements, the powers and duties of local authorities and their members and officers and local government finance.

Local Government Elections

14.2 Cabinet Office has overall responsibility within the UK Government for electoral registration and franchise, party funding and matters relating to the conduct and administration of elections. The Wales Office leads on electoral matters in relation to the Assembly. These issues cut across elections to Westminster, Assembly elections and local elections, and contain a wide spectrum of powers and responsibilities (some of which are devolved).

14.3 The franchise, electoral registration and electoral administration in respect of local government elections in Wales are non-devolved, but the electoral arrangements²² for local authorities are devolved. The constituency boundaries for Westminster and Assembly elections are not devolved, but for local elections in Wales they are.

14.4 The conduct of local government elections in Scotland has been devolved since the Scotland Act 1998. Scottish Ministers are responsible for making the rules on the conduct of Scottish local elections, but not for the franchise or electoral registration in relation to those elections. The Commission may wish to consider whether electoral administration in regard to local government elections in Wales, which would cover setting the rules for the conduct of the elections, should similarly be devolved to Welsh Ministers. We would expect the franchise and electoral registration to remain non-devolved.

Business Rates

14.5 Legislative competence for business rates is devolved, and the Welsh Government is responsible for policy on the collection and redistribution of business rates in Wales. Resources from business rates in Wales are, however, partly dependent on Barnett formula consequentials from the distribution of rates in England. In practice, therefore, whilst the Welsh Government has the power to, for example, set its own business rates multiplier and reliefs policies, there is currently limited incentive to set rates that differ significantly from those set for England.

14.6 The Silk Commission considered business rates in Part I of its remit, and recommended that they be fully devolved, subject to the Welsh Government and the UK Government agreeing the details and assessing any risks involved. We are currently considering this recommendation.

²² These include arrangements for the numbers of councillors for a local government area, and the number and boundaries of electoral areas into which an area is to be divided.

Sunday Trading

14.7 Sunday trading is non-devolved, and is specifically excepted in Schedule 7 to GoWA. The Sunday Trading Regulations (1999) apply to England and Wales. Sunday trading is devolved in Scotland, and the regulations do not apply there. Although some stakeholders have called for a relaxation of the current rules, the UK Government recognises that Sunday trading is an emotive issue and has no plans to change the legislation.

15. National Assembly for Wales

15.1 The Assembly has wide ranging legislative competence in relation to its own affairs. We consider below two matters relating to the Assembly where legislative competence is non-devolved.

Assembly Elections

15.2 National Assembly elections are regulated by secondary legislation which the Secretary of State makes under the GoWA. These provisions are framed so as to ensure that the law relating to Assembly elections is broadly similar to that which applies at Parliamentary and local elections.

15.3 GoWA sets out in statute a number of instances where the Secretary of State for Wales may act in the case of Assembly elections. The Secretary of State can, for example, after consulting with Welsh Ministers, vary the date of Assembly elections by up to one month either before or after the first Thursday in May, principally if there is a need to avoid a clash with other elections. Similarly, the Secretary of State for Wales may call an extraordinary (early) Assembly general election in the event of a national crisis or an impasse in the Assembly. In Scotland, these powers rest with the Presiding Officer and so the Commission may wish to examine whether a similar arrangement is practical in Wales.

15.4 Section 13 of GoWA provides for the Secretary of State to question the conduct of elections for the return of Assembly members and elections in the event of any irregularities. This function ensures that appropriate electoral safeguards are built into the system and allows for a degree of independent scrutiny. We believe this function should continue to be undertaken at a distance from the Assembly and the Welsh Government.

15.5 GoWA confers power on the Secretary of State for Wales to make the conduct Order relating to Assembly elections, although in practice this is agreed with the Welsh Government, and the disqualification order is drafted by the Welsh Government, before being presented to Her Majesty in Council by the Secretary of State for Wales. As the First Minister is a Privy Counsellor, the disqualification order could be presented to the Privy Council by him without any need for legislative changes. In this context, the Commission may wish to consider whether it is appropriate for the Welsh Ministers to be responsible for making the conduct Order relating to Assembly elections, within the context of the framework of the Representation of the People Acts.

15.6 The Scottish Ministers are responsible for making the conduct rules for elections to the Scottish Parliament, following the Scotland Act 2012. This includes the responsibility for fees and charges payable to returning officers in relation to elections to the Scottish Parliament, something which has been devolved in Wales since 1999.

15.7 The Calman Commission did not make recommendations in relation to the setting of boundaries for Scottish Parliamentary elections and this remains reserved to the UK Government. The link that formerly existed between Westminster and

Scottish Parliamentary constituencies was broken in 2004. An equivalent change ending the link between parliamentary boundaries in Wales and Assembly boundaries was made in the Parliamentary Voting System and Constituencies Act 2011.

Statutory Register of Lobbyists

15.8 Lobbying plays an important role in the policy making process, ensuring that Ministers and senior officials hear a full range of views from those who will be affected by Government decisions, but it must be conducted in a transparent and open way.

15.9 The UK Government has made a clear commitment to increasing the transparency of what we do - making it easier for the public to hold politicians and public bodies to account. This has already resulted in the publication of details of ministerial meetings, Government procurement and a number of other items of public interest. Some in the Assembly have called on the Welsh Government to publish details of its meetings with lobbyists similar to that published by the UK Government.

15.10 We received a large response to our consultation on *Introducing a Statutory Register of Lobbyists* last year, which we are currently considering. As part of the policy development process, we are examining the scope of the register, including potential application in the Devolved Administrations.

16. Public Administration

16.1 The Assembly exercises legislative competence in relation to the Public Services Ombudsman for Wales; the audit, examination, regulation and inspection of auditable public bodies in Wales, including the Assembly itself, the Assembly Commission and the Welsh Government; inquiries in respect to matters in relation to which the Welsh Ministers, First Minister or Counsel General exercise functions; and equal opportunities in relation to equal opportunity public authorities; and access to information held by open access public authorities.

The Civil Service in Wales

16.2 The civil service is not a devolved subject. Civil servants supporting the Welsh Government are members of the Home Civil Service (HCS).

16.3 The 1997 White Paper 'A Voice for Wales' considered how the Assembly would work in practice. It concluded that:

'it is vital that the Assembly should continue to benefit from the high professional standards, expertise and – above all – integrity for which the British Civil Service is renowned. The staff of the Assembly will therefore be members of the Home Civil Service...'

16.4 Similarly, the 1997 White Paper 'Scotland's Parliament' explicitly considered the subject of how best to configure the civil service within Scotland as part of the implementation of the devolved settlement. While focussing on Scotland, it concluded that maintaining a united Home Civil Service across Scotland, England and Wales was important for the following reasons:

- as a means of safeguarding the common standards of professionalism and political neutrality central to the underpinning principles of the UK's civil service;
- as a means of securing a complementary and integrated approach to policy-making, particularly in areas of overlapping responsibilities;
- as a means of helping to ensure good lines of communication between administrations;
- to facilitate the exchange and development of staff; and
- to achieve economies of scale in terms of infrastructure.

16.5 The number of permanent FTE staff within the Welsh Government totals 5,310²³ (June 2012). However, 26,660 are employed by UK Government departments and agencies in Wales. A substantial number of these work on UK-wide

²³ [Table 12 Civil Service employment; regional \(GOR\) distribution by government department, 'Civil Service Statistics, 2012 Tables', <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcm%3A77-279335>](http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcm%3A77-279335)

matters, for example at the Driver Vehicle Licensing Agency in Swansea and the Intellectual Property Office at Newport.

16.6 There is a separate Civil Service Code for the Welsh administration.²⁴ This Code makes clear civil servants' accountability to Welsh Government Ministers.²⁵ The unified Civil Service has worked well since 1999 as civil servants across all administrations have supported their respective Ministers in line with the underlying principles of a neutral and impartial civil service.

16.7 Being part of a unified and politically neutral civil service has also permitted numerous instances of effective informal contact between administrations on issues both of policy and corporate governance.

16.8 Any more substantial change would inevitably entail transitional costs, negotiations with the trades unions, transfers of financial responsibility for pensions and additional funding for the Welsh Government to take over functions currently delivered by the UK Government. All of these would need to be funded in accordance with the Statement of Funding Principles.

16.9 We believe that present arrangements offer appropriate flexibility over how different administrations are structured; their patterns of recruitment; and the terms and conditions provided to the vast majority of their staff. This flexibility allows those in the civil service supporting Welsh Ministers to reflect their distinctive priorities and needs. At the same time, a united Home Civil Service also ensures that civil servants and others working in Wales are part of a wider framework that brings opportunities for exchange of people and ideas as well as reinforcing the professionalism of the civil service.

16.10 This was agreed by the Calman Commission which analysed the evidence for creating a separate Scottish civil service. The final report stated that:

'the Commission believes that a unified civil service is a desirable component of a political Union' and 'therefore, is not in favour of devolving the civil service in Scotland'.²⁶

16.11 We believe that civil servants supporting the Welsh Government should continue to be members of the Home Civil Service. The present arrangements are working well and have important benefits for the people of Wales and the wider United Kingdom. They provide for a professional civil service that loyally serves Ministers from any political party or parties in the Welsh Government.

24

<http://wales.gov.uk/about/recruitment/currentvacancies/generalappointments/civilservicecode/?lang=en>

²⁵ In other respects this Code is substantially identical to the main Home Civil Service code.

²⁶ Paragraph 4.201, p.155 <http://www.commissiononscottishdevolution.org.uk/uploads/2009-06-12-csd-final-report-2009fbookmarked.pdf>

The Northern Ireland Model

As the model of the Northern Ireland Civil Service (NICS) could be cited as a possible precedent it is worth briefly examining its structure and origins.

The NICS is a separate civil service, now largely structured along the same lines as the HCS, but operating under separate legislation based on the prerogative powers, and with a separate Civil Service Commission. Management responsibilities are vested in the First Minister and deputy First Minister acting jointly, or in the Department of Finance and Personnel. The NICS generally is a transferred matter, so the Northern Ireland Assembly can legislate on it without constraint; but the functions and procedures of the Commissioners are reserved, meaning the Secretary of State's consent is needed to any change made by the Assembly and legislation is therefore normally made at Westminster.

The reasons lie in the unique nature of Northern Ireland constitutional circumstances and politics over the last eighty years. Had there already been a sufficient cadre of Belfast-based HCS staff in 1921 to support the new administration, it seems unlikely that there would have been a need to create a new and separate NICS. Similarly, had the NICS not already existed at the point of devolution in 1999, the Government would not have wished to create one because those HCS officials could have continued to serve the new devolved administration.

Civil Contingencies

16.12 Emergencies are by nature complex events, with unpredictable and often wide-ranging consequences and no regard for national or other boundaries. Effective emergency preparedness and response therefore requires close co-operation at all levels based on trust and mutual respect. This is particularly important given the current nature of the Welsh devolution settlement and the likelihood that most major emergencies occurring in either Scotland or England will affect Wales, irrespective of formal responsibilities.

16.13 Arrangements for civil protection and emergency powers under Parts 1 and 2 of the Civil Contingencies Act 2004 respectively are not devolved to Wales, although UK Ministers are required to consult, and in some cases obtain the consent of, the Welsh Ministers before exercising certain powers under the Act in relation to Wales or to certain bodies with functions in Wales. These powers include making regulations or orders, issuing guidance, giving directions or bringing enforcement proceedings.

16.14 Responsibility is devolved in many areas in which emergencies may occur, such as most of flooding and the environment, as is responsibility for some local responders, such as the fire and rescue services, local government and the health service. The Welsh Government is engaged in many aspects of civil protection work and plays an important non-statutory co-ordinating role. The UK Government and the Welsh Government work together on the development of civil protection policy.

16.15 Overall, our experience is that existing arrangements work well and there is no need for significant change.²⁷ At a national level, officials in London and Cardiff are in regular contact on a wide range of issues and opposite numbers are automatically involved in contingency planning on issues with significant cross border effects. Liaison occurs both on an ad-hoc basis in response to particular challenges, and in a structured way through the participation of the Devolved Administrations in the Government's official level Cabinet subcommittee overseeing emergency planning activity.

16.16 It is important to note that the Civil Contingencies Act assigns responsibility for the delivery of duties to the local level. UK resilience rests on the principle of subsidiarity but co-operation and co-ordination at all levels is supported by the statutory guidance. The administrative role of the Welsh Government in co-ordinating, facilitating and supporting emergency planning is set out in the statutory guidance, *Emergency Preparedness*. A separate protocol sets out the role of the Welsh Government in the event of a major emergency requiring the implementation of emergency powers.

16.17 Although civil protection and emergency powers are not in themselves devolved, the role of the Welsh Government in co-ordinating civil protection activity in Wales has evolved. For example, it now co-ordinates cross-cutting activities and the work undertaken by Local Resilience Forums.

16.18 The respective roles of devolved and non-devolved bodies in the response phase of an emergency may not always be clear in advance. Clarity of roles and responsibilities is important as is the ability to work together in planning for emergencies and to build, as far as possible, on day-to-day arrangements in the response phase. While the Government believes that no major change is necessary, understanding of how these arrangements might work better in practice would be helpful.

Charity Law and Regulation

16.19 Policy relating to supporting civil society is generally already devolved in Wales. However, there are areas that are not, for example charity law and regulation. Charity law is currently devolved in Scotland. The devolution of charity law has created divergent definitions of the expressions "charity" and "charitable purposes" as a result of legislation passed by the Scottish Parliament in this area. It has also meant that there is concurrent regulation of charities within the UK by separate regulators. The effects of this were highlighted in the 2009 Calman Commission report on Scottish devolution,²⁸ which recommended returning to a single UK-wide definition of charity.

²⁷ The Simpson Review of local authority service delivery in Wales touched on civil emergencies and suggested that the delivery of emergency planning needed to be restructured and delivered at regional level. A commitment has been made to regionalise the delivery of Welsh local authority emergency planning services within two years and, where practicable, to include other partners within four years.

²⁸ *Serving Scotland Better: Scotland and the United Kingdom in the 21st Century*, June 2009.

16.20 The regulatory framework for charities in England and Wales was recently reviewed by Lord Hodgson of Astley Abbots²⁹. He did not recommend devolving charity law to Wales. During his review, which involved widespread consultation with the charity sector (including a consultation event in Cardiff), he did not receive any calls from charities and their umbrella bodies for charity law and regulation to be devolved in Wales. The Charity Commission already operates a separate office in Wales, and this is considered to work well.

Public Sector Efficiency

16.21 The UK Government's Cabinet Office is responsible for securing procurement, IT and delivering major projects. It buys services on behalf of Government, including the Devolved Administrations in Scotland and Wales, and is therefore able to profit from the benefits of scale that this brings. We do not judge that it would be in the best interest of the any of the Devolved Administrations, or the people they represent, to break away from this arrangement and expose themselves to financial risk.

²⁹ Trusted and Independent: giving charity back to charities, July 2012.

17. Security and Policing

17.1 Policing, immigration, customs and security are non-devolved. These subjects interact, to varying degrees, with devolved functions, such as fire and rescue services, health services and local government. We believe it is important that partners delivering devolved and non-devolved services work together in the public interest in order to maximise their collective impact. The four police forces in Wales have established good collaborative working arrangements with their devolved and non-devolved partners and are well integrated with the partnership planning arrangements at a local and all-Wales level.

Security

Border Security, Immigration and Visas

17.2 The establishment and maintenance of an external border and the ability to regulate migration are key attributes of a nation-state; and should remain non-devolved. The current arrangements ensure that the interests of all constituent parts of the UK are both protected and promoted. This is consistent with the position in both Scotland and Northern Ireland.

Counter Terrorism

17.3 Counter-terrorism is an important element of national security. National security concerns the protection of the whole of the UK from a range of threats including terrorism, espionage, hostile foreign intelligence activity, and proliferation of weapons of mass destruction. Operational responsibility for this falls to the Security Service who work with the police – the UK's Counter Terrorism Network and Special Branches in particular – to counter these threats. The Home Secretary is answerable to Parliament for the work of the Security Service.

17.4 The UK's National Intelligence Machinery is overseen by the National Security Adviser and Joint Intelligence Organisation, working closely with UK Government Departments (including the Home Office). This ensures that the UK's Security and Intelligence Agencies (the Security Service, SIS and GCHQ) are provided with strategically co-ordinated requirements and priorities which fall within the scope and responsibility of the UK Government. This process is overseen by the National Security Council, of which the Home Secretary is a member.

17.5 Strategic policy responsibility for the UK's counter-terrorism strategy (CONTEST) is non-devolved. The Home Secretary also retains residual powers of direction, for example in relation to certain areas of Critical National Infrastructure (CNI) protection such as water in Scotland, where the regulation of that sector is otherwise devolved to the Scottish Government. The provision of security advice in relation to CNI is the responsibility of the Centre for the Protection of National Infrastructure, which operates throughout the UK.

17.6 In other areas of CONTEST such as Prevent, which aims to stop people becoming terrorists or supporting terrorism, Wales benefits from the UK Government's strategic policy development framework as well as specific directly

funded intervention programmes such as the Channel Project, and a Prevent coordinator post, both currently based in Cardiff. Welsh Prevent delivery partners in local government and policing benefit from being a part of the wider Prevent delivery networks, allowing them to interact with their counterparts in England. Economies of scale mean there are many more projects from which to draw information, learning and experience. Counter-terrorism and wider national security should therefore remain non-devolved, consistent with the approach in Scotland and Northern Ireland.

Policing

17.7 Policing and criminal justice are non-devolved. However, many areas of devolved policy influence levels of offending and criminality, including local government, health and education. The four police forces in Wales work closely with their devolved partners to identify shared priorities and deliver efficient, value for money and citizen focused services; for example, police work alongside local authorities and Community Safety Partnerships to deliver Domestic Abuse and Substance Misuse strategies. They have developed strong relationships with devolved and non devolved partners and are fully involved in Local Service Boards in the 22 local authorities in Wales, and the Public Service Leadership Group in Wales, which provides leadership for collaborative work to improve public services in Wales. Collaboration between the police forces in Wales and the Welsh Government has developed over time and the introduction of elected Police and Crime Commissioners (PCCs) presents an opportunity for further collaboration. Collaboration to date has delivered a number of jointly funded projects:

- 500 additional community support officers;
- Tarian, the Southern Wales response to Serious Organised Crime -£642k in 2012/13; and
- £2.5m funding from the Welsh Government for the All Wales Community Schools Liaison Core Programme (matching the UK Government's contribution).

17.8 Overall, the current arrangements work well. There are four key points to bear in mind in considering the devolution boundary for policing. They are:

A. Policing is inextricably linked with the criminal justice system (CJS).

17.9 Policing is a key component of the CJS. Policing priorities and ways of operating have a direct impact on the other parts of the CJS and vice versa. Examples of this relationship are; arresting patterns, quality of evidence gathering and their role in crime prevention and reducing reoffending. This link was recognised in the Police Reform and Social Responsibility (PRSR) Act 2011 which places a reciprocal duty on PCCs and CJS partners to co-operate. It should be noted that in Scotland and Northern Ireland policing and the CJS are both devolved.

B. Existing governance and partnership arrangements provide a significant level of integration and autonomy

17.10 Collective local leadership and collaboration on crime, justice and community safety is the key to cutting crime and improving outcomes for local people. In Wales

the four PCCs operate with partners in devolved and non-devolved public service, and in the context of the strategic priorities of the Welsh Government, in order to achieve crime reduction outcomes. These arrangements have developed over time and work well. Some recent examples of integration include:

- An all Wales Criminal Justice Board, chaired by a Welsh Chief Constable, to enable closer partnership working between criminal justice agencies and Community Safety Partnerships;
- Police involvement in the Wales Community Safety Advisory Board, a Welsh Government led group which aims to improve community safety in Wales; and
- Police involvement in the 22 Local Service Boards (LSBs) in Wales which oversee the production of the single needs assessment which provides the evidence for a Single Integrated Plan in each local authority area in Wales.

17.11 The introduction of PCCs helps ensure a more consistent approach across crime and disorder and community safety policies. PCCs decentralise control of local policing decision making and make it more accountable to the public. In addition, PCCs will set a police and crime plan for their force area that focuses on working in partnership to cut crime, as well as maintaining an efficient and effective police force.

C: There are cost and complexity issues with separating out national structures and arrangements.

17.12 A range of national policing structures and arrangements involve cross boundary issues (e.g. organised crime) or provide significant economies of scale (e.g. IT procurement). The separating out of these national structures and arrangements would involve considerable initial start up and running cost for the Welsh Government. There would also be a cost to UK Government in terms of the break up of current structures and contractual implications.

17.13 Policy relating to police pay and pensions, police complaints, independent inspection of policing, national police air service, college of policing, transparency and accessibility are non devolved. If these areas were devolved, they would all need to be duplicated in respect to Wales. Value for money and delivery risk are significant issues given tight fiscal pressures and the significant change already underway as part of the police reform programme.

D: The Strategic Policing Requirement and the management of national threats.

17.14 Section 37A of the Police Act 1996 (as amended by section 77 of the Police Reform and Social Responsibility Act 2011 (PRSR 2011) requires the Home Secretary to issue a Strategic Policing Requirement (SPR). The SPR applies to Home Department police forces in England and Wales³⁰, and sets out the threats which are considered of particular national significance which the police must

³⁰ These are set out in the Police Act 1996 as forces established for the policing areas listed in schedule 1 of the 1996 Act plus the Metropolitan Police and City of London forces. These are the territorial forces in England and Wales but do not include other forces such as the British Transport Police, Ministry of Defence and Civil Nuclear Constabulary, who are maintained by other UK Government Departments.

address; appropriate national policing capabilities are required to counter those threats. These are terrorism, organised crime, public disorder, civil emergencies and cyber threats. PCCs and chief constables in England and Wales will be required to have regard to the SPR in exercising their respective roles. National threats require a coordinated or aggregated response in which resources are brought together from a number of police forces.

17.15 The UK Government is responsible for ensuring that capabilities are in place to respond to serious and cross boundary criminality and for owning the associated risks. Where forces do not meet required standards there is a reserve power³¹ which allows the Home Secretary and the PCC for a police force³² to enter into agreements with respect to the level of performance to be achieved by the police force in respect of any of its national or international functions..

17.16 There are a number of national structures that support the delivery of the SPR such as the Police Protective Services Programme and the National Crime Agency (NCA). The NCA has an important remit to tackle organised crime, strengthen our borders, fight fraud and cyber crime and to protect children and young people from sexual abuse and exploitation; crime which is cross boundary in its operation. The NCA benefits from access to a central intelligence hub, and has the authority to coordinate and task the national response. We support the continuation of an England and Wales SPR to ensure that an appropriate national response can be given to terrorism, organised crime, public disorder, civil emergencies and cyber threats.

Police Funding

17.17 The police in Wales get their funding from two main sources - central Government (the UK Government, via the Home Office, and the Welsh Government) and the police precept component of council tax. Through the Spending Review process, the Home Secretary determines the amount of central Government funding to the police in Wales.

17.18 The Home Secretary decides the overall allocation of UK Government funding to Welsh police force areas through an adjustment to the raw allocations of Police Main Grant (called Additional Rule 1) and the provision of the Welsh Top-up grant. The Police Main Grant and the Welsh Top-up grant taken together ensure that English and Welsh force areas are treated equally (so in 2011/12 and 2012/13 all police force areas in England and Wales have had their UK Government funding reduced by the same percentage). The Welsh Government decides the allocation of Welsh Government funding between police force areas.

17.19 Police Main Grant, the Welsh Top-up and Welsh Government funding are not ringfenced, so PCCs have freedom and flexibility over how to use them. The Home

³¹ Section 96A of the Police Act 1996, amended by section 94 of the Police Reform and Social Responsibility Act 2011.

³² The Mayor of London for the Metropolitan Police Service and the City of London Corporation for the City of London Police.

Office also provides ringfenced funding to Welsh police force areas for counter terrorism policing and (to end March 2013) for neighbourhood policing.

Table 1: Home Office Police Main Grant and Welsh Top-up

	2010/11 (£m)*	2011/12 (£m)	2012/13 (£m)
Dyfed-Powys	42.7	40.8	38.4
Gwent	51.2	48.2	44.7
North Wales	59.6	56.1	52.7
South Wales	108.4	100.6	92.7
Total	262.0	245.7	228.5

*Adjusted figures to include funding streams rolled into Police Main Grant from 2011/12

Table 2: Welsh Government Funding to the Police

	2010/11 (£m)	2011/12 (£m)	2012/13 (£m)
Dyfed-Powys	18.3	17.1	15.7
Gwent	36.5	35.1	33.0
North Wales	28.0	27.0	24.8
South Wales	84.0	81.9	77.6
Total	166.8	161.0	151.0

Table 3: Police Precept Funding to the Police

	2010/11 (£m)	2011/12 (£m)	2012/13 (£m)
Dyfed-Powys	37.5	39.4	41.7
Gwent	36.9	38.5	39.8
North Wales	55.9	58.4	60.0
South Wales	70.9	74.8	79.1
Total	201.3	211.2	220.6

17.20 Whilst the Home Secretary determines the quantum, and in effect, the allocation of Central Government funding to Welsh police forces, the Welsh Local Government Minister has control over council tax policy in Wales, including on capping the precept (local referenda on council tax do not apply in Wales).

Alcohol licensing

17.21 Alcohol licensing is non-devolved. The Licensing Act 2003 (the “2003 Act”) applies to England and Wales. It regulates the carrying on of four ‘licensable activities’:

- the sale by retail of alcohol;
- the supply of alcohol (i.e. in a members’ club);
- the provision of regulated entertainment; and
- the provision of late night refreshment (i.e. between 11pm and 5am).

17.22 The 2003 Act delegates responsibility for authorising the carrying on of licensable activities, including by virtue of premises licences and temporary events notices (TENs), to county or county borough councils in Wales and to local councils at district or unitary level in England. They are referred to as Licensing Authorities (LAs). The 2003 Act also repealed some provisions that were specific to Wales, including allowing premises in Wales to open on Sundays only where there had been a specific vote on that issue.

17.23 The Government has legislated via the PRSR Act 2011 to overhaul the 2003 Act in favour of local communities, including giving LAs and the police much stronger powers to remove licences from, or refuse to grant licences to, premises that are causing problems, as well as to give them stronger powers to tackle crime and disorder and other problems caused by late night drinking. The 2003 Act requires LAs to exercise their licensing functions with a view to promoting four statutory objectives:

- the prevention of crime and disorder;
- public safety;
- the prevention of public nuisance; and
- the protection of children from harm.

17.24 Alcohol misuse has a bearing on issues such as health and social harms, which are devolved matters, as it does on crime and disorder. But, in contrast, the alcohol *licensing* regime is fundamentally linked to measures to prevent and tackle crime and disorder. The 2003 Act does not include health as a statutory objective and historically the focus has been on the prevention of crime, disorder and nuisance and public safety.

17.25 Public health protection responsibilities are devolved and rest mainly with Public Health Wales and the Health Protection Agency (HPA). The Government’s reforms as part of the PRSR 2011 have included measures to give health bodies a greater say in alcohol licensing by making them “responsible authorities” under the 2003 Act. This means they are automatically notified of new licensing applications. It allows health data relevant to the licensing objectives, such as A & E data, to be more readily shared with licensing authorities. In addition, the UK Government has recently consulted on proposals to introduce a health-related licensing objective in England and Wales specifically linked to cumulative impact. The consultation closed on 6 February 2013, and we are currently considering responses.

17.26 Alcohol licensing is a devolved matter in Scotland, unlike Wales. Crucially, however, there is a separate legal system in Scotland, and there is a strong inter-relationship between alcohol licensing and the criminal justice and legal systems in England and Wales.

Alcohol licensing and the criminal justice system

17.27 Alcohol, if misused, is a dangerous substance and licensing functions are intrinsically linked to various criminal offences and to policing. Alcohol-related crime and anti-social behaviour is at unacceptable levels. Over 47% of violent crime is alcohol-related³³ and the Government has clear commitments to tackle this. There are therefore inextricable links between local authorities' licensing functions, policing and the CJS.

17.28 There is a framework of criminal offences set out in the 2003 Act and penalties for conviction, including offences relating to under-age sales and smuggling. The police prosecute these offences but LAs also have powers under the 2003 Act to prosecute them. Some offences are linked directly to LA licensing functions, for example the criminal offence of carrying out licensable activities without a valid authorisation.

17.29 The role of the police in licensing is fundamental. In their role as a responsible authority for the purposes of licensing, the police receive notice of applications for new (and variations to existing) licences and have powers to object to TENs based on the licensing objectives. The police also have an integral role in the enforcement of licensing, including powers to apply for a review of a problem premises and to enter premises. They also have emergency powers under criminal justice legislation to close premises down immediately where there is evidence of crime and disorder. Magistrates' Courts serve as the appeal body for LAs' licensing decisions and the Courts also have powers and a duty to consider the forfeiture of a personal licence issued under the 2003 Act when a personal licence holder is convicted of a relevant criminal offence.

Cross-border jurisdictional issues

17.30 Different regimes for alcohol licensing raise some potential jurisdictional issues. Under the 2003 Act, the place where the order for alcohol, or payment for it, takes place may not be the same as the place where the alcohol is appropriated to the contract (i.e. the place where it is identified and specifically set apart for delivery to the purchaser). This position can arise - for example - when sales are made online or by telephone, but the alcohol is packaged and delivered from a warehouse situated elsewhere. Checks on the age of the purchaser should be made at the time of the sales transaction and on delivery. There would be particular cross-border enforcement issues in the case of the Wales-England border, which is much more heavily populated than the Scotland-England border. There are a series of criminal offences relating to alcohol fraud and illicit alcohol, and the offence of keeping smuggled goods under the 2003 Act.

³³ Source: Crime Survey for England and Wales (CSEW) – based on perceptions of victims, 2011/12

UK Government reforms to give local powers and discretion to local authorities in England and Wales

17.31 The PRSR Act 2011 gives licensing authorities and the police in England and Wales increased powers and discretion to tackle alcohol-related problems, and local communities a greater say. This gives LAs in Wales greater flexibility to tackle alcohol problems based on local needs and priorities. The Government's recent reforms, brought into force in 2012, include:

- giving health boards in Wales a say in alcohol licensing by providing for them to be automatically notified of new premises licence applications or applications to vary existing licences and allowing them to make representations based on the licensing objectives in their role as "responsible authorities";
- lowering the threshold for decision-making, making it easier for LAs to review licences for problem premises or to impose conditions on a licence; the introduction of new powers to tackle late night drinking problems including allowing LAs to impose a charge on businesses which benefit from selling alcohol late at night via the late night levy; and new powers for LAs to restrict the sale of alcohol between midnight and 6 am in their local areas via early morning alcohol restriction orders (EMROs); and
- removing statutory guidance issued under the last Government to prevent licensing authorities adopting local policies such as zoning, fixed or staggered hours in their areas.

17.32 New proposals for building further on this greater localism, announced in the UK Government's Alcohol Strategy in March 2012, include: allowing LAs to determine their own local systems for handling TENs and introducing health as a licensing objective for controlling cumulative impact of licensed premises and proposals for the introduction of minimum unit price for alcohol. The Government is considering responses to its consultation on these proposals.

Anti-Social Behaviour

17.33 The UK Government considers anti-social behaviour (ASB) to be a form of criminal behaviour. In many cases ASB is actually crime – for example, low level criminal damage. We are therefore keen to retain clarity over responsibility for crime policy in Wales to ensure consistency for frontline professionals at a local level, including the police and PCCs. Paragraph 12 of Schedule 7 to GoWA specifies anti-social behaviour *orders* as an exception to the Assembly's legislative competence in respect of local government. The exception is unclear to the extent that it could be interpreted as referring to an order under s1 of the Crime and Disorder Act 1998 or alternatively could be interpreted more broadly as a restriction on the Assembly's powers to legislate in the field of anti social behaviour generally. The Commission may wish to consider whether this exception should be redrafted, or an additional exception inserted into the Schedule, to put beyond doubt that the exception covers ASB.

Misuse of Drugs

17.33 The UK Government believes that a UK-wide approach to tackling the misuse of drugs is essential, and that a robust, consistent and stable legislative framework to tackle illegal drugs across the UK should continue. The legislative framework, set out in the Misuse of Drugs Act 1971 (the 1971 Act) and the associated legislation, ensures that there are common controls (including drug classifications and offences for unlawful possession, supply etc) across the UK.

17.34 The UK Government is the competent authority to enact and comply with our international obligations in relation to drugs. The external border controls, which flow from the international obligations and are enshrined in the 1971 Act, apply to the UK as a whole. Import controls which were inconsistent between different parts of the UK would inevitably create new opportunities for drugs traffickers.

17.35 In terms of legitimate use of “controlled drugs”, a common regulatory framework for all UK healthcare professionals dealing with controlled drugs for patients improves compliance (and therefore reduces the risk of diversion) in their day to day activities.

18. Social Welfare

18.1 Legislative competence for social welfare is devolved to the Assembly. Specifically, this subject includes:

- the protection and well-being of children and young adults (including adoption and fostering);
- care of children, young adults, vulnerable persons and older persons; and
- badges for display on motor vehicles used by disabled persons.

18.2 However, the more substantive subjects relating to social welfare are not devolved, either because they are express exceptions to the social welfare subject or because they are discrete subjects which are not listed at all in Schedule 7. These include employment law and relations, social security, child support and occupational and state pensions.

18.3 Functions in relation to these subjects are exercised by the UK Government on a GB-wide basis, and the UK Parliament exercises legislative competence at the GB-level. Whilst the social security systems in Great Britain and Northern Ireland are separate, in practice they operate in parallel under the **parity principle**.

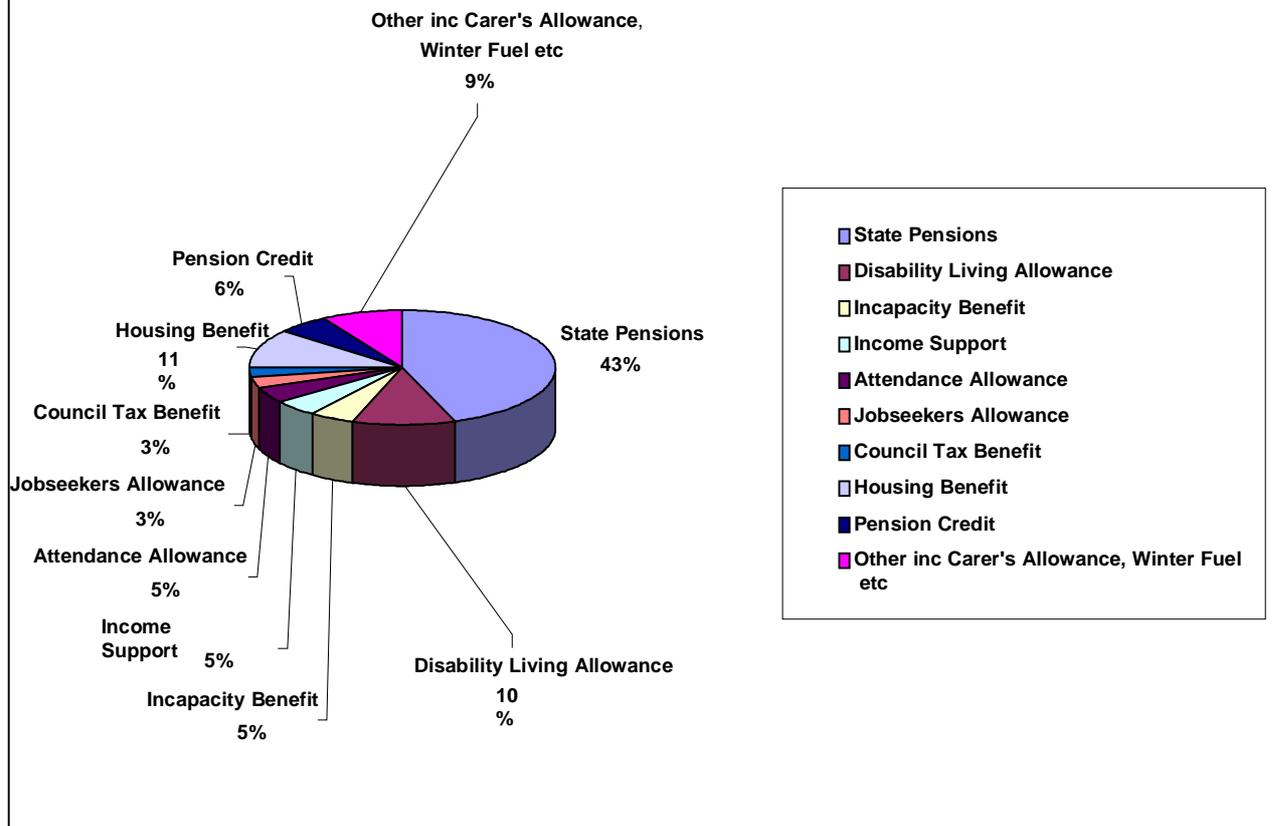
18.4 The UK Government's Department for Work and Pensions (DWP) helps support people of working age from welfare into work and offers a service to employers to help them fill their vacancies. It provides financial support for customers claiming disability benefits and their carers and provides frontline services to customers of pension age by the delivery of a range of benefits such as State Pension and Pension Credit. DWP provides Child Maintenance services. DWP also works in partnership with local organisations in Wales to provide information on pensions, benefits and retirement information and to deliver pension-related services.

18.5 DWP employs 6,569 staff at over 80 sites throughout Wales. In Wales every working day, on average:

- Over 830 people move off Jobseekers Allowance (JSA);
- 1,150 vacancies are notified;
- Over 3,600 adviser interviews are conducted;
- 713 New JSA Claims are received; and
- 531 New Claims for State Pension are received at our Pension Centre.

18.6 Based on data compiled for 2011/12, total benefit expenditure in Great Britain amounted to £174.9 billion, of which £8.7 billion was spent in Wales. A breakdown of the £8.7 billion expenditure in Wales is shown in Table 4 opposite.

Table 4 - Benefits Expenditure in Wales



The Parity Principle

18.7 The **parity principle** argues that, as people throughout the UK pay consistent rates of National Insurance (NI) contributions and non-devolved taxation, they should also be entitled to consistent rights and benefits. There are also good practical and administrative reasons why welfare benefits are, and should continue to be, broadly aligned throughout the UK, and are best operated on a common basis throughout GB:

- Entitlement to many benefits is transferable throughout the UK. For all practical purposes, actions, evidence and decisions made in one part of the UK are accepted in another part of the UK;
- The UK Government has negotiated a series of reciprocal arrangements with other countries which allows each other's citizens to have access to the host state's benefit systems based on entitlement earned in the other state. In addition, certain benefits can be "exported" within the European Union under EC Regulation 1408/71. This would be greatly complicated without parity; and
- services are delivered more efficiently and effectively at the national level, and there are economies of scale in sharing the IT infrastructure used to calculate and pay NI benefits.

18.8 For these reasons, we believe that responsibility for State Pensions and most welfare benefits should continue to be non-devolved.

Welfare Reform

18.9 A key priority for the UK Government is to reform and simplify the **welfare system** to ensure that the system always incentivises work and that work always pays. The Government's Welfare Reform Act 2012 introduces two new benefits: Universal Credit (UC), which will replace a number of in and out of work income-based benefits and the Personal Independence Payment (PIP), which will replace Disability Living Allowance (DLA) for people of working age. These changes start to come into effect from April 2013, and DWP is working closely with the Welsh Government and Welsh local authorities to prepare the ground.

18.10 The introduction of UC will have implications for the Welsh Government in relation to its services that currently base their eligibility criteria on income-related benefits which are going to be replaced by UC; this is referred to by the term "passport benefits". This means that textual changes will have to be made to Welsh legislation as a consequence of welfare reform to substitute references to benefits which are now replaced with references to Universal Credit. It is for the Welsh Government to decide whether it is appropriate to make Universal Credit the eligibility threshold in every case as this benefit is also payable to people in work.

18.11 PIP, like DLA, will act as a passport to benefits and schemes which are devolved to Wales, such as the blue badge and concessionary travel.

18.12 The Welfare Reform Act abolishes the discretionary Social Fund and paves the way for delivery of new local welfare provision to replace Community Care Grant and Crisis Loans. From 1 April 2013 the Welsh Government will be responsible for new provision and will receive funding equivalent to that which was spent on the Community Care Grants and Crisis Loans in Wales at the point at which responsibility is transferred.

Council Tax Benefit

18.13 Council Tax Benefit (CTB) has also been abolished by the Welfare Reform Act and support for council tax payments will also be devolved to Wales from 1 April 2013. The Welsh Government is responsible for providing for a framework of council tax support in Wales, and the Local Government Finance Act 2012 contain provisions - inserted at the request of the Welsh Government - to provide Welsh Ministers with powers to make regulations in relation to council tax reduction schemes in Wales.

18.14 The Welsh Government will receive funding towards the costs of providing support. This will be the Wales share of 90% of forecast CTB expenditure for 2013-14, based on shares of previous expenditure by Administration. Levels of funding for authorities in England for future years will be set at spending reviews, with the Devolved Administrations (including Wales) receiving consequential funding under the Barnett formula.

Remploy

18.15 Last year, the UK Government implemented the Sayce Review, which endorsed the idea that money to support disabled people into employment should follow individuals not institutions and that Remploy factories should be set free from Government control. The Review also supported the view that Government-funded segregated employment is not consistent with an objective of disability equality. The UK Government announced that it would cease funding factories which make significant losses year after year and restrict funding to those factories which might have a prospect of a viable future without Government subsidy. As a result of the decision to reduce current funding the Remploy Board resolved to close some factories.

18.16 The UK Government announced an £8 million personalised package of support (the People Help and Support Package) for all those affected in GB by these closures. Any disabled member of staff who is made redundant received an offer of individualised support for up to 18 months to help with the transition from Government funded sheltered employment to mainstream employment. We also announced that we would be working with employers and the Employers Forum on Disability to look to offer targeted work opportunities for displaced staff, and to establish a Community Support Fund to provide grants to local disability organisations to support Remploy employees to make the transition from sheltered to mainstream employment.

Child Maintenance

18.17 Given its impact on the benefit system, the UK Government believes that child maintenance policy and collection is best undertaken at the UK-wide level. The Secretary of State has jurisdiction to calculate, collect and enforce child maintenance where the parent with care, non-resident parent and qualifying child(ren) are each habitually resident in the United Kingdom. Were responsibility for child maintenance to be devolved to Wales, jurisdiction would need to be based on the location of the parent with care, the non-resident parent or the applicant.

18.18 In cases where one party resided in one jurisdiction and the other party resided in another, any of those positions would create administrative complexity and potential confusion for customers because one of the parties would be subject to the child maintenance provisions applicable to the jurisdiction in which the other resided. In the event there was any divergence between the schemes in the two jurisdictions, that could also lead to apparent inequities such that two parents with care, or two non-resident parents, living next door to each other and in similar circumstances could be entitled to, or liable to pay, different amounts of maintenance. The Agency currently has 79,500 cases where at least one party resides in Wales. Of those, the other party resides elsewhere in Great Britain in more than 30% of cases (23,700).³⁴

³⁴ Information from live and assessed caseload March 2012.

Executive Competence of Welsh Ministers

18.19 The Welsh Ministers have executive competence to organise training and access to work programmes. These include powers under the Employment and Training Act 1973³⁵ which the Welsh Ministers are able to exercise concurrently³⁶ with the Secretary of State. It is worth noting that the Assembly has legislative competence in relation to education and training, but the Welsh Government's skills provision is largely founded on the powers in the 1973 Act.

18.20 Welsh Ministers and Ministers of the Crown have concurrent powers under several sections of the 1973 Act, but most notably under section 2. Certain functions under section 2 are not devolved, such as the function of helping all those (as distinct from a particular section of the population of Wales) without work to find employment and employers to fill vacancies, or any function ancillary to that function, but more generally section 2 is widely drawn. Examples of its use by the UK Government include: organising training programmes; making discretionary payments to people preparing for, or starting, work; and, by awarding grants under the Access to Work Scheme, assisting people with disabilities to take up work or remain in employment. Similarly, Welsh Ministers use their section 2 powers to provide training courses and award training allowances to those in Wales who meet their eligibility requirements, which include being unemployed.

Child Poverty

18.21 The target to eradicate child poverty is UK-wide. The UK Government produces a Child Poverty Strategy, which works alongside the child poverty strategies prepared by the Devolved Administrations covering the issues for which each is responsible.

18.22 The Government's vision for eradicating child poverty is encompassed in the UK Child Poverty Strategy. DWP has a key role to play in delivery of the strategy and supporting parents into work through a variety of measures and increasing integrated service delivery with key organisations where needed. Its day to day business is central to improving outcomes for children and young people, for instance tackling worklessness; the affordability and availability of formal childcare and advising parents on in work benefits.

18.23 The UK Government acknowledges that one of the largest causes of child poverty is worklessness, and we consider reducing the number of children in workless households to be a priority. In Wales, we are working closely with the Welsh Government on a number of projects to tackle child poverty, and to support the implementation of its Child Poverty Strategy for Wales.

³⁵ The Employment and Training Act 1973 was included in Schedule 1 to The National Assembly for Wales (Transfer of Functions) Order 1999.

³⁶ Having concurrent powers means that it is open to either the Secretary of State or the Welsh Ministers to exercise the functions.

Children's Commissioner

18.24 There are four Children's Commissioners, one in each of the four nations of the United Kingdom. The Children's Commissioner for Wales is appointed by, and reports to, the Assembly, and safeguards and promotes the rights and welfare of children in relation to devolved areas.

18.25 The Dunford Review of the Children's Commissioner for England³⁷ made a recommendation that:

"the children's commissioners in the devolved administrations should in principle be responsible for all relevant matters in respect of children and young people who normally reside in their countries" and

"[all four commissioners] should coordinate their investigations and share findings to ensure that the wider benefits are felt by all children in the UK and to avoid duplication of effort."

18.26 The Welsh Government has argued that the Children's Commissioner for Wales should be responsible for promoting and protecting children's rights across all areas of policy and practice, including non-devolved matters, in line with the above recommendation.

18.27 The UK Government has considered various ways of putting John Dunford's recommendations into effect within the current constitutional settlement, in consultation with the Devolved Administrations and the Children's Commissioners. In July 2012, the UK Government published draft legislation for Parliamentary scrutiny that would have allowed the Commissioner for England to have delegated her powers to investigate children's rights issues to the devolved Commissioners. The four Commissioners have since advised that the proposed new arrangements could undermine their working relationship and we have therefore decided not to pursue this option and to revert to the existing legislation.

18.28 Making the Children's Commissioner for Wales responsible for promoting and protecting children's rights across all areas of policy and practice, including non-devolved matters, would present significant difficulties. The Commissioners are accountable to their respective legislatures and their responsibility is to provide reports or raise matters with those legislatures about policy areas for which they are responsible, so that if changes to policy or legislation are recommended, the appropriate legislature can consider them. It would thus present constitutional difficulties for a devolved Commissioner to report to a devolved legislature on non-devolved matters. It would also be ineffective as a driver of policy change.

18.29 The four children's Commissioners work collaboratively on issues affecting the whole of the UK and have done so even more since the Dunford report was issued.

³⁷ Review of the Office of the Children's Commissioner (England), John Dunford, 2010.

Safeguarding Children

18.30 Safeguarding children requires cross-agency working which does not always fit easily with the boundaries of devolved and non-devolved responsibilities. The Assembly has competence in relation to social welfare, which includes the protection and well-being of children and young adults. This covers the implementation of policy for safeguarding provided that it does not encroach on the exception in Schedule 7 to GoWA for family law and proceedings, nor the non-devolved criminal justice system. The UK Government is responsible for matters relating to the criminal justice system in Wales, such as the prescribing of criminal offences, and for bodies such as the police, the National Offender Management Service (NOMS) and the probations service.

18.31 Similarly, employment law creates protections for workers and the restrictions on adult and child employment prevent the exploitation of those in more vulnerable positions in the labour market. The need for clarification of employment law and relations as a specific exception is discussed in section 5 of this evidence.

Family Law and Proceedings

18.32 We propose that we maintain the current system, that is, the vast majority of family law policy is not devolved. Her Majesty's Courts and Tribunal Service (HMCTS) and the judiciary act across England and Wales as a single jurisdiction. If policy on children's family law was devolved then, over time, HMCTS would find themselves needing to operate different laws in England and Wales. The elements of family law which are devolved relate to local authority practice and Cafcass. In England, Cafcass is an NDPB, whereas Cafcass Cymru is part of the Welsh Government. In practice, the two organisations operate in a similar manner because of the requirements of the courts.

19. Sport and Recreation

19.1 Sport and recreational activities are devolved, although betting, gaming and lotteries are non-devolved and specific exceptions in Schedule 7 to GoWA. Welsh Ministers exercise limited functions under sections 25C, 26 and 27 of the National Lottery Act 1993 which relate to Welsh distribution bodies for lottery funds.

National Lottery

19.2 The Welsh Government is involved in setting the priorities for distribution of the proceeds of the National Lottery in Wales. Operational agreement on specific responsibilities is set out in the Lottery Annex to the Concordat between DCMS and the Welsh Government.

19.3 The Welsh Ministers have the power to give policy directions concerning the operations and priorities of the Wales-only distributing bodies (the Arts Council of Wales (ACW) and Sport Wales (SCW)), and to appoint members to each of these bodies. The Secretary of State's powers of direction which apply to the ACW and SCW must be exercised in respect of those bodies with the agreement of the Welsh Government.

19.4 The Welsh Government and the Secretary of State also have a concurrent power to issue policy directions to the Heritage Lottery Fund in relation to Wales - i.e. to determine the purposes for which and the conditions subject to which, the Fund distributes money in relation to Wales. In order to avoid unintended inconsistencies in the exercise of this concurrent power, their use in relation to Wales by either the Secretary of State or the Welsh Government is subject to mutual consultation.

19.5 Similar consultation arrangements exist where the Secretary of State exercises powers to make decisions on the allocation of resources between Wales and other parts of the United Kingdom and on general principles of the administration of Lottery funding.

The National Heritage Memorial Fund

19.6 The National Heritage Memorial Fund is a UK-wide body with both Lottery and non-Lottery functions. Appointments as Trustees of the Fund are a matter for the Prime Minister. The Trustees are required to include persons who have knowledge, experience or interests relevant to the purposes for which the Fund may be applied and who are connected by residence or otherwise with England, Wales, Scotland and Northern Ireland respectively. At present one such "Welsh trustee" is appointed, and the Welsh Government is consulted on the appointment.

Sport

19.7 Sport is devolved, although the UK Government remains responsible for international sport and is the contracting party to the international sporting organisations.

19.8 Each Home Nation has its own Sport Council . Each Devolved Administration funds its respective Sport Council, and the UK Government funds Sport England. Sport Councils can have different priorities. In Wales, the focus is on physical activity, while in England it is on delivering youth and community sport. Sport Councils also deliver sport lottery funding.

19.9 UK Sport is a UK wide organisation, responsible for funding for elite sport for Team GB at the Olympics and Paralympics and other world class events. The Chairs of the individual Sports Councils represent their respective Devolved Administrations on the UK Sport Board. The Secretary of State for Culture, Media and Sport appoints the Board, and consults the Devolved Administrations on the Chair appointment. She also consults them on key strategic issues, such as the proposal to merge UK Sport and Sport England.

20. Tourism

20.1 Tourism is devolved. The UK Government, through DCMS, is responsible for sponsoring VisitBritain (VB) and VisitEngland (VE), including setting targets and key indicators of performance. DCMS encourages VB and VE (where appropriate) to work closely with the devolved tourism bodies including Visit Wales, the Welsh Government's tourism arm. Wales has benefitted from both VB's international campaigns (including GREAT) and VE's 'Holiday's at Home are GREAT' campaign, and will continue to do so from the extended GREAT campaigns home and abroad.

20.2 The Concordat between the UK Government (DCMS) and the Welsh Government requires DCMS to advise the Welsh Government of all UK and EU tourism reviews that affect Welsh tourism, notifying it of any proposed changes that may impact on Wales.

21. Town and Country Planning

21.1 The Assembly has legislative competence in relation to most planning subjects, as set out in paragraph 18 of Schedule 7 to GoWA, but the exception to this is development consent under the Planning Act 2008 (the '2008 Act').

Nationally Significant Infrastructure Projects

21.2 The 2008 Act introduced a new consenting regime with the aim of streamlining the process for large infrastructure projects considered to be of national significance. The 2008 Act applies to a limited extent in Wales: the intention was to ensure it did not change the existing devolution boundary in relation to planning. Therefore, whilst development consent under the 2008 Act is required for a wide range of nationally significant infrastructure in England, in Wales such consent is only required for energy generating stations above 50 megawatts (100 megawatts if the project is offshore) and certain pipeline, overhead electricity line and harbour facility projects. Other infrastructure development in Wales is subject to the relevant devolved development consent process.

21.3 Applications for large infrastructure projects under the 2008 Act are submitted to the Planning Inspectorate who make recommendations to the relevant UK Secretary of State (for example, the Secretary of State for Energy and Climate Change decides energy projects). Where the Secretary of State decides to grant consent, a development consent order (DCO) is made. A DCO automatically removes the need for planning permission and certain other types of consents (e.g. Harbours Act orders for harbours) on a case by case basis.

21.4 However, the potential scope of a DCO is more limited in Wales; in particular, a DCO does not automatically remove the need for a listed building consent or ancient monument consent (which are automatically removed by a DCO in England). There is also a longer list of consents that can only be granted through a DCO if the relevant consenting authority (usually the local planning authority) agrees. This means that the consenting process for large infrastructure projects in Wales can be more complex than for similar projects in England.

Other Planning Provisions

21.5 There are also non-devolved provisions under the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Acquisition of Land Act 1981 relating to statutory undertakers³⁸. Welsh Ministers are the "appropriate Ministers" for water and sewerage undertakers only. For statutory undertakers in Wales which operate in non-devolved areas (for example, energy or telecoms), ministerial responsibilities in relation to planning are mostly non-devolved, and UK Government Ministers are the "appropriate Ministers" in relation to planning functions under the above Acts.

³⁸ Statutory Undertakers are the various companies and agencies with legal rights to carry out certain development and highways works, for example utilities companies dealing with energy or water, telecoms companies or transport undertakers (such as Network Rail).

21.6 There are also a number of HM Treasury functions which are non-devolved. These functions include deciding any question as to the “appropriate authority” for Crown land and which Minister is the “appropriate Minister” for statutory undertakers.

Major Energy Infrastructure

21.7 Numerous coal, nuclear and Combined Cycle Gas Turbine plants are due to be decommissioned over the next decade. Significant and urgent investment is therefore needed in our energy infrastructure to ensure that our energy needs, UK carbon reduction targets and renewable targets are met. This will require more large scale plants, greater levels of interconnection with other countries and greater network integration. Wales will play an important role in meeting these needs and critical to this is a streamlined planning system for England and Wales that minimises delays and fosters investor confidence.

21.8 The UK Government’s policy on planning decisions for Nationally Significant Infrastructure Projects in the energy sector is set out in the six National Policy Statements³⁹ published in July 2011, which cover England and Wales and have been welcomed as providing a clear basis for planning and investment decisions. These arrangements make full provision for consideration of local impacts alongside national policy in decision making.

The Consenting Regime for Energy Infrastructure

21.9 Under the provisions of the 2008 Act, the Secretary of State for Energy and Climate Change is responsible for determining applications for development consent for major energy infrastructure, including power stations over 50MW onshore and 100MW offshore, and major overhead lines and gas infrastructure in England and Wales. Applications for consent for offshore power station projects in Welsh territorial waters with a capacity of between 1MW and 100MW are considered by the Marine Management Organisation (MMO) under section 36 of the Electricity Act 1989, with the Welsh Government issuing a marine licence. A generating station with a capacity of 1MW or less would require a marine licence only. Onshore, applications for generating stations with a capacity of 50 MW or below are determined by local planning authorities under the Town and Country Planning Act 1990, but may be determined by Welsh Ministers if they decide to call in an application. The Secretary of State also determines applications for overhead lines below the Planning Act threshold (i.e. below 132kV) and necessary wayleave applications in England and Wales.

21.10 We consider that planning policy and decision making for major infrastructure in Wales should be viewed in a wider context. England, Wales and Scotland collectively benefit from major developments in terms of economic benefits, security of supply and low carbon deployment. Developers welcome consistent planning

³⁹ The six National Policy Statements on energy cover Overarching Energy; Fossil Fuel Electricity Generating Infrastructure; Renewable Energy Infrastructure; Gas Supply Infrastructure and Gas & Oil Pipelines; Electricity Networks Infrastructure; and Nuclear Power Generation.

policy and decision making to give them the confidence they need to make the very large investments required in, for example, new nuclear power stations at Hinkley and Wylfa, new connections with Ireland, and around £18bn of potential onshore network development by 2021. We consider that the current unified planning regime for England and Wales provides a stable platform for investment in major infrastructure both now and in the future.

The 50MW Threshold

21.11 The UK Government has found the 50MW threshold for onshore development to be appropriate because many schemes above 50MW are of sufficient importance and scale to be considered nationally significant. Major infrastructure projects onshore between 50MW and 100MW include onshore windfarms, biomass plants and energy from waste plants. Changing the threshold from 50MW to 100MW could have a negative impact on energy and planning policy for major infrastructure and result in increased complexity in the planning system and less efficient, more piecemeal and more expensive development.

21.12 The wholesale electricity market for GB is operated by National Grid, the System Operator for Wales, England and Scotland. Interconnection in the networks between Wales, England and Scotland has been strengthened in recent years, with more connections currently under development (including subsea connection from North Ayrshire to North Wales).

21.13 The Secretary of State is responsible for energy security and for specific related areas of policy such as generation, supply, transmission and distribution and, taken together with decision making on major energy infrastructure, these responsibilities allow for strategic decision making in the round on all energy issues. Energy networks across the Welsh / English border are substantially integrated (North Wales and South Wales in particular, with proposals being developed for mid-Wales), and maintaining a unified planning regime would facilitate further development of this important infrastructure. It should be noted that network development is a critical component of energy developments (e.g. Wylfa new nuclear power station, onshore and offshore wind farms and planned High Voltage Direct Current (HVDC) links with other countries), and maintaining a unified regime would help ensure the whole package of necessary development in a timely way.

Associated Development

21.14 The UK Government believes there is a strong case to realign consenting powers in the area of “associated development” under the Planning Act 2008. Currently, in England only, the Act makes provision for ‘associated development’ (e.g. roads, substations) that is part of a larger development to be consented to at a national level, as it forms part of a Nationally Significant Infrastructure Project (e.g. power stations, overhead lines). In Wales, any ‘associated development’ is determined at local authority level which can result in additional complexity, cost and uncertainty. The Government considers that the planning framework for major infrastructure in Wales can be made more streamlined and more effective by including associated development within the Planning Act regime. The Commission may wish to consider this point.

Community Infrastructure Levy and Section 106 Obligations

21.15 The Planning Act 2008 also introduced a new Community Infrastructure Levy (CIL). CIL allows local authorities in England and Wales to raise funds from development to fund new infrastructure. The Levy is set and collected locally, by local planning authorities, not by central Government, and is subject to consultation and independent examination. It is voluntary for local authorities to adopt CIL, but if adopted it is mandatory for them to collect, and use as prescribed, on local infrastructure. The detail of how CIL works is set out in the Community Infrastructure Regulations 2010 (as amended).

21.16 Section 106 of the Town and Country Planning Act 1990 allows local authorities in England and Wales to seek a planning obligation, also known as a 'Section 106 agreement', to mitigate the impact of an otherwise unacceptable development. CIL differs from Section 106 obligations in that the funds collected are not tied to a specific development or the provision of specific infrastructure.

21.17 A principle underpinning CIL is that it should be the vehicle for the collection of pooled contributions for infrastructure. The CIL regulations therefore limit the use of 'pooled' Section 106 obligations post April 2014 as contributions towards infrastructure that could otherwise be funded by CIL. Currently affordable housing is the only infrastructure item that can be funded through a Section 106 obligation but cannot be funded by CIL and, as such, the pooled contributions restriction would not apply to affordable housing.

21.18 CIL does not have to be adopted anywhere from 2014 - it is voluntary - but the restrictions on pooling Section 106 contributions effectively mean most, if not all, planning authorities will want to adopt it. The Section 106 pooling restrictions will severely limit the ability of areas to fund large infrastructure through the use of multiple Section 106 contributions because they cannot pool them together as before.

21.19 We believe that these arrangements benefit England and Wales as CIL is a faster and fairer, and more certain and transparent, way of funding infrastructure than the system of Section 106 planning agreements, which are often subject to lengthy negotiation.

21.20 To date, neither the UK Government nor the Welsh Government has sought the devolution of CIL to Wales. The Welsh Government has endorsed each proposed regulatory change to the CIL regime. The Welsh Government did, however, respond to a UK Government consultation in 2011 on a proposal for affordable housing to be included in the infrastructure items able to be funded through CIL. As the CIL regulations restrict the pooling of Section 106 contributions for items able to be funded by CIL, and both because affordable housing is a high priority in Wales and adoption of CIL is thought likely to be slower initially in Wales due to local governance issues, the Welsh Government opposed the proposal.

21.21 The Government has decided, in light of the 2011 consultation, not to include affordable housing within the CIL regime at the present time. We want to see CIL more widely established before giving further consideration to such a significant

change. The pooling restrictions in respect of Section 106 contributions will therefore not apply to affordable housing developments.

21.22 If take up of CIL remains low in Wales nearer to 2014, there may be a case for devolving responsibility for determining CIL requirements in Wales, as local authorities would otherwise be constrained in their ability to raise funds from development when the 2014 restrictions on the use of Section 106 contributions kick in. Alternatively, there may be ways to increase take up of CIL in Wales under current arrangements. The Commission may wish to consider this issue.

Building Regulations

21.23 Most executive functions in the Building Act 1984, including the power to make building regulations, are devolved to the Welsh Ministers. Functions related to excepted energy buildings or exercisable by the Secretary of State as a Crown authority under the Building Act are not devolved. Legislative competence in respect of provisions in the Building Act is also non-devolved.

21.24 In respect of excepted energy buildings⁴⁰ and the transposition of EU Directives, the boundary of the settlement is complex and difficult to work in practice.

- The current boundary means that excepted energy buildings in Wales must comply with the building regulations which apply to England. This means that building control bodies (local authorities and approved inspectors) in Wales need to use the building regulations applying in England in relation to excepted energy buildings (which is likely to impact on a small amount of their work).
- At present Welsh Ministers are not designated to use the European Communities Act (ECA) 1972 to transpose Directives concerning matters that relate to building regulations. The European Communities (Designation) Order 2008 (S.I. 2008/301) designated the Secretary of State (and any Northern Ireland department) with powers to legislate in relation to measures relating to the environment, which covers energy performance of building matters. The designation does not extend to Welsh Ministers. This means that for environment or energy performance matters where we rely on the ECA 1972, the Secretary of State legislates for Wales. For example, when recently transposing the Energy Performance of Buildings Directive (recast) 2010/31/EU, the UK Government had to include within the building regulations applying in England provisions which would also apply to the buildings of statutory undertakers and Crown buildings in Wales, as Welsh Ministers do not have powers to legislate for these. This is confusing for the Crown and statutory undertakers and also for building control bodies operating in Wales.

21.25 The Commission may wish to consider whether there is a need for categories of buildings to be excepted from the competence of Welsh Ministers, and whether

⁴⁰ In general, generation stations and buildings associated with the storage and transport of gas. Defined in the Schedule to the Welsh Ministers (Transfer of Functions) (No.2) Order 2009

Welsh Ministers should be able to make building regulations in respect of all buildings in Wales.

22. Water and Flood Defence

22.1 Paragraph 19 of Schedule 7 devolves the following to the Assembly: water supply; water resources management (including reservoirs); water quality; the representation of consumers of water and sewerage services; flood risk management and coastal protection. The appointment and regulation of any water undertaker whose area is not wholly or mainly in Wales is non-devolved. This means that the Assembly's legislative competence is currently limited to those parts of the appointment areas of three water undertakers (Dŵr Cymru/Welsh Water, Dee Valley Water and Albion Water) which are in Wales. The legislative competence of the Assembly does not extend to any part of Severn Trent Water's area in mid-Wales (see Map 1).

22.2 There is also an exception for the licensing and regulation of licensed water suppliers within the meaning of the Water Industry Act 1991 - the 'WIA 1991' - (apart from the regulation of licensed activities using the supply systems of any of Dŵr Cymru/Welsh Water, Dee Valley Water and Albion Water). The licensing and regulation of all sewerage suppliers in Wales is non-devolved.

22.3 The complexity in the devolution boundary for water relates to the appointment and regulation of water undertakers and the licensing and regulation of licensed water suppliers. It stems from the cross border nature of those companies and the way in which functions were originally transferred to the Assembly under the National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1999/672) ('the TFO') made under the Government of Wales Act 1998.

22.4 Under section 6 of the WIA 1991, there is a water and sewerage undertaker appointed for every part of England and Wales (with the exception of the Isles of Scilly). Those companies appointed have de facto near monopolies within their respective appointment (or supply) areas. In the TFO, a distinction was made under the WIA 1991 between some functions of the Secretary of State which were devolved 'in relation to Wales' (i.e. within the geographic boundary of Wales) and some functions which were devolved 'in relation to water and sewerage undertakers wholly or mainly in Wales' (i.e. within undertaker appointment areas, two of which, Dŵr Cymru/Welsh Water, Dee Valley Water, cross the border with England). The reason for this cross border transfer of functions was to ensure a consistent application of water industry law in relation to the appointment areas of undertakers which reflected, broadly, the cross border river basin catchments of the Dee, the Wye and the Severn. It was also to ensure that the cross border assets of those undertakers, such as water treatment works, water supply zones, water mains and sewers, were regulated consistently on both sides of the border. These technical aspects are considered further below.

22.5 Under the Government of Wales Act 1998, the Assembly was able to make only secondary legislation. Any such legislation which affected cross border bodies, such as Dŵr Cymru/Welsh Water and Dee Valley Water, also had to be laid in Parliament (and was subject to the 'negative' resolution procedure). This gave the elected representatives of the customers of those companies living in England the opportunity to scrutinise legislation made in the Assembly which affected customers who had no elected representatives in the Assembly. An important instrument which

was made in this way was the Water Supply (Water Quality) Regulations 2001 (now revoked), which governed drinking water quality in the public supply network of water undertakers wholly or mainly in Wales, and licensed water suppliers using the supply systems of those undertakers.

22.6 When the Assembly assumed primary law-making powers⁴¹ following GoWA 2006, such joint regulation making powers were no longer appropriate (as the Assembly could make primary legislation which is not subject to Parliamentary scrutiny). GoWA states that provisions of Assembly Acts cannot apply other wise than in relation to Wales and so the definition of the Assembly's legislative competence in relation to water in GoWA was confined to the geographic boundary of Wales. Subject 19, "water and flood defences", of Schedule 7 to GoWA was drafted to reflect the intention that no part of Severn Trent Water, being mainly in England, would fall within the legislative competence of the Assembly in relation to water industry matters by inserting an exception to the legislative competence in relation to the appointment and regulation of water undertakers whose area is not wholly or mainly in Wales. The UK Government takes the view that the exceptions in paragraph 19 for the 'appointment and regulation' of undertakers (and similarly the 'licensing and regulation' of licensed water suppliers) concerns those matters which are governed by the WIA 1991 under which those companies are appointed or licensed, and that this exception for 'regulation' does not extend to, for example, environmental regulation of Severn Trent Water within Wales.

22.7 Under the WIA 1991⁴², the executive competence of the Welsh Ministers in relation to the activities of the water and sewerage industry has been largely devolved in relation to undertakers wholly or mainly in Wales, although, as explained above, there are exceptions to this. This means that the Welsh Ministers can, for example, make certain secondary legislation in relation to the whole of the appointment (or supply) areas of Dŵr Cymru/Welsh Water and Dee Valley Water.

22.8 The Secretary of State has powers to intervene in relation to the Assembly and the Welsh Ministers exercising their legislative and executive competence respectively. Under section 114 of GoWA, he may make an order preventing an Assembly Bill being submitted for Royal Assent if he has reasonable grounds to believe that the Bill contains provisions which might have a serious adverse impact on water resources in England, water supply in England or the quality of water in England. The intervention power does not extend to sewerage, but neither does the legislative competence of the Assembly.

22.9 Under section 152 of GoWA, the Secretary of State may also intervene if it appears to him that the exercise of an executive function (or failure to exercise that function) might have a serious adverse impact on water resources, water supply or the quality of water in England. Again, the intervention power does not extend to sewerage. These powers of intervention have never been used.

⁴¹ These were Assembly Measures up to 5 May 2011, and Acts of the Assembly thereafter.

⁴² For functions under this Act transferred to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999 (SI1999/672). Those functions were subsequently transferred to the Welsh Ministers under paragraph 30 of Schedule 11 to GoWA.

Water Policy

22.10 Water policy matters broadly fall into three categories: the regulation of the water environment (often referred to as water quality); the regulation of the water and sewerage industries who supply water to households and businesses and treat sewerage from the same sources; and the management of flood defences. This area is inevitably complex. Put at its most straightforward, this is because the border between England and Wales does not reflect the river basins or river catchments which span the boundary. The water and sewerage industries are undoubtedly one of the most complex areas in terms of the Welsh devolution settlement.

Water Environment

22.11 Under the EU Water Framework Directive 2000/60/EC (the “Directive”) there are two cross-border river basin districts: the Severn (incorporating the river catchments of the Severn and the Wye) and the Dee. There is a further river basin district entirely in Wales which covers western Wales (see Map 1 overleaf). The Western Wales river basin district is exclusively within the executive competence of the Welsh Ministers (and, in so far as set out in Schedule 7 to GoWA, the Assembly could exercise legislative competence within the terms of the Directive).

22.12 Under the Directive, the UK is required to manage the Severn and the Dee river basin districts in a holistic fashion. All aspects of EU and domestic water environment law and policy sit within the context of the Directive. Objectives must be set for water bodies within those river basin districts, irrespective of administrative boundaries, for the good of the water environment in its broadest sense. Therefore, although water environment policy is largely devolved, the Secretary of State and the Welsh Ministers and their respective delivery bodies are obliged under the Directive to produce joint plans in order to implement all aspects of water environment law.

22.13 The UK Government and all three Devolved Administrations have worked in a highly co-operative way in the transposition and implementation of the Directive. All the UK’s administrations and their respective enforcement agencies have worked together to develop a common understanding of the Directive and a common scientific approach to its implementation. Although there are clear differences of approach (and this is most obviously so in relation to Northern Ireland which shares international river basin districts with the Republic of Ireland), we expect this positive, co-ordinated approach to continue.

22.14 All aspects of water environment law fall within the Directive. Therefore, as a matter of EU law, the effective cross border management of these issues by the Secretary of State and the Environment Agency, and by the Welsh Ministers and Natural Resources Wales, is assured. This is one of the benefits of the Directive.

Map 1: Water Framework Directive – River Basin Districts in the UK



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LEGEND: IRBD International River Basin Districts RBD River Basin Districts

Northern Ireland

	IRBD Name: North Western (IRBD)
	IRBD Name: Neagh Bann (IRBD)
	RBD Name: North Eastern

	National and International Borders
	Rivers
	Capital Cities
	Coastal and Transitional Waters Areas are shown as a part of the RBD.

Scotland, England and Wales

	RBD Name: Scotland		RBD Name: Western Wales
	RBD Name: Solway Tweed (Cross Border)		RBD Name: Dee (Cross Border)
	RBD Name: Northumbria (Cross Border)		RBD Name: Severn (Cross Border)
	RBD Name: North West		RBD Name: Thames
	RBD Name: Humber		RBD Name: South East
	RBD Name: Anglian		RBD Name: South West

Water and sewerage industries

22.15 The regulation of the water industry – both water supply and sewerage treatment – raises a number of issues in terms of the Welsh devolution settlement. These have been recently highlighted by the draft Water Bill, which the UK Government published on 10 July 2012.

22.16 The appointment areas of water and sewerage undertakers do not follow the England-Wales border, but instead reflect the relevant river catchments and the existence of water pipes and sewers owned by the undertakers which relate to those catchments. This can be seen from Map 2 below.

Map 2: The Appointment Areas of the cross border Water and Sewerage Undertakers in Wales (courtesy of Water UK)



22.17 Water supply is largely devolved whereas sewerage is not. As explained earlier, the Assembly has legislative powers, but only in relation to Wales, over the appointment and regulation of water supply undertakers wholly or mainly in Wales, and to regulate the activities of the new entrant licensed water suppliers using the supply systems of those undertakers (e.g. drinking water quality). Licensed water suppliers are new entities created in the Water Act 2003. This means that the Assembly can only legislate for part of the appointment areas of Dŵr Cymru/Welsh Water and Dee Valley Water.

22.18 The executive competence of the Welsh Ministers in relation to the water and sewerage industries has been largely devolved in relation to undertakers wholly or mainly in Wales, although there are exceptions to this. This means that largely the Welsh Ministers can, for example, make some secondary legislation in relation to the whole of the appointment areas of Dŵr Cymru/Welsh Water and Dee Valley Water.

22.19 Broadly speaking, legislative competence, and much of the executive competence for the licensing of new entrant licensed water suppliers is not devolved.

22.20 In practice, many of these functions are carried out by Ofwat as the economic regulator for the industry across England and Wales. This means that there is a single licensing regime industry for England and Wales. There are relatively few water supply licensees in existence and currently a limited market in which they operate.

22.21 The table overleaf has been compiled by the Drinking Water Inspectorate ('DWI'). In relation to water supply, it shows the extent of the cross border nature of the business of Dee Valley Water ('DVW'), Dŵr Cymru/Welsh Water ('DWR') and Severn Trent Water ('SVT'). The data comes from water company annual returns to DWI and reflects the situation as at September 2012. For water treatment works ('WTW'), service reservoirs ('SRs') and water supply zones ('Zones'), the table shows the total numbers of assets, volume in cubic metres/day supplied or Megalitres capacity ('ML') and populations served by each of those companies in total, in Wales, in England, and in both Wales and England. These figures are provisional, but illustrate the scale of assets involved and the complexity involved in any changes to regulatory arrangements.

22.22 A water treatment works is a site where raw water is treated so it is safe and meets drinking water standards. Service reservoirs are sites where treated water is stored within the distribution network conveying water from treatment works to consumers' taps. They are needed to ensure a continuous supply of water at the required pressure is available on demand at consumers' taps. Water supply zones are defined distribution network areas established to check that the quality of the water at every consumers' tap meets EU and national drinking water standards. Zones are defined by the nature of the distribution system, size of population and source(s) of the treated water. The quality of water within a single zone must be uniform. Most water treatment works will serve more than one zone and there are limits as to the extent to which different standards could be applied to different zones. That said, all zones must comply with the standards in the EU Drinking Water Directive, therefore the only scope for setting different standards is the setting of stricter ones.

22.23 From the table, it can be seen that Dee Valley Water currently has no cross-border supplies although it has 4 assets situated in England with the remainder in Wales. Dŵr Cymru/Welsh Water has one cross border water treatment works and five cross border water supply zones. Severn Trent Water has eight cross border water supply zones. Therefore, as currently configured, from the three companies, the scale of the cross border arrangements is a relatively small proportion of each company's total supply. However, the situation could change in future because assets and new customer premises can be abandoned and new ones commissioned, affecting zone boundaries. The existence of a water treatment works on the geographic boundary adds further complexity.

22.24 There are also cross border sewers, and sewage treatment works serving both England and Wales.

Table 5: Water Companies' Cross Border Business

DVW	Total		Wales		England		Both		
WTWs	6	66,280 m3	4	41,890 m3	2	24,390 m3			cubic metres/day
SRs	31	37.98 ML	29	30.96 ML	2	7.02 ML			Megalitres capacity
Zones	18	261,084 pop	13	159,892 pop	5	101,192 pop			population

DWR	Total		Wales		England		Both		
WTWs	77	782,530 m3	70	741,823 m3	6	38,587 m3	1*	2,120*	cubic metres/day
SRs	388	1467.48 ML	362	1380.79 ML	26	86.69 ML			Megalitres capacity
Zones	84	2,950,725 pop	72	2,716,563 pop	7	142,275 pop	5**	91,887**	population

* one works site straddles the geographic boundary

** 5 Water Supply Zones straddle the geographic boundary

SVT	Total		Wales		England		Both		
WTWs	136	1,882,467 m3	2	15,331 m3	134	1,867,136 m3			cubic metres/day
SRs	542	2,857.9 ML	58	30.14 ML	484	2,827.77 ML			Megalitres capacity
Zones	209	7,554,279 pop	2	2,727 pop	199	7,391,387 pop	8***	160,165***	population

*** 8 Water Supply Zones straddle the geographic boundary

22.25 The technical features of the water and sewerage industries are complex. Separating cross border systems may not always be technically feasible at reasonable cost and may create significant regulatory difficulties. Any proposal to align the legislative competence of the Assembly and executive competence of the Welsh Ministers in relation to the water and sewerage industries with the geographic boundary of Wales, would have significant implications – including for the management of water resources; the potential impact on the stability of the regulatory regime for the statutory water and sewerage undertakers; investment and asset management; and the inter-dependence of the cross-border water and sewerage industries.

22.26 The UK Government would be happy to provide further technical assistance if the Commission is minded to look into this area, and would recommend that the Commission take evidence from water and sewerage companies.

22.27 The draft Water Bill reforms the water supply licensing regime and creates a sewerage licensing regime across England and Wales, introducing greater competition for non-household customers. It also makes some changes to the regulation of water and sewerage undertakers to give effect to the new regime.

22.28 However, it largely preserves the existing regime in respect of the Assembly's and Welsh Ministers' competences. This means that Welsh Ministers have the power to decide when to extend competition in areas supplied by water undertakers that are wholly or mainly in Wales.

22.29 The Bill as currently drafted allows for the Secretary of State to commence the key competition provisions in those areas of England served by Dŵr Cymru/Welsh Water and Dee Valley Water (e.g. parts of Cheshire and Herefordshire). This is a change from the current approach to regulation of the water sector in that it removes the powers of the Welsh Ministers to determine the size of the market which may be served by the new entrant licensees. The approach is likely to alter in future versions of the Bill, enabling the Secretary of State to commence these provisions in England with the consent of Welsh Ministers.

22.30 This approach reflects the current different policy approaches between England and Wales on the extension of competition in the water sector. It is intended to enable customers on the English side of the border to have access to the benefits of a more competitive market, whilst recognising the competence of Welsh Ministers. It also reflects the fact that customers in England are not represented in the Assembly.

Management of flood defences

22.31 This area of law and policy was significantly reformed by the Flood and Water Management Act 2010. That Act implemented the legislative recommendations of the Pitt Review⁴³ which was set up following the floods of summer 2007. The Act also gave effect to the Welsh Government's Environment Strategy for Wales, New Approaches Programme and the Strategic Policy Position Statement on Wales.

22.32 The 2010 Act gives the Environment Agency a strategic overview of the management of flood and coastal erosion risk in England, and the Welsh Ministers a similar role in Wales. In accordance with the Government's Response to the Pitt Review⁴⁴, it also gives upper tier local authorities in England, and local authorities in Wales, responsibility for preparing and putting in place strategies for managing flood risk from groundwater, surface water and ordinary watercourses in their areas.

22.33 The 2010 Act also:

- amended the Coast Protection Act 1949 to give the Environment Agency powers in relation to coastal erosion risk management in England and Wales to add to their current powers on coastal flooding;
- provides for Regional Flood and Coastal Committees to replace Regional Flood Defence Committees for regions in England and Wales. These committees advise the Environment Agency about the way in which the Agency proposes to carry out its flood and coastal erosion risk management functions in relation to the respective Committee's region. Their consent is required prior to implementation of the Environment Agency's regional programme for their respective region;

⁴³ Learning lessons from the 2007 floods. An independent review by Sir Michael Pitt http://webarchive.nationalarchives.gov.uk/+http://www.cabinetoffice.gov.uk/upload/assets/www.cabinetoffice.gov.uk/flooding_review/flood_report_web.pdf

⁴⁴ The Government's Response to Sir Michael Pitt's Review of the Summer 2007 Floods, December 2008. <http://www.defra.gov.uk/publications/2011/03/30/pb13193-flood-review-2007/>

- provides additional legal powers for certain authorities in England and Wales formally to designate assets or features which affect flood or coastal erosion risk. It increases regulatory control of the significant number of assets or features which form flood and coastal erosion risk management systems, but which are not maintained or operated by those formally responsible for managing the risk; and
- requires relevant authorities to co-operate with any other relevant authority which is exercising flood or coastal erosion risk management functions. Relevant authorities include risk management authorities and Welsh Ministers.

22.34 The Environment Agency currently carries out flood management functions in Wales through Environment Agency Wales, a Welsh Government Sponsored body which is also part of Environment Agency but is responsible to Welsh Ministers. Plans are in place to transfer these functions from the Environment Agency to the newly established Natural Resources Wales (“NRW”) by way of an order made by Welsh Ministers under the Public Bodies Act 2011 (“the Functions Order”).

22.35 It is expected that the Functions Order will transfer the Environment Agency’s functions and powers under the Coastal Protection Act 1949 to the NRW in relation to coastal erosion risks in Wales. It will also amend the 2010 Act to transfer various functions of the Agency relating to Wales to the NRW. The NRW will become a “risk management authority” and “Welsh risk management authority” for the purposes of the 2010 Act, so that it is subject to the Welsh Ministers’ national flood and coastal erosion risk management strategy, and is required to co-operate with the Welsh Ministers and other risk management authorities.

22.36 The Functions Order will also transfer the EA’s functions in relation to Regional Flood and Coastal Committees operating in areas wholly or mainly in Wales to the NRW. Any revisions to committee areas which affect both English and Welsh Committees will be for the EA and NRW acting jointly.

23. Welsh language

23.1 Legislative competence over the Welsh language is devolved to the Assembly. This means that the Assembly can legislate in relation to the Welsh language, other than in the specific case of the use of the Welsh language in courts.

23.2 The Welsh Language Act 1993 sets out that the Welsh language is treated on the basis of equality in the administration of justice in Wales, and practice directions and other guidance developed by judiciary in Wales ensure that Civil, Family and Criminal Courts apply the principles of the Act in practice. The Judicial College is working with HM Courts and Tribunal Service's Welsh Language Unit to provide training in Welsh so as to broaden the availability of appropriately trained Welsh-speaking judiciary.

23.3 Any legislation made by the Assembly in relation to the Welsh language which modifies a pre-commencement⁴⁵ function of a Minister of the Crown requires the consent of the Secretary of State. This includes the functions of UK Government bodies exercising Minister of the Crown functions, but not every function of public bodies funded by the UK Government could be so characterised.

23.4 The Assembly legislated on the Welsh language in 2011, via the Welsh Language Measure, prior to the Assembly assuming legislative powers in all twenty devolved areas in May that year. The Assembly legislated using the legislative competence conferred on it by the Welsh Language Legislative Competence Order (LCO) 2010, which conferred a narrower range of Welsh language powers than the Assembly is now able to exercise.

23.5 The Measure makes provision for promoting and facilitating the Welsh language, establishing the office of Welsh Language Commissioner (replacing the Welsh Language Board) and making provision about standards relating to the Welsh language. As set out in the Measure, any standards could only apply in relation to Minister of the Crown functions with the consent of the Secretary of State.

⁴⁵ Pre-commencement functions are functions which Ministers of the Crown exercised before Schedule 7 to GoWA commenced (i.e. before 5 May 2011).