



Llywodraeth Cymru
Welsh Government

DATGANIAD YSGRIFENEDIG GAN LYWODRAETH CYMRU

TEITL Tystiolaeth i Ymchwiliad Pwyllgor Cyfansoddiad Tŷ'r Arglwyddi,
"Yr Undeb a Datganoli"

DYDDIAD 2 Hydref 2015

GAN Y Gwir Anrh. Carwyn Jones AC, Prif Weinidog Cymru

Mae Pwyllgor Cyfansoddiad Tŷ'r Arglwyddi, dan gadeiryddiaeth yr Arglwydd Lang o Monkton, wedi dechrau Ymchwiliad newydd, sy'n dwyn y teitl "Yr Undeb a Datganoli". Mae Llywodraeth Cymru wedi cyflwyno Memorandwm Tystiolaeth, ac atodaf gopi ohono er gwybodaeth i'r Aelodau. Rhagwelaf y bydd y Pwyllgor yn cynnal sesiynau tystiolaeth llafar maes o law.

HOUSE OF LORDS CONSTITUTION COMMITTEE: INQUIRY INTO “THE UNION AND DEVOLUTION”

WRITTEN EVIDENCE SUBMITTED BY THE WELSH GOVERNMENT

Introduction

1. The Welsh Government is pleased to submit this Written Evidence to the Committee in respect of this Inquiry. Our understanding is that you are concerned to investigate what binds the constituent parts of the Union together, and how it can be strengthened and reinforced.
2. The Welsh Government is strongly supportive of the Union, and we welcome the Inquiry as entirely appropriate now. In a speech to the Institute of Government on 15 October 2014, the First Minister said:

“...devolution has already fundamentally changed the governance of the United Kingdom. This was clear before the Scottish referendum was even in prospect, and it has become blindingly obvious since then. Public support for the devolved Parliament and Assemblies has created a presumption of popular sovereignty in the different parts of the UK, which has fundamentally challenged assumptions about a centralized British state.

So much so, that I believe we should stop talking about devolution, what powers can be handed down by a reluctant Whitehall, and start talking about the Union, and the issues we must share with each other”.

3. He returned to this theme in more urgent terms in a speech at the British Academy on 5 June this year:

“...in [a] longer-term perspective, I cannot be so sure that the Union will survive. There may come a time when Scots will again be asked what future they see for their country. And they may not be persuaded to stay with us without a clearer vision than they had in 2014 of what the UK can offer them in the future.

I do not believe that that vision can be developed on a bilateral basis, and I continue to believe that we are all Better Together. So those who are committed to the Union need now to work together to develop a perspective for the UK which..... enables the unity of the UK while guaranteeing the diversity of its constituent parts.”

4. From a Welsh perspective, the Inquiry is timely for another reason. As the Committee will be aware, a new Bill on Welsh devolution is in prospect. A key element of this will be the reconstruction of Welsh devolution on the basis of a model, similar in some respects to that already in operation for Scotland, whereby powers are reserved to the centre, with all remaining functions and competences becoming the responsibility of the devolved institutions. The Welsh Government supports this in principle, but of course the fundamental question is, what are to be the powers reserved to the centre? As the recent study, “Delivering a

Reserved Powers Model for Wales”, published jointly by the Constitution Unit (CU) and the Wales Governance Centre (WGC), points out, the answer to this is not straightforward, but needs to be approached on the basis of principle:

“...the absence of any coherent principle for the division of functions between the devolved and UK/England tiers of government will leave the door open to further debate about these issues, and add to the innate instability of any arrangements that are put in place. They are unlikely to deliver a stable long-term settlement as is widely sought. Coherence and stability will only be achieved by adopting a longer term perspective.”

5. Perhaps the outcome of the Committee’s Inquiry can contribute to the development of that longer-term perspective on the appropriate division of functions within the Union, and provide a template against which the provisions of the Wales Bill, once published, can be assessed.

The Nature of the Union

6. We set out below five propositions about the Union which underpin our approach to the questions raised by the Committee’s Inquiry:
 - (i) Whatever its historical origins, the United Kingdom is best seen now as a voluntary association of nations which share and redistribute resources and risks between us to our mutual benefit and to advance our common interests;
 - (ii) Although we should be careful about the easy use of the term (because “devolution” is based on the assumption that our state is fundamentally a centralised one which may, if it wishes, give away some power; this starts our discussion in the wrong place), the principles underpinning devolution should be recognised as fundamental to the UK constitution, and the devolved institutions should be regarded as effectively permanent features of that constitution;
 - (iii) Devolution is about how the UK is collectively governed, by four administrations which are not in a hierarchical relationship one to another. The relations of the four governments of the United Kingdom should therefore proceed on the basis of mutual respect and parity of esteem (and comment on the policies of other administrations should, within a culture of robust political debate, properly reflect that respect). Each of the administrations, including the UK Government in respect of England, has separate responsibilities and accountabilities, which should be recognised and respected by all the other partners, as part of the joint enterprise of the governance of the UK;
 - (iv) The allocation of legislative and executive functions between central UK institutions and devolved institutions should be based on the concept of subsidiarity, acknowledging popular sovereignty in each part of the UK. (Parliamentary sovereignty as traditionally understood will need in the longer term to be recognised as incompatible with this evolving constitution); and
 - (v) The presumption should therefore be that the devolved institutions will have responsibility for matters distinctively affecting their nations. Accordingly, the powers of the devolved institutions should be defined by the listing of those

matters which it is agreed should, for our mutual benefit, be for Westminster, all other matters being (in the case of Wales) the responsibility of the Assembly and/or the Welsh Government. (Given Wales' distinctive relationship and degree of socio-economic integration with England, the list of matters attributed to Westminster may, by agreement, include some which may more appropriately be dealt with on an England-and-Wales basis, as well as those dealt with on a UK or GB basis. There should therefore be no assumption that those matters for which Westminster is responsible in respect of Wales will be identical to those in respect of Scotland or Northern Ireland, although there will be very many common features in the lists).

7. The Committee's inquiry primarily raises issues under point (i) above: what are the matters which merit all-Union action to our mutual benefit? We address that question below, but it is worth stressing first the relevance of points (iv) and (v) to the forthcoming Wales Bill. In our discussions with the UK Government, we have argued that reservations to the Assembly's legislative competence should be drafted in accordance with the principle of subsidiarity, which we believe provides the "coherent principle" the CUWGC Report calls for. In other words, we have said that responsibility for decisions should lie at the lowest possible level consistent with their effective implementation, or closest to where they will have their effect, and that the Wales Bill should be drafted accordingly. We will be examining the Wales Bill, once published, from that perspective.
8. Turning then to the Union itself, since the Report of the Calman Commission in 2009, this has generally been regarded as having three elements: economic union (including currency union and fiscal union); political union; and social union. Taking these in turn:
 9. Our economic union implies that there should be no barriers to trade, business and employment for people and companies in different parts of the UK; ours is a "single market" (to an extent that the European Union is still some way from achieving). The devolution statutes reinforce this, by reserving to Westminster exclusive legislative competence in respect of such matters as company formation and dissolution; business regulatory powers; statutory employment rights, and so forth. We would expect the Wales Bill to reaffirm that, in respect of Wales, these matters should continue to be Westminster responsibilities; the Welsh Government has not argued to the contrary. Economic union also implies central responsibility for macro-economic and monetary policy, within the context of a common currency, and again the Welsh Government supports that. The more difficult question, however, is the extent to which economic and currency union requires full fiscal union; on this, the Welsh Government considers that there clearly is scope for devolution of some tax responsibilities, but our position differs in detail from those of both the UK Government and the Scottish Government.
10. So far as the UK Government's position is concerned, in 2013 it introduced a Wales Bill providing for a limited measure of devolution of responsibility for income tax rate-setting, but attached to this a "lockstep" restriction (subsequently removed by amendment in the House of Lords) on the Welsh Government's ability to propose movement of individual rates which in our view would have

resulted in no real freedom of action at all (and so we welcomed the amendment).

11. We differ from the Scottish Government in our policy on devolution of Corporation Tax (and other business-related taxes such as National Insurance). The First Minister has consistently argued that, leaving aside the special circumstances of Northern Ireland, devolution of Corporation Tax could only lead to damaging competition between different parts of the UK and a “race to the bottom” which would serve only to undermine the UK’s overall tax base and business tax take; this would do nothing to reinforce the Union.
12. Our political union is principally manifested in the UK’s external relationships and membership of the European Union and of international organisations, and by reserving the European Communities Act 1972, and Foreign Affairs and Defence to Westminster, the devolution statutes reaffirm that position. There is also obviously a domestic dimension to political union, based on our common commitment to democracy and the rule of law; this is principally manifested in the form of a House of Commons with Members, of equal status, drawn from all parts of the Union, and a Home Civil Service which shares with the Northern Ireland Civil Service common values, principles and professional standards. These currently are, and in the Welsh Government’s view should remain, matters for which legislative competence should be reserved to Westminster. So far as the Civil Service is concerned, we welcome the fact that the Scottish Government did not argue a case to the Smith Commission for devolution of responsibility for civil servants supporting Scottish Ministers, and we strongly support the recent four-administration initiative, led by Sir Jeremy Heywood, to enhance civil service capability in relation to devolution.
13. The social union is multi-faceted, and of course includes extensive family and social relations amongst UK citizens, as well as a cultural heritage with strong common features across the Union. In our evidence to the Silk Commission in 2013, we drew attention to “The vital role that broadcasting institutions play in creating a common cultural citizenship for people across the UK (which) would not be strengthened by any attempt to divide responsibility for broadcasting institutions among its constituent parts”. We did however “believe that this vital UK role can be reinforced by measures aimed at strengthening the particular contribution which the broadcasters make in each of those constituent parts”, and our approach to BBC Charter renewal, in which we will continue to take a close interest, will be based on this approach.
14. As Professor Gallagher argued in an essay published very shortly after the Scottish referendum, the political union and the social union are closely linked:
“..political union has internal significance as well..... People throughout the UK elect members of Parliament not just to deal with foreign affairs but taxation too. They expect the UK Government to manage the economy of the whole of the union. Political union also provides the legitimacy for sharing fiscal resources across the whole UK, most obviously and directly in social security. Pensions are paid to people wherever they are in the country, irrespective of local taxable capacity. Benefit payments in poor or depressed areas are

funded by taxes transferred from better off ones. This applies not merely within Scotland or England, but across the nations of the UK”.

15. Resource and risk sharing, in the interests of social protection for all UK citizens, are at the heart of the Welsh Government’s understanding of the social union. The First Minister made the point in these terms in his Institute for Government speech previously referred to:

“Our welfare state establishes a certain set of rights and entitlements for our citizens which apply wherever they live within the UK. I place a strong value on the fact that we all have an equal claim on the safety net that protects us – however imperfectly – from Beveridge’s five famous ‘giant evils’. So I see social security as one of the core components of our common citizenship – one of the great achievements of the UK. I would not want that safety net to fray as a result of ill-considered or rushed reforms”.

16. The Welsh Government has concerns about the direction of policy on welfare devolution, particularly as seen in the Scotland Bill, under which the Scottish Government will have new powers to supplement provision currently provided on a GB-wide basis. In practice this could mean that Scottish residents in receipt of social security benefits could receive higher levels of support than citizens in identical circumstances but resident in Wales or England. It is hard to reconcile this with conceptions of common social citizenship across the Union. In a recent paper, Professor Gallagher has argued that

“Social security has always been reserved, and entitlements the same throughout the United Kingdom.....this social union was one of the strongest arguments for Scotland's remaining in the United Kingdom. But an equally strong argument can be made for allowing Scotland, if it wishes and is willing to pay for it, to offer a more generous welfare package, including benefits as well as services”. (Emphasis added)

17. In the Welsh Government’s view, this is only an acceptable proposition if each administration within the UK is in broadly the same position in terms of resources so as to be able to make higher benefits payments to those it deems worthy of these; benefit levels for citizens in different parts of the Union should not depend on whether the particular administration in whose territory they are resident is well or poorly served by the Union’s resource allocation mechanism.

Financial Reform

18. That last comment leads to our principal conclusion. For the health of the Union, reform is needed so that the distribution of resources across the UK takes account of the factors that influence the demand for public services in each part. And the case for financial reform is even stronger when it forms the central element of a funding model with devolved taxes. As outlined in our evidence to the House of Lords Select Committee on Economic Affairs for its inquiry into devolution of public finances within the UK, it is the Welsh Government's view that public spending should be determined by needs, and therefore a needs-based allocation formula is ultimately the most sensible way to deliver fairness across the UK. The inadequacies of the Barnett Formula in this respect are well-known, and do not require restatement here; but obvious unfairness in the allocation of resources across the UK can only do harm to the strength of the

Union. The principle should be that the different parts of the Union should be able to deliver an equivalent level and quality of public services for an equivalent tax effort. Each part of the UK should be able to make its own choices at the margin about tax rates and so determine the total of resources available for public services in its territory; but there should be a common core UK standard, with resources being redistributed from areas with a stronger tax base to those with a weaker tax base to ensure this. We would strongly oppose any suggestion that each part of the UK should retain the product of its tax base and only pool resources for common services.

19. The Welsh Government would also favour greater scrutiny and a more open and transparent approach to the calculation of funding for Wales (and the other devolved administrations). The operation of these resourcing arrangements, including determinations of devolved administrations' spending power and borrowing limits, and functions in respect of Revenue and Customs, should be the responsibility of public agencies accountable to all four administrations jointly. The Holtham Commission recommended the establishment of an independent advisory body. Alternatively, the Silk Commission suggested that the Office for Budget Responsibility or the National Audit Office could review and audit technical aspects of the funding regime. Either of these approaches would enable the Devolved Administrations to have more confidence in the framework.
20. Reform along these lines should sit alongside improved and strengthened structures for the management of inter-governmental relations, which need to work effectively if the Union is to remain strong. Following the Constitution Committee's valuable report earlier this year, work, in which the Welsh Government is participating, is ongoing to review the existing arrangements.

Conclusion

21. As noted above, the Welsh Government welcomes the Constitution Committee's initiative in establishing this timely and appropriate Inquiry, and we hope this Evidence is of assistance to the Committee. We will read with interest other Evidence submitted to the Committee, and will be particularly interested in that of the UK Government; we will want to test the provisions of the Wales Bill against the arguments the Government advances as to the nature of the Union and the principles which ought to be considered in the allocation of responsibilities between Westminster and the devolved legislatures. That may also be a fruitful area of inquiry for the Committee in due course.

**Welsh Government
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