

## **National Assembly for Wales**

### **The road to the Independent Commission on devolution in Wales**

September 2011

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.

This paper outlines the political and constitutional developments which have led to the establishment of the Commission.

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**Enquiry no:** 11/1591

## **National Assembly for Wales**

### **The road to the Independent Commission on devolution in Wales**

September 2011

Alys Thomas

Paper number: 11/052



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# The road to the Independent Commission on devolution in Wales

## 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.<sup>1</sup>

This paper outlines the political and constitutional developments which have led to the establishment of the 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\*](#).

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<sup>1</sup> [\*Wales Office, Next Steps for Commission on Devolution in Wales outlined\*](#) , Press Release, 19 July 2011

## 2. The Independent Commission: the announcement

Following the UK General Election in May 2010, the Coalition Agreement between the Conservative and Liberal Democratic parties contained a commitment:

Depending on the outcome of the forthcoming referendum, we will establish a process similar to the Calman Commission for the Welsh Assembly.<sup>2</sup>

The UK Spending Review announced in October 2010 stated that:

the Government recognises the concerns expressed by the Holtham Commission on the system of devolution funding. Depending on the outcome of the forthcoming referendum, the Government will consider with the Welsh Assembly Government the proposals in the final Holtham report, consistent with the work being taken forward in Scotland following the Calman Commission.<sup>3</sup>

Further clarification on this wording was provided by the Chief Secretary to the Treasury, the Rt.Hon. Danny Alexander MP when he appeared before the Assembly Finance Committee in November 2010.

**Mr Alexander:** One thing that I meant to say is that that part of the coalition agreement refers explicitly to a Calman-like process, which was a commission that was established to take forward the question of fiscal devolution, tax powers, and so on. In a sense, as you quite rightly observed, the language in the spending review had evolved slightly. Given the second Holtham report and the work that has taken place in this area, some people took the language of ‘a Calman-like process’ to imply that we would somehow require a new commission to be established to do the same work again before this issue could be addressed. Given the work of the Holtham commission, I do not think that that is a requirement that we would put on at all, which is why the language has evolved slightly.<sup>4</sup>

The referendum held on 3 March 2011 produced a “yes” vote in favour of bringing into force Part 4 of the *Government of Wales Act 2006* thereby extending the legislative competence of the Assembly. In the first Welsh Questions in the House of Commons after the referendum the Secretary of State responded to a question from Simon Hart MP:

**Simon Hart:** Can the Secretary of State provide a timetable for the introduction of a Calman-style inquiry, as per the coalition agreement, and will she undertake a full consultation on the matter?

**Mrs Gillan:** I am grateful to my hon. Friend. When we established the coalition Government, we committed in the coalition agreement to establishing a Calman-like process for the Assembly. I will announce further details on that in the coming months.<sup>5</sup>

In reply to another question from David T.C.Davies MP she said:

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<sup>2</sup> [Cabinet Office., \*The Coalition:our programme for Government\*, May 2010, p28](#)

<sup>3</sup> [HM Treasury, \*Spending Review 2010\*, CM7942 October 2010 p71](#)

<sup>4</sup> [RoP, 22 November 2010 para152](#)

<sup>5</sup> HC Debates, 16 March 2011, col 283



**Mrs Gillan:** I, too, am a devoted Unionist, but I recognise that the yes vote does not mean that the Welsh devolution settlement will stand still. It is a living object, which is why we are establishing a Calman-like process to examine the future of the Welsh Assembly and how we are governed across the UK, specifically in Wales.<sup>6</sup>

On the 12 July 2011 the Prime Minister, the Rt. Hon. David Cameron MP, addressed the National Assembly for Wales and stated:

Four months ago, Wales held a referendum and the people of Wales spoke decisively. The Assembly will no longer have to ask permission from Westminster to legislate on devolved matters. It is clear: there is no turning back from devolution, nor should there be. However, I believe that, with this new level of power that you hold, there should be new levels of accountability. So, as we promised, we will establish a process similar to the Calman commission in Scotland. The strength of Calman was that it worked by consensus—Conservatives, Labour and Liberal Democrats in Scotland coming together and agreeing a way forward. I am, therefore, asking all political parties to seek consensus on the future direction of devolution. Whatever the outcome of this process, I want you to know that I will always be here to work with you for the good of Wales as part of a strong United Kingdom.<sup>7</sup>

On the 19<sup>th</sup> July, as stated in the introduction, the Secretary of State issued a press release announcing that an independent commission would be established which “will examine issues of fiscal devolution and accountability in Wales and will take into consideration the work of the Holtham Commission.” She stated:

It is only right that the Welsh Government is accountable for the money it spends. We are only at the beginning of the process, but I believe that by working together across parties, between governments and institutions, we can reach agreement which will deliver fiscal accountability to the Assembly.<sup>8</sup>

She confirmed that an independent Commission will be established in the autumn and look to report on its recommendations in the autumn of 2012. Work is to continue between the UK Government and the Welsh Government over the summer, and she anticipated making further announcements on the process after recess.<sup>9</sup>

She further stated that the UK Government is committed to considering all aspects of the Holtham Commission’s reports but that “separate discussions will continue on Holtham’s proposals for funding reform for Wales.”<sup>10</sup> The Commission will be considering fiscal devolution and accountability but reform of the Barnett formula would not appear to be part of its remit.

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<sup>6</sup> HC Debates, 16 March 2011, col 284

<sup>7</sup> RoP, 12 July 2011

<sup>8</sup> [Wales Office, \*Next Steps for Commission on Devolution in Wales outlined\*, Press Release, 19 July 2011](#)

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

After the Commission has reported and the UK Government has considered its proposals, the Commission will then look at the constitutional settlement in Wales “in light of experience” and aim to report on its findings in 2013.<sup>11</sup>

The First Minister’s response was published on the Welsh Labour Party website:

I welcome the announcement of an independent Commission to look at fiscal devolution for Wales, and that the Commission will consider all aspects of the Holtham report for funding reform as part of its work. We will continue to work closely with the UK Government to ensure this work progresses as quickly as possible in order to achieve a fairer funding package for Wales.<sup>12</sup>

On the 15<sup>th</sup> July it had been reported in the *Western Mail* that all four party leaders<sup>13</sup> in the National Assembly had signed a letter to the Secretary of State calling for a wide-ranging commission to look into further stages in Welsh devolution.<sup>14</sup>

Extracts from the letter were subsequently published on the Institute of Welsh Affairs’ Click on Wales blog. The four leaders’ suggested outline terms of reference and wrote:

You will note that our suggested Terms [of Reference] envisage a two-stage process. The first stage should focus on fiscal devolution. This needs to proceed in parallel with inter-governmental discussions on fair funding and borrowing to which both Governments are committed. We have set out a time-table for both strands of this work which we hope the UK Government can agree to. The second stage would enable the Commission to look at the current constitutional settlement in the light of experience and to consider recommendations that might benefit the people of Wales... We all agree that the Commission needs to begin its work in September and to drive forward with momentum.<sup>15</sup>

The suggested headline Terms of Reference for the Commission are:

In parallel with the Commission, but separate from it, **borrowing powers** and ensuring fairer funding for Wales should be addressed through **inter-governmental** discussions. Borrowing powers should be for capital expenditure only; fairer funding should be addressed through revision of the block arrangements currently delivered through the Barnett formula. These discussions have **already begun** and should conclude no later than September 2012 at which point they should form part of a **coherent package** of reform along with the Commission report.

The Commission is asked to undertake its work in two parts. In the **first part**, the Commission should consider options for **fiscal devolution**, taking into account the work already done by the Holtham Commission. This work would include identifying the practical and legal issues to be resolved before any agreed proposals could be implemented.

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<sup>11</sup> Ibid.

<sup>12</sup> [Labour Party Wales website, News, Commission on Devolution \[accessed 26 July 2011\]](#)

<sup>13</sup> It was signed by acting Welsh Conservative Assembly group leader Paul Davies before the election of Andrew RT Davies as leader was announced

<sup>14</sup> [Western Mail, Demand for Commission to look into further devolution for Wales, 15 July 2011](#)

<sup>15</sup> [Click on Wales Blog, Speaking with one voice Wales gets her way, 21 July 2011 \[accessed 26 July 2011\]](#)

The Commission should commence its work in **September 2011** and report, with recommendations, no later than **September 2012**.

Secondly, and after **Part One** of the Commission has reported, **Part Two** of the Commission should look at the current **constitutional settlement** in the light of experience and recommend changes that would enable the National Assembly for Wales, and Welsh Government, to better serve the people of Wales.

The Commission is asked to report on this aspect of its remit, with recommendations as it considers appropriate, by **March 2013**.

The Commission should aim to reflect a consensual view. The Chair should have the confidence of the main Welsh political parties and both the Welsh and UK Governments.<sup>16</sup>

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<sup>16</sup> Ibid.

### 3. The Calman and Holtham Commissions

As seen above, all statements pertaining to the proposed Commission make reference either to the Holtham commission, the Calman commission or both. The Independent Commission on Funding and Finance for Wales (Holtham Commission) was established following a commitment by the previous Welsh Government's One Wales agreement to establish a Commission to review how Welsh devolution is funded.<sup>17</sup> In Scotland the Commission on Scottish Devolution (Calman Commission) had a remit to review the provisions of the *Scotland Act 1998* in light of experience and to recommend any changes to the present constitutional arrangements. Further details of these two Commissions are provided below,

#### 3.1. *The Calman Commission*

Formed in 2008, the Commission on Scottish Devolution,<sup>18</sup> chaired by Sir Kenneth Calman, had the support of the main Scottish opposition parties (Labour, Conservative and Liberal Democrats) and the then UK Government, but was opposed by the SNP Scottish Government.<sup>19</sup>

The Calman Commission had an extremely wide remit, as announced to the House of Commons by the then Secretary of State for Scotland (Rt. Hon Des Browne MP):

To review the provisions of the Scotland Act 1998 in light of experience and to recommend any changes to the present constitutional arrangements that would enable the Scottish Parliament to serve the people of Scotland better, that would improve the financial accountability of the Scottish Parliament and that would continue to secure the position of Scotland within the United Kingdom.<sup>20</sup>

Reviewing the current funding arrangements and potential funding alternatives for a devolved Scotland was only a small part of their remit.

The Calman Commission published their final report in June 2009; making 63 recommendations intended to:

...improve the financial accountability of the Scottish Parliament, to improve the distribution of powers and functions, to improve joint working between the Parliaments and Governments and encourage co-operation on shared interests, and to strengthen the operation of the parliament itself. Taken together, we believe these recommendations will

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<sup>17</sup> [\*One Wales: a progressive agenda for the government of Wales. An agreement between the Labour and Plaid Cymru Groups in the National Assembly\*](#), June 2007 [accessed 25 May 2011]

<sup>18</sup> [Commission on Scottish Devolution](#) [accessed 25 May 2011]

<sup>19</sup> Further information on the background to the Calman Commission can be found in the Research Service paper: [The Scotland Bill](#), January 2011

<sup>20</sup> [HC Deb 25 March 2008](#) col 8WS [accessed 25 May 2011]

enable devolution to serve the people of Scotland better, while also consolidating Scotland's important place within the United Kingdom.<sup>21</sup>

In relation to 'Strengthening Accountability in Finance', the Commission's recommendations included:

- a **Scottish rate of income tax** to replace the current Scottish variable rate. Existing rates of income tax in Scotland would be cut by 10p in the pound and the Scottish Parliament given the power to set a new rate for basic and higher rates. This would be compensated for by a corresponding reduction to the block grant;
- **devolving Stamp Duty Land Tax, the Aggregates Levy, Landfill Tax and Air Passenger Duty** to the Scottish Parliament, again with a corresponding block grant reduction;
- the block grant should continue to make up the remainder of the Scottish budget, but that **it should be based on relative need**; until a UK-wide needs assessment can be conducted, the block grant should continue to be determined by the Barnett formula;
- giving Scottish Ministers additional **borrowing powers**; and
- strengthening the inter-governmental relationships that deal with finance.<sup>22</sup>

Non- financial recommendations included:

- Holyrood to control airgun laws and power to set drink driving limits, landfill levy, speed limits and ability to run Scottish elections;
- co-operation between Westminster and Holyrood to be strengthened. Ministers from each legislature should appear before relevant committees;
- powers of insolvency, charity law and registration of health professionals be returned to Westminster.

The previous UK Government published a White Paper in November 2009,<sup>23</sup> which took forward some of the Commission's recommendations and set out plans for a Scotland Bill to be introduced following the General Election in May 2010. The then Leader of the Opposition (Rt. Hon David Cameron MP), accepted many of the aims in the White Paper, but stated that should the Conservative Party form a government following the election, they would "not be bound" by these proposals

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<sup>21</sup> Commission on Scottish Devolution, [\*Message from the Chairman, Sir Kenneth Calman\*](#), 15 June 2009 [accessed 25 May 2011]

<sup>22</sup> Commission on Scottish Devolution, [\*Serving Scotland Better: Scotland and the United Kingdom in the 21st Century. An Overview of the Final Report\*](#), June 2009

<sup>23</sup> Scotland Office, [\*Scotland's Future in the United Kingdom\*](#), November 2009 [

and would “produce their own White Paper and legislation to deal with the issues raised by Calman”.<sup>24</sup>

The SNP Scottish Government also produced their own White Paper in February 2009, which outlined “the case for improving the current fiscal arrangements and the options for reform”.<sup>25</sup> The Scottish Government’s then Constitution Minister (Michael Russell) responded to the Calman Commission’s report in a news release:

...the Calman Commission's recommendations on finance fall far short of the requirements of our nation, and the challenges of our times. Scotland needs full fiscal autonomy, allowing this country to raise all the money it spends and take the big economic decisions. That is the best and simplest solution - anything else risks being a messy fudge. Borrowing powers for Scotland are to be welcomed, although the Calman proposals are too limited.

At present, we have a 'pocket money parliament' - under the Calman proposals, Scotland would have a Saturday job but the pay would be deducted from our pocket money. Scotland has to go much further than a system of the Treasury giving with one hand and taking away with the other - which is why the Scottish Parliament and Government need fiscal autonomy and full financial powers.<sup>26</sup>

Following the General Election on 6 May 2010, the Coalition’s Programme for Government included a pledge to “implement the proposals of the Calman Commission” in Scotland.<sup>27</sup>

### 3.2. *Independent Commission on Funding and Finance for Wales (Holtham Commission)*

The Holtham Commission was tasked with reviewing the funding of devolution in relation to Wales, including:

- examining the pros and cons of the present approach based on the Barnett formula; and
- identifying possible alternative funding mechanisms including the scope for the Welsh Ministers to have borrowing and tax-varying powers.

The Holtham Commission published its findings in two parts. Its first, interim, report, *Funding devolved government in Wales: Barnett and beyond*, came out in July 2009.<sup>28</sup> It assessed the Barnett formula as it has been applied to Wales, and considered the case for change. It concluded that the Barnett formula:

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<sup>24</sup> The Times, [White Paper hands tax-raising powers to Scotland](#), 25 November 2009 [accessed 25 May 2011]

<sup>25</sup> Scottish Government, [Fiscal Autonomy in Scotland: Taking forward our National Conversation](#), 24 February 2009 [accessed 25 May 2011]

<sup>26</sup> Scottish Government, News Release, [Calman Commission](#), 15 June 2009 [accessed 25 May 2011]

<sup>27</sup> Cabinet Office, [The Coalition: our programme for government](#), May 2010 p 28

<sup>28</sup> Independent Commission on Funding and Finance For Wales, [First Report, Funding devolved government in Wales: Barnett and beyond](#), July 2009

...has no stated purpose other than getting a distribution done. In this it unquestionably succeeds. The purpose that can be inferred from its operation is to achieve the distribution with a minimum of public political conflict.<sup>29</sup>

The Commission's interim report made a number of recommendations, including:

- The Barnett formula should be **replaced by a needs-based methodology**.
- There should be **no further decline in relative funding per head in Wales until a new funding system is in place**. Therefore, the **Barnett formula should be immediately modified to include a 'floor' to prevent further convergence**. It was proposed that this could be achieved by multiplying all increases to the Welsh block grant generated by the Barnett formula by 114 per cent.<sup>30</sup>

The Commission's interim report also made a number of recommendations aimed at enhancing the funding flexibility available to the Welsh Ministers and improving relations with regard to funding.<sup>31</sup> These included:

- being able to draw forward capital allocations over the course of the spending review period, allowing 'smoothing' of capital budgets;
- the ability to move funds from capital to revenue budgets;
- freedom to access end year flexibility<sup>32</sup> stocks without HM Treasury agreement;
- operation of the funding formula should be conducted by an independent advisory body at arm's length from Government; transparency should be enhanced by producing an annual publication allowing comparison of spend in Wales determined by the Barnett formula and comparable spend in England; and
- A Treasury Minister should attend the National Assembly's Finance Committee, at least once in each spending review period, to discuss funding issues in relation to Wales.

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<sup>29</sup> Independent Commission on Funding and Finance For Wales, *First Report, Funding devolved government in Wales: Barnett and beyond*, July 2009 page 68

<sup>30</sup> Analysis within the report suggests that Wales would receive £114 (rather than the current £112) for every £100 spent in England, if it were determined by the English funding formula. A simple adjustment to avoid further convergence would be to multiply any positive increments allocated to Wales by 114 per cent; thus placing a floor under funding for Wales and preventing further convergence.

<sup>31</sup> Independent Commission on Funding and Finance For Wales, *First Report, Funding devolved government in Wales: Barnett and beyond*, July 2009

<sup>32</sup> End year flexibility (EYF) – this is a mechanism which allowed for the carry-over of unspent provision from one year to later years, to ensure any under spend remains available rather than being returned to HM Treasury. Since the publication of the Commission's report, the UK Government have withdrawn the EYF system and the Welsh stocks of EYF (HM Treasury, *Spending Review 2010*, October 2010 page 18). This has now been replaced by the Budget Exchange System, which does not allow for the accumulation of stocks over time, and therefore flexibility in accessing stocks is no longer an issue.

The National Assembly debated the Commission's interim report in October 2009.<sup>33</sup> The then Welsh Government welcomed the report and stated its intention to pursue its recommendations with the UK Government.<sup>34</sup>

The Holtham Commission published its final report, *Fairness and accountability: a new funding settlement for Wales* in July 2010.<sup>35</sup> It presented the findings of the second stage of the Commission's work, looking at alternative funding mechanisms for Wales, including the scope for the Welsh Ministers to have tax-varying powers and greater powers to borrow.

The Commission **considered options which are consistent with the current devolution settlement (or that following a referendum in favour of enhanced legislative powers)**, and therefore did **not** consider models of fiscal autonomy.

The Commission's final report:

- provides evidence of how a **needs-based funding system** could operate in a manner fair to all regions of the UK;
- makes the case for the **devolution of selected tax-varying powers** to Wales: potentially including income tax, corporation tax, stamp duty land tax, capital gains tax, and minor taxes such as landfill tax, air passenger duty and aggregates levy;
- recommends a power to introduce **new Wales-specific taxes**; and
- recommends **limited borrowing powers** for the Welsh Ministers.

The main weaknesses of the current system were found to be **lack of equity and accountability**, therefore the Commission's recommendation to replace it with a needs-based system aims to ensure an equitable funding system. The report also stated that **some devolution of tax powers would greatly enhance the accountability of the current settlement**.

The report suggests that the earliest practical option of any devolution of tax-varying powers would be 2015. However, more limited powers relating to borrowing or minor taxes could occur sooner. The report makes the case that, **as discussions are underway in relation to fiscal devolution in other areas of the UK, Wales should be involved in all stages of these discussions, on the assumption that similar powers may be granted to Wales**.

It is suggested that **responsibility for any devolved taxes should remain with HMRC** (consistent with the Calman recommendations). However, should tax-

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<sup>33</sup> RoP [13 October 2009](#) p47-71

<sup>34</sup> Welsh Government, Andrew Davies (Minister for Finance and Public Service Delivery, [Written Statement on the publication of the Holtham Commission Part 1 Report](#), Written Cabinet Statement, 7 July 2009

<sup>35</sup> Independent Commission on Funding and Finance for Wales, [Final Report, Fairness and accountability: a new funding settlement for Wales](#), July 2010 [accessed 25 May 2011]



varying powers be devolved there is likely to be a need for some form of specialist support to help determine tax policy.

The report states that it would be for the Welsh Ministers to decide whether there would be a need for a **referendum prior to any devolution of tax-varying powers**, although it does suggest that it is likely that devolution of power over income tax would take place only after a referendum, as this may be too significant a change without public endorsement.

In response to the Commission's final report, the then Minister for Business and Budget (Jane Hutt AM) issued a statement that the Welsh Government welcomed the demonstration of how a needs-based system could operate and that they would continue to press the UK Government to implement a floor in the forthcoming (2010) Spending Review. She went on to state that the recommendations on tax-varying and borrowing powers would '*need consideration*'.<sup>36</sup>

The current UK coalition Government, prior to the publication of the Commission's final report, stated in their Programme for Government that:

We recognise the concerns expressed by the Holtham Commission on the system of devolution funding. However, at this time the priority must be to reduce the deficit and therefore any change to the system must await the stabilisation of the public finances. Depending on the outcome of the forthcoming referendum, we will establish a process similar to the Calman Commission for the Welsh Assembly.<sup>37</sup>

The National Assembly debated the Commission's final report in October 2010. The Assembly unanimously endorsed a motion calling for the implementation of a funding floor by the UK Government, followed by wider reform of the current funding arrangements.<sup>38</sup> In relation to tax-varying powers, this has been decided to be a matter for the people of Wales and the First Minister (Carwyn Jones AM) stated that it would require a referendum.<sup>39</sup>

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<sup>36</sup> Welsh Government, Minister for Business and Budget (Jane Hutt AM), [\*Publication of the Holtham Commission's final report\*](#), Written Cabinet Statement, 6 July 2010

<sup>37</sup> HM Government, [\*The Coalition: Our programme for Government\*](#), 2010 (under 'Political Reform')

<sup>38</sup> RoP [12 October 2010](#) p51-66

<sup>39</sup> BBC News Article, [\*Voters must decide on devolved tax powers, says Jones\*](#), 10 March 2011[accessed 25 May 2011]

#### 4. The Scotland Bill<sup>40</sup>

On 30 November 2010 the UK Government introduced the *Scotland Bill* at Westminster and published a command paper, *Strengthening Scotland's Future*. The Bill contains clauses which deal with a number of the Calman Commission recommendations, including:

- re-reserving to Westminster powers over the insolvency and of the regulation of health professions;
- increased involvement of the Scottish Government in the selection of the Scottish members of the BBC Trust and the Crown Estate Commissioners;
- and devolution of powers to Scottish Ministers with regard to the administrations of Scottish elections, the regulation of airguns, of speed limits and of drink-driving limits.

The Bill also includes clauses which cover subjects which were not in the Commission's recommendations, such as:

- renaming the Scottish Executive as the Scottish Government;
- reserving the regulation of activities in Antarctica; and
- giving the UK Supreme Court a role in scrutinising Acts of the Scottish Parliament.

The Bill also contains clauses which seek to partially implement the Calman recommendations relating to finance. These include:

- clauses to abolish the Scottish variable rate; to establish a Scottish income tax to replace part of the UK income tax;
- to devolve stamp duty, land tax and landfill tax;
- to provide powers to create or devolve other taxes;
- and to provide new borrowing powers.

Following the introduction of the Bill, the Scottish Parliament established an ad hoc Committee which was asked to consider the Bill and any relevant legislative consent memorandums (LCMs) and recommend whether the Parliament should consent to the Bill.<sup>41</sup> The Committee's *Report on the Scotland Bill and relevant legislative consent memorandum* was published on 3 March 2011, ahead of the first day of its Committee stage in the House of Commons. The Scottish Affairs Committee at Westminster also scrutinised the Bill.

The Bill has completed its passage through the House of Commons and received its First Reading in the House of Lords. The Second Reading is scheduled for 6

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<sup>40</sup> [Research Service, \*The Scotland Bill\*, Research Paper 01/11, January 2011](#)

<sup>41</sup> [SPICe, \*Key Issues for the Parliament in Session 4\*, 11/028, 6 May 2011](#)

September 2011. Following the victory of the SNP in the May 2011 Scottish elections, further amendments were made to the Bill:

- introducing a power which will enable the UK Government to amend, in future, the way in which Scottish Ministers can borrow to include bond issuance, without the need for further primary legislation. The UK Government will conduct a review of the costs and benefits of bond issuance over other forms of borrowing, and will consider extending Scottish Ministers' powers where this does not undermine the overall UK fiscal position or have a negative impact on total UK borrowing;
- removing the requirement for Scottish Ministers to absorb the first £125 million of tax forecasting variation within their budget - this will give the Scottish Government more flexibility to decide how best to respond to variations in tax receipts compared to forecasts;
- allowing Scottish Ministers to make discretionary payments into the Scottish Cash Reserve for the next five years, up to an overall total of £125 million - this will help manage any variation in Scottish income tax receipts compared to forecasts in the initial phase of the new system; and
- bringing forward to 2011 pre-payments, a form of cash advance, to allow work on the new Forth Replacement Crossing to begin.<sup>42</sup>

Following the Scottish elections the Scotland Bill Committee in the Scottish Parliament has been re-formed with a remit to:

consider the Scotland Bill, proposed amendments to the Bill, responses to the report of the Session 3 Scotland Bill Committee, and to report to the Parliament.<sup>43</sup>

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<sup>42</sup> [Scotland Office, UK Government announces Scotland Bill changes, Press Release, 13 June 2011.](#)

<sup>43</sup> [Scottish Parliament website \[accessed 27 July 2011\]](#)

## 5. Welsh devolution reviews since 1999

When the Secretary of State for Wales appeared before the Welsh Affairs Select Committee at Westminster on 13 July 2011 she was asked by Jonathan Edwards MP whether the proposed “Calman-style” commission would have a similarly broad remit to the Scottish Calman Commission. She noted that the Calman Commission was the first comprehensive review of the *Scotland Act 1998* but that in Wales a new Act had been introduced in 2006 which brought about far reaching changes to the settlement.<sup>44</sup>

This section briefly sums up the reviews of devolution in Wales since 1999 and key changes arising from them.

### 5.1. *The Richard Commission*

The Richard Commission on the Powers and Electoral Arrangements of the National Assembly for Wales was appointed by the First Minister in July 2002 to review:

- the scope of the Assembly’s powers: whether they are adequate to meet the needs of Wales; and
- the number of elected Assembly Members and their method of election.

The Chair, Lord Richard of Ammanford, was appointed by the then First Minister, the Rt.Hon. Rhodri Morgan AM,, four members were nominated jointly by the leaders of the four political parties in the Assembly and five were chosen through public advertisement and interview.

The Commission claimed to have approached its remit from “a broad and practical perspective, looking at how the arrangements are working at present; what, if any, problems have been encountered.” It held 115 open evidence sessions, three seminars and nine public meetings across Wales and received over 300 written submissions in response to its two consultation papers.

The Report was published in March 2004 and was agreed unanimously by the Commission although a letter was appended from Ted Rowlands outlining his reservations about replacing the current arrangements after just four years. However, he added that “the experience of operating the settlement over the coming years may justify such a change. If so, I believe our report will make a major contribution to an informed debate”.

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<sup>44</sup> HC Welsh Affairs Select Committee, 13 July 2011, Parliament TV

The Commission's recommendations were that:

- there should be a legislative Assembly for Wales;
- in the interim, the framework delegated powers approach should be expanded as far as possible with the agreement of the UK Government and Parliament;
- if a legislative Assembly is constituted, tax-varying powers are desirable, but not essential;
- to exercise primary powers, the Assembly needs an increase in membership to 80 Members;
- the Assembly should be reconstituted as a separate legislature and executive;
- the present voting system cannot sustain an increase to 80, and the best alternative is the Single Transferable Vote system;
- these changes should be in place by 2011, or sooner if practicable.

Further to the publication of the Richard Commission report in March 2004, the National Assembly for Wales passed a resolution in October 2004<sup>45</sup>, calling on the First Minister to urge the Secretary of State for Wales to bring forward proposals to amend the *Government of Wales Act 1998* for the following purposes:

- the separation of the legislative and executive arms of the National Assembly for Wales and the distribution of powers between the two arms;
- enhanced legislative powers; and
- the correction of some anomalies in the electoral system for the Assembly.

## *5.2. Better Governance for Wales White Paper*

In June 2005 the UK Government White Paper, *Better Governance for Wales* (Cm.6582) was published. It set out how the UK Government intended to fulfil these policy commitments. The paper proposed a formal separation of the executive and legislative branches of the Assembly by ending its status as a corporate body and changing the nature of executive authority so that the First Minister and Ministers are appointed by the Monarch. It also proposed to legislate in order to prevent candidates standing in constituencies as well as on the regional list.

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<sup>45</sup> RoP, 6 October 2004, p.33

With regard to the legislative powers of the Assembly, the UK Government proposed to increase these in three stages by:

- Ensuring that primary legislation is drafted in a consistent way in relation to Wales and one that gives the Assembly maximum discretion in making its own provisions, so called “framework powers”.
- Introducing primary legislation to put in place a procedure that will enable Parliament to give the Assembly powers to modify legislation or make new provision on specific matters or within defined areas in currently devolved functions. This will involve Orders in Council being made at the Assembly’s request and passed by Parliament using the affirmative procedure.
- Introducing the possibility of primary legislative powers if approved by votes in both Houses of Parliament, the Assembly and in a referendum.

Following the release of the White Paper, the Assembly established a committee to consider the proposals set out for the proposed new structure and its legislative powers. The Committee reported back to the Assembly in Plenary on 21 September 2005 before submitting its report<sup>46</sup> to the UK Government in mid September.<sup>47</sup>

The Committee took evidence from a wide range of witnesses including party leaders; committee chairs; the Permanent Secretary; trade unions; senior parliamentary officials from Scotland and Westminster and academics. Much of the evidence given probed the likely procedures for an Order in Council in the Assembly and in Westminster and the resulting changes in the volume and nature of the work of the Assembly in committees and plenary. The House of Commons Welsh Affairs Committee also held an inquiry into the White Paper. The Report<sup>48</sup> was published on 13 December 2005.

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<sup>46</sup> Better Governance for Wales White Paper Committee, *Report of the Better Governance for Wales White Paper*, LD3999, 13 September 2005.

<sup>47</sup> RoP 21 September 2005 p47

<sup>48</sup> [Welsh Affairs Committee, Government White Paper, Better Governance for Wales Report, 13 December 2005, HC551, 2005-2006.](#)

### 5.3. *The Government of Wales Act 2006*

The *Government of Wales Act 2006* enacted the key recommendations in *Better Governance for Wales*

It created a formal legal separation between:

- the Legislative branch: the National Assembly for Wales, comprising the 60 Assembly Members, and
- the Executive branch: the Welsh Assembly Government, which will comprise the First Minister, Welsh Ministers, Deputy Welsh Ministers and the Counsel General.

It enacted Part 3 of the Act allowing the Assembly to seek legislative competence from the UK Parliament to make a new category of legislation, “Measures of the National Assembly for Wales” or “Mesurau Cynulliad Cenedlaethol Cymru” (“Assembly Measures”). Legislative competence may be sought through clauses in Westminster Bills or through the potentially more straightforward mechanism of an Order in Council. This is how the Third Assembly operated between 2007 and 2011.

The Act also required each candidate standing in an Assembly election to choose to stand either as a constituency representative or on a regional list. They can no longer stand as both. Both the 2007 and 2011 Assembly elections were held on this basis.

### 5.4. *The All Wales Convention*

The *Government of Wales Act 2006* also contains provisions for the Assembly to have primary law making powers in devolved fields. These will be called “Acts of the National Assembly for Wales” or “Deddfau Cynulliad Cenedlaethol Cymru”.

These provisions could only be triggered by:

- two-thirds of all Assembly Members voting in favour of a referendum;
- then approval by UK Government and Parliament; and
- a “yes” vote in a referendum of the Welsh public.

The One Wales Agreement which underpinned the coalition between the Labour Party and Plaid Cymru between 2007 and 2011 stated:

There will be a joint commitment to use the Government of Wales Act 2006 provisions to the full under Part III and to proceed to a successful outcome of a referendum for full law-making powers under Part IV as soon as practicable, at or before the end of the Assembly term.

Both parties agree in good faith to campaign for a successful outcome to such a referendum. The preparations for securing such a successful outcome will begin immediately. We will set

up an all-Wales Convention within six months and a group of MPs and AMs from both parties will be commissioned to set the terms of reference and membership of the Convention based on wide representation from civic society. Both parties will then take account of the success of the bedding down of the use of the new legislative powers already available and, by monitoring the state of public opinion, will need to assess the levels of support for full law-making powers necessary to trigger the referendum.<sup>49</sup>

In October 2007 the then First Minister, the Rt. Hon. Rhodri Morgan AM, announced that Sir Emyr Jones Parry, a former UN ambassador, would chair the Convention. In the first instance a group of MPs and AMs from both parties – the Establishing Committee - drew up the terms of reference for the Convention; suggested a *modus operandi* and provided advice on membership.

The Committee met between December 2007 and March 2008. In its Report<sup>50</sup> it stated that the Convention would:

- Raise awareness and improve understanding of the current arrangements for devolved government in Wales and of the provisions of Part 4 of the *Government of Wales Act 2006*, and their future implications for the governance of Wales.
- Facilitate and stimulate a widespread, thorough and participative consultation at all levels of Welsh society on the issue of primary law making powers.
- Prepare an analysis of the views expressed and the evidence presented through this process.
- Assess the level of public support for giving the National Assembly for Wales primary law making powers.
- Report to the One Wales Government on its findings, with recommendations relevant to the holding of a referendum.

In terms of how the Convention should proceed the Report of the Establishing Committee stated:

The Establishing Committee believes that a successful Convention will require the broadest possible debate. The Convention will need to engage organised groups (for example the trade unions, business organisations and national voluntary organisations). It is also important that it reaches out to individuals, groups and communities that have not been involved before in such debates. Children and young people must also be engaged in the process, since it is their future the Convention will be debating. We recognise that such a broad approach presents challenges in terms of working methods and resources. However

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<sup>49</sup> [One Wales Agreement between Labour Party and Plaid Cymru Groups, June 2007](#). P6

<sup>50</sup> Report of the Establishing Committee of the All Wales Convention, March 2008.



we believe it is essential if the Convention is to meet the requirements of its Terms of Reference.<sup>51</sup>

The Establishing Committee Report recommended that an Executive Committee of 12 -15 people drawn from different sectors be appointed. The All Wales Convention would be the name of the whole consultation and engagement process. Thus everyone who attends a public meeting, submits a written response, or participates in a discussion and who registers a wish to do so will be regarded as a participant in the Convention. It went on:

We recognise that this is a radical and challenging approach, but we believe it to be necessary if the Convention is to expand debate beyond those who would normally become involved, and if it is to be seen to have done so. It will be for the Executive Committee to determine what feedback, if any, should be given to those participating in the All Wales Convention in its widest sense.<sup>52</sup>

The Executive Committee of the Convention had 16 members, in addition to the Chairman, Sir Emyr Jones Parry, and was made up as follows:

- Four members of the public appointed through an open competition process.
- Eight appointed from nominations received from key Welsh organisations.
- Four members nominated by the main political parties.

The Executive Committee began meeting in July 2008. The focus of the Convention's work for in late 2008 was raising awareness and improving the public's understanding of the current devolution settlement - 'where we are now' - and the options for the future. Committee Members attended a number of conferences and events - including the WLGA Annual Conference in Llandudno and the Royal Welsh Winter Fair.

From January 2009 the Convention's work moved to a focus on engagement in the debate on further devolution, with a view to this being the main focus.<sup>53</sup> A series of events across Wales were held. These were in a variety of formats such as roadshows and question times.

Sir Emyr Jones Parry argued that it was not the job of the Executive Committee to put the case for a referendum, still less to argue for any particular outcome. It would be for politicians to consider after the Convention report has been presented to them.<sup>54</sup> This view was disputed by some opponents of further powers for the Assembly, such as True Wales, who argued that it was a *de facto* "Yes" campaign.<sup>55</sup>

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<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

<sup>53</sup> Welsh Assembly Government, One Wales Delivery Plan 2007-2011

<sup>54</sup> Sir Emyr Jones Parry, *Precis of Speech* given to WLGA Conference , 10 October 2008.

<sup>55</sup> [BBC Wales, \*Fledgling No Campaign Launched 25 September 2009.\*](#)

The [Final Report](#)<sup>56</sup> came out in November 2009. It concluded that:

We are convinced that Part 4 offers substantial advantage over the present arrangements in Part 3. It would offer greater efficiency, permit a strategic approach to the drafting of the legislation, provide greater clarity, be more consistent with the rule of law and democratic tradition, and reflect the emerging maturity of the National Assembly for Wales.

It also found that:

most people in Wales have come to accept devolution as part of everyday life. Whether it was always a complete success was much debated, but consistently the people of Wales favoured devolution. However once we started asking questions about the processes of devolution, it became clear that the complexities of the current arrangements were little understood. People didn't understand exactly who had the power for what and how laws were made.

It concluded that “a “yes” vote in a referendum is obtainable, but the evidence we have collected underlines that there can be no certainty about this.”

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<sup>56</sup> [All Wales Convention, Final Report, November 2009](#)

## 6. Ap Calman?

The idea of a creation of a “Calman style” Commission came from the UK coalition agreement in 2010. The thrust of the debate in Wales during the 2010 General Election was the extent to which any incoming UK Government would carry forward the recommendations of the Holtham Commission but the use of the term has raised expectations about what “ap Calman”<sup>57</sup> – son of Calman – might contain.

It should be remembered that in Scotland the creation of the Calman Commission was opposed by the SNP. In August 2007 the newly elected SNP government published a white paper on Scotland’s constitutional options – *Choosing Scotland’s Future* – and launched the “National Conversation”, a consultation process around the themes in the white paper. A little over three months later the Scottish Parliament (by a vote of its unionist majority) resolved to establish “an independently chaired commission to review devolution in Scotland”. The UK Government signalled its support for this commission in January 2008.<sup>58</sup> Calman’s remit, therefore, explicitly excluded independence as an option, reflecting the Calman Commission’s origins in discussions among the unionist parties in late 2007. The “National Conversation”, reflecting the SNP’s ambitions for an independent Scotland, had no remit to “secure the position of Scotland within the UK”.<sup>59</sup> The official Scottish Government response to its final report was lukewarm.<sup>60</sup>

“Calman”, therefore, would seem to mean different things to different parts of the political spectrum. Moreover, those views have been developed around the constitutional debate in Scotland. The asymmetrical nature of UK devolution has been clear from the outset and caution should be deployed in applying a direct read across from Scotland to Wales.

Plaid Cymru’s Lord Wigley has already commented that a broad remit is required for the commission and that cross-party consensus on the terms of reference is vital. These criteria would appear to be the contents of the cross party letter to the Secretary of State mentioned in section 2 are the approach taken.

Lord Wigley said:

Like the original Calman Commission in Scotland, the Welsh commission needs to have a broad remit to investigate the wider devolution settlement. This has to go much beyond just debating financial powers for Wales.

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<sup>57</sup> [Alan Trench, Cheryl Gillan at the Welsh Affairs Committee and ap Calman, Devolution Matters blog, 13 July 2010.](#)

<sup>58</sup> [Charlie Jeffrey, “An outbreak of consensus: Scottish politics after devolution”, \*Political Insight\* April 2010](#)

<sup>59</sup> *Ibid.*

<sup>60</sup> Scottish Government, News Release, [Calman Commission](#), 15 June 2009 [accessed 1 August 2011]

Unlike what happened in Scotland, Wales has recently had a referendum which showed a massive majority in favour of devolving powers to Wales.

Opinion polls show support for devolving further powers, such as policing and justice. Wales needs its own legal jurisdiction now that it can make its own laws.

We must build upon the work that has already been done by the independent Holtham Commission on funding and financing Wales, rather than seek to repeat it.

Holtham's work is widely considered, including by the UK Treasury, as superior to the work done by the Scottish Calman Commission, so why kick that expertise into the long grass?<sup>61</sup>

An interesting feature of the suggested headline terms of reference set out in the party leaders' letter is the requirement that the work of the commission is that consideration of fiscal devolution will be **parallel but separate** from ongoing intergovernmental discussions in respect of funding.

On 21 June 2011 the First Minister made a statement in Plenary on Financial Reform. He stated that:

Fair funding is the centrepiece, but not the limit, of our ambitions for reform. We need effective borrowing powers as a high priority. That is important to help to fund investment in Welsh infrastructure and to support economic recovery. Wales cannot be the only part of the UK where the Government cannot borrow to fund roads and hospitals. That puts us at a competitive disadvantage compared with other parts of the UK, and we look to the UK Government now to correct this. Wales can compete with anyone, but we need a level playing field.<sup>62</sup>

Noting that UK Government Ministers have indicated interest in exploring tax devolution for Wales he said that there could be advantages in handing powers over certain taxes to Wales, "particularly in those areas where policy responsibility is already largely or wholly devolved, and where the sums raised are relatively small in relation to our total budget." He suggested that landfill tax, stamp duty land tax, aggregates levy and air passenger duty fell into this category. He continued:

In aggregate, those taxes raise around £200 million a year in Wales, and each may be a useful policy lever to help to deliver the Government's priorities. Risk might also arise from the devolution of tax powers; the precise terms of any deal would be crucial to determining whether devolution would be in the interests of Wales when it comes to taxation.<sup>63</sup>

He further noted that corporation tax could provide "a powerful tool to promote economic development" but also warned that "the budgetary risks would also be considerable". Replying the points raised by Paul Davies AM he elucidated further:

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<sup>61</sup> [Plaid Cymru, Wigley: 'Calman Cymru' must learn Scottish Lessons, Press Release, 14 July 2011](#)

<sup>62</sup> [RoP, 21 June 2011](#)

<sup>63</sup> *Ibid.*

Corporation tax must be approached with care. Northern Ireland will see a hole in its budget of about £350 million if responsibility for corporation tax is devolved. The hole would be bigger in Wales. It is right to say that, in theory, if you reduce corporation tax, you will see a subsequent explosion or growth in the number of businesses, all of which pay tax, and so you recoup it over time, but it does take time. One of the estimates for Northern Ireland is that it would take 20 years to recoup the money that would be lost with a corporation tax rate cut to 12.5 per cent.<sup>64</sup>

However, he was clear that the Welsh Government was not seeking powers to vary income tax rates:

The multiple administrative, economic, and legal obstacles to such a move mean that it could, in any case, be feasible only over the longer term. Irrespective of the practical difficulties, there is also a constitutional issue to face. Devolution of income tax-varying powers would represent a fundamental change in the relationship between devolved Government in Wales and our citizens. In my view, there would need to be a referendum before powers to vary income tax rates were passed to the National Assembly, as there was in Scotland in 1997. It appears, from her recent statements in the House of Commons, that the Secretary of State for Wales shares that view.<sup>65</sup>

On the 6 July 2010 the First Minister met with the Chancellor of the Exchequer. The First Minister found the meeting "very constructive" and said:

We talked about a wide range of different subjects and we are now going to work together to continue the process of ensuring an appropriate funding package for Wales.<sup>66</sup>

Further details about the Commission, its membership and detailed remit will be forthcoming in the autumn.

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<sup>64</sup> [RoP, 21 June 2011](#)

<sup>65</sup> Ibid.

<sup>66</sup> [BBC News, Carwyn Jones praises George Osborne approach to funding, 6 July 2011](#) [accessed 3 August 2011]