

Paper for the Council for Economic Renewal

The draft Wales Bill

Background

Following the 2011 referendum, the National Assembly is able to make legislation in any of the 20 subject areas within its competence. This is known as *the conferred powers model*: the Assembly can only legislate in matters relating to an area which has been specifically devolved. This is in contrast to the Scottish Parliament which may legislate in any area unless it is specifically reserved (*‘the reserved powers model’*).

The UK Government announced its proposals for a new devolution settlement for Wales in February 2015. This followed the second report the Silk Commission and discussions with the political parties in Wales. In its Command Paper, *Powers for a Purpose*, the UK Government committed to implementing the Silk recommendations where there was a consensus among the party leaders.

The draft Wales Bill

The UK Government published its draft Wales Bill in October 2015. This made provision to move from a conferred powers model to a reserved powers model: under the proposed Bill, the National Assembly would be able to legislate on any subject area unless it was specifically reserved in the Bill.

In addition, the Bill included provisions to devolve responsibility for:

- local and National Assembly elections;
- National Assembly procedures and governance;
- speed limits
- ports;
- sewerage;
- consents for energy generation projects below 350MW;
- marine conservation and licensing;
- onshore oil and gas licensing.

The Bill has undergone pre-legislative scrutiny by the House of Commons Welsh Affairs Committee (WAC) and the National Assembly Constitutional and Legislative Affairs Committee (CLAC). CLAC published its report on 4 December 2015 calling for a number of changes to the Bill before introduction. The WAC report is in preparation.

Plenary Debate

The National Assembly debated the CLAC report on 13 January, and agreed unanimously to welcome the report and to note the Committee's recommendations for amendment:

- to remove the necessity test (*see below*) or replace it with a test based on appropriateness.
- to include a system for requiring Minister of the Crown consents that reflects the model in the Scotland Act 1998.
- to reduce significantly the number and extent of specific reservations and restrictions.
- to include a distinct Welsh jurisdiction.

Key issues with the current draft Bill

Restrictions on changes to Criminal and Civil Law

At present, the National Assembly can modify the law of contract, common law and other areas of private law and criminal law wherever those modifications relate to a devolved subject. This includes creating a criminal offence where appropriate to make legislation effective.

The First Minister has said that the draft Bill would curtail this power significantly, (by introducing a series of new legal tests, including the necessity test, which a provision amending the Civil or Criminal Law must pass in order to be within competence) which is inconsistent with the mandate of the 2011 referendum, and make it inevitable that more Bills will be referred to the Supreme Court.

The Secretary of State for Wales said in evidence to WAC that there needed to be a boundary to prevent modification of "*the general application of criminal and civil law*" and that it was important for the protection of the single jurisdiction of England and Wales.

The First Minister has proposed the creation of a distinct legal jurisdiction for Wales to reflect the growing body of Welsh law, and to make it easier to define the powers of the National Assembly in respect of the private and criminal law consistently with the referendum mandate.

Ministerial Consents

The draft Bill would require the UK Government to consent to any provision of a Welsh Bill which modifies:

- any function of a UK Minister, even if it is in a devolved area
- any function of a UK Government Department, even if it is in a devolved area
- any function of a reserved authority.

The First Minister has said that this significantly extends the circumstances in which the Assembly would require UK Government consent in order to legislate.

The Secretary of State has said that he was open to examining the issue.

List of Reserved Areas

The First Minister has said that the list of reservations includes matters that should be devolved, or are too minor for inclusion in a constitutional document and should be reduced significantly. These include alcohol licensing, the Community Infrastructure Levy, pedlars, street trading, and the pubs' code.

The Secretary of State has said that he is open to consideration of reducing the list of reservations.

Next Steps

WAC will publish its report shortly. The Bill, including any revisions made by the UK Government, is expected to be introduced in Parliament in the next few months. On the current timescale, the Bill would pass through the House of Commons and be introduced in the House of Lords by July. The UK Government's aim is for the Bill to receive Royal Assent in 2017.