

29<sup>th</sup> July 2022

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## **Independent Commission on the Constitutional Future of Wales**

### **Purpose**

- 1 To inform members of the Independent Commission on the Constitutional Future of Wales, seek initial views on the commission's core areas of interest and seek agreement that Group Leaders agree an initial submission to the commission.

### **Background**

- 2 The Welsh Government confirmed the establishment of an Independent Commission on the Constitutional Future of Wales in its Programme for Government in June 2021. During his address at the WLGA Annual General Meeting in June, the First Minister informed members that the commission would consider all aspects of democracy and devolution, including the important role of local democracy and local government in the constitutional future of Wales.
- 3 In setting the context for the commission in the Senedd in July 2021, the Counsel General noted:

“The last few years have exposed the deficiencies of our current settlement, as well as increasing tensions in the wider constitutional landscape of the United Kingdom. We have consistently iterated our support for a union and for a union that must change. We continue to lead the debate in Wales and doing so with practical proposals for positive change, most recently in the second edition of ‘Reforming our Union: Shared Governance in the UK’.

- 4 The Welsh Government has also more recently and separately announced proposals for the reform of the Senedd, including increasing the number of members to 96 from 60, initially based on pairing of new parliamentary constituencies, with statutory gender quotas and the d'Hondt proportional voting system. Leaders and councillors will have views about the proposals, however, the electoral administrative implications are likely to be complex and challenging (notably should new constituencies spanning parts of several local authorities are introduced).
- 5 The commission's membership was confirmed in November 2021 (Annex A) and is co-chaired by Professor Laura McAllister and the Rt. Revd. and Rt. Hon. Dr Rowan Williams.
- 6 The commission has 2 broad objectives:
  - To consider and develop options for fundamental reform of the constitutional structures of the United Kingdom, in which Wales remains an integral part

- To consider and develop all progressive principal options to strengthen Welsh democracy and deliver improvements for the people of Wales.

7. The commission is currently engaging with civil society and stakeholders and is seeking to engage the public in its work.
8. The commission will produce an interim report by the end of 2022 and a full report with recommendations by the end of 2023.
9. The timing of the commission's initial work coincided with the local elections which has impacted on the commission's ability to engage with local government. The commission however is keen to hear local government's views, there has been engagement with the commission's secretariat and WLGA officials and the commission has requested a meeting with all leaders in September (date to be confirmed).
- 10. It is proposed therefore that the WLGA provides an initial submission during August (shaped by members' views and approved by Group Leaders) ahead of the meeting between leaders and the commission and a substantive response is developed and submitted following the publication of the commission's interim report at the end of 2022.**

## Consultation

11. The commission is considering the governance settlement in Wales, intergovernmental relations at a national (Wales and UK) and a central-local (Welsh Government and local government) level, and the balance of power and responsibility between the three types of government is appropriate and whether more responsibilities should be given to local councils to bring decision making closer to people across Wales.
12. The commission is also interested in approaches to citizen engagement and participation in democracy and public services and has specifically asked the WLGA to provide some examples of innovative practice around engagement in local decision-making, scrutiny and elections.
13. The commission has posed several consultation questions to help frame public and stakeholder submissions:
  - 13.1. What matters to you about the way Wales is run?
  - 13.2. What do you think the priorities for the commission should be?
  - 13.3. Thinking about how Wales is governed, by the Welsh Government and the UK government, what are the strengths of the current system, what aspects do you most value and wish to protect? Can you provide examples?
  - 13.4. Are there any problems with the current system, and if so, how could they be addressed? Again, please provide examples.

13.5. Thinking about the UK government, the Welsh Government and Welsh local government (your local council), what do you think about the balance of power and responsibility between these three types of government – is it about right or should it change and if so, how? For example, who should have more power, or less?

13.6. As a distinct country and political unit, how should Wales be governed in the future? Should we:

- broadly keep the current arrangements where Wales is governed as part of the UK, and the Westminster Parliament delegates some responsibilities to the Senedd and Welsh Government, with those responsibilities adjusted as in Q5, or
- move towards Wales having more autonomy to decide for itself within a more federal UK, with most matters decided by the Senedd and Welsh Government, and the Westminster Parliament decides UK-wide matters on behalf of Wales (and other parts of the UK) or
- move towards Wales having full control to govern itself and be independent from the UK or
- pursue any other governance model you would like to suggest
- alongside any of these options, should more responsibilities be given to local councils bringing decision making closer to people across Wales and if so, please provide examples.

13.7. Overall, what is most important to you in about the way in which Wales should be governed in the future? Is there anything else you want to tell us?

**14. The WLGA has a long-established position on the value of local democracy and the importance of local government; following the elections, new leaders will wish to take-stock and consider the WLGA's existing approach to localism, in particular the need for further powers and increased local accountability and democratic oversight over other local, regional or national public services.**

**15. The WLGA does not have an agreed position on the future of devolution, although the case has been made for further functions and powers to be devolved to Wales previously. There have also been significant developments in recent years, notably in the post-Brexit period, and contested competence between the UK Government and Welsh Governments and more dynamic inter-governmental relations. Leaders will wish to consider these matters more fully ahead of discussions with the commission and in developing the WLGA's final submission.**

## **Localism and Central-Local Relations**

16. The WLGA has a long-established position on the value of local democracy and the importance of local government, putting forward the case for greater local accountability, freedom and flexibility around finance to allow councils to be as responsive as possible to their communities' needs.

17. The WLGA believes that services are best provided within a democratic framework of local accountability and that the people who use public services should have as much of a say in the way they are organised, managed and funded as possible. Local government is the tier of government closest to service users and best able to respond

to their needs. Whilst the Welsh Government sets the strategy for public services nationally, it is for local authorities to interpret national priorities and strategy to deliver services based on local circumstances, local needs and local priorities.

18. The WLGA's Manifesto for Localism<sup>1</sup>, published in November 2020, summarises the importance of local democracy and the vital contribution of local services. Local authorities are the foundation of the country's communities. They provide vital everyday local services, from schools, to housing, to social care, to local transport. They provide a local democratic voice to Wales' diverse communities. They provide community leadership, bringing communities and partners together, empowering communities to develop and work towards common ambition and deliver better outcomes. They are the economic bedrock of Wales' economy, employing over 10% of the Welsh workforce and spending £8bn on employment, goods and services.

19. The WLGA believes a localist framework, based on principles of partnership, mutual respect and subsidiarity with councils empowered and trusted, fairly funded and free to respond locally, will lead to better outcomes for our diverse communities.

20. The WLGA's Manifesto for Localism is the WLGA's most recent statement of local government's collective priorities for the promotion and strengthening of local democracy and local government, including the need for equal recognition and mutual respect for councillors given their shared democratic mandate with Members of the Senedd and Members of Parliament; a vote for a councillor is equal to a vote for a Member of the Senedd or a Member of Parliament, all have democratic legitimacy, and each play vital but different representative roles.

21. Furthermore, the WLGA's Manifesto called for:

- a commitment from the Welsh Government and the Senedd to the European Charter of Local Self Government and the principle of subsidiarity, where the presumption is that power is transferred to the level of government closest to the people;
- A commitment to provide councils with maximum local freedom and flexibility and minimal direction or prescription;
- A commitment to strengthen local accountability and local democratic oversight in local, regional and national public bodies;
- A recognition that the Welsh Government has a clear national strategic role and sets national outcomes, but councils are best placed to determine what services are prioritised locally and how they are best delivered; and
- A recommitment to the Collaboration Principles developed in 2018, whereby collaboration is locally-led to improve outcomes and is a means to an end not an end in itself.

22. The statutory roles of local government are outlined in several hundred pieces of legislation and are summarised in the Local Government Partnership Scheme. The statutory Partnership Scheme (last updated in 2017) seeks to 'promote and sustain' local government in Wales, but the WLGA has long called for the Welsh Government to extend this commitment further through the adoption of the European Charter of Local Self Government and the principle of subsidiarity, where the presumption is that power is transferred to the level of government closest to the people.

23. The Partnership Scheme is due to be updated during the coming year and there is

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<sup>1</sup> <https://www.wlga.wales/SharedFiles/Download.aspx?pageid=62&mid=665&fileid=2860>

scope to strengthen the scheme, which arguably incorporates much of the Charter's principles but could be expanded to incorporate some key elements, for example *Article 6 – Appropriate administrative structures and resources for the tasks of local authorities and Article 9 – Financial resources of local authorities, more fully.*

24. Leaders have placed on record their recognition of the constructive central-local relations in Wales during the recent period. Central-local relations were improving generally from 2019 onwards, following joint endeavours for example through the Derek Vaughan chaired working group on local government reform and partnership, mutual respect and engagement was embedded during the pandemic period,
25. This shared leadership, which has continued, has seen an unprecedented level of dialogue and engagement and openness, with regular bilateral meetings between Ministers and WLGA spokespersons and, at the height of the pandemic, daily and then weekly meetings between all 22 leaders and Ministers. These channels of communication have ensured Ministers can engage and communicate national priorities and strategy directly with leaders and has also ensured that local issues and risks are rapidly escalated to Ministers and allow local intelligence and innovation to shape national strategy. This degree and regularity of central-local engagement has not been seen in other parts of the UK.
26. This openness to constructive engagement, mutual respect and a wider recognition of and understanding of the vital role of local government is also a feature of the sixth Senedd too; the election of 14 serving councillors as well as the experiences of the pandemic have contributed to this new relationship.
27. Local government reform, to varying degrees, has dominated Welsh Government policy for the past decade; several reviews, Green and White Papers and legislation have proposed a range of 'options' to reform the structure of local government.
28. Local government has been opposed to many of the proposed wholesale reforms due to a lack of robust evidence, significant up-front costs and contested savings assumptions and impact on service delivery. The experiences of the pandemic have also demonstrated the value of local government, local decision-making and local service delivery. Councils demonstrated that they are uniquely placed at the heart of their communities and public service delivery and are invariably the first port of call for the most vulnerable or those in need of support or assurance. Councils have demonstrated flexibility, innovation, resilience and responsiveness. The pandemic demonstrated councils' ability to respond irrespective of scale and reaffirmed the WLGA's stance on the importance of subsidiarity and localism, with elected members and officers rooted in their local communities
29. The Welsh Government's approach to reform has also evolved and currently favours the empowerment of the current 22 local authorities, increased co-production and an expectation for increased collaborative working, including through the four new Corporate Joint Committees. Although there was disagreement from some councils around the 'mandation' of regional working and consequential impact on local accountability, corporate joint committees are now in place and leaders and councils are working on developing and embedding the required regional governance and functions.
30. The WLGA and local government have always promoted and been supportive of

collaboration; local authorities work collaboratively with each other and other public services to deliver improved outcomes and have a track record of collaboration and of sharing services.

31. The WLGA and local government's commitment to collaboration is underpinned by the fundamental principle that collaboration is a 'means to an end not an end to itself'; councils collaborate where there is a business case resulting in efficiencies or improved outcomes. A set of 'collaboration principles' was agreed following the working group chaired by Derek Vaughan, which sets out a framework of guiding principles to ensure that any collaborative reforms are rooted in clear and viable business cases and subject to local democratic decision-making.
32. The commission is particularly keen to explore the powers and roles of local government including the balance of power between central, devolved and local government and whether 'more responsibilities be given to local councils bringing decision making closer to people across Wales'.
33. The WLGA has previously made the case for additional powers and flexibilities to be provided to local government and for greater local democratic oversight of public services.
34. The WLGA had long called for and has welcomed the introduction of the general power of competence through the Local Government and Elections (Wales) Act 2021. The Welsh Government also committed to reducing the administrative burden on local government in its Programme for Government, which has also been welcomed, and a working group will shortly be formed to consider this work.
35. Administrative burdens which impact on local accountability and flexibility can be summarised as budgetary (such as ringfencing or new legislative burdens being fully funded), regulatory (including numerous statutory duties and the associated audit and compliance role of external regulators) and approach to policy development (for example, an inconsistent approach to early engagement and co-production of policy and legislation). Some of these have been highlighted by the WLGA previously, including:
  - **Transferring of specific grants into the settlement** (currently there are up to 100 specific grant schemes worth around £1.146bn)
  - **The need for new legislative or policy burdens to be properly resourced**
  - **Consistency of early engagement and co-production of policies or legislation and a commitment to local discretion and flexibility in guidance and legislation** – although this has improved in recent years, there needs to be a consistent corporate commitment and approach whereby Welsh Government seeks early views on policy proposals and solutions, allowing councils to determine how best to deliver and manage approaches locally.
  - **Proportionate external regulation** – councils are subject to a broad and complex external regulatory regime, with a range of audit and inspection bodies including the Auditor General for Wales, Estyn, Care Inspectorate Wales, the Public Services Ombudsman for Wales and several commissioners.
  - **The bureaucracy, complexity and democratic oversight of emergency planning arrangements** – such arrangements have historically worked very effectively, particularly in response to immediate or short-term emergencies, but the longer-term pandemic highlighted the need for review and reform, in particular the place of democratic leadership and oversight.

- **Partnerships** – a recent joint Welsh Government and WLGA review of statutory partnerships committed to pausing the establishment of new partnerships and restated the flexible discretion for partnerships to be reviewed (and rationalised if necessary) locally. There however remains a complex picture of local and regional partnerships, with varying levels of accountability with the burden of administering partnerships typically falling to local authorities.

36. Recently elected leaders will wish to take stock of the WLGA's previous policy positions, particularly in light of the experiences in recent years and in the context of the current political environment.

37. Leaders' views are sought on the longstanding Manifesto for Localism commitment calling for the strengthening of local accountability and local democratic oversight in local, regional and national public bodies.

38. The WLGA has, at various stages in the past, called for greater local democratic oversight in the careers service and further education, in the oversight of local health and the transfer of some public health functions and funding into local government to build on and enhance preventative services provided by councils.

**39. Members' may therefore wish to provide views on whether and which local, regional or national services and/or organisations should have closer alignment with local government and/or greater local democratic accountability and oversight.**

40. The commission will also be keen to explore citizen involvement, the level of engagement and participation in local democracy and local decision-making and will no doubt reflect on the experiences of May's local elections.

41. There was unprecedented investment in engaging young people in May's elections, several electoral pilots and the WLGA's Diversity in Democracy campaign, where all councils signed Diverse Council Declarations.

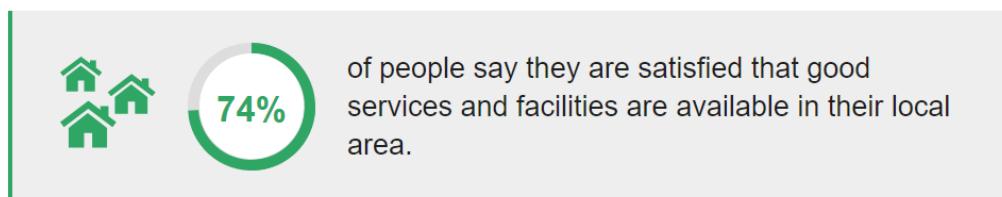
42. Although there were some positive developments, notably greater diversity and significant increase in women councillors (36% from 28% and two councils achieving gender balance), general apathy and engagement in the political process was reflected as the number of candidates standing fell on average (2.7 candidates per seat compared to 2.8 in 2017, despite a reduction in uncontested seats figures remained high (particularly in Gwynedd and Pembrokeshire) and overall turnout fell from 42.4% to 38.8%.

43. Abuse and intimidation of candidates and elected representatives remains a significant issue, particularly around the elections, which prompted leaders to endorse the first ever 'Fair Campaign' pledge.

44. Councils have a new duty to promote public participation in decision-making, a new duty to introduce petition schemes and public participation schemes and powers to change their voting system. Approaches around community empowerment and participation, which expanded during the pandemic, may see an increase in participation in local decision-making and engagement in and involvement with the delivery and management of community facilities and public services.

45. Recently published data from the Welsh Government's National Survey for Wales, published in July 2022<sup>2</sup>, reveals a promising direction of travel in terms of opportunities for participation and influencing decisions, as well as increased satisfaction in council services:

## Local authority services



This has increased from 69% in 2018-19. There has also been an increase in the proportion of people who say they are satisfied that they can get to these services and facilities, 86% in 2021-22, compared with 83% in 2018-19.

When asked about their involvement in decisions relating to local authority services and budgets more people gave a positive response than before the pandemic. 34% of people say they have opportunities to participate in making decisions about the running of their local services, compared with 17% in 2019-20. 30% of people say they can influence decisions affecting their local area, compared with 19% in 2018-19. These are marked increases which may reflect the change in mode or are a result of the pandemic or a combination of both, further analysis is needed to explore this.

**Extract from National Survey for Wales, July 2022**

## Constitutional Settlement, Devolution and Inter-governmental Relations

46. The WLGA and local government have been a committed advocate for and supporter of Welsh devolution since its introduction. Senior local government leaders were key champions of devolution ahead of the first referendum and local government has been a key advocate of devolution since.

47. Leaders and local authorities have historically had different views about the balance of power between Cardiff Bay and Westminster and the direction of travel around devolution, federalism or independence.

48. This difference of opinion, particularly on the matter of the constitutional settlement, is likely to be reflected among newly elected councillors and council leaders, given the different party political positions on the future of devolution. A common WLGA position on may not therefore be achievable but is an area leaders will wish to explore in detail in developing a submission to and in discussions with the commission.

**49. Leaders will wish to consider the competence of the Senedd and the case for devolving additional functions, funding and powers and will also have a view about inter-governmental relations and the relationship and role of the UK Government in a post-Brexit constitutional settlement.**

<sup>2</sup> <https://gov.wales/national-survey-wales-headline-results-april-2021-march-2022-html>

## Devolution of functions, funding, and powers

50. The Welsh Government has set out ambitions to explore the devolution of range of wider powers to the Senedd. In addition to establishing the commission, the Welsh Government's Programme for Government included commitments to:

- Make the case for clear and stable tax devolution for Wales;
- Explore the necessary infrastructure required to prepare for the devolution of the administration of welfare;
- 'Challenge the UK Internal Market Act and its attack on devolution and champion the rights of the Senedd to legislate without interference in areas devolved to Wales;
- Pursue the case for the devolution of policing and justice;
- Pursue devolution of powers needed to help reach net zero, including management of the Crown Estate in Wales;
- request the devolution of the Gender Recognition Act and seek the devolution of any necessary additional powers;
- Pursue the case for devolution of broadcasting and communication powers; and
- Devolution of the Health and Safety Executive to Wales

51. Much of the Welsh Government's reform agenda has not been considered fully by local government in the recent period, but the WLGA and local government have previously either identified challenges or opportunities in the devolution settlement and has explored or supported some calls for further devolution.

**52. Taxation and Funding** – The Programme for Government states that Welsh Government will 'Make the case for clear and stable tax devolution for Wales.' There remain ongoing concerns about the adequacy of Barnett and also the UK Government's consistency around allocation of funding within Wales. Recent examples have been around the adequacy of Shared Prosperity Funding, commitments around long-term liabilities around remedial work for coal-tips and the absence of consequential funding as a result of HS2 and wider rail infrastructure investment. The WLGA has raised these matters in meetings with and correspondence to UK Government Ministers. There are also questions about the operation of the Barnett formula and whether it is thoroughly 'needs-based'. Since its inception in the late 1970s the formula has always operated on population shares and takes no account of deprivation, sparsity or demographic factors such as the age of the population. A more sophisticated formula is something that could be explored.

53. There are also many instances in the past few years when the WLGA has written to the Treasury or UK Government to ask for additional flexibility for the Welsh Government around the use of its own reserves (which are limited). Furthermore we have highlighted that Welsh Government should be given more powers to borrow. The latter was a something that the WLGA argued for in the evidence to the Silk Commission and it something we should continue to call for.

**54. Criminal Justice and policing** – The Welsh Government is committed to pursuing the case for the devolution of policing and justice, which is a core commitment in the Programme for Government. The Welsh Government's *Delivering Justice for Wales*,

published in May 2022, sets out the Welsh Government's approach to reforming the justice system and delivering better outcomes for the people of Wales. The Welsh Government's position is informed by the Independent Commission on Justice in Wales, which concluded in October 2019 that, "Major reform is needed to the justice system and to the current scheme of devolution...Justice should be determined and delivered in Wales so that it aligns with its distinct and developing social, health and education policy and services and the growing body of Welsh law."

'Delivery Justice for Wales' sets out some core components of their approach to designing a devolved justice system, along with a work programme setting out what has been done and what is being planned in the areas of:

- Prevention and early intervention
- Equality and justice
- Family justice
- Policing and community safety in Wales
- Criminal justice: devolved functions
- Criminal justice reform programmes
- Civil and administrative courts and tribunals in Wales
- Access to justice
- The legal sector and economy of Wales
- Governance, constitutional issues and the law of Wales

Devolution of policing and criminal justice will have significant implications for local government and will wish to contribute to the debate on the direction of travel.

**55. Public Sector Pay** – much of the public sector pay, including teachers' pay, is devolved to Wales. Local government pay and terms and conditions remain a nationally negotiated arrangement through local government employment mechanisms. Although teachers' pay is devolved to Wales, the remit of the IWPRB does not cover many of the terms and conditions which remain in the burgundy book, which offers a degree of consistency across nations but expands the number of different negotiating bodies.

56. Whilst public sector pay is generally devolved to the Welsh Government, there are implications in terms of affordability, acceptability and comparability in terms of making devolved decisions following any UK Government pay announcements. For example, the UK Government's recent acceptance of the recommendations of NHS, police and teacher pay review bodies has not immediately led to additional consequential funding to meet respective pay pressures in Wales. Although some of the UK Government pay agreements may be funded through UK Government departmental savings, such savings are not necessarily available to Welsh Government due to a smaller departmental base and, furthermore, some of the UK Government departmental savings will inevitably be made in non-devolved departments and so an appropriate consequential should follow.

**57. Welfare Reform** – the Welsh Government has set out plans to 'explore the necessary infrastructure required to prepare for the devolution of the administration of welfare' in the Programme for Government. The Scottish Government has had additional powers over its benefits system for a number of years and recently it Wales has taken its own approach to cost-living-schemes and commitments such as free school meals and payments to carers. These sometimes interact with DWP benefits in a negative way

and there is a case to consider how devolved benefits might operate in a more positive way. However the devolution of Council Tax Benefit was an unfortunate example of a benefit that was devolved but with only 90% of the funding.

## **Intergovernmental Relations**

58. Post-Brexit intergovernmental relations have led to increased engagement from and concerns about 'encroachment' in devolved matters by the UK Government.
59. The UK Internal Market Act 2000, which shapes inter-governmental relations, has been subject to unsuccessful legal challenge from the Welsh Government earlier this year (on grounds that the judicial review was deemed to be 'premature').
60. The Act, which the Welsh Government describes as an 'attack' on the competence of the Senedd and 'severely curtailing' Senedd powers given scope for UK Ministers to use 'Henry VII powers' in devolved areas. The Internal Market Act has been cited as a reason for delays around implementing Welsh Government environmental ambitions and the banning of single use plastics.
61. Post-EU funding and investment has also caused tensions between the Welsh Government and UK Government and changed the dynamic of central (UK)-local relations in Wales.
62. The WLGA welcomed the UK Government commitment to ensure that Wales does not receive any less funding than it would have done had the UK remained in the EU. Local government has been clear however that the new Shared Prosperity Fund funding should be additional to EU funding still being spent in the final years of existing EU programmes. The changes also impact on local government's relations with Welsh Government and other partners, all of whom have benefited from EU funding. Welsh Government and partners have needed to know how the new funding arrangements will work from their perspective as well. There are also concerns that current programmes are at risk, and that the timescale to agree a coherent, integrated and coordinated set of projects, funded from various different sources, was challenging, particularly as much of the work was undertaken through the recent electoral period.
63. The issue of Multiply has also been raised with the UK Government on two main grounds: (i) it is an educational initiative and therefore cuts across devolved responsibility and (ii) the allocation for Multiply is in the same proportion as overall Shared Prosperity Fund which means it is around five times per head more than in the rest of UK. The WLGA has therefore called for flexibility to allow some of the funding to be spent on other interventions.
64. There are several areas where there is shared (and occasionally contested) competence which can lead to inter-governmental dispute or an increasingly complex policy or statutory framework. Two such areas for example are:
  - a. **Human Rights** – the Welsh Government's programme for government includes several commitments to addressing inequalities in Wales. The UK Government has plans to reform human rights legislation through the Bill of Rights Bill, which will have significant implications for devolved policy and legislation and public services. This has been an emotive and contested debate, with the Welsh and Scottish Governments making joint submissions arguing that the case has not

been made for reform, that proposed reforms will lead to a diminution of human rights in Wales and the UK, in particular of foreign nationals and, of relevance for the commission, that the proposals do not sufficiently reflect devolution and hence will cause complexity and challenge for public authorities in Wales operating under devolved legislation which extended the Human Rights Act.

b. **Electoral Law** – the UK Government retains responsibility for Parliamentary and PCC elections whilst local and Welsh elections are a matter for the Senedd and Welsh Government. Both UK and Welsh Governments are reforming electoral law and practice which will lead to increasingly fragmented legislation and electoral administration and inconsistent and potentially confusing electoral experiences for the public. These divergences will continue to have significant ramifications for electoral administrators in terms of burden and complexity. The different arrangements will inevitably impact on clarity, consistency and simplicity of elections from the perspective of the public, which could potentially encourage disengagement and weaken public confidence in the democratic process.

65. There is increasing attention given to the use of Legislative Consent Motions (LCMs) within the Senedd, both in terms of Welsh Government LCMs seeking approval for devolved matters which it supports in UK legislation and UK Government LCMs which seek to include devolved matters in UK legislation.

66. LCMs (based on the ‘Sewel Convention’) are used when the UK Parliament legislate on a subject matter that is devolved to the Senedd and it will not normally do so without the consent of the Senedd.

67. A Senedd Research paper<sup>3</sup> summarises the issues, which include a significant increase in LCMs being presented to the Senedd by the Welsh Government. The LCM approach impacts on the Senedd’s ability (and that of wider stakeholders) to scrutinise legislation fully and also can have implications for Senedd accountability, where UK bills delegate powers to UK and Welsh Ministers.

68. There is also increasing disagreement around UK Government LCMs, due to differences in policy positions between the Welsh Government (and/or wider Senedd) and UK Government or more fundamental concerns about implications on devolved functions and powers. The UK Government or Parliament can however continue to proceed with legislation, despite an LCM not being supported in the Senedd. UK Parliamentary Committees have also expressed concerns about the UK Government’s approach to the use of LCMs as a vehicle to create new delegated powers to government.

69. Given the recent developments and changing dynamics in inter-governmental relations at a Welsh and UK Government level and between UK Government and local government, it could be argued that there should be a review of the ‘Sewell Convention’, a codification of responsibilities and relationships to provide clarity and effective governance. Furthermore, clear protocols around consultation, engagement and respect, framed around areas of mutual interest and common competence should be developed and enforced. The Partnership Scheme in the Welsh context provides a

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<sup>3</sup> <https://research.senedd.wales/research-articles/legislative-consent-in-the-sixth-senedd-the-story-so-far/>

model framework for such a protocol. Such a protocol could be multi-lateral, covering devolved and local government, and the WLGA may wish to explore further options with the LGA and with COSLA and NILGA through the UK Forum.

## **Recommendations**

### **70. Members are invited to:**

- 65.1 Note a meeting between leaders and the commission will be arranged for September to provide initial local government views and that local government and the WLGA will have further opportunities to engage with and inform the commission during the next 18 months;**
- 65.2 Consider the WLGA's current approach to localism, local government empowerment and central-local relations (paragraphs 16-45);**
- 65.3 Provide initial views on whether and which local, regional or national services and/or organisations should have closer alignment with local government and/or greater local democratic accountability and oversight (paragraph 39);**
- 65.4 Provide initial views on the potential devolution of additional functions, funding, and powers to the Senedd (paragraphs 50-57);**
- 65.5 Provide initial views on current and future intergovernmental relations (paragraphs 58-69); and**
- 65.6 agree that, based on members' feedback, an initial submission to the commission is developed and agreed with Group Leaders in advance of the September meeting.**

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**Author:** Daniel Hurford  
**E-mail:** [daniel.hurford@wlga.gov.uk](mailto:daniel.hurford@wlga.gov.uk)

## Annex A

### Members of Constitutional Commission

The commission will develop options for the fundamental reform of the constitutional structures of the UK in which Wales remains an integral part and it will also consider all progressive options to strengthen Welsh democracy.

#### Co-chairs:

- **Professor Laura McAllister** - Professor of Public Policy School of Law and Politics
- **Rt. Revd. and Rt. Hon. Dr Rowan Williams** – former Archbishop of Canterbury

The commissioners are:

- **Dr Anwen Elias** - Reader in Politics at Aberystwyth University.
- **Miguela Gonzalez** - Diversity and inclusion practitioner and a former journalist.
- **Michael Marmot** - Professor of Epidemiology and Public Health at University College London and Director of the UCL Institute of Health Equity.
- **Lauren McEvatt** - Former Conservative UK government special adviser to the Wales Office.
- **Albert Owen** - Former Labour MP for Ynys Mon from 2001 to 2019.
- **Philip Rycroft** - A civil servant for 30 years, his last posting was as Permanent Secretary at the Department for Exiting the EU.
- **Shavanah Taj** - Wales TUC's first BME General Secretary.
- **Kirsty Williams** - Former Liberal Democrat Member of the Senedd and Minister for Education in the Welsh Government.
- **Leanne Wood** - Former Member of the Senedd for the Rhondda and former Leader of Plaid Cymru.

The commission is supported by an expert panel, which brings expertise in areas including governance, law, constitution, the environment, economics, and finance.