

CLA GP7

Constitutional and Legislative Affairs Committee

Inquiry into the Granting of Powers to Welsh Ministers in UK Laws

Response from Police Federation



'Influence, Represent Negotiate'

**The Committee Clerk
Constitutional and Legislative Affairs Committee
Tŷ Hywel
National Assembly for Wales
Cardiff CF99 1NA**

E-mail: CLA.Committee@wales.gov.uk

Dear Sir,

Consultation – The granting of powers to Welsh Ministers

1. Introduction

The Police Federation was formed in 1919 by an Act of Parliament. In the UK, it currently represents over 140,000 police officers and some 7,600 in Wales. This is made up of 98% of all uniformed and CID ranks from Constable to Chief Inspector. The Superintendents Association and Association of Chief Police Officers form the remaining 2%.

The Federation's membership comes from each of Wales' four police forces. It's staff – who are themselves, serving police officers – are elected to their respective roles.

The Federation was established to protect and promote the 'welfare & efficiency' of police officers and in its discharge of functions as laid down by statute.

2. Overview

The Police Federation of England & Wales (*The Federation*) welcomes the opportunity to provide advice to The Constitutional and Legislative Affairs Committee concerning the granting of powers to Welsh Ministers.

The Federation recognises that there is a changing and differing constitutional base across the UK and as such, the matters being investigated by the Committee are both timely and highly relevant to how 'Cardiff & London' operate in the future. Given that The Federation is a UK-wide organisation, within our submission, we will naturally have a view from both sides of the border.

It may prove useful to the Committee that our submission does answer some (not all) of the issues raised in the consultation, but also, quite deliberately, touches upon areas that may be regarded presently as being on the periphery. We fully accept that, but the issues and examples we raise are of importance, both historically and in the future and need to be identified as being noteworthy, or even subject to debate, as the devolved power base of Wales changes.

The Federation are happy to have this advice placed in the public domain; we do not however, think we could add further to this advice to the Committee by appearing to give oral evidence.

The Federation's advice to the Committee is submitted not as a '*constitutional expert*' but more so as we regard, as coming from a '*unique user*'. The relevance to that classification is that The Federation recognise that an imbalance exists between the two government institutions at London and Cardiff, whereby *criminal law* is devolved, yet *criminal justice* is presently not devolved. This anomaly places strains and some ambiguity on how policy and powers – moreover their understanding - become devolved and their impact upon existing or planned Welsh Government policy, conferred or granted powers and directions. There are, in short, loose ends within our remit that The Police Federation continually have to focus upon from matters raised by The Welsh and UK Governments.

Devolved functions and responsibilities that impact upon policing in Wales include:

- Council Tax "capping" policy for local and police authorities;
- The unhypothecated funding of local authorities and police authorities in Wales through the local government revenue and capital settlements;
- Cross cutting responsibilities for the strategic approach to the delivery of public services including performance and collaboration, including such policing services;
- Community Safety;
- Relations with the Police and other Criminal Justice Agencies, including counter-terrorism issues (and the part funding thereof such as Wales Extremist & Counter Terrorism Unit);
- Youth Justice;

- Drug and alcohol misuse (including the delivery of the substance misuse strategy);
- Domestic violence;
- Road Safety.

The above are wide ranging and any movement generated by 'UK policy' or 'UK powers' in these matters could create a further imbalance on how the 'UK police' are trained and implement initiatives on the ground for such changes specific in Wales. Naturally this could include powers granted to Welsh Ministers.

It is worthy to note that in November 2006 at an HM School of Governance seminar held in The Senedd, Sir Jeremy Beecham (Beecham Report '*Beyond Boundaries*' on public sector workings), stated that "*policing will fall within the cracks of devolution*". It is a concern that The Federation share, that given the diversity of modern day policing and the demands placed up it. This should be viewed against a backdrop that there does exist a lack of 'coherence' between London and Wales that issues which do affect policing (and the service we give to the public) could, given the devolved settlement, become for Wales, more undefined and un-scrutinised. At its extremities, this issue has potential to become arguably un-democratic and lacking in transparency.

There is a danger therefore, that any subject issue that is prefixed 'policing' – howsoever defined - may seemingly not be considered by London as being of relevance to Wales (when in fact it is) or not worthy of consideration in Wales by the Welsh Government, perhaps through a lack of knowledge.

It would be fair to state, that the understanding of Welsh devolution by Westminster & Whitehall is poor. As such, in 2006, during the '*Police amalgamation process*' under Home Secretary Charles Clarke, we saw policing minister Tony McNulty attending 'the Assembly' completely unaware of the roles and responsibilities of Welsh Ministers in respect of policing.

Later in 2009 during an inquiry led by the House of Commons, Welsh Affairs Committee, the former First Minister, Rhodri Morgan and Sir Jon Shortridge (Permanent Secretary in Wales) gave evidence to the effect that '*London did not understand devolution*' and that '*devolution was seen as an experiment*'.

Of late, under the current UK-coalition Government, the progression of the *Police Reform Bill*, sees a serious lack of understanding by the Police Minister, Nick Herbert on the functions and responsibilities of Welsh Ministers; this criticism is extended also to his government officials. Indicative of this, is the result witnessed by the Legislative Consent Motion on parts of that Bill rejected by The National Assembly for Wales on already devolved functions.

It is worthy to note that prior to this, in 2009, '*The all-Wales Convention*', headed by Sir Emyr Jones-Parry highlighted in his report (Chapter 4) of concerns in respect of policing and that it was by "*default rather than design*" that the Home Office had some understanding of devolution. This was resolved simply as David Hanson, a Welsh MP, just so happened to be the

Minister of State for Policing. Such was the concern that it warranted inclusion in the Conventions report. Seemingly nothing has changed.

Taking the above into consideration, The Federation therefore submits that given the concurrent misunderstanding of the mechanisms of devolution in Wales that as and when powers become 'devolved' and/or 'granted' to Welsh Ministers, they too are likely to have had little or no understanding of present Welsh powers – and how it affects policing - or indeed how they impact upon the development of unique and current Welsh policy. Ergo, any scrutiny will be lacking, missed or un-researched. This then *de facto* extends towards how Ministers in Wales receive such powers, how they are interpreted or are ultimately held accountable for such powers.

It is only with a high degree of detailed advice from stakeholders that such issues can be captured. For example, The Police Federation have, over successive years, been progressing matters in respect of 'mental health'; a serious issue the police are operationally facing daily. Given all-party support in Wales a 'Mental Health (Wales) Measure' – now termed a Bill – has been placed upon the statute. It awaits secondary legislation to 'fill-in' details.

That framework legislation has subsequently been progressed in Wales and The Federation shall be progressing, complex issues, such as, and in lay terms, on how those arrested under S135 and S136 of the Mental Health Act can be dealt with by police, in a non-devolved capacity, but under devolved 'Welsh law'.

The previous UK Labour Government (under Welsh Secretary Paul Murphy) had to have substantial advice passed to their offices to allow 'the boundaries to be stretched' via the [then] LCO process so as to facilitate – in the future – such issues that Welsh Ministers wished to progress that were quite different to those of UK Ministers. Clearly this *ad hoc* process is not conducive with clarity or a smooth transition of devolved powers. The result being that when powers were granted to Health Minister, Edwina Hart AM, the Police Federation had to re-advise of its concerns. But from the police's perspective, (not the NHS) that process, at that very early stage did not have scrutiny by The National Assembly for Wales of the Minister. It was subsequently recognised and rectified. But this issue was reflective of an embryonic legislative and constitutional system that was flawed.

The present Welsh Government are to progress a *Domestic Violence (Wales) Bill*. It has been advised – in Plenary by The First Minister - that there is not to be any criminal justice elements to the Bill, but it will "*place a duty on relevant public sector bodies to have a domestic abuse and 'a violence against women' strategy and support elements in place*". Clearly this process will involve the police and The Police Federation will examine the Bill when it is published.

But to physically affect this future strategy, there will be a need to be a change to current 'policing procedures' and indeed this would demand dedicated

training of officers and perhaps additional funding for the police to meet the demands of the new polices in place.

Although, the Bill hasn't been published, natural supposition leads us to highlight that such a strategy should lie in parallel to the current powers of policing (for example '*powers of entry*'). Of course by the very nature of developing legislation, that Bill may well change in its terms. The danger being that this could then start to create differing 'police powers' in Wales to that of England. That in itself could become an issue if such powers were to be granted from Westminster – no matter how small – and indeed how Welsh Ministers could be scrutinised on 'policing' in this respect.

The Police Federation accept that this scenario is presently hypothetical, but the reality exists that a Bill will be forthcoming and if such a Domestic Violence Strategy – backed by legislation - is to be effective then it will need to have 'teeth'.

A further example – albeit in the future is worthy of mentioning. That of 'Smoking in Cars'. The Welsh Government have consulted upon this issue and may decide to progress a Welsh law to stop smoking in cars that have children under the age of 16 as passengers. The Police Federation have submitted evidence in this respect. Essentially, there is no evidence to support that smoking (*per se*) is a road safety issue, but considerable evidence that smoking is a health issue.

Therefore, if the Welsh Government were to follow a legislative route, scrutiny of existing Welsh Ministers powers could be examined for an already devolved function (health) but possibly implemented by a non-devolved function (policing).

In effect 'the police' may be directed to uphold this law, that itself, would require some serious thinking between Cardiff and London on where that power and responsibility lays and with whom, The Home Secretary or The Wales Health Minister.

Conclusion:

The Criminal Justice system is not alone in these issues, as an example a Transfer of Function Order was made to allow 'education' to be a devolved function to allow teaching in prisons (a non-devolved area), so the problems above are fairly well rehearsed.

The Committee will know that these debates have been made across many portfolios and are regularly exercised. They are reflective of where the dynamic constitutional base of Wales currently lays. Policing has its feet in many camps, acting in both non-devolved and devolved capacities and that adds up to unclear lines of responsibilities and likely continuous legal advice being taken on where powers actually lay. Moreover where scrutiny lays for Welsh Ministers ahead of, or after powers have been granted.

This can be best be defined by the words of David Lambert (Cardiff Law School) who said of devolution “...we are entering the unknown, a weather-vane of politics, we will all need to look four ways, to Westminster, Cardiff bay, Whitehall and Cathays park. What we have is a seismic shift in constitutional matters, in policy areas and in Wales only law making powers that is going to test the political will, mechanisms and strength of governments. What Wales has, is unique in any government structure and in legislative capacity.....”

The Police Federation firmly believe that a stout mechanism should exist between The Welsh Government and The National Assembly for Wales to capture these non devolved/devolved issues. And that any powers to be conferred upon Welsh Ministers should have an ‘open conduit’ – ahead of powers being devolved - to allow advice to be passed to both London and Cardiff upon the implications of such Welsh/English policy. Furthermore, that pre scrutiny could exist so that Ministers can be questioned by subject Committees, perhaps a function of the Constitutional Committee, on where such powers will likely sit amongst Welsh Government policy and for ‘the Assembly’ (a generic terminology) to define those lines of scrutiny.