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Law Making in a Devolved Wales: Work in Progress

Abstract: Devolution for Northern Ireland, Scotland, and Wales resulted in an asymmetrical constitutional framework. The Welsh settlement was more limited than that for Northern Ireland and Scotland. However, since the Government of Wales Acts of 1998 and 2006, Wales has eventually achieved primary law-making powers. Regrettably, the stages leading to the present position resulted in an often confused and confusing body of law. Practitioners wishing to know the content of Welsh law on a subject may encounter a complex tapestry of different types of enactments. The next step for Wales must be improved accessibility and codification. The process of devolution continues. This paper by Professor John Williams was delivered at the BIALL Annual Conference in June 2014.
Keywords: devolution; Welsh law

INTRODUCTION

The 2014 Scottish referendum on independence has heightened awareness of the UK's constitutional framework. The asymmetric nature of the current devolution arrangements, alongside the West Lothian question promise a period of constitutional churn. Curtice recognises the untidy nature of the settlement, but considers it the only structure workable across Great Britain. Keating argues there is nothing wrong with an asymmetrical model.[1] Untidy though it is, asymmetry was the only arrangement supported across the UK.[2] Future arrangements for England or the English regions, plus enhanced arrangements for the other three nations, will increase asymmetry. Thomas Hardy said the British constitution, owes its 'success in practice to [its] inconsistencies in principle'.[3] UK devolution lacks principle, but is pragmatic, reflecting differing appetites for self-government.

The main differences between Northern Ireland, Scotland and Wales are the size of the legislatures and their competences. (See Fig 1). The Wales model led to fragmentation of the law and different approaches to making law. This presents difficulties for practitioners.

THE WELSH DEVOLUTION CONTEXT

Two quotations from Labour politicians capture Welsh devolution. Tony Blair's first Secretary of State for Wales Ron Davies, the 'architect' of Welsh devolution, described it as a process and not an event.[4] In 2002 Rhodri Morgan, the founding First Minister for Wales, referred to 'clear red water' and 'made in Wales'.[5] The Government of Wales Act 1998 (GWA 1998) structure, combining the executive and legislature into a corporate body, was odd. In practice, executive functions were delegated to the First Minister and then to ministers, although subject committees of the Welsh Assembly contributed to policy development. This was not an ideal model and compromised the National Assembly of Wales' (hereafter the Welsh Assembly) ability to scrutinise legislation.[6] In 2002, the Welsh Assembly separated the legislative and executive functions, albeit within the confines of the GWA 1998. Formal separation came with the Government of Wales Act 2006 (GWA 2006).

Unlike Scotland, Wales did not have primary law making powers under the GWA 1998. The Welsh Assembly, established by the GWA 1998, could only enact secondary legislation when Parliament granted it the power. The GWA 1998 failed to appease pro-devolutionists; Wales remained beholden to Westminster. Nor did it persuade anti-devolutionists that the Welsh Assembly was anything other than an expensive talking shop. What was clear was that the model required revision in order to be successful; alternatively, devolution in Wales was a failed experiment.

Morgan's comments were challenging. Wales lacks a mature legal infrastructure similar to that in Scotland. Since 1965, Scotland has had a Law Commission; Wales has the Law Commission for England and Wales, a recognition that it was (and remains), part of the unified jurisdiction of England and Wales.[7] Successive secretaries of state could 'Welshify' Westminster legislation by rebranding it as 'Welsh'. However, Welsh law, remained

	Legislative body	Membership of the legislative body	Powers
Northern Ireland Population 1.8m	Northern Irish Assembly	108 Members of the Legislative Assembly - MLAs	Transferred matters (i.e. any powers not reserved or excepted)
Scotland Population 5.2m	Scottish Parliament	129 Members of the Scottish Parliament - MSPs	Reserved powers model
Wales Population 3m	National Assembly for Wales	60 Assembly Members - AMs	Conferred powers model – areas of legislative competence are listed.
England	Limited devolution – for example, the Mayor of London and the London Assembly.		Westminster legislates for England – e.g. health and social care.

Figure 1: legislative bodies in England, Northern Ireland, Scotland, and Wales.

quintessentially English. There are examples of Welsh innovation such as the All Wales Mental Handicap strategy in the 1983.[8] Nevertheless, Welsh law derived from Parliament and was adapted by secondary legislation or Welsh codes or guidance.

Morgan challenged the assumption that under a Westminster-centric model, there must be a common approach to English and Welsh Law. Although a Labour politician, he rejected Blair's policies in, for example, health and social care. Drakeford rightly predicted policy differentiation would increase with Blair's third term.[9] He states the reasons as being,

> "…Welsh policy-making relies on co-operation, rather than competition, as the route to better services; it prefers 'voice' rather than 'choice' as the best way of strengthening the influence of citizens (rather than consumers) in developing diverse and responsive services; it aims for a greater equality of outcome, rather than simply of opportunity and so on.[10]"

This was clear when comparing the Welsh 'citizen' approach to health with Blair's 'consumer' approach.

The cautious 1998 settlement recognised the reservations many Welsh people had towards devolution. The 1997 Welsh referendum on devolution result was 50.3% in favour and 49.7% against, in contrast to 74.3% in Scotland voting for a Scottish Parliament. However, by 2013 a Beaufort Poll found that 62% of people wanted increased powers for the Welsh Assembly. Eighty per cent trusted it to act in Wales' best interests.[11] The Welsh have grown to love the Welsh Assembly.

Law-making capacity embraces policy development, drafting, scrutiny, and implementation. Civil Service capacity in Wales is limited. Out of a Civil Service of nearly 450,000 in 2013, the Welsh Government has 5,560. Wales has limited legislative competence, which excludes Defence, Work and Pensions, and HM Treasury. The Barnett formula restricts Civil Service growth. Drafting Welsh legislation is as complex as in England, despite the smaller population. Whether the Civil Service resource for the Social Services and Well-being (Wales) Act 2014 matched the Social Care Act 2014 in England is doubtful. The Welsh Assembly only has sixty Assembly Members; few remain to scrutinise legislation after excluding government ministers.

Seemingly running against the clear red water argument is that in some areas of policy, devolution results in policy copy and policy transfer between the nations, for example the creation of the Older People's and Children's Commissioners. It also extends to public sector governance.[12] In some policy areas, initial divergence ends in near convergence. Devolution provides an incentive for policy development within the UK.

THE ROAD TO DEVOULTION IN WALES

Hywel Dda (890 AD – circa 950 AD) codified Welsh traditional rights and duties and represented Welsh law for many centuries. Codified Welsh law contrasts with today's Welsh law. For the period, Hywel Dda (Cyfraith Hywel) had enlightened views. For example, a woman was entitled to half the joint property if a marriage of seven years or more ended.[13] Rhodri Morgan was not the first proponent of 'clear red water'. However, Henry VIII changed the content, language, and administration of laws in Wales. In *An Acte for Lawes & Justice to be ministred in Wales in like fourme as it is in this Realme 1536* (27 Henry VIII c. 26); and *An Acte for certaine Ordinaunces in the Kinges Majesties Domynion and Principalitie of Wales 1543* (34 and 35 Henry VIII c. 26), he harmonised the laws of England and Wales by extending English law into Wales. Section 20 of the 1535 Act made English and not Welsh the language of the law courts and therefore of the law. This stymied the development of Welsh legal language. The Acts remained in force until the 1990s. The

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unified jurisdiction of England and Wales had arrived and Westminster law governed Wales. 'For Wales, see England' was invariably sound advice for lawyers advising clients in Wales. The Welsh Language Act 1967 eventually repealed the provision in the Wales and Berwick Act 1746 that 'England' in legislation includes Wales and Berwick on Tweed.

On occasions, Westminster passed Wales-only legislation. The Sunday Closing (Wales) Act 1881 was the first example; similar legislation was thought unnecessary in England. Despite its depicture of the Welsh as needing protection from the demon drink on the Sabbath, the Act acknowledged that Wales could be different and this should be reflected in law.[14]

After the Second World War, growing support for Plaid Cymru worried the Labour Party. There was support within Labour for a Minister or Secretary of State for Wales. The Atlee Government in 1949 established the Council for Wales and Monmouthshire. The Council's terms of reference were:

> (1) to meet from time to time, and at least quarterly, for the interchange of views and information on developments and trends in the economic and cultural fields in Wales and Monmouthshire; and (2) to ensure that the Government are adequately informed of the impact of Government activities on the general life of the people of Wales and Monmouthshire.[15]

The Lord President of the Council, Herbert Morrison, wished to avoid any overlap with other advisory bodies in Wales.

> "The job of the new Council will not be so much to advise direct on matters of detail, but the broader one of seeing that the Government are adequately informed of the trends of Welsh opinion, and how Governmental activities are affecting the lives of the Welsh people.[16]"

The Council was a nominated body meeting in private. Often its advice was ignored.[17] The failure to prevent the flooding of Capel Celyn near Bala in North Wales, to create a reservoir for Liverpool, demonstrated the Council's impotency and how the Welsh had little input into the laws affecting their homes and communities. A private Act of Parliament allowed the compulsory purchase of land without resort to local authority procedures. The idea of the 'English Parliament' destroying Welsh speaking communities to deliver water to English cities was a fillip for advocates of separation and those supporting a stronger Welsh voice in the 'English' Parliament. In 2005, Liverpool apologised for flooding the area.[18] Nevertheless, the Council's report *Government Administration in Wales: Third Memorandum of the Council for Wales and Monmouthshire*[19] was influential in committing Labour to appointing a Secretary of State for Wales. Interestingly, Churchill's Government created the post of Minister of Welsh Affairs in 1951. Harold Wilson's government established the Welsh Office with a Secretary of State for Wales and disbanded the Council.

The Secretary of State acquired functions from government departments and became responsible for implementation of many laws within Wales. At the time of the 1997 referendum, the Welsh Office acquired responsibility for areas including Agriculture, Transport Planning and Environment, Health, Economic Development, Education and Local Government. The Secretary of State often had executive authority in the defined areas to introduce secondary legislation detailing how an Act of Parliament operated within Wales. The office fell into disrepute following the appointment of secretaries of state who were not Welsh MPs. Despite this, it created a significant legacy of Welsh law for the Welsh Assembly.

Government of Wales Act 1998 (GWA 1998)

Following the 1997 devolution referendum in Wales, the UK Government introduced the Government of Wales Bill in Parliament. Ron Davies at second reading put the case for the Welsh Assembly:

> "The provisions of the Bill do not challenge [Parliamentary] sovereignty in any way — nor could they. What the Bill does is open up a new prospect: the ever expanding powers and responsibilities with which Parliament has endowed the Secretary of State for Wales should in future be exercised by a body that is as responsible as the House is to its own democratic mandate. The Bill therefore contains the Government's detailed legislative proposals to set up the national assembly for Wales, and to take action to reform the quango state and so bring effective democratic control closer to the people of Wales.[20]"

As noted in Figure 1, Wales has a conferred powers model rather than reserved powers. The fields of devolved competence are in Figure 2.

1. Agriculture, forestry, fisheries and food.	10. Industry.
2. Ancient monuments and historic buildings.	11. Local government.
3. Culture (including museums, galleries and libraries).	12. Social services.
4. Economic development.	13. Sport and recreation.
5. Education and training.	14. Tourism.
6. The environment.	15. Town and country planning.
7. Health and health services.	16. Transport.
8. Highways.	17. Water and flood defence.
9. Housing.	18. The Welsh language

Figure 2: Fields in which functions were transferred by the first Order in Council.[21]

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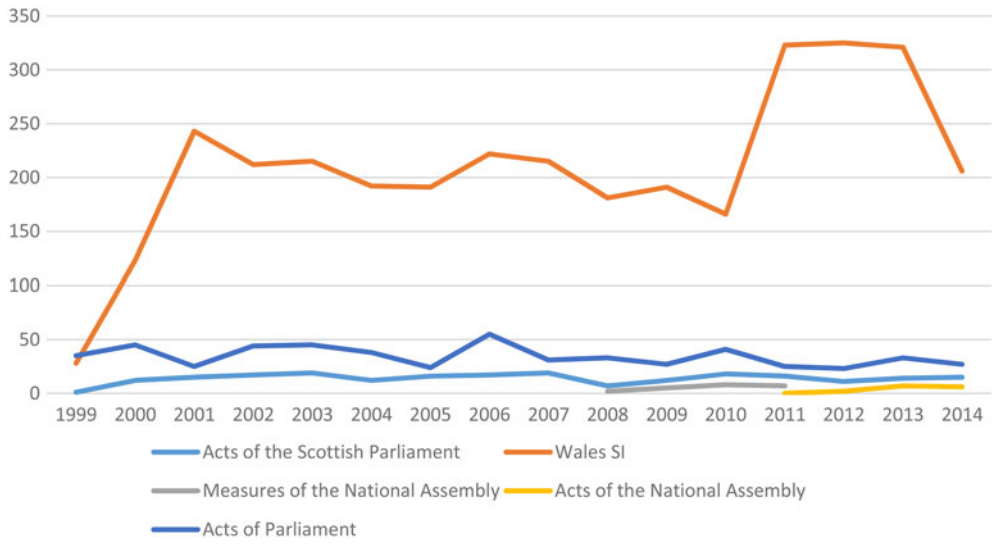

Figure 3: Law-making output – Scottish Parliament, the National Assembly for Wales/Welsh Assembly and Parliament.

The Welsh Assembly's powers to enact secondary legislation replaced the Secretary of State powers. This 'executive devolution', or the transfer of secondary law making-powers, contrasted with Scotland. Using primary law making powers the Scottish Parliament embarked upon an ambitious legislative programme. In its second year, it enacted the Adults with Incapacity (Scotland) Act 2000, the Bail, Judicial Appointments etc. (Scotland) Act 2000, and the Ethical Standards in Public Life etc. (Scotland) Act 2000, along with nine other Acts. By contrast, the Welsh Assembly appeared busy in passing secondary legislation, but modest in achieving significant policy changes because the only law-making procedures available to it were statutory instruments. (see Figure 3).

It would be churlish to say the statutory instruments were unimportant, but they were technical and amending and based on Westminster law rather than paradigm shifting. Watkins sums it up:

> "The Assembly's powers with regard to these fields replaced the previously existing powers of ministers to issue subordinate legislation rather than primary legislation, in effect dealing with how the policies of the Westminster government were to be carried into effect within Wales, but without the power to initiate major policy changes by enactment.[22]"

Reforms occurred within Wales during this stage of devolution, but only with Westminster approval. Morgan's clear red water resulted in policy initiatives in Wales, despite the limited settlement. Some came about through Wales-only legislation by Parliament. Wales, through Parliamentary legislation, established the Older People's Commissioner for Wales.[23] Part 5 of the Care Standards Act 2000 established the office of Children's Commissioner for Wales following the recommendation of the Waterhouse Report, *Lost in Care*[24] and the Health and Social Care Committee of the Welsh Assembly's report, *A Children's Commissioner for Wales*.[25] Welsh Government adopted their recommendations as policy. The 2001 Westminster Act increased the powers of the Commissioner. It was the first Wales-only Act since devolution. Therefore, Wales had a major new policy, but only through an Act of Parliament and not Welsh Assembly legislation.[26]

There was dissatisfaction with the GWA 1998 because it was unfair and barely workable. The devolution architecture was flawed and law making processes cumbersome and beholden to Westminster.

Government of Wales Act 2006 (GOWA 2006)

The GWA 2006 followed a review of devolution in Wales by the Richards Commission.[27] Its terms of reference were to 'consider the sufficiency of the Welsh Assembly's powers' and in particular whether they are sufficiently clear to allow 'optimum efficiency' in policy making. When presenting the Report Richards said:

> "We examined in detail the dynamics of the present situation and found that the Welsh Assembly is increasingly setting the legislative agenda for Wales in devolved areas and negotiating with Whitehall and Westminster for the legislation it needs. Since this is already happening, and likely to happen increasingly in future, it seemed to us that the most efficient and straightforward process would be for the Welsh Assembly itself to pass this legislation in Cardiff.[28]"

The Commission recommended primary law-making powers for the Welsh Assembly. The GWA 1998 had

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limited law-making potential and was inconsistent with the growing trust in the Welsh Assembly.[29]

The GWA 2006 did not immediately implement this recommendation. Instead, Part 3 GWA 2006 introduced 'Measures of the National Assembly', or Assembly Measures. Assembly Measures are largely equivalent to Acts of Parliament. However, the Welsh Assembly lacked unfettered ability to pass Assembly Measures as it required legislative competence from Westminster by way of a Legislative Competence Order ('LCO'). LCOs were Orders in Council adding a 'Matter' to the 'Fields' in Schedule 5 to the GWA 2006 – the same Fields as in Schedule 2 GOWA 1998 in Figure 2. Obtaining LCOs was complex, lengthy, and Westminster-centric. Once approved, the Matter was added to the appropriate Field and the Welsh Assembly empowered to pass a Measure within the terms of the LCO. The Mental Health (Wales) Measure 2010 illustrates the convoluted process.

Of course, the 2010 LCO was not substantive law, but a granted competence to the Welsh Assembly to introduce the Measure. The LCO reads as follows:

Matter 9.2
Assessment of mental health and treatment of mental disorder.
This matter does not include any of the following

(a) subjecting patients to
  (i) compulsory attendance at any place for the purposes of assessment or treatment,
  (ii) compulsory supervision, or
  (iii) guardianship;

(b) consent to assessment or treatment;
(c) restraint;
(d) detention.

03/10/07	Mental health selected as a subject for a Measure in a Welsh Assembly ballot
17/10/07	Welsh Assembly grants leave to introduce proposed LCO
18/02/08	Proposed LCO laid
26/02/08	Committee established
13/03/08	Consultation opened
25/04/08	Consultation closed
20/06/08	Committee report laid
02/12/09	Draft LCO laid
09/12/09	Draft LCO approved in Plenary Westminster
21/05/09	Secretary of State refers the proposed LCO to Parliament for scrutiny
02/06/09	Welsh Affairs Committee (WAC) call for evidence
26/06/09	WAC call for evidence closes
30/10/09	WAC report published
06/01/10	UK Government response to WAC report published
26/01/10	Draft Order approved by the House of Commons
01/02/10	Draft Order discussed by House of Lords in Grand Committee
03/02/10	Draft Order approved by the House of Lords
10/02/10	Royal approval - *The National Assembly for Wales (Legislative Competence) (Health and Health Services and Social Welfare) Order 2010*

Figure 4: Procedure for Mental Health LCO.

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> "For the purposes of this matter, "treatment of mental disorder" means treatment to alleviate, or prevent a worsening of, a mental disorder or one or more of its symptoms or manifestations; and it includes (but is not limited to) nursing, psychological intervention, habilitation, rehabilitation and care.[30]"

The LCO concentrates on exceptions rather than what can be included in the Measure. It is more restrictive rather than permissive. The Mental Health (Wales) Measure 2010 implemented the policy. Despite the LCO restrictions, the Measure has improved the care of people with mental health issues who are not detained patients. This is an example of where practitioners must consult Westminster and Welsh Assembly legislation to understand Welsh mental health law. It also demonstrates that law making in Wales remained dependent on negotiations with Westminster; something Richards argued was the rationale for primary law making powers.

In the 2005 White Paper, *Better Governance for Wales* Peter Hain, the Secretary of State for Wales, accepted that 'in the long-term' Wales could have primary law making powers.[31] His argument was that political consensus on the issue was lacking[32]:

> "The Government is clear that [transferring primary legislative powers over all devolved fields] would represent a fundamental change to the Welsh settlement and would have to be endorsed in a referendum. The Government has no current plans for such a referendum but, in order to avoid the necessity of a third Government of Wales Bill, it proposes to provide for the possibility in this legislation.[33]"

Section 103, GWA 2006 made provision for a referendum on primary law-making powers for the Welsh Assembly. Following a positive vote in a referendum, the GWA 2006 provided for the introduction of those powers without further legislation. In order to assess whether there was consensus, the Welsh Government established the All Wales Convention. Its Terms of Reference included assessing 'the level of public support for giving the Welsh Assembly primary law making powers.' The Report concluded that:

> "Our judgement is that a "yes" vote in a referendum is obtainable, but the evidence we have collected underlines that there can be no certainty about this.[34]"

This triggered the 2011 referendum, which asked:

> "Do you want the Assembly now to be able to make laws on *all* matters in the 20 subject areas it has powers for?"

The result was a convincing 'yes' with 63.49% voting for and 36.51% against. The people of Wales approved primary law making powers; implementation of the relevant parts of the GWA 2006 followed. LCOs and Measures were replaced by Acts of the Assembly'. The subjects of legislative competence are in Schedule 7, which follows the list in Figure 2. The first Act of the Welsh Assembly was the National Assembly for Wales (Official Languages) Act 2012 -Deddf Cynulliad Cenedlaethol Cymru (Ieithoedd Swyddogol) 2012. The optimist might say the process was over and Wales is on an equal footing with Scotland. However, the story is not finished.

THE ROLE OF THE SUPREME COURT IN DETERMINING LEGISLATIVE COMPETENCE

The Welsh conferred model is susceptible to uncertainties regarding legislative competence. The Welsh Assembly has competence to legislate in the following circumstances.

Under s.112 GWA 2006, the Counsel General for Wales or the Attorney General for England and Wales may refer the question whether a Bill is within the Welsh Assembly's legislative competence to the Supreme Court. Similar powers exist in the Scottish and Irish legislation, but used only in relation to Wales.[35] The Attorney General referred the Local Government Byelaws (Wales) Bill, to the Supreme Court.[36] The Bill simplified making byelaws. Section 6 removed the requirement that local authority byelaws in Wales included in the Bill required confirmation by Welsh Minsters. Furthermore, it removed the Secretary of State's concurrent powers to confirm these byelaws. Was the removal of the Secretary of State's power outside the Welsh Assembly's legislative competence? The Supreme Court said 'no'. Lord Neuberger said:

> "Section 6 of the Bill plainly is intended to have the effect of removing the need for confirmation by the Welsh Ministers of any byelaw made under the scheduled enactments. That is a primary purpose of the Bill… The removal of the Secretary of State's confirmatory powers by the Bill in relation to the scheduled enactments would be incidental to, and consequential on, this primary purpose.[37]"

The Attorney General also referred to the Agricultural Sector (Wales) Bill. The UK Government abolished the Agricultural Wages Board in the Enterprise and Regulatory Reform Act 2013. The Welsh Bill sought to reinstate the regulatory framework in Wales. In summary, the issue was whether this was an agricultural matter (within Part 1 Schedule 7 GWA 2006), or an employment matter (employment law is not devolved). The Supreme Court found the Bill within the Welsh

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• It relates to one or more of the subjects in Part 1 of Schedule 7 and does not fall within the exceptions included in the Schedule, and • it applies only in relation to Wales and does not confer, impose, modify or remove (or gives power to do so) functions exercisable otherwise than in relation to Wales.	*s.108(4) GWA 2006*
• It provides for the enforcement of a Welsh Assembly Act within s.108(4) (see above) or a provision of a Welsh Measure; or • it is appropriate for making such a provision effective; or • it is otherwise incidental to, or consequential on, such a provision.	*s.108(5) GWA 2006*
Part 2 Schedule 7 (restrictions on interfering with pre-commencement functions of a Minister of the Crown) does not prevent an Assembly Act removing or modifying, (directly or through subordinate legislation) to remove or modify, pre-commencement function of a Minister of the Crown if • the Secretary of State consents, or • the provision is incidental to, or consequential on, any other provision contained in the Assembly Act	*Para 6 Part 3 Schedule 7 GWA 2006*

Figure 5: The legislative competence of the Welsh Assembly.

Assembly's competence. Embracing agriculture and employment did not take it outside the Welsh Assembly's competence, in the absence of an exception in the Schedule.[38]

The Counsel General for Wales referred the Recovery of Medical Costs for Asbestos Diseases (Wales) Bill. Although confident the Bill is within competence, the Counsel reasoned that:

> "it is appropriate in this case to have the issue of the competence of this Bill clearly resolved before it comes into force, given that bodies representing the insurance industry have consistently disputed the Welsh Assembly's competence to pass this Bill.[39]"

LAW REFORM IN WALES

As noted above, Scotland has a Law Commission established, with the Law Commission for England and Wales, by the Law Commissions Act 1965. The Northern Ireland Law Commission, established by the Justice (Northern Ireland) Act 2002, replaced the non-statutory Law Reform Advisory Committee in Northern Ireland. The rationale for a separate commission for Scotland is in the White Paper, *Proposals for English and Scottish Law Commissions,*[40] which argued that because the origins of Scottish law were different and the two jurisdictions distinct, a separate Commission was necessary. Although tenable in 1965, historical reasons should not inhibit debate on law reform machinery in Wales. Wales now has its own law-making capacity and is an emerging jurisdiction.[41] The reform of adult social care in England and in Wales illustrates the divergent approaches by the two nations within the Law Commission for England and Wales' proposed framework in its report, *Adult Social Care*.[42]

The Law Commission recognised the need for Welsh participation in its work. In 2012 it established a Welsh Committee to advise on law reform in Wales.[43] In its Twelfth Programme of Law Reform, two projects relate specifically to Wales.[44] Planning and development control in Wales is one of them. In making the case for its inclusion, the Commission identify problems encountered by practitioners in planning law within Wales:

> "Some, but not all, of the recent English legislation is applicable to Wales, while some provisions are

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> specific to Wales only and some have been commenced in England but not in Wales. This means that it is very difficult, even for professionals, to understand which parts of the planning law apply in Wales, leading to increased costs to individuals, communities and businesses, as well as to local planning authorities.[45]"

Also included in the Programme is the form and accessibility of the law applicable in Wales. This project will provide advice to Government on how to simplify existing legislation and make it more accessible and improve clarity.[46] In addition, clause 25 of the Wales Bill 2014 amends the Law Commissions Act 1965 by imposing a duty on the Commission to provide advice and information directly to the Welsh Ministers. The Welsh Ministers will have to produce an annual report and present it to the Assembly. This must include details of any Law Commission proposals on devolved matters that have been implemented, or have yet to be implemented. Under the provisions of the Bill, Welsh Ministers will be able to refer law reform proposals to the Law Commission.

CONCLUSION

Even the casual observer would easily identify the complexity of Welsh Law. Figure 6 lists the different law making procedures in Wales.

The fact that substantive law may be spread across any or all of these procedures makes it difficult for practitioners and the public to ascertain the law. Child law illustrates the complexity. The Children Act 1989 contains much of the public and private law of children. Subject to Welsh regulations, it applied to England and Wales. Part III provides for children who are in need, as defined by s.17. The Welsh Assembly's Social Services

Law making procedure	Examples
Pre devolution Wales only Westminster legislation.	*Welsh Church Act 1914* *Local Government (Wales) Act 1994*
National Assembly for Wales (Transfer of Functions) Order 1999. The functions of a Minister of the Crown under the legislation specified in Schedule 1 are transferred to the Welsh Assembly	See the list of functions transferred to the Welsh Assembly. The list includes: o *Animal Health and Welfare Act 1984* o *Health and Medicines Act 1988* o *Children Act 1989* o *Data Protection Act 1998 s.30*
Post devolution Wales only Westminster legislation	*Children's Commissioner for Wales Act 2001* *Commissioner for Older People (Wales) Act 2006* *Marriage (Wales) Act 2010* *Government of Wales Act 2006*
Secondary legislation passed by the Welsh Assembly under Westminster legislation.	*The Children's Commissioner for Wales (Appointment) Regulations 2000* - powers conferred s.118 (7) of and para 2 of Sched 2 Care Standards Act 2000 *The High Hedges (Appeals) (Wales) Regulations 2004* – powers conferred s,.2 of the Anti-social Behaviour Act 2003
Secondary legislation passed by the Welsh Assembly under its own legislation (Measures or Acts)	*The Children and Families (Wales) Measure 2010 (Commencement No. 3 and Savings Provision) Order 2010* – powers conferred by s.74(2) and 75(3) of the Children and Families (Wales) Measure 2010 *The Mobile Homes (Pitch Fees) (Prescribed Form) (Wales) Regulations 2014* – power conferred by para23 of Chap 2 of Part 1 of Sched2 to the *Mobile Homes (Wales) Act 2013*
Assembly Measures.- (legislative competence via LCOs).	*NHS Redress (Wales) Measure 2008* *Mental Health (Wales) Measure 2010*
Acts of the Welsh Assembly.	*Human Transplantation (Wales) Act 2013* *Social Services and Well-being (Wales) Act 2014*

Figure 6: Law making procedures in Wales.

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and Well-being (Wales) Act 2014 repealed Part III of the 1989 Act within Wales. Welsh practitioners must now consult the 2014 Welsh Assembly Act to find the duties of local authorities and others towards children in need of care and support. The 1989 Act uses 'welfare of the child'. The 2014 Act uses "well-being" as defined by s.2, which lists factors used to determine well-being. Under s.2 (3) of the 2014 Act, well-being of children includes 'welfare" as 'interpreted for the purposes of the Children Act 1989'. Not easy reading. A child 'in need' may become a child at risk of harm and abuse. The support provisions may lead to action under Parts IV and V of the 1989 Act. Parts IV and V remain applicable in Wales. A practitioner will therefore need to switch from one piece of legislation to another. In addition, he or she will need to consider the Rights *of Children and Young Persons (Wales) Measure 2011, Children's Commissioner for Wales Act 2001,* and any secondary legislation under the Westminster or Welsh Assembly legislation. This makes the Law Commission's programme on the accessibility of Welsh legislation a priority. Furthermore, codification and consolidation of Welsh law will improve accessibility and consistency.

Two further issues arise. The brevity of the discussion on them does not imply they are unimportant, rather that they are substantive issues requiring detailed consideration elsewhere. The first is the Welsh language. What are the challenges involved in drafting in two languages and what lessons are there from other bilingual jurisdictions? How accessible is the law in the Welsh language? The second and related issue is the need to develop a legal literature for Wales – in English and in Welsh. Stevenson identifies the need for more commentaries on Welsh law and the need for law texts to include detailed commentary on Welsh as well as English law.[47]

The Welsh Assembly now has primary law making powers, recognition that it is a mature legislative body and that the people of Wales want laws made in Wales for Wales. An important part of the journey is complete. The form of law-making in Wales is settled. Broader issues arise. Should Wales have further areas of responsibility devolved to it? Criminal justice and policing are possibilities. Should the reserved powers model apply in Wales? At what point, if ever, will Wales become a jurisdiction and if it is, will it also still be part of the unified jurisdiction of England and Wales?

In 2011, the Secretary of State for Wales established the Commission on Devolution in Wales chaired by Paul Silk. It terms of reference were in two parts:

> "Part I: financial accountability
> To review the case for the devolution of fiscal powers to the National Assembly for Wales and to recommend a package of powers that would improve the financial accountability of the Assembly, which are consistent with the United Kingdom's fiscal objectives and are likely to have a wide degree of support.
> Part II: powers of the National Assembly for Wales
> To review the powers of the National Assembly for Wales in the light of experience and to recommend modifications to the present constitutional arrangements that would enable the United Kingdom Parliament and the National Assembly for Wales to better serve the people of Wales."

In its first Report, the Commission made recommendations on the devolution of fiscal powers to Wales.[48] The Wales Bill 2014, inter alia, includes powers in relation to taxation within Wales and provides for a referendum on income tax provisions. The key recommendation in the Second Report is:

> "The existing conferred powers model should be replaced by a reserved powers model. The two Governments should agree a process and timetable for developing and agreeing the new legislation setting out the powers reserved to Westminster.[49]"

If this happens, it will be a further step in devolving powers to Wales. The devolution frenzy generated by the aftermath of the Scottish referendum campaign has created a new political climate within which the process of devolution in Wales may be one-step nearer completion, whatever completion means.

Footnotes

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Biography

John Williams is Professor of Law and Head of the Department of Law and Criminology at Aberystwyth University. His area of research is the law and older people and he has published and lectured widely on this subject. He was the legal advisor to the Health and Social Care Committee of the Welsh Assembly at Stage 1 of the Social Services and Well-being (Wales) Bill and is currently a member of the Welsh Government's Special Advisory Panel on Safeguarding Adults at Risk. In 2012, he was appointed to the United Nations expert panel on human rights and older people. He is a member of the Centre for Welsh Legal Affairs at Aberystwyth University.

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Free and Easy: a Guide for Occasional Users to the Irish Legal System and Resources

Abstract: The purpose of this article, written by John Furlong, is to provide a comparative overview of the Irish legal system with that of the jurisdictions of the United Kingdom and will cover the range of free-to-use resources that are available in respect of Irish case law, legislation and commentaries. The content is aimed at librarians and legal information professionals who are required from time to time, to understand and source Irish law. The article is based on a paper presented at BIALL's 45th Annual Conference, which was held in Harrogate in 2014.
Keywords: legal systems; legal research; legal sources; Ireland

Although the bitterness of recent political history might suggest otherwise, there have always been strong ties bonding the islands of Britain and Ireland. There are long standing social, familial and cultural links. Trade and business between the two islands is significant; the United Kingdom[1] is Irelands biggest export market and Ireland is the UK's fifth biggest market[2]. In other areas, there are initiatives and plans to increase co-operation; the energy supply sector, joint trade missions, communications and tourism being examples of areas in which there is noticeable interaction.

This strong interdependency is emphasised by a shared and sometimes brutal history. The modern political history of the United Kingdom and Ireland – starting with the Act of Union 1800 – has resulted in a significant similarity in legal systems and laws. The parliament of the United Kingdom of Great Britain and Ireland passed a wide range of measures, which generally and specifically affected Ireland. Public health, education, land reform and criminal law were among the areas affected and a substantial amount of the legislation continues in effect today.

The similarity has been further added to by the harmonising elements of European law. Ireland and the United Kingdom are the only two English speaking common law members of the European Union.

With the similarities come also notable differences. The purpose of this article is to identify the key elements and issues within the Irish legal system which are relevant to any comparative research with the laws and systems of the United Kingdom. From time to time,