

Press Release: Independent review recommends politicians say NO to Draft Wales Bill unless major changes are made

1 February 2016

A report by an independent review group consisting of constitutional and legislative experts will today (Monday 1 February 2016) say that they could not recommend that politicians in Cardiff Bay and Westminster support the Draft Wales Bill in its current form.

The landmark report, “Challenge and Opportunity: The Draft Wales Bill 2015,” was commissioned by the Wales Governance Centre at Cardiff University and the Constitution Unit at the University College London. The report provides an expert commentary and assessment of the detailed provisions set out in the Draft Wales Bill published in October 2015.

In their report, the independent review group say:

- **The ‘reserved powers’ approach offers many benefits to Wales and to the UK as a whole if done properly.** That is not the case with the Draft Wales Bill. Done badly, the reserved powers approach will lead to another short-lived arrangement that works poorly.
- **To be lasting and effective, a new Wales Act needs to be underpinned by clear principles that ensure a coherent and consistent devolution package for Wales.** As that is not the case, it is unsurprising that the Bill has attracted little support, even in the short time available for consideration.
- **The list of reservations in the draft Bill reflects the lack of coherent approach by Whitehall. The overall package of reservations is highly complex,** and some of the proposed reservations are designed to protect Whitehall departmental interests rather than deliver a coherent and consistent set of devolved powers. Their complexity will inhibit policy making and undermine the robustness of the settlement.
- **The reliance on ‘necessity’ tests for legislation affecting private or criminal law is unduly onerous.** These tests add complexity and uncertainty, and will provoke legal challenge with decisions on whether Welsh legislation is necessary taken by judges rather than elected representatives.
- **There are complex questions about the legal relationship between England and Wales arising from the powers necessary to make ‘reserved powers’ work effectively.** A distinct Welsh legal jurisdiction is one answer to these issues. A ‘rules-based’ approach to managing legal differences is another.

Commenting on the difficulties with the Draft Wales Bill, Professor Richard Rawlings of University College London, who helped draft the report, said:

“Wales has experienced three deeply problematic devolution settlements since 1999. There was genuine hope that the all-party agreement that Wales should move to a ‘reserved powers’ model of devolution heralded the beginning of a process that would lead to Welsh devolution being placed on a sustainable constitutional basis.”

“The draft Wales Bill does not do what was promised. All too often, the Secretary of State’s fine policy objectives of a stronger, clearer, fairer and more robust devolution settlement are frustrated by provision that is constricting, clunky, inequitable and constitutionally short-sighted. At the heart of the difficulty is the triple squeeze on the devolved institutions of intrusive general restriction, over-occupation of legislative space, and blurry forms of executive veto. It does not have to be like this.”

The report points to the need for fundamental changes to the proposed legislation and sets out a series of proposals for reconstructing the legislation in order to deliver a properly constituted reserved powers model of devolution for Wales.

The report explains how alternative approaches to the legislation based on territorial rules or a distinct but not separate jurisdiction for Wales offer ways of providing the space to allow the National Assembly to legislate effectively.

Commenting on the next steps for the Draft Wales Bill, Professor Richard Wyn Jones of the Wales Governance Centre at Cardiff University said:

“We believe that the legislative process around the Draft Wales Bill should be paused for these matters to be fully examined by all stakeholders including the Welsh Government, Wales Office and the Ministry of Justice.”

Editor’s Notes:

1. The Wales Governance Centre is a Cardiff University research centre undertaking innovative research into all aspects of the law, politics, government and political economy of Wales, as well the wider UK and European contexts of territorial governance. The Constitution Unit at UCL conducts timely, rigorous, independent research into constitutional change and its consequences. Its research has significant real-world impact, informing policy-makers engaged in constitutional reform both in the United Kingdom and around the world.
2. To arrange media opportunities in both Welsh and English, please contact Llew Williams on [07455 015819](tel:07455015819) or WilliamsL59@cardiff.ac.uk
3. The report will be launched at 12.30pm in the Main Hall in the Pierhead Building, Cardiff Bay on Monday 1 February 2016. The report will also be launched in Westminster at 5.00pm on Tuesday 2 February 2016 in the Wilson Room in Portcullis House.
4. The report was produced by an independent review group consisting of:
 - Alan Cogbill (Chair), former Director of the Wales Office
 - Robert Hazell CBE, Professor of Government and the Constitution and former Director of the Constitution Unit at University College London
 - Sir Stephen Laws, former First Parliamentary Counsel and Member of the McKay Commission on the Consequences of Devolution for the House of Commons
 - Emyr Lewis, Senior Regional Partner Wales at Blake Morgan LLP
 - Lowri Morgan, Head of Wales Office, The Law Society

- Richard Rawlings (Rapporteur), Professor of Public Law at University College London and former Legal Adviser to the House of Lords Constitution Committee
 - Sir Paul Silk, former Clerk to the National Assembly for Wales and Chair of the Commission on Devolution in Wales 2011-2014
 - Alan Trench (Adviser), former Specialist Adviser to the House of Commons Welsh Affairs Committee and to the Scottish Conservatives' Commission on the Future Governance of Scotland
 - Thomas Glyn Watkin, former First Legislative Counsel for Wales and Honorary Professor at Bangor and Cardiff Universities
 - Richard Wyn Jones, Professor of Welsh Politics and Director of the Wales Governance Centre at Cardiff University
5. The first report issued in September 2015 by the Wales Governance Centre and the Constitution Unit, *Delivering a Reserved Powers Model of Devolution for Wales*, can be found [here](#).

A copy of the UK Government's Draft Wales Bill can be found [here](#). The Command paper which preceded the Draft Bill, *Powers for a Purpose*, is available [here](#).

Related Links

- [Click here for a copy of the report.](#)