

National Assembly for Wales

The Silk Commission November 2011

Earlier in 2011 the Secretary of State for Wales, the Rt. Hon. Cheryl Gillan MP, announced that she would be appointing an independent commission to consider, in the first instance, the financial accountability of the Welsh Government and National Assembly for Wales and, at a later date, the constitutional settlement.

That Commission has now been created and Paul Silk appointed as chair. This paper provides information about the creation and remit of the Silk Commission.

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The Silk Commission
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The Silk Commission

1. Introduction

On 19 July 2011 the Secretary of State for Wales, the Rt. Hon. Cheryl Gillan MP announced that an independent Commission would be established to look at the financial accountability of the Welsh Government and National Assembly for Wales. She anticipated that this would begin work in the autumn. The Secretary of State further stated that after the Commission had reported on financial accountability and the UK Government has considered its proposals, the Commission will look at the constitutional settlement in Wales “in light of experience”. The Commission will aim to **report on its findings in 2013**.¹

The announcement of the Commission’s chair and membership was made on 11 October 2011.² It is chaired by Paul Silk formerly Clerk to the National Assembly for Wales (2001 to 2007) and a former Clerk in the House of Commons. It has therefore come to be termed “the Silk Commission”.

This paper sets out information on the remit and membership of the Commission and responses to its creation.

Further background to the creation of the Silk Commission can be seen in the Research Service Paper [*The Road to the Independent Commission*](#).

Detailed information on the current arrangements for funding devolution via the Barnett Formula can be seen in the Research Service paper, [*The Barnett Formula and the changing face of devolution funding*](#).

2. The Commission

2.1. Membership

The Secretary of State for Wales announced on 11 October 2011 that the Commission would be **chaired by Paul Silk**, Clerk to the National Assembly for Wales from 2001 to 2007 and a former Clerk in the House of Commons. He is joined on the Commission by **four members nominated by each of the political parties in the National Assembly for Wales, and by two independent members**.

¹ Wales Office, [*Next Steps for Commission on Devolution in Wales outlined*](#), Press Release, 19 July 2011 [accessed 8 November 2011]

² Wales Office, [*Commission on Devolution in Wales takes shape*](#), Press Release, 11 October 2011 [accessed 8 November 2011]

In addition to Paul Silk, the members are:

- Dyfrig John CBE (Chairman of the Principality Building Society)
- Professor Noel Lloyd CBE (former Vice-Chancellor of Aberystwyth University)
- Professor Nick Bourne (Welsh Conservative nominee, former Leader of the Welsh Conservatives in the National Assembly)
- Sue Essex (Welsh Labour nominee, former Finance Minister in the Welsh Government)
- Rob Humphreys (Welsh Liberal Democrats nominee, Director of the Open University in Wales)
- Dr Eurfyl ap Gwilym (Plaid Cymru nominee, economist)³

2.2. *Terms of Reference*

The terms of reference of the Commission are:

An independent Commission will be established to review the present financial and constitutional arrangements in Wales. It will carry out its work in two parts:

Part I: financial accountability

To review the case for the devolution of fiscal powers to the National Assembly for Wales and to recommend a package of powers that would improve the financial accountability of the Assembly, which are consistent with the United Kingdom's fiscal objectives and are likely to have a wide degree of support.

Part II: powers of the National Assembly for Wales

To review the powers of the National Assembly for Wales in the light of experience and to recommend modifications to the present constitutional arrangements that would enable the United Kingdom Parliament and the National Assembly for Wales to better serve the people of Wales.

In undertaking Part I, the Commission should:

- provide independent advice on the case for improving the financial accountability of the National Assembly for Wales consistent with the fiscal and constitutional framework of the United Kingdom;
- consult widely on a package of fiscal powers which would improve the financial accountability of the National Assembly for Wales;

³ [Wales Office, *Commission on Devolution in Wales takes shape*, Press Release, 11 October 2011 \[accessed 8 November 2011\]](#)

- make recommendations on whether a package of fiscal powers could be devolved to the National Assembly for Wales which are likely to have a wide degree of support; and
- consider and make recommendations on how best to resolve the legal and practical implementation issues from devolving a package of fiscal powers, including consistency within the United Kingdom.

Part I will be completed before work on Part II begins.

In undertaking Part II, the Commission should:

- examine the powers of the National Assembly for Wales, and in particular:
 - the boundary between what is devolved and non-devolved;
 - whether modifications to the boundary should be made at this stage; and
 - any cross-border implications of such modifications;
- consult widely on any proposed modifications to the current boundary;
- make recommendations on any modifications to the settlement likely to have a wide degree of support; and
- consider and make recommendations on how best to resolve the legal and practical implementation issues from those modifications.

The Silk Commission will **not consider**, in part I, the Holtham Commission's proposals for funding reform in Wales, including Welsh Ministers' existing borrowing powers, which are being dealt with through a **separate bilateral process** between the United Kingdom Government and the Welsh Government; and, in part II, the structure of the National Assembly for Wales, including issues relating to the election of Assembly Members.

Jane Hutt AM, Minister of Finance and Leader of the House made a statement on the progress of the bi-lateral discussions on 10 October 2011. She said that initial discussions will include work to gain a shared understanding of:

- trends in Welsh spending;
- previous studies which have been carried out on Welsh needs; and
- the operation of existing borrowing powers.

She concluded that:

Once the consideration of spending trends and previous needs studies has been completed, and subject to the agreement of Welsh Ministers and UK Ministers that a problem exists, the next stage will look at options for reform.

These discussions will proceed alongside the work of the Commission on Devolution in Wales, on which the Secretary of State for Wales is expected to make further announcements shortly.⁴

2.3. *The work of the Commission*

The Commission met for the first time on 4 November 2011 at the Millennium Stadium. In her statement announcing the Commission, the Secretary of State had said:

I expect the Commission to consult widely on its proposals, and building on the consensus we have sought to achieve in its formation, to make recommendations which are likely to have wide degree of support.⁵

Mr Silk stated:

It will now be up to us as a Commission to come together, gather evidence, speak to as wide range of people as possible and come up with a package of recommendations with a wide range of support. No mean feat but one which I am determined we can achieve. I am sure that we will encounter difficulties from time to time, but my aim is to ensure that all political parties and the two Governments in London and Cardiff retain confidence in our work.⁶

At its first meeting, in private, Commission members discussed the way the Commission will operate, its work programme for Part I and agreed on how it will go about gathering evidence to support its work.⁷

The Guardian reported that Mr Silk had suggested he would like to hold public meetings inside and outside Wales and he anticipated that the body would speak to former members of the Calman Commission in Scotland. Mr Silk was also reported as having said that all taxes would be considered and added: "The taxes one will be looking at primarily are corporation tax, income tax and the smaller taxes like landfill tax and aggregates tax." He also said the Commission could look at the possibility of a separate Welsh judicial system being created.⁸

3. Moratorium

In press interviews given on the day that the Commission was announced, the Secretary of State was reported as saying there was now "effectively... a

⁴ [Welsh Government, Written Cabinet Statement by the Minister of Finance and Leader of the House, Jane Hutt AM, *Progress of Intergovernmental Talks on Funding Reform*, 10 October 2011 \[accessed 15 November 2011\]](#)

⁵ [Wales Office, *Commission on Devolution in Wales takes shape*, Press Release, 11 October 2011 \[accessed 8 November 2011\]](#)

⁶ [Wales Office, Commission on Devolution in Wales webpages, Message from the Chair, 24 October 2011 \[accessed 9 November 2011\]](#)

⁷ [Wales Office, *Silk Commission to hold its first commission meeting*, Press Release, 1 November 2011 \[accessed 9 November 2011\]](#)

⁸ [Guardian, *Wales may get power to set its own income and corporation tax rates*, 11 October 2011 \[accessed 10 November 2011\]](#)

moratorium on Welsh government ministers pushing Westminster for more control in areas such as energy”.⁹

In the House of Commons Debate on the Silk Commission she clarified this in response to a point raised by Hywel Williams MP who said:

Where others shy away from seeking greater responsibility for the Welsh people and our Government, my party want them to take it. We want them to do so because by taking responsibility for ourselves, we can create and build the better Wales—the Wales that we all want to live in. Devolution should not stop—indeed, it cannot stop, as Ron Davies said all those years ago—and it will not stop, despite the Secretary of State’s apparent call for a moratorium, which I saw in *The Western Mail* about three weeks ago. It is clear that in respect of the requirements of good governance, this Government take action, as did the previous Government, to transfer powers to Welsh Ministers. We see statutory instruments appearing fairly regularly to transfer powers. They are perhaps minor powers—they are not changes of principle—but that process will continue.¹⁰

The Secretary of State replied:

May I reassure the hon. Gentleman that what I had envisaged was that the major questions—such as energy, ports and the other areas that have from time to time come across my desk, with demands having been made that powers in those areas be passed down—should rightly be looked at by the Silk Commission, but I am certainly not ruling out transfers of administrative matters from time to time where it makes sense? To rule that out would be nonsensical and the door is always open on those issues. I think it is a question of common sense, but we must not undermine what the Silk commission will look at in part II.¹¹

4. Political Reaction

Welcoming the Commission, **the First Minister**, the Rt. Hon. Carwyn Jones AM stated:

We have already looked into how Wales is funded through the Holtham Commission and this new inquiry will follow on from that work and its conclusions. I am pleased that the first phase of the Commission’s remit is due to be completed by next autumn. I am sure that the Commissioners will be aware of the need to make quick progress.

We will seek to work positively with the Commission while also continuing to press hard for a funding floor and borrowing powers in the ongoing inter-governmental talks.

Those talks will continue while the new Commission carries out its work. But this is a twin-track process - progress on issues of accountability can only be made if there is also real

⁹ Ibid.

¹⁰ HC Debates, 3 November 2011 col 1175 [accessed 10 November 2011]

¹¹ Ibid.

progress on fair funding and borrowing powers. Wales needs a comprehensive package of financial reforms that delivers a fairer, more stable settlement.¹²

The Leader of the Welsh Conservatives, Andrew R T Davies AM, also welcomed the establishment of the Commission.¹³

The Leader of Plaid Cymru, Ieuan Wyn Jones AM stated:

Plaid Cymru welcomes the establishment of the commission and looks forward to playing a full role in the work it will undertake. It is important that the commission plots a clear and ambitious course for Wales in both fiscal and constitutional matters.

While it is now down to the current Welsh government to negotiate a fair funding deal for Wales in the short term, the commission must create a sustainable fiscal footing for our nation and increase the financial accountability of its democratically elected government. It must also be bold and ambitious as it looks at which areas of government should be matters for the Welsh people.

Plaid Cymru will take a constructive and co-operative approach towards the work of the commission, which has the potential to play an historic role in the development of our nation.¹⁴

Leader of the Welsh Liberal Democrats, Kirsty Williams AM, noted that Liberal Democrats had consistently supported greater financial powers and that:

Wales' devolution package is missing a critical element. Unlike most families and businesses, the Welsh government has the luxury of spending money handed out by others. Uniquely, Wales has no power to borrow or raise money. This lack of accountability for how money is raised breeds and irresponsibility about how money is spent.

The process announced today cannot be about Wales whingeing for others to deliver. It is about building a persuasive case with maximum support across Wales that demands the respect of politicians in Westminster.

The Welsh Liberal Democrats will engage fully and constructively in this process. At every stage we will be pressing to bring more accountability and responsibility to the Welsh Government and to give Wales further powers to drive forward Wales' economic development, creating jobs and prosperity for people in Wales.¹⁵

Danny Alexander, Chief Secretary to the Treasury, said:

The creation of this Commission is the fulfillment of an important commitment to the people of Wales that we made in our Coalition Agreement. With its impressive membership, under the chairmanship of Paul Silk, I hope very much that this Commission will be able to form a

¹² [Welsh Government, *Independent Commission on funding in Wales welcomed*, Press Release 11 October 2011 \[accessed 9 November 2011\]](#)

¹³ [Welsh Conservatives, *Silk Commission welcomed*, Press Release 11 October 2011 \[accessed 9 November 2011\]](#)

¹⁴ [Plaid Cymru, *Plaid response to Commission on devolution in Wales*, 11 October 2011 \[accessed 9 November 2011\]](#)

¹⁵ [Welsh Liberal Democrats, *Silk Commission can bring more accountability and responsibility to the Welsh Government – Kirsty Williams*, Press Release 12 October 2011 \[accessed 9 November 2011\]](#)

broad consensus about the next steps in devolution of power to Wales, and in particular to give Welsh taxpayers a greater say in how their money is spent.¹⁶

5. The House of Commons Debate

5.1. *Opening by Government and Opposition*

A [House of Commons Debate](#) took place on 3 November 2011 on the Silk Commission. Opening for the Government, **the Secretary of State** stated that:

...neither the Assembly nor the Welsh Government are accountable to the people of Wales for the money that they spend on the policies that they implement. The Welsh Government simply receive the Welsh block grant voted by Parliament, and spend it.

That cannot be right. With power comes responsibility, and it is surely better for the devolved institution to be accountable to the people of Wales not just for decisions on public spending in Wales, but by being responsible for raising some of the money needed to pay for those decisions. Even local authorities, despite receiving block grants, have responsibility for raising local council tax, and consequently they recognise the difficulty of raising tax moneys before they spend money. There is no reason why one institution..... should be immune from raising taxes, and instead simply spend money and continue to ask for more.¹⁷

She further stated that:

The first part of the Silk commission's remit is to look at financial accountability. It will consider the case for devolving fiscal powers and recommend a package of powers that could improve the Assembly's financial accountability. Those powers would need to be consistent with the United Kingdom's wider fiscal objectives.

The commission will consider the tax and borrowing powers that could be devolved to the Assembly and the Welsh Government. Those include powers in relation to landfill tax, air passenger duty and stamp duty, but they are not limited to those taxes. The commission's remit, however, is to recommend the devolution only of taxation powers that are likely to have wide support, and it will need to consult broadly to secure that support not only in Wales but in other parts of the United Kingdom.¹⁸

With reference to Part II of the Commission's remit, she said:

The commission will then turn its attention to the second part of its remit—to look at the current constitutional arrangements in Wales. Specifically, it will consider the powers of the Assembly and the boundary between what is devolved and non-devolved, and make recommendations to modify the boundary, if they are likely to enable the Welsh devolution settlement to work better. Again, the commission will need to consult broadly on its proposals and make only those recommendations for change that are likely to have wide support.

¹⁶ [Wales Office, Commission on Devolution in Wales takes shape, Press Release, 11 October 2011 \[accessed 8 November 2011\]](#)

¹⁷ HC Debates, 3 November 2011 col 1125 [accessed 9 November 2011]

¹⁸ HC Debates, 3 November 2011 col 1125 [accessed 9 November 2011]

Currently, the Assembly has powers in all 20 devolved areas, and it will be for the commission to decide whether there is a requirement to tidy up the devolution boundary, but any further changes to the settlement will need to be right for Wales and right for the United Kingdom as a whole. I anticipate the commission reporting on part 2 of its remit in 2013.¹⁹

Following an intervention by **Huw Irranca Davies MP, the Secretary of State** was able to clarify to scope the Commission's remit in Part II.

Huw Irranca-Davies: On a point of detail about the possible extension of powers that the Silk commission is considering, will that include energy consents? The matter has been debated a lot recently, as the Secretary of State knows, and it has some support, and opposition, on both sides of the House. Ministers have made it clear that they do not think that it should be part of the commission's deliberations. Will she clarify the situation?

Mrs Gillan: I am grateful to the hon. Gentleman for raising that matter, particularly as before the debate I was looking at the party manifestos for the Assembly elections. He will know that I regularly receive requests for powers over all sorts of areas, and I expect those areas to be looked at. It is fair to say that I expect the commission—this is subject to the way in which it wishes to conduct its business—to consider requests for energy consents for projects of more than 50 MW, and to consider trust ports, rail and separate Welsh legal jurisdiction, all of which have been raised up the agenda by one or other party, or the Welsh Government. It is right that it should have the opportunity to consider energy consents, but I have an extremely long list of things that other parties want fully devolved, which will not stop until the point of separatism is reached. He and I agree that that is not the way to go. The commission may find itself having to consider several other areas, but I am not going to restrict its operation by anything we say in the House. Indeed, I am looking forward to seeing the outcome.²⁰

In regard to timetables for implementation of any recommendations emerging she stated:

Three have been set out. One has a shorter time scale, which assumes that, whatever the recommendations, manifesto commitments or referendum would be necessary. In fact, it would be very difficult to produce a Bill by the time of the next general election, and the time scale could be unfeasibly short. However, again, I am not ruling that out; I am simply saying that it would be difficult. If we did that, and if there were new fiscal and constitutional powers, they would be implemented post-2015.

Another scenario is based on a manifesto commitment and no referendum, which would lead us to believe that there would be legislation after the next general election. However, I do not know what the Silk commission will recommend, or whether it will require both manifesto commitments and a referendum, in which case the time scale would be slightly longer.²¹

She concluded:

¹⁹ HC Debates, 3 November 2011 col 1127 [accessed 9 November 2011]

²⁰ HC Debates, 3 November 2011 col 1128 [accessed 9 November 2011]

²¹ HC Debates, 3 November 2011 col 1129-30 [accessed 9 November 2011]

This is also an important statement of intent by the coalition Government. The Welsh Government receive nearly £15 billion a year from the Treasury, but, as I have said, are not accountable for raising a penny they spend. We do not think that is right, and I am certain that taxpayers do not think it is right either. I want the argument, for once, to move away from whether there is enough money to how it is spent and whether it is spent effectively. It is true to say that a Government who take from Peter and give to Paul can always rely on the support of Paul. We are asking the commission to see whether Paul can also make a contribution.²²

Replying for the Opposition, the Rt. Hon. Peter Hain MP stated:

We welcome the establishment of the Silk commission, which, as the Secretary of State said, has been established on an all-party basis. The Welsh Assembly, which is well over a decade old, is now truly embedded into Welsh civic society, so there may be a case for looking at increasing its financial powers and flexibility. As the First Minister, Carwyn Jones, has indicated, devolving stamp duty, aggregates tax and new borrowing could be advantageous to the Welsh Government and, indeed, to the people of Wales.²³

However, he also expressed some concerns about the motives of the UK Government

I am deeply suspicious of the real Tory agenda that lies behind the Silk commission. The commission's terms of reference state that any devolution of powers must be "consistent with the United Kingdom's fiscal objectives.

Can the Secretary of State explain what is meant by that? I wonder whether, in drawing up the terms of reference, the Chancellor, the Secretary of State and others were thinking of Switzerland, which has a highly federalised and separate tax system in its various cantons, and which demonstrates how such a system can lead to lower public expenditure—not a model that we desire or will accept for Wales. Silk must not become an excuse for this right-wing Government to offload their financial obligations to lower-income parts of the UK, such as Wales.²⁴

The Secretary of State replied that:

The right hon. Gentleman asked me a direct question, and I will give him a direct answer. Devolved funding rules, as set out in the statement of funding policy, operate within the UK's fiscal framework. We therefore expect any changes that come out of the commission's work or intergovernmental talks to be consistent with that framework, for example as set out in the programme for government. As he knows, that is because macro-economic policy is a reserved matter for the UK.²⁵

²² HC Debates, 3 November 2011 col 1131 [accessed 9 November 2011]

²³ HC Debates, 3 November 2011 col 1132 [accessed 9 November 2011]

²⁴ HC Debates, 3 November 2011 col 1134 [accessed 9 November 2011]

²⁵ HC Debates, 3 November 2011 col 1134 [accessed 9 November 2011]

Mr Hain responded that:

I am grateful. The Secretary of State is confirming, then—I am not challenging her on this point—that should there be a derogation in the case of, for instance, stamp duty, that would be taken from the Welsh funding block. That is what I understand her reply to mean.²⁶

He continued:

My second element of disappointment is that the Silk commission will not consider the Holtham commission's proposals for funding reform in Wales.....

.....We are aware that Holtham does not offer a quick solution, and that there would be impacts on the other devolved nations and regions. The introduction of a Barnett floor, which was a Labour manifesto commitment and a proposition featured in the Holtham commission's two reports, would have ensured that Wales's position did not become worse. Why have the Government not considered introducing a floor similar to the one that we proposed, which was agreed with the Treasury? It could be implemented relatively straightforwardly, again with the agreement of the Treasury.²⁷

Contemplating a scenario where the “**devo-max**” option being mooted for Scotland would be applied to Wales, Mr Hain stated:

Under devolution-max, as we understand it from the Scottish model, Wales would be responsible for raising all its own revenue, but we simply could not do it. It would be impossible suddenly to halve public spending in Wales. With devo-max, income tax and other taxes would literally have to double overnight just to maintain current spending levels, which is clearly a preposterous scenario—if ever implemented, it would have a devastating impact upon the Welsh economy and people's way of life.....

..... We should celebrate both the successes of devolution and the economic, social, cultural and political ties that bind us together—they are probably stronger now than ever before—but devo-max, or independence-light, is not the answer to the economic problems that Wales still confronts. Labour's vision is of a Britain in which the stronger, richer parts support the weaker, poorer parts—a Britain fairer, more just and more equal, not an unfair, unjust, unequal Britain where the weakest go to the wall. I hope that the Silk commission will take close account of that important principle.²⁸

5.2. *Key Issues*

MPs raised a number of key issues in the course of the debate.

A number of Labour MPs were concerned that it was not clear, if Wales acquired taxation powers, how the **block grant would be adjusted accordingly**. **The Rt. Hon. Paul Murphy MP** stated:

Finally, we have to be careful that the proposals are not based on a hidden agenda from the Government—what I call the Trojan horse. The hon. Member for Monmouth referred to the West Lothian question, and the Silk commission's hiving off financial responsibility to the

²⁶ Ibid.

²⁷ HC Debates, 3 November 2011 col 1134-35 [accessed 9 November 2011]

²⁸ HC Debates, 3 November 2011 col 1137 [accessed 9 November 2011]

Welsh Assembly, and perhaps taking away the block grant—we do not know for sure—is part of the agenda of the new Conservative party.²⁹

Wayne David MP declared himself:

concerned that the terms of reference are written in such a way that the work of the commission will be conducted within the parameters of the United Kingdom's fiscal objectives. We all know what those central Government objectives are—to make cuts, cuts, cuts, and nothing but austerity, austerity, austerity. It is important to realise that when we are talking about fiscal matters regarding Wales, we are talking about not increased resources but fewer resources. The question is how that reduction in resources will be introduced.³⁰

Huw Irranca-Davies MP said:

Although there is significant merit in addressing the two matters that the Silk commission will examine—power and fiscal responsibilities—there is a worry that Wales will be done down. To her credit, the Secretary of State has made it clear today that she does not want that to happen, but there is a great deal of concern among Opposition Members that we might end up in that situation, particularly given the coalition's approach to constitutional affairs since it was formed. The concern is that this process will not be about looking after the best interests of the people of Wales, or even the best interests of the institutions of Wales—that is, in fact, a decidedly secondary consideration—but that instead it will be a way to look as if we are giving with one hand, while in reality taking away with the other. That is a concern, and we must monitor what happens.³¹

Several Labour MPs also argued that the Holtham Commission recommendation for a **funding floor** for the Barnett formula was not being introduced with immediate effect. Summing up for the Opposition, **Nia Griffith MP** stated:

We are disappointed that the Secretary of State has decided to make setting up the Silk commission a priority over tackling the challenge of delivering a fairer funding system for Wales—an issue that is specifically excluded from the commission's remit. If her Government were really interested in delivering the best for the people of Wales, they would have made it a priority to introduce the so-called Barnett floor—a concept that was explored in the Holtham reports and adopted by Labour in our 2010 manifesto as the most practical and immediate step to protect funding to Wales.³²

Earlier in the debate the Secretary of State had stressed that this was the subject of ongoing bilateral discussion between the UK and Welsh Governments.³³

Coalition MPs reiterated the argument for **financial accountability** outlined by the Secretary of State. Roger Williams MP stated:

When Wales said yes to having a Welsh Assembly in 1997, the devolution package was missing one critical element. The Welsh Government have the luxury of spending money

²⁹ HC Debates, 3 November 2011 col 1155 [accessed 10 November 2011]

³⁰ HC Debates, 3 November 2011 col 1162 [accessed 9 November 2011]

³¹ HC Debates, 3 November 2011 col 1192 [accessed 9 November 2011]

³² HC Debates, 3 November 2011 col 1197 [accessed 9 November 2011]

³³ HC Debates, 3 November 2011 col 1198 [accessed 9 November 2011]

handed out by others..... as has been suggested, they have fewer powers than local authorities.³⁴

Guto Bebb MP commented that:

every Member in the Chamber will also recognise that local authorities are accountable to the electorate because local councillors are elected; yet they are accountable through the council tax increases they impose as well. Therefore, it is certainly arguable that there is a need for some financial and fiscal accountability in how the Welsh Assembly operates.³⁵

Plaid Cymru MP Jonathan Edwards concurred with the financial accountability argument:

My party fully agrees with the points made by the Secretary of State and Tory Back Benchers about accountability. Before I came to this place, I served as a town councillor in Carmarthen. We were responsible only for very local matters, but we had taxation powers. For the life of me I cannot understand why anybody would oppose giving the Government of Wales similar powers, as this would, not least, focus the minds of Assembly Members on wealth generation, which is very important. If we are serious about creating a more prosperous and just society, we have to focus on wealth generation, as do the Welsh Government. Giving them tax-raising powers would make them focus more on such issues and on some of the give-away processes that we are seeing at the moment.³⁶

However, **David T.C. Davies MP** expressed concern about the prospect of giving fiscal powers to Wales.

It is hard to see how we could maintain the integration of the various parts of the United Kingdom if we were all doing different things fiscally. The Silk commission has apparently ruled out borrowing, but I have been told by those in a position to know that it has ruled out only some kinds of borrowing, and anything can be examined. There are certainly ongoing discussions about different kinds of borrowing.³⁷

The Secretary of State provided clarification on the issue of **borrowing**:

The Silk commission can look at future borrowing, whereas current borrowing is at present the subject of bilateral discussions between the Treasury and the Welsh Government. The Silk commission can look at future borrowing.³⁸

Later in the debate the Rt. Hon. **Paul Murphy MP** commented:

I cannot understand from the response of the Secretary of State to the hon. Member for Monmouth the difference between current and future borrowing. Either one agrees with the concept of the Welsh Government being able to borrow, or one does not. The Northern Ireland Executive and the Scottish Government will be able to borrow, and local government can borrow, so why on earth can the Welsh Government not borrow? It is quite incongruous

³⁴ HC Debates, 3 November 2011 col 1158 [accessed 10 November 2011]

³⁵ HC Debates, 3 November 2011 col 1165 [accessed 10 November 2011]

³⁶ HC Debates, 3 November 2011 col 1195 [accessed 9 November 2011]

³⁷ HC Debates, 3 November 2011 col 1149 [accessed 10 November 2011]

³⁸ Ibid.

that that is the case, and I am glad at least that they can discuss borrowing, even if they cannot discuss borrowing at the moment.³⁹

The current borrowing referred to is mainly in relation to the ability to borrow to fund (capital) infrastructure, such as the powers recently given to Scotland. Future borrowing mainly refers to (revenue) borrowing to balance fluctuations in tax incomes in the event of tax devolution.

Jonathan Edwards MP stated:

Taxation powers and borrowing go hand in hand, and I am grateful that the Silk commission will be able to look at borrowing powers. In a situation where we will have a varying income stream as a result of having taxation powers, borrowing is the best measure for smoothing out those differences, and it is right and proper that the Welsh Government will be able to have those powers if the commission so recommends.

Mr Murphy was of the opinion that it “would not be constitutionally right or proper for there to be tax-raising or tax-varying powers in Wales, so far as income tax is concerned, **without the people’s saying so.**”⁴⁰

MPs of all parties touched on powers that might be sought under Part II of the Commission’s work, such as the **judicial system**. Mr Murphy commented that:

Most Members of the House of Commons would be wary of transferring policing and justice to the Welsh Assembly. We have a different system from Scotland, and we are so bound up with the English judicial and legal system that I would not agree.⁴¹

Hywel Williams MP noted:

There have been persistent complaints from members of the legal profession in Wales and others, including academic lawyers, who have looked at the changes to the body of law in Wales and found that it is difficult to keep track. There are people who are doing a heroic job of trying to keep track of the implications and I only wish that they were better resourced. Unsurprisingly, my opinion is that there should be a devolution of jurisdiction to Wales, which would make things rather clearer, but I shall say something about that later.⁴²

David Hanson MP was concerned about **cross-border** issues:

Will the Secretary of State ensure that the commission looks carefully at the impact of the border? My constituency, and that of many others, is close to the English border. People who live in my constituency work in England, and people who live in England work in my constituency. The differing rates of VAT, corporation tax and quarrying tax, and of expenditure, are important on both sides of the border. I do not want the commission to look specifically at Welsh issues without taking representations from the English side of the border.⁴³

³⁹ HC Debates, 3 November 2011 col 1154 [accessed 10 November 2011]

⁴⁰ HC Debates, 3 November 2011 col 1153 [accessed 10 November 2011]

⁴¹ HC Debates, 3 November 2011 col 1154 [accessed 10 November 2011]

⁴² HC Debates, 3 November 2011 col 1176 [accessed 10 November 2011]

⁴³ HC Debates, 3 November 2011 col 1124 [accessed 10 November 2011]

The Secretary of State replied:

I could not agree more with the right hon. Gentleman. I refer him to the commission's specifications, in which we state that it should

“consider and make recommendations on how best to resolve the legal and practical implementation issues from devolving a package of fiscal powers”.

I think that says it all: we are keeping an open mind. The right hon. Gentleman knows that since becoming shadow Secretary of State, I have been concerned about the implications of the permeability of the border. The commission offers us the chance to look not only at recommendations that might be made but at the practical difficulties.⁴⁴

All MPs who spoke generally welcomed the Commission apart from David T.C. Davies MP, who stated that “unlike some Members, I shall **not be offering a welcome**, cautious or otherwise, to the Silk commission”. He argued that Wales seemed to be “locked in a kind of constitutional groundhog day, with the same sequence of political events repeating itself over and over again”, namely successive commissions resulting in increased powers for the Assembly. He continued:

I would be delighted if we really were going to consider varying the powers of the Welsh Assembly, because I assume that varying can cut both ways. It could mean that, rather than just handing the Assembly new powers, we could look at taking a few powers away from it, once in a while. I suggested that in a Westminster Hall debate a few years ago, when Wales was doing particularly badly on the health service, but it did not seem to meet with much approval from anyone—certainly not anyone in my political party. The very fact that it had been suggested was a source of outrage to many.

The Welsh Assembly can take powers away from local authorities that are failing in Wales and, quite rightly, it has used them from time to time, so I see no reason why the Silk commission should not look realistically at the possibility of removing powers from the Welsh Assembly in devolved areas if standards have clearly dropped below those that all in the United Kingdom are entitled to expect.⁴⁵

⁴⁴ Ibid.

⁴⁵ HC Debates, 3 November 2011 col 1145 [accessed 10 November 2011]