



Llywodraeth Cymru
Welsh Government

Commission on Justice in Wales:

**Supplementary evidence to the
Commission on Justice in Wales –
The Government and Laws in Wales Bill**

Creation of a Welsh legal jurisdiction, and devolving responsibilities for policing and justice: the proposals made in the Draft Government and Laws in Wales Bill

Background

1. This supplementary evidence paper focusses on the Draft Government and Laws in Wales Bill, published by the Welsh Government in 2016 as a proposed alternative to the Wales Bill then being considered by the UK Parliament (and which became the Wales Act 2017). The paper explains how the Draft Government and Laws in Wales Bill (referred to in the remainder of this paper as the alternative Bill) was intended to work and sets out how practical matters could have been resolved within the time periods envisaged by it. It should be read in conjunction with the other evidence papers already submitted to the Commission on Justice in Wales.

2. In the early years of devolution (1999-2006) the powers transferred to Wales were very limited, and the governance structure created for the exercise of these powers (essentially a local authority model, albeit one that by a complex system of delegations was able to create a **de facto** government) was similarly unambitious, certainly in comparison with Scotland.

3. The system developed on a piecemeal basis building incrementally on what had gone before. It was essentially a democratisation of the system created in the 1960s when the Welsh Office was created. Criticisms of these arrangements focused on both the **lack of depth** of the powers (i.e. that they were a series of specific executive powers constrained by their statutory context) and the lack of breadth of the powers (i.e. why was it that the Assembly could deal with one issue but not another that was clearly connected).

4. The Government of Wales Act 2006 expanded the powers of the National Assembly and Welsh Government, in particular after the move to full law making powers was clearly endorsed by the referendum of 2011.

5. However, implementation of the 2006 Act did not fully resolve the issues outlined above. A **jagged edge** between the powers devolved and those not devolved remained. And the jagged edge concerned both the depth and the breadth of the powers – the depth because of the numerous restrictions on legislating that required UK Government consent despite a subject being otherwise devolved, and the breadth because the number of subjects devolved – although expanded – was still broadly the same as the subjects initially devolved in 1999, which were in turn based on the old Welsh Office powers.

6. And while the creation of a formal executive and a fully fledged legislature was a big step forward, it did not fully resolve the problem of constitutional design. The powers devolved began to overtake the constitutional infrastructure. This was because fuller law making powers meant that a legislature had been created to make laws that were different for Wales, yet **enforcing and administering** those laws (mainly through the court system) remained the responsibility of the UK Government. This was because the broader justice system was not devolved and because, unlike any other legislature in the common law world, the laws made by National Assembly would, essentially, form part of another legislature's legal jurisdiction.

7. So responsibility for some matters remained devolved while closely connected matters were not, and from a constitutional perspective the division meant perpetual tension between administrations and a lack of clarity about who was responsible for what.

8. The system therefore was, and still is, notwithstanding the changes made by the Wales Act 2017, inherently complex.

Government and Laws in Wales Bill

9. The purpose of the alternative Bill published by the Welsh Government in 2016 was to set out how a stable, future proof system could be put in place. It addressed the jagged edge and the failures in constitutional design that undermine the current system.

10. In drafting the alternative Bill, the guiding principles were:

- **subsidiarity:** legislative and ministerial responsibility for matters in Wales should be devolved unless there is good reason to retain power at the UK or England and Wales level. So the alternative Bill made provision for devolution of responsibility for policing and justice (as well as for some other matters);
- **clarity:** the alternative Bill set out the devolution settlement in a logical way that is more accessible to the lay person and with a clear line drawn between what is devolved and what is not; and
- **a lasting settlement:** in providing for a Welsh legal jurisdiction, the alternative Bill recognised the divergence of the law which is the natural consequence of the creation of a Welsh legislature; and in providing for the long term devolution of justice, the alternative Bill would establish a stable, coherent workable and long term devolution settlement in line with Scotland and Northern Ireland.

11. Importantly, however, the alternative Bill recognised also the practical implications of these changes. It proposed, therefore, a phased process of change over a transitional period of up to 10 years.

Phase 1: Creation of a 'distinct' Welsh legal jurisdiction

12. Phase 1, which would begin soon after Royal Assent to the alternative Bill had been secured, involved dividing the England and Wales legal jurisdiction into an English jurisdiction and a Welsh jurisdiction.

13. This is largely a matter of form, with limited immediate practical implications. It would include the creation of a formal body of Welsh law (parallel to Scots law, and the law of Northern Ireland) and introduction of the concept of a Welsh court and a Welsh judge. However, the Welsh courts and the judiciary, while distinct, would initially continue to be administered by the UK Ministry of Justice. This, therefore, would involve different **formal** arrangements for the administration of the law in Wales but initially at least there would be limited **practical** change.

14. Clause 3 of the alternative Bill contains the following proposition:

“There is to be a legal jurisdiction of Wales.”

What this involves and how it is achieved is provided for in Part 5 of the alternative Bill.

15. In so far as the law itself is concerned, the key provisions are **clauses 77 and 78 (see below)**. Their effect would be to divide the law applicable in England and Wales at the time of the division of the existing legal jurisdiction into two new bodies of law, the law of England and the law of Wales. The effect would be that all of the law that currently extends to England and Wales, except that which applies to England only, becomes the law of Wales. As this concerns what constitutes the formal body of law of the new jurisdiction, the boundary between what is devolved (and what is not) is not relevant for these purposes.

16. This addresses the current anomalous system under which Welsh laws form part of what is essentially the English legal jurisdiction administered by a court system that extends across England and Wales.

17. As illustrated in **Annex 1**, there are currently three legal jurisdictions in the UK. This means that the UK Parliament makes laws that are expressed to extend to England and Wales, Scotland or Northern Ireland (or to a combination of the three). This system pre-dates devolution and reflects the fact that elements of the law have always been **different** in Scotland and Northern Ireland.

18. When the UK constitution was changed, therefore, to allow for **further** difference – by the creation of new legislatures in 1999 – mechanisms existed (in the form of separate legal jurisdictions) to take those differences into account¹. However, this was not the case in relation to the Welsh legislature (or indeed – it should not be forgotten – in relation to the UK Parliament legislating only for England).

19. This would be remedied, and simplified, by creating the concept of Welsh law and consolidating (and therefore, remaking) statute law in devolved areas (as well as reforming it in the normal way). The goal would then be that within Welsh law, devolved statute law would be the creation either of the National Assembly or the Welsh Ministers. Similarly this would also of course allow for a clearer demarcation of (truly) English law. The benefits outlined in relation to Wales would all apply also in relation to England.

20. When referring here to the “law” (of Wales and of England) it is perhaps worth emphasising that this includes not only statute law (whether made for Wales on non reserved matters by the National Assembly or on reserved matters by the UK Parliament), but also the common law (and clause 78 (3) refers). This, therefore, would mean potential divergence in the common law between Wales and England. However, aside from common law that emerges from the interpretation of statute law, divergence in common law is likely to be a very slow process as it would take time for precedent to develop differently in Wales – and this is something that would, in any event, be overseen by the Supreme Court at the UK level.

¹ Also of note is that substantially more of the law that extends to Scotland and Northern Ireland was – before 1999 – made separately for Scotland and Northern Ireland. This process escalated after 1999 meaning that within Scots law, for example, much of the statute law in devolved areas has been made specifically for Scotland.

Establishment of two distinct jurisdictions

77 Legal jurisdictions of Wales and of England

The legal jurisdiction of England and Wales becomes two legal jurisdictions, that of Wales and that of England.

78 The law of Wales and the law of England

- (1) *The law of England and Wales is divided into the law of Wales and the law of England.*
- (2) *All of the law that extends to England and Wales immediately before the coming into force of this section—*
 - (a) *except in so far as it applies only in relation to England, is to extend to Wales (and becomes the law of Wales), and*
 - (b) *except in so far as it applies only in relation to Wales, is to extend to England (and becomes the law of England).*
- (3) *In this section “law” includes—*
 - (a) *rules and principles of common law and equity,*
 - (b) *provision made by virtue of an Act of the United Kingdom Parliament, an Act of the Welsh Parliament or an Act or Measure of the National Assembly for Wales, and*
 - (c) *provision made pursuant to the prerogative.*
- (4) *Any provision of any enactment or instrument enacted or made, but not in force, when subsection (1) comes into force is to be treated for the purposes of that subsection as part of the law that extends to England and Wales (but this subsection does not affect provision made for its coming into force).*

21. The creation of a Welsh legal jurisdiction (and the associated distinct body of Welsh law) would also necessitate the creation of Welsh courts. These courts, of course, already exist but they would be re-constituted as distinctly Welsh courts,

initially at least in the same form. They would continue to be administered by the Ministry of Justice (through HM Courts and Tribunals Service) in the transitional period. **Clauses 79 and 80** of the alternative Bill created the Welsh Courts:

79 Senior Courts system

- (1) *The Senior Courts of England and Wales cease to exist (except for the purposes of sections 83(3) and (4)) and there are established in place of them—*
 - (a) *the Senior Courts of Wales, and*
 - (b) *the Senior Courts of England.*

- (2) *The Senior Courts of Wales consist of—*
- (a) *the Court of Appeal of Wales,*
 - (b) *the High Court of Justice of Wales, and*
 - (c) *the Crown Court of Wales,*
- each having the same functions in Wales as are exercisable by the corresponding court in England and Wales immediately before subsection (1) comes into force.*
- (3) *The Senior Courts of England consist of—*
- (a) *the Court of Appeal of England,*
 - (b) *the High Court of Justice of England, and*
 - (c) *the Crown Court of England,*
- each having the same functions in England as are exercisable by the corresponding court in England and Wales immediately before subsection (1) comes into force.*
- (4) *For the purposes of this Part—*
- (a) *Her Majesty’s Court of Appeal in England is the court corresponding to the Court of Appeal of Wales and the Court of Appeal of England,*
 - (b) *Her Majesty’s High Court of Justice in England is the court corresponding to the High Court of Justice of Wales and the High Court of Justice of England, and*
 - (c) *the Crown Court constituted by section 4 of the Courts Act 1971 is the court corresponding to the Crown Court of Wales and the Crown Court of England.*
- (5) *Subject to section 84—*
- (a) *references in enactments, instruments and other documents to the Senior Courts of England and Wales (however expressed) have effect (as the context requires) as references to the Senior Courts of Wales or the Senior Courts of England, or both; and*
 - (b) *references in enactments, instruments and other documents to Her Majesty’s Court of Appeal in England, Her Majesty’s High Court of Justice in England or the Crown Court constituted by section 4 of the Courts Act 1971 (however expressed) have effect (as the context requires) as references to either or both of the courts to which they correspond.*

80 County court and family court

- (1) *The county court and the family court cease to exist (except for the purposes of sections 83(3) and (4)) and there are established in place of them—*
- (a) *the county court of Wales and the family court of Wales with the same functions in Wales as are exercisable by the county court and the family court (respectively) immediately before this subsection comes into force, and*
 - (b) *the county court of England and the family court of England with the same functions in England as are exercisable by the county court and the family court (respectively) immediately before this subsection comes into force.*

- (2) *For the purposes of this Part—*
- (a) *the county court is the court corresponding to the county court of Wales and the county court of England, and*
- (b) *the family court is the court corresponding to the family court of Wales and the family court of England.*
- (3) *Subject to section 84 references in enactments, instruments and other documents to the county court or the family court (however expressed) have effect (as the context requires) as references to either or both of the courts to which they correspond.*

22. **Clause 83** of the alternative Bill made provision about how the newly constituted bodies of law (Welsh law and English law) would be applied by the newly reconstituted courts (of Wales and of England). This includes a transitional provision relating to pending proceedings before the courts.

83 *Division of business between courts of Wales and courts of England*

- (1) *The Senior Courts of Wales, the county court of Wales, the family court of Wales and the justices for local justice areas in Wales are to apply the law extending to Wales (including the rules of private international law relating to the application of foreign law).*
- (2) *The Senior Courts of England, the county court of England, the family court of England and the justices for local justice areas in England are to apply the law extending to England (including the rules of private international law relating to the application of foreign law).*
- (3) *All proceedings, whether civil or criminal, pending in any of the Senior Courts of England and Wales, the county court or the family court (including proceedings in which a judgment or order has been given or made but not enforced) must be transferred by that court to whichever of the courts to which that court corresponds appears appropriate.*

23. The alternative Bill also made provision about the judiciary. Initially all existing judges of the England and Wales legal jurisdiction would become judges both of the Welsh Courts and of the English Courts. This was a transitional measure but is one that would be likely, in practice, to be adopted throughout the interim period by new judges being appointed (through existing processes) as judges of both corresponding courts (of England and of

Wales). After the transitional period appointments to the judiciary would be made separately for Wales, but there would remain scope (subject to agreement with the UK Government) for flexibility either through cross ticketing or less formal loan arrangements under which English judges could sit in Wales (or vice versa). **Clause 81** contains the provision about the judiciary:

81 *Judiciary etc.*

- (1) *All of the judges, judicial office-holders and other officers of Her Majesty’s Court of Appeal in England or Her Majesty’s High Court of Justice in England become judges, judicial office-holders or officers of both of the courts to which that court corresponds.*
- (2) *All of the persons by whom the jurisdiction of the Crown Court constituted by section 4 of the Courts Act 1971 is exercisable become the persons by whom the functions of both of the courts to which that court corresponds are exercisable except that (despite section 8(2) of the Senior Courts Act 1981)–*
 - (a) *a justice of the peace assigned to a local justice area in England may not by virtue of this subsection exercise functions of the Crown Court of Wales, and*
 - (b) *a justice of the peace assigned to a local justice area in Wales may not by virtue of this subsection exercise functions of the Crown Court of England.*
- (3) *All of the judges, judicial office-holders and other officers of the county court become judges, judicial office-holders or officers of the county court of Wales and the county court of England.*
- (4) *All of the judges, judicial office-holders and other officers of the family court become judges, judicial office-holders or officers of the family court of Wales and the family court of England except that (despite section 31C(1)(y) of the Matrimonial and Family Proceedings Act 1984)–*
 - (a) *a justice of the peace assigned to a local justice area in England is not a judge of the family court of Wales, and*
 - (b) *a justice of the peace assigned to a local justice area in Wales is not a judge of the family court of England.*

24. Similar provision (**clause 82**) was made for existing legal practitioners such that those who practice in England and Wales currently could continue to do so in both of the new jurisdictions. Although it was not explicit in the alternative Bill, the Welsh Government’s policy was that this position should continue at least until the justice system is fully devolved. After this, although a different formal process would be likely to be needed, in practice the notion of an English lawyer being able – more or less as of right – to practise in Wales (and vice versa) is something that should continue indefinitely.

This, again, is something that would be subject to agreement but there is no suggestion that this would be problematic; and there is indeed already a precedent for this within the UK. A solicitor entitled to practise in England and Wales is entitled to practise also in Northern Ireland simply by filling in an application form² and paying a fee. (An application by a Scottish solicitor by contrast must be considered by the Law Society of Northern Ireland’s Education Committee – a position that reflects the greater differences in the fundamental principles that underpin the legal systems).

² This requires a “Certificate of Good Standing” from the SRA which states that the applicant is a fit and proper person to practice as a solicitor in Northern Ireland; a certified copy of the applicant’s original Admission Certificate to the Roll of Solicitors in England and Wales; a brief description of the applicant’s experience since admission; and two character references.

82 **Legal professions**

(1) *Every legal practitioner who would (but for this Part) at any time after the coming into force of this Act be entitled to carry on a reserved legal activity for the purposes of the law of England and Wales, in proceedings in England and Wales or before the courts of England and Wales, has at that time the same entitlement for the purposes of the law of England and the law of Wales, in proceedings in England and proceedings in Wales and before the courts of England and the courts of Wales.*

(2) *In this section—*

a “legal practitioner” means every solicitor, barrister, notary, legal executive, licensed conveyancer, patent attorney, trade mark attorney, law costs draftsman, accountant or other person who, in accordance with the Legal Services Act 2007 (c. 29), is entitled to carry on a reserved legal activity;

a “reserved legal activity” has the same meaning as in the Legal Services Act 2007.

25. As referred to above these changes would largely formal and intended essentially as an initial foundation stone for further change over time.

Phase 2: Transitional period – building capacity and capability

26. The alternative Bill provided for a 10 year period of transition to allow for an orderly process of devolving policing and justice. This period would allow time for the UK Government and Welsh Government to agree new arrangements and enable the Welsh Government to develop its capacity and capability. There is also potential under this model to take a gradual approach by devolving (or partially devolving) certain elements ahead of others.

27. This process would of course require the UK Government and Parliament to agree to the principle of devolving policing and the justice system, and in turn to agree to a gradual process of further developing the infrastructure required over time. There is no reason to suggest that, were the UK Government to agree to the overarching principle, that pragmatic and practical mechanisms such as cross-ticketing of judges or shared regulatory systems could not be adopted to facilitate the development of the Welsh system.

Change to the powers devolved

28. The alternative Bill would make a significant change to the powers devolved to Wales, but for the most part would not do so immediately.

This would involve a change not only to the subjects reserved but also to the numerous restrictions that also constrain the system of government in Wales. Some of these changes would take effect immediately but the majority, and the most significant, would have been deferred for a period of up to 10 years. This would have been achieved by creating a third category (additional to reserved matters and devolved matters) of ‘deferred matters’.

29. Over the longer term policing, the administration of justice, civil and criminal law, and family law would be devolved, but the alternative Bill defined these as ‘deferred matters’ not to be fully devolved until a ‘deferred transfer date’. This was set in the alternative Bill as 1 March 2026 (10 years from the publication of the alternative Bill) or any later date agreed. Although those matters would not initially be devolved, during this period of transition, the Welsh legislature would be able to make some provision touching on deferred matters, if to do so was consequential on or incidental to devolved law or appropriate for making that law effective or for enforcing it.

30. More importantly, and as a way of enabling the National Assembly to develop its expertise in these matters, provision was proposed for the Assembly to be able to develop its own legislation in these deferred areas going beyond merely making ancillary provision, but this would be subject to a disapproval process open to the UK Parliament, which would

therefore be able to prevent the National Assembly from enacting any such legislation during this transitional period.

31. The full list of deferred matters (all of which are relevant to the deliberations of the Commission) was as follows:

DEFERRED MATTERS

Preliminary

- 125 *The matters specified in the Sections of this Part are deferred matters.*
- 126 *The deferred matters are subject to any exceptions specified in the Sections and are to be interpreted in accordance with any interpretation provisions in the Sections.*
- 127 *Any exceptions or interpretation provisions in a Section relate only to that Section (so that an entry under the heading “exceptions” does not affect any other Section).*
- 128 *This Part ceases to have effect on the deferred transfer date.*

Section 60 – Courts and tribunals

- 129 *Courts and tribunals, including—*
- (a) their jurisdiction and powers;*
 - (b) judicial decision making (including judicial precedent);*
 - (c) the judiciary of courts and tribunals and members of tribunals (including their appointment and remuneration).*
- 130 *Civil proceedings (including family and other non-criminal proceedings), including—*
- (a) disclosure;*
 - (b) evidence;*
 - (c) procedure;*
 - (d) remedies;*
 - (e) enforcement of orders of courts or tribunals;*
 - (f) costs;*
 - (g) limitation of actions.*

131 *Criminal proceedings, including—*

- (a) *bail;*
- (b) *custody pending trial;*
- (c) *disclosure;*
- (d) *evidence;*
- (e) *procedure;*
- (f) *prosecutors;*
- (g) *sentencing.*

132 *The use of the Welsh language in courts.*

Exceptions

Tribunals (including their establishment, abolition, judiciary and members) that wholly or mainly make determinations on matters that do not relate to reserved matters.

The jurisdiction and powers of courts and tribunals in relation to disability discrimination in the education and training sector.

Welfare advice to courts, representation and provision of information, advice and other support to children ordinarily resident in Wales and their families and Welsh family proceedings officers.

Section 61 – Criminal law

133 *Capacity to commit crime and immunity from prosecution.*

134 *Creating, modifying or abolishing offences against the person and penalties for such offences, including—*

- (a) *homicide and conduct related to homicide;*
- (b) *suicide and conduct related to suicide;*
- (c) *assault or battery (including assault or battery with aggravating features).*

135 *Creating, modifying or abolishing sexual offences and penalties for such offences.*

136 *Creating, modifying or abolishing offences against property or property and persons, and penalties for such offences including—*

- (a) *criminal damage;*
- (b) *theft, robbery or burglary;*
- (c) *handling stolen goods;*
- (d) *taking property without consent;*
- (e) *making off without payment;*
- (f) *blackmail, forgery, fraud or deception;*
- (g) *piracy.*

- 137 *Creating, modifying or abolishing offences relating to child cruelty, child neglect, child abduction, child destruction, concealment of birth and penalties for such offences.*
- 138 *Creating, modifying or abolishing offences against public order or public security and penalties for such offences, including—*
- (a) riot, violent disorder or affray;*
 - (b) incitement to hatred;*
 - (c) offences relating to public meetings, processions and assemblies.*
- 139 *Creating, modifying or abolishing offences against privacy, decency or morality and penalties for such offences, including—*
- (a) disclosing private sexual images;*
 - (b) public nudity;*
 - (c) obscene communications, performances, publications or displays.*
- 140 *Creating, modifying or abolishing offences against religion and penalties for such offences.*
- 141 *Creating, modifying or abolishing offences against the administration of justice and penalties for such offences, including—*
- (a) perjury;*
 - (b) contempt of court;*
 - (c) obstructing the course of justice;*
 - (d) escape from lawful custody.*
- 142 *Creating, modifying or abolishing offences relating to bribery and penalties for such offences.*
- 143 *Creating, modifying or abolishing offences relating to offensive weapons and penalties for such offences.*
- 144 *Creating, modifying or abolishing inchoate offences and penalties for such offences, including—*
- (a) encouraging or assisting crime;*
 - (b) conspiracy;*
 - (c) attempt.*

Interpretation

“Offensive weapon” means any article made or adapted for use for causing injury to the person, or intended by the person having it with him or her for such use by that person or another person.

Section 62 – Private law

- 145 *Private law.*
- 146 *Private international law.*

Section 63 – Family law

147 Family law.

Exception

Adoption agencies and their functions.

Section 64 – Policing

148 The provision, supervision and regulation of police forces.

149 The prevention, investigation and detection of crime by the police.

150 The maintenance of public order by the police.

Exception

Collaboration arrangements involving the police and Welsh public authorities with mixed functions or no reserved functions.

Section 65 – Prisons and other places of detention

151 Provision and regulation of facilities for the detention of persons under arrest, persons on remand and offenders (including the appointment, management and functions of officers in the facilities).

Exception

Secure accommodation for children and young people provided by local authorities.

Section 66 – Offender management

152 Probation.

153 Arrangements for the escort of detained offenders and persons under arrest or on remand.

Section 67 – Legal Professions, legal services and claims management

154 Regulation of the legal profession, legal services and claims management.

Section 68 – Legal aid

155 Legal aid.

Section 69 – Arbitration

156 Commercial arbitration.

Section 70 – Criminal records

157 Criminal records.

Exception

Disclosure and barring to safeguard vulnerable groups.

Section 71 – Compensation for persons affected by crime and miscarriages of justice

158 *Compensation for persons affected by crime.*

159 *Compensation for miscarriages of justice.*

Section 72 – Civil registrations

160 *Registration of births, adoptions, marriages, civil partnerships and deaths.*

161 *Registration of places of worship.*

Section 73 – Registration of interests in land

162 *Registration of interests in land.*

Section 74 – Grant and registration of probate

163 *Grant and registration of probate.*

Section 75 – Charities

164 *Registration and regulation of charities.*

Exception

The charitable status of schools and institutions in the further or higher education sectors.

Section 76 – Anti-social behaviour

165 *Anti-social behaviour injunctions under section 1 of the Anti-social Behaviour, Crime and Policing Act 2014.*

32. The alternative Bill would reduce the number of reserved matters. As has been said elsewhere in the Welsh Government's evidence, the difference between the Welsh devolution settlement and those of Scotland and Northern Ireland is stark. The Government of Wales Act 2006, as amended by the Wales Act 2017, contains 27 pages of reservations (in Schedule 7A) and 7 pages of restrictions (in Schedule 7B). By contrast the Scotland Act 1998 as enacted (the most obvious comparator) had 17 pages of reservations and 4 pages of restrictions.

33. The alternative Bill reduces the number of pages of reservations, and although this is not a scientific exercise it is notable that the reduction is only significant once the deferred matters are devolved – at which point the pages are reduced from 25 to 20. This demonstrates how justice

and policing is not only central to the aims and responsibilities of any government or legislature, it is also the main difference between the Scottish and Welsh settlements.

Relaxation of unnecessary restrictions

34. The jagged edge of the devolution settlement is caused, however, not only by the extensive **reservations** but also by **restrictions** imposed on the Welsh legislature that often require consent of the UK Government. The Wales Act 2017 has changed the nature of these restrictions such that in some instances consent of the UK Government is no longer required but it also added new wide ranging restrictions. Overall the effect is to exacerbate the jagged edge. The alternative Bill proposed a different approach which would not inappropriately constrain the Welsh legislature.

35. Also detrimental is a restriction lifted from the Scotland Act (and justified on that basis), but set in the very different context of the Welsh devolution settlement. A restriction on modifying the (frankly, confusing) concept of “the law on reserved matters” has much more effect in Wales because there are considerably more reserved matters, and, crucially, among them are the justice system. The significance of this lies with the fact that policing and the justice system are reserved matters, and any provision made for the purposes of enforcing (devolved) law is therefore subject to a necessity test. Welsh legislation can, as a result, be challenged on the basis that provisions needed to enforce the law have a “greater effect on reserved matters than is necessary to give effect to the purpose of [the] provision”. This test should not apply and was not included in the alternative Bill.

36. Also highly problematic are restrictions that require the consent of UK Ministers when Welsh Acts affect “reserved authorities”, which are broadly defined. Again the extent of the subjects reserved, as well as the definition adopted, makes this consent requirement wide ranging in effect. Despite this not being a concept that exists in the other devolution settlements, the alternative Bill accepted the principle of limiting the extent to which legislation can affect reserved authorities without UK Government consent – however the reserved authorities themselves are far more limited.

Potential for gradual approach to devolving policing and justice

37. The alternative Bill envisaged that the listed deferred matters would all become devolved on a specified “transfer date”. The framework could have been used, however, in such a way as to devolve some elements of the justice system to be devolved before others. Outside the framework of the Bill it would also have been possible to partially devolve certain deferred matters elements as an interim measure (for example executive powers or responsibility – policing and the probation

service are examples). However, doing so could create yet more “jagged edges” and further tension and incoherence between what is devolved and not devolved. Care would be needed, therefore, first of all to ensure that decisions to devolve some elements incrementally are workable in the short term and, crucially, part of a longer term constitutional design.

Building civil service capacity and expertise – and developing justice policy

38. As set out in other evidence papers submitted by the Welsh Government, the “jagged edge” of the devolution settlement mitigates against efficient and effective delivery of public services. The removal of that jagged edge is not an exercise in constitutional neatness but one of allowing better coordination of public services. At present inter-connected public services, and the justice system itself, are the responsibility of different administrations. Changing to more coherent and integrated arrangements would facilitate a more joined up approach which should of itself lead to better use of resources and better outcomes.

39. The approach set out in the alternative Bill may serve to address some of the issues the Commission is grappling with relating to the capacity of the Welsh Government to take on extensive new responsibilities over a relatively short period of time. Of course, the Welsh Government has considerable experience of taking on new functions and of adapting to new constitutional arrangements. Since 1999 there have been significant changes to the system of government and to the powers devolved on several occasions. The most obvious manifestation of this is that there have already been 4 Acts of the UK Parliament on Welsh devolution. As part of these changes the Welsh Government has developed expertise in developing new laws, established a Welsh Revenue Authority and taken over responsibility for matters such as transport and fire services.

40. The most recent figures for current expenditure on policing and justice in Wales is £717 million per year. The Welsh Government would expect spending on these functions in the most recent year to be the starting point for a negotiation about the baseline funding position, although clearly there will be scope for debate about whether that level of spending is in fact the appropriate baseline for a devolved function. Once an appropriate baseline is established, we would expect that the Barnett formula would then be applied to changes in spending on comparable English functions to determine consequential changes to the Welsh block grant thereafter.

41. We estimate the cost of additional policy capacity to be approximately £14 million per year. This is based on what we consider to be a reasonable estimate of the number of officials needed to undertake the equivalent role in Scotland and of our experience of other functions being transferred to the Welsh Government. Our estimate is for a directorate of 200. The actual capacity required will of course depend on the policy and legislative priorities of future Welsh Governments and it is reasonable to assume that the resources required will vary at different times under different governments. Again, subject to agreement, the objective would not be to replicate all of the functions of the Ministry of Justice but to “buy into” existing UK or England and Wales resource or expertise where that is practicable and effective. Some justice related bodies already operate on a cross-jurisdictional basis and there would be more obvious synergies between Welsh and English jurisdictions. It could also be possible to make use of other forms of external expertise on an **ad hoc** basis.

42. The Welsh Government, subject to the approval of the National Assembly for Wales, has complete autonomy in deciding how the budget available to Wales is directed for devolved functions. The funding allocated to policing and justice would depend on the overall level of resources available and the priority accorded to these functions relative to others. This would, of course, be a matter for the Welsh Government at that time and it would be inappropriate to give any kind of commitment on this. The important thing is that such decisions are taken in Wales, where both the Government and the Assembly are mature institutions which have a proven track record in resource allocation and scrutiny.

43. Key to a successful transfer of responsibilities would be tackling existing inefficiencies in the justice system and ensuring effective collaboration with connected services that are already devolved. Justice and policing are of course, considerably more than “services” but in operational terms there are clear synergies between what is done by the police and the justice system on the one hand, and (as obvious examples) the health service and education system on the other.

44. Time would be spent, therefore, to examining how the inefficiencies identified by the National Audit Office in their 2016 report “Efficiency in the Justice System”³ could be eliminated. That report found that overall, the criminal justice system is not delivering value for money, and that the reforms being led by the Ministry of Justice and others will not address all of the causes of inefficiency.

45. Interestingly many of the causes of inefficiency identified arise from ineffective collaboration between different parts of the system, noting a lack of leadership and shared vision, and a “lack of incentives to encourage organisations to take

³ www.nao.org.uk/report/efficiency-in-the-criminal-justice-system/

the best course of action for the whole system” (paragraph 2.12, page 27). The report also concludes that “organisations need to be able to work together in an integrated way”, and need “criteria to assess collaborative working” (paragraph 2.13, page 27). The report goes on to say that “Different organisational structures and approaches among the main organisations in the system mean it is difficult for them to work together effectively at a local level. The police and victims services are seeking to devolve authority to local level. Other parts of the system, such as the CPS, have a more centralised structure, with national performance measures. In addition, regional boundaries overlap in some areas. This means there is no common level of the system (local, regional or national) where parties have autonomy to agree how to tackle inefficiencies.” These are all issues that should be easier to tackle within a smaller and more integrated system.

46. It would also be vital to ensure that collaborative working and joined up policy making would occur **within** the Welsh Government. Officials dedicated primarily to policing and justice related matters would need to work closely with, and be supported by, other Welsh Government directorates whose functions are inter-related. The ability to easily bring officials and Ministers together on a cross portfolio basis is an advantage that a smaller administration such as the Welsh Government can utilise.

Assessing what further operational infrastructure would be required

47. As part of the development of its justice policy the Welsh Government has also been considering various bodies that may be described as forming part of the justice system’s operational infrastructure. A table of such bodies is set out in **Annex 2**.

48. Further analysis would need to be given to the extent to which the devolution of the justice system would require the establishment of new,

separate bodies to undertake these functions in Wales, but the transitional period envisaged by the alternative Bill would allow time for this to be done. In considering this question, the Welsh Government recognises that detailed questions about the institutional architecture of a Welsh justice system would need to be addressed. Were there to be a decision that justice should be devolved, there would need to be sufficient time to enable these matters to be properly considered before powers were formally transferred. The information provided below is intended to set out, at a strategic level, the main factors which would influence decisions about the future design of the justice system. More detailed work could then follow as and when a decision to devolve these functions is taken. In the meantime, we hope that the Commission will itself examine these issues, and we look forward to seeing its findings and recommendations in this regard.

49. There are various factors which would influence deliberations on what a fully devolved justice system might look like:

- the exact powers devolved and the remit of existing bodies;
- the nature (or ‘type’) of functions being exercised and the extent to which the ways in which services delivered are likely to diverge between Wales and England or beyond;
- the extent to which delivery in Wales and in England may continue to be intertwined or interdependent, and the desirability and practicality of ‘disentangling’ delivery in Wales;
- the viability of establishing separate arrangements for what would be a much smaller Welsh system of justice as opposed to using existing bodies to provide services where appropriate.

50. The evidence below attempts to describe how these factors might influence consideration of how the functions of particular bodies might

be discharged, were justice to be devolved. However, in general terms, our current view is that much of the existing infrastructure could be shared, initially at least, with the establishment of separate Welsh bodies occurring gradually, as legislation and policy diverges over time.

The exact powers devolved, and the remit of existing bodies

51. In developing the alternative Bill, we acknowledged that there are certain functions and bodies for which responsibility should remain reserved to the UK Government. We did not, for example, envisage the devolution of responsibility for matters which fall within the remit of the National Crime Agency. And whilst we believe that policing should be a devolved matter, we did not include the functions carried out by specialist police forces such as British Transport Police, the Ministry of Defence Police, or the Civil Nuclear Police Authority and Constabulary. So these bodies would continue to operate as they do currently.

52. Similarly, we did not envisage extending legislative competence to include regulation of the powers of public bodies to carry out surveillance and investigation or the rules governing the interception of communications. So reservations in respect of interception of communications, communications data and surveillance would be retained, and bodies such as the Investigatory Powers Commissioner's Office would continue to operate in exactly the same way.

53. On a related point, there are some bodies whose remit cross existing devolution boundaries. For example, the Criminal Injuries Compensation Authority deals with compensation claims from people who have been physically or mentally injured because they were the victim of a violent crime in England, Scotland or Wales; but compensation for criminal injuries is not a reserved matter in Scotland. Similarly, the remit of the Criminal Cases

Review Commission covers Northern Ireland as well as England and Wales, although not Scotland.

The nature of functions being exercised

54. The non-devolved justice system comprises a large number of bodies who have responsibility for a range of functions. These include:

- bodies with responsibility for operational delivery of justice, and those who set and monitor the rules and procedures by which this is achieved;
- inspectorates, and other bodies who monitor and oversee the operation of the justice system;
- bodies responsible for maintaining professional standards, and investigating complaints;
- regulatory bodies, and professional representative bodies;
- bodies responsible for recruitment, and/or for determining pay and conditions of service;
- bodies who provide advocacy, representation or support to promote or protect the rights of citizens in the justice system, including victims of crime.

55. In all cases, the type of function for which a body is responsible would be an important factor in determining whether or not a separate Wales body ought to be created. For example, the Law Society is an independent professional body which represents, supports and promotes solicitors. It is certainly possible for the interests of solicitors in England and Wales to be represented by a single body, much as the British Medical Association continues to represent doctors in Wales. And it is of course the case that it would be for the professions themselves to determine how best their interests might be represented in Wales, were justice to be devolved. Regulatory processes are more complex but it is notable that, the functions of the Solicitors Regulation Authority are similar in a number of ways to those carried out by the General Medical Council, suggesting that this arrangement could also continue, at least initially.

56. In relation to existing bodies which are responsible for advising on pay and related matters, such as the Prison Service Pay Review Body, and the Police Remuneration Review Body, arguments could be made both for the retention of existing arrangements and for the establishment of new, separate arrangements for Wales. Given that the pay costs of a devolved justice system would fall upon the Welsh Government's budget, a case could be made for the establishment of distinct arrangements, but there is no compelling reason why separate arrangements must be established: setting teachers' pay and conditions has only recently become a devolved responsibility even though education (and local government) have been devolved matters since 1998. It is also notable that the Police Remuneration Review Body makes recommendations on police pay for Northern Ireland, but not Scotland. Decisions about how pay and conditions would be managed would be a policy choice for a future Welsh Government, but initially at least there would be benefits to maintaining a common approach with England, and the establishment of separate pay and conditions arrangements may not be a high priority.

The likelihood of divergence and the interdependencies of delivery in England and Wales

57. An objective assessment of the nature and functions of the bodies which currently exist across England and Wales would help to identify where the continuation of existing arrangements may be the better approach. However, matters of practicality and of policy priority would also play an important part. By that we mean on the one hand that a future Welsh Government may have policy ambitions and priorities which will determine (or at least influence) where new Welsh bodies are established. This might in some cases need to be balanced against an assessment of how easy or difficult in practical terms it might be to disentangle Welsh

specific arrangements from the existing England and Wales system.

58. As an example of where policy priorities might be persuasive, the increasing difficulties Welsh citizens face in accessing justice is a significant concern for Welsh Ministers. These difficulties are partly caused by recent changes to legal aid, and a future Welsh Government which sees reform of the legal aid system as an urgent priority may wish to establish a Wales body for the administration of a new Welsh legal aid system. On the other hand, it might be possible for a single body to administer distinct systems for England and for Wales, using the experience and infrastructure already in place to do so. Both approaches would have advantages and disadvantages, which would need to be considered carefully and agreed with the UK Government.

59. To develop this point, prisons are an example of where there may be tensions between policy priorities and the practicalities associated with justice delivery across Wales and England being intertwined or interdependent. Her Majesty's Prison and Probation Service (HMPPS) is an executive agency sponsored by the Ministry of Justice which implements sentences given by the courts in custody and community, and seeks to rehabilitate offenders. In turn, HM Prison Service is the executive agency of HMPPS which keeps those sentenced to prison in custody; and the National Probation Service works with HMPPS to supervise high risk offenders released into the community. Supervision of low and medium-risk offenders is currently the responsibility of Community Rehabilitation Companies, although in July 2018, the Ministry of Justice issued a consultation seeking views on the service provided by these companies in both England and Wales, with the possibility of their contracts being ended early.

60. Seeking to reduce reoffending by improving the way in which offenders are supported and rehabilitated whilst in prison or on probation, is likely to be a priority. On that basis, the Welsh Government may wish to establish specific bodies for the delivery of prison and probation services in Wales. For probation, this might (in organisational terms) be a relatively straightforward undertaking. Probation services support and supervise offenders in their community, which means that by definition Welsh probation services will be dealing largely (if not almost exclusively) with citizens in Welsh communities. Probation services have generally been organised on local or regional boundaries – for a long time their regional scope matched that of the police forces. And probation services have very close working relationships with other public services which play an important role in the rehabilitation of offenders.

61. But for prisons, the position would most likely be more complex. There are now more prison places in the Welsh prison estate than are needed for the numbers of Welsh offenders who are serving custodial sentences at any one time. But there are no facilities in Wales for female offenders, and no dedicated Category A provision (although HMP Berwyn has housed a small number of Category A prisoners). A Welsh prison service could have to continue to be reliant on facilities in England for some types of prisoner, whilst having a surplus of places for other types. So in purely practical terms, the establishment of a Prison Service for Wales would be a more complicated undertaking than the establishment of a Welsh Probation Service.

The viability and practicality of establishing separate bodies for Wales

62. Decisions about the justice infrastructure would, therefore, be influenced by the nature of the function being carried out, and by the policy priorities of a future Welsh Government. But we recognise that

questions of practicality and viability will also play a part. By this we mean:

- that it may not be possible or desirable in purely practical terms to establish, on day one, the full suite of separate devolved justice bodies which we may conclude are necessary for the justice system we wish to create in Wales;
- that because Wales will be a far smaller jurisdiction than England – and because some of the existing England and Wales bodies are themselves relatively modest in size – it may not be sensible to establish separate arrangements here.

63. As a starting point it is likely that we would, therefore, seek to reach agreements whereby many of the bodies would – initially at least – continue to operate on an England and Wales basis. We do not believe that this should cause any difficulties for the bodies in question. Although a future Welsh Government would set its own policy direction for justice once it is devolved, the extent of divergence would initially be very limited, as reforms will take time to develop and implement (and in many cases may require Acts of the Assembly). New bodies would then be established over time, based on the policy priorities of the government of the day, and reflecting where increased policy divergence begins to make continued reliance on common England and Wales bodies more difficult.

Decoupling of the statute book by codification of the relevant law

64. Finally, the Welsh Government intends to accelerate the development of the body of Welsh statute law. A long term project of making legislation more accessible by consolidating and codifying the law in devolved areas will continue and would complement the creation of a Welsh legal jurisdiction.

Phase 3: Full devolution of justice and policing in a separate Welsh legal jurisdiction

65. After a period of transition of up to 10 years, the alternative Bill envisaged policing and the justice system being fully devolved. A formal body of Welsh law would already exist, forming part of a Welsh legal jurisdiction.

66. At that point the Welsh Government would not be constrained in its desire to develop its own justice policies, or in its desire to integrate existing services with policing and the justice system where appropriate.

67. This would not mean that further change would necessarily occur, nor that change would occur quickly. The Welsh Government foresaw that many of the processes undertaken during the transitional period would continue or be kept under review. The new system would continue to evolve gradually and the desirability of change to the private law in particular, would need to be assessed (among other things) against the desirability of continuity.

68. Crucially phase 3 would bring an end to the dichotomy between law making on the one hand and the administration of justice on the other, and eliminate the causes of routine tensions (and potential for conflict) between the Welsh and UK Governments.

Conclusion

69. Unfortunately despite the careful thought given to how the Welsh devolution settlement should be re-designed, and the development of the detailed proposals set out in the alternative Bill, the UK Government was unwilling to consider any significant departure from its Bill. In consequence no meaningful debate of the different approach set out in the alternative Bill took place. The Welsh Government subsequently established the Commission on Justice whose remit includes, but is not confined to, the issues addressed by the alternative Bill.

Annex A: UK legal systems: today

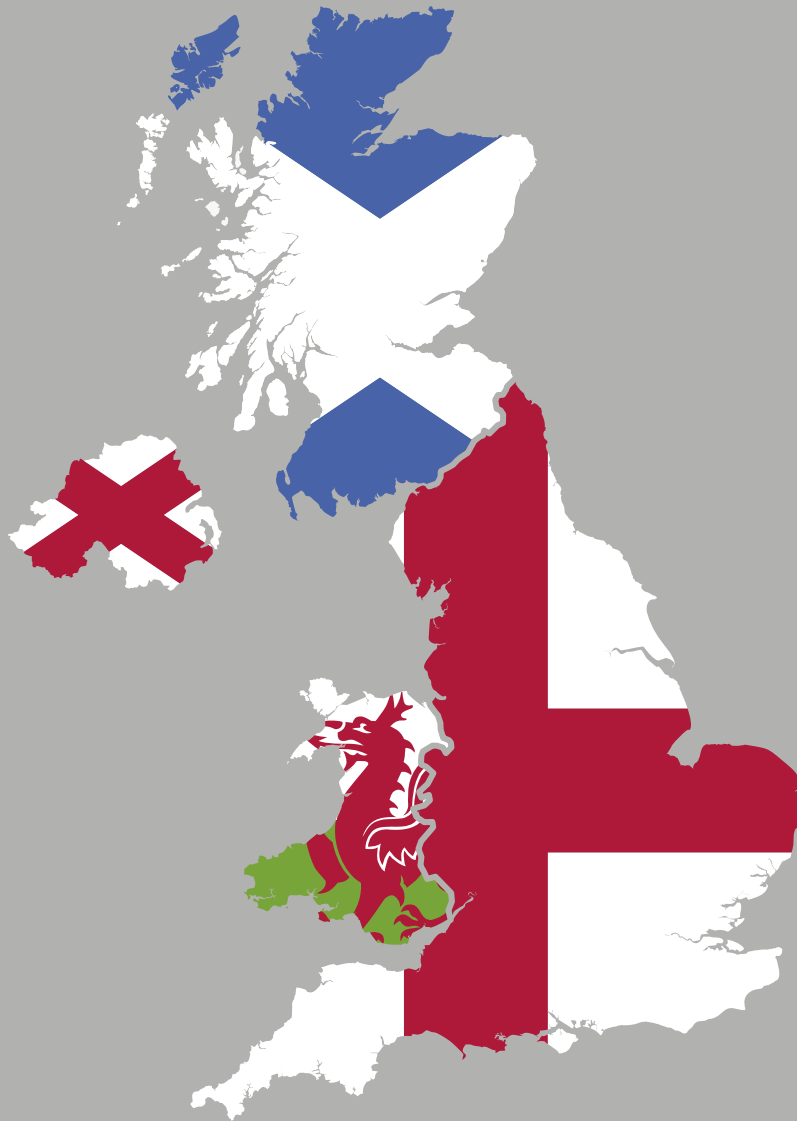


Legal jurisdictions
(and bodies of law)



Sources of Law

UK legal systems: future



Legal jurisdictions (and bodies of law)



Sources of Law

Annex B: Bodies by category

Judiciary	Legal profession	Courts	Criminal Justice	Policing	Victims' Rights	Safeguarding	Regulatory, Other
Advisory Committees on Justices of the Peace.	Bar Council.	CAFCASS.	CPS.	Biometrics Commissioner.	Criminal Injuries Compensation Authority.	Disclosure and Barring Service.	Gangmasters and Labour Abuse Authority.
Judicial Appointments Commission.	Bar Standards Board.	Civil Justice Council.	HMI Prisons.	British Transport Police.	Victims' Commissioner.	Office of Public Guardian.	Investigatory Powers Commissioner's Office.
Judicial Appointments and Conduct Ombudsman.	Law Society.	Civil Procedure Rules Committee.	HMI Probation.	Civil Nuclear Police Authority and Constabulary.		Official Solicitor and Public Trustee.	Law Commission.
Judicial College.	Solicitors Regulation Authority.	Criminal Cases Review Commission.	HM Prison and Probation Service.	College of Policing.			Security Industry Authority.
Judicial Conduct Investigation Office.		Family Justice Council.	Independent Monitoring Board.	HMI Constabulary and FRS.			SFO.
Judicial Office.		Family Procedure Rules Committee.	Ministerial Council on Deaths in Custody.	Independent Office for Police Conduct.			Surveillance Camera Commissioner.
Legal Aid Agency.		HMCTS.	Parole Board.	MoD Police.			
Legal Ombudsman.		Insolvency Rules Committee.	Prison and Probation Ombudsman.	NCA.			
Legal Services Board.		Sentencing Council.	Prison Service Pay Review Body.	Police Advisory Board for England and Wales.			
Tribunal Procedure Committee.			Youth Custody Service (YCS).	Police Remuneration Review Body.			
			YJB.	Technical Advisory Board.			
			YCS.				

Bodies A-Z

Body	Function
Advisory Committees on Justices of the Peace	<p>Judiciary (recruitment and investigations of misconduct)</p> <p>Established by Lord Chancellor, role is to recruit magistrates in their areas, and deal with allocations of misconduct by magistrates.</p>
Bar Council	<p>Legal profession (professional representative body)</p> <p>Represents barristers in England and Wales, promotes:</p> <ul style="list-style-type: none"> • The Bar’s high quality specialist advocacy and advisory services; • Fair access to justice for all; • The highest standards of ethics, equality and diversity across the profession, and • The development of business opportunities for barristers at home and abroad. <p>Is also the Approved Regulator of the Bar, and discharges its regulatory functions through the independent Bar Standards Board.</p>
Bar Standards Board	<p>Legal profession (regulatory)</p> <p>Regulates barristers and specialised legal services businesses in England and Wales:</p> <ul style="list-style-type: none"> • Sets education and training requirements for becoming a barrister, and continuing training requirements; • Sets standards of conduct for barristers; • Authorises organisations that focus on advocacy, litigation, and specialist legal advice; • Monitors service provided by barristers and authorised organisations; handles complaints; takes disciplinary or other action where appropriate.

Body	Function
Biometrics Commissioner	<p>Policing (regulatory)</p> <p>Independent of government, commissioner’s role is to keep under review the retention and use by the police of DNA samples, DNA profiles and fingerprints.</p>
British Transport Police	<p>Policing (prevention and detection of crime).</p>
CAFCASS	<p>Courts (representation of children in court)</p> <p>Represents children in family court cases, already operates separately in Wales.</p>
Civil Justice Council	<p>Courts (establishment and revision of court rules and procedures)</p> <p>An Advisory Public Body established under the Civil Procedure Act 1997 with responsibility for overseeing and co-ordinating the modernisation of the civil justice system. Advises the Lord Chancellor, the Judiciary and Civil Procedure Rule Committee on the effectiveness of aspects of the civil justice system.</p>
Civil Nuclear Police Authority and Constabulary	<p>Policing (specialist)</p> <p>The CNC is the armed police force in charge of protecting civil nuclear sites and nuclear materials in England, Scotland and Wales. The CNPA is an executive non-departmental public body which oversees the CNC.</p>
Civil Procedure Rules Committee	<p>Courts (setting of court rules and procedures)</p> <p>The Civil Procedure Rule Committee was set up under the Civil Procedure Act 1997 to make rules of court (the Civil Procedure Rules) for the Civil Division of the Court of Appeal, the High Court and the County Court. CPRC is an advisory non-departmental public body sponsored by MoJ.</p>

Body	Function
College of Policing	<p>Policing (professional development and support)</p> <p>Professional body for the police service in England and Wales, and provides those working in policing with the skills and knowledge necessary to prevent crime, protect the public, and secure public trust. Includes developing evidence base for what works, supporting development of individual members of the service, and developing standards in policing for individuals and forces. Independent of the Home Office, the NCP was established as a (not for profit) company limited by guarantee, and is pursuing Royal Charter status.</p>
CPS	<p>Criminal Justice (prosecution of criminal offences)</p> <p>Prosecutes criminal cases that have been investigated by the police and other investigative organisations in England and Wales.</p>
Criminal Cases Review Commission	<p>Courts</p> <p>Independent organisation which investigates suspected miscarriages of justice from magistrates courts and the Crown Court in England, Wales and Northern Ireland.</p>
Criminal Injuries Compensation Authority	<p>Victims' rights</p> <p>An executive agency sponsored by MoJ, the CICA deals with compensation claims from people who have been physically or mentally injured because they were the victim of a violent crime in England, Scotland or Wales.</p>
Disclosure and Barring Service (DBS)	<p>Safeguarding</p> <p>Carries out the functions previously undertaken by the Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA). Responsible for:</p> <ul style="list-style-type: none"> • processing requests for, and issuing, DBS checks for England, Wales, the Channel Islands and the Isle of Man; • making decisions regarding whether an individual should be barred from engaging in regulated activity with children, adults or both, in England, Wales and Northern Ireland; • maintaining the children's and adults' barred lists.

Body	Function
Family Justice Council	<p>Courts (advisory)</p> <p>A non-statutory advisory body, whose primary role is to promote an inter-disciplinary approach to family justice, and to monitor how effectively the family justice system delivers its service. It also advises on reforms necessary for continuous improvement.</p>
Family Procedure Rules Committee	<p>Courts (setting of court rules and procedures)</p> <p>Advisory NDPB sponsored by MoJ, makes rules of court that govern the practice and procedure followed in family proceedings in the High Court and family court.</p>
Gangmasters and Labour Abuse Authority	<p>Other regulatory</p> <p>Home Office NDPB governed by an independent Board, operates the licensing scheme which regulates businesses who provide workers to the fresh produce supply chain and horticulture industry.</p>
HMCTS	<p>Courts (operational management and administration)</p> <p>Executive agency sponsored by MoJ, responsible for administration of criminal, civil and family courts and tribunals in England and Wales.</p>
HMI Constabulary and Fire and Rescue Services	<p>Policing (inspectorate)</p> <p>Independently assesses the effectiveness and efficiency of police forces in England and Wales, and fire and rescue services in England.</p>
HMI Prisons	<p>Criminal Justice (inspectorate)</p> <p>Independent inspectorate which reports on conditions for and treatment of those in prison, young offender institutions and immigration detention facilities, in England and Wales.</p>
HMI Probation	<p>Criminal Justice (inspectorate)</p> <p>Independent inspector of youth offending and probation services in England and Wales, reports on the effectiveness of probation and youth offending service work with adults and children.</p>

Body	Function
HMPPS	<p>Criminal Justice (operational management and administration)</p> <p>Executive agency sponsored by MoJ which carries out sentences given by the courts in custody and community, and aims to rehabilitate through education and employment.</p> <p>In turn, HM Prison Service is an executive agency of HMPPS, which keeps those sentenced to prison in custody; and the National Probation Service works with HMPPS to supervise high risk offenders released into the community.</p>
Independent Monitoring Board	<p>Criminal Justice (support/advocacy for citizens in relation to justice system)</p> <p>Independent Monitoring Boards (IMBs) exist in every prison and Immigration Removal Centre to monitor the treatment received by those detained in custody to confirm it is fair, just and humane.</p>
Independent Office for Police Conduct	<p>Policing (professional standards, complaints investigation)</p> <p>Oversees the police complaints system in England and Wales. Investigates the most serious matters, including deaths following police contact, and set the standards by which the police should handle complaints.</p>
Insolvency Rules Committee	<p>Courts (setting of court rules and procedures)</p> <p>Advisory NDPB, considers amendments to the rules arising out of a review of secondary insolvency legislation, giving their recommendations to the Lord Chancellor.</p>
Investigatory Powers Commissioner's Office	<p>Regulatory</p> <p>Established under the terms of the Investigatory Powers Act 2016, the IPCO provides independent oversight of the use of investigatory powers by intelligence agencies, police forces and other public authorities.</p>
Judicial Appointments Commission	<p>Judiciary (recruitment)</p> <p>Independent body that selects candidates for judicial office in courts and tribunals in England and Wales, and for some tribunals with UK-wide jurisdiction.</p>

Body	Function
Judicial Appointments and Conduct Ombudsman	<p>Judiciary (complaints investigation)</p> <p>Investigate the handling of complaints about the judicial appointments process, and the handling of complaints involving judicial discipline or conduct.</p>
Judicial College	<p>Judiciary (professional development and support)</p> <p>Responsible for training judges in county, Crown, and higher courts in England and Wales; and tribunals judges in England & Wales, Scotland and Northern Ireland.</p>
Judicial Conduct Investigation Office	<p>Judiciary (complaints investigation)</p> <p>Independent office which supports the Lord Chancellor and Lord Chief Justice in considering complaints about the personal conduct of judicial office holders.</p>
Judicial Office	<p>Judiciary (operational management and administration)</p> <p>Supports the judiciary across the courts of England and Wales, and the non-devolved tribunals across the UK, by providing training, legal and policy advice, human resources, communications and administrative support.</p>
Law Commission	<p>Law Reform</p> <p>Statutory independent body created by the Law Commissions Act 1965 to keep the law of England and Wales under review and to recommend reform where it is needed.</p>
Law Society	<p>Legal profession (professional representative body)</p> <p>Independent professional body representing, promoting and supporting solicitors.</p>
Legal Aid Agency	<p>Courts (provision of legal aid to assist access to justice)</p> <p>Executive agency sponsored by MoJ, provides civil and criminal legal aid and advice to people in England and Wales.</p>

Body	Function
Legal Ombudsman	<p>Legal Profession (professional standards/complaints investigation)</p> <p>Examines complaints about legal service providers and claims management companies.</p>
Legal Services Board	<p>Legal profession (regulatory body)</p> <p>Independent body responsible for overseeing the regulation of lawyers in England and Wales, oversees the ten approved regulators which themselves regulate lawyers, also oversees the Office for Legal Complaints, which is the Board of the Legal Ombudsman.</p>
Ministerial Council on Deaths in Custody	<p>Criminal Justice</p> <p>The Ministerial Council on Deaths in Custody incorporates senior decision-makers, experts and practitioners in the field, and takes an extended, cross-sector approach to deaths in custody to allow for better learning and sharing of lessons across the custodial sectors. The Council is a three-tier structure:</p> <ul style="list-style-type: none"> • A Ministerial Board which brings together decision-makers responsible for policy and issues related to deaths in custody in MoJ, HO and DoH, and a range of other interested organisations. • An Independent Advisory Panel (IAP) which provides independent advice and expertise to the Ministerial Board. • A Practitioner and Stakeholder Group which supports the work of the IAP.
MoD Police	<p>Policing (specialist)</p> <p>Protects MoD sites of national importance.</p>
NCA	<p>Policing (specialist)</p> <p>Tackles serious and organised crime (drug trafficking, firearms, cyber-crime, sexual exploitation of children, human trafficking and modern slavery).</p>

Body	Function
Office of Public Guardian	<p>Safeguarding (support/advocacy for citizens in relation to justice system)</p> <p>Executive agency of MoJ, protects people in England and Wales who may not have the mental capacity to make certain decisions for themselves, such as about their health and finance.</p>
Official Solicitor & Public Trustee	<p>Safeguarding (support/advocacy for citizens in relation to justice system)</p> <p>Provides assistance to people who are vulnerable because of their lack of mental capacity or young age to take advantage of the services offered by the justice system.</p>
Parole Board	<p>Criminal Justice</p> <p>An independent body that carries out risk assessments on prisoners to determine whether they can be safely released into the community.</p>
Police Advisory Board for England and Wales (PABEW)	<p>Policing (advisory body)</p> <p>Advisory NDPB sponsored by HO, considers draft regulations under the Police Act 1996 about matters such as recruitment, diversity and collaboration between forces. It also works with police managers and staff to respond to more general questions from the Home Secretary about changes to and reform of the police.</p>
Police Remuneration Review Body	<p>Policing (advisory body for pay and conditions of service)</p> <p>Advisory NDPB sponsored by HO, provides independent advice to the government on pay and conditions for police officers at or below the rank of chief superintendent.</p>
Prison and Probation Ombudsman	<p>Criminal Justice (professional standards/complaints investigation)</p> <p>Carries out independent investigations into:</p> <ul style="list-style-type: none"> • complaints made by prisoners, young people in detention, offenders under probation supervision, and immigration detainees; and • deaths of prisoners, young people in detention, approved premises' residents, and immigration detainees.

Body	Function
Prison Service Pay Review Body	Criminal Justice (advisory body for pay and conditions of service) Examines and reports upon matters relating to the rates of pay and allowances to be applied to public sector prison services in England, Wales and NI.
Security Industry Authority (SIA)	Regulatory Executive NDPB sponsored by Home Office, regulates and licenses the private security industry in the UK.
Sentencing Council	Courts (sentencing guidelines) Promotes greater consistency in sentencing, whilst maintaining the independence of the judiciary. It produces guidelines on sentencing for the judiciary and criminal justice professionals and aims to increase public understanding of sentencing.
Serious Fraud Office	Regulatory Investigates and prosecutes serious or complex fraud, bribery and corruption.
Solicitors Regulation Authority	Legal profession (regulatory) Regulates solicitors in England and Wales.
Surveillance Camera Commissioner	Regulatory Created under the Protection of Freedoms Act 2012 to further regulate CCTV, the Commissioner oversees compliance with the surveillance camera code of practice, production of which was a requirement of the Act.
Technical Advisory Board	Policing (advisory) Advisory NDPB sponsored by Home Office, advises the Home Secretary on whether the obligations imposed on communications service providers (CSPs) under the terms of Regulation of Investigatory Powers Act (RIPA) are reasonable.

Body	Function
Tribunal Procedure Committee	Courts (setting of court rules and procedures) Advisory NDPB, makes rules governing the practice and procedure in First-tier Tribunal and Upper Tribunal.
Victims' Commissioner	Victims' rights Promotes the interests of victims and witnesses, encourages good practice in their treatment, and reviews the Code of Practice for Victims which sets out the services victims can expect to receive.
Youth Custody Service (YCS)	Criminal Justice (operational management and administration) Responsible for deciding where a child or young person under 18 remanded or sentenced to custody should be placed.
YJB	Criminal Justice (operational management and administration) NDPB responsible for overseeing the youth justice system in England and Wales.

Notes:

- Home Office Tribunal non-departmental public bodies are not listed.
- Bodies which are part of or related to security services, or whose role is focused on counter-terrorism, are not listed.
- Bodies whose remit relates to immigration are not listed.