

Agenda – Constitutional and Legislative Affairs Committee

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| Meeting Venue: | For further information contact: |
| Committee Room 4 – Tŷ Hywel | Gareth Williams |
| Meeting date: Monday, 8 February 2016 | Committee Clerk 0300 200 6565 |
| Meeting time: 14.30 | SeneddCLA@Assembly.Wales |

- 1 Introduction, apologies, substitutions and declarations of interest**
- 2 Instruments that raise no reporting issues under Standing Order
21.2 or 21.3**

(Pages 1 – 5)

CLA(4)–03–16 – Paper 1 – Statutory instruments with clear reports
Negative Resolution Instruments

**CLA648 – The Cancellation of Student Loans for Living Costs Liability (Wales)
Regulations 2016**

Negative procedure; Date made: 19 January 2016; Date laid: 25 January 2016;
Coming into force date: 1 August 2016

CLA652 – The Education (Student Support) (Wales) (Amendment Regulations 2016

Negative procedure; Date made: 26 January 2016; Date laid: 29 January 2016;
Coming into force date: 22 February 2016

**CLA653 – The Child Minding and Day Care (Wales) (Amendment) Regulations
2016**

Negative procedure; Date made: 27 January 2016; Date laid: 29 January 2016;
Coming into force date: 1 April 2016



CLA654 – The Childcare Act 2006 (Local Authority Assessment) (Wales) Regulations 2016

Negative procedure; Date made: 27 January 2016; Date laid: 29 January 2016;
Coming into force date: 1 April 2016

CLA655 – The National Health Service (Primary Medical Services and Primary Dental Services) (Wales) (Amendment and Transitional Provision) Regulations 2016

Negative procedure; Date made: 26 January 2016; Date laid: 29 January 2016;
Coming in to force date: 1 March 2016

CLA658 – The Town and Country Planning (Pre-Application Services) (Wales) Regulations 2016

Negative procedure; Date made: 27 January 2016; Date laid: 1 February 2016;
Coming into force date: 16 March 2016

CLA661 – The Planning (Listed Buildings and Conservation Areas) (Wales) (Amendment) Regulations 2016

Negative procedure; Date made: 27 January 2016; Date laid: 1 February 2016;
Coming into Force date 1 March 2016

CLA662 – The Developments of National Significance (Application of Enactments) (Wales) Order 2016

Negative procedure; Date made: 27 January 2016; Date laid: 1 February 2016;
Coming into force date: 1 March 2016

CLA663 – The Development of National Significance (Wales) Regulations 2016

Negative procedure; Date made: 27 January 2016; Date laid: 1 February 2016;
Coming into force date: 1 March 2016

CLA664 – The Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2016

Negative procedure; Date made: 27 January 2016; Date laid: 1 February 2016;
Coming into force date: 16 March 2016

Affirmative Resolution Instruments

**CLA649 – The Qualifications Wales Act 2015 (Consequential Amendments)
Regulations 2016**

Affirmative procedure; Date made: not stated; Date laid: not stated; Coming into force date: 1 May 2016

**CLA667 – The Children (Secure Accommodation) (Wales) (Amendment)
Regulations 2016**

Affirmative procedure; Date made: Not stated; Date laid: Not stated; Coming into force in accordance with regulation 1(2)

Other Legislation

CLA650 – Code of Practice on the Role of the Director of Social Services under part 8 (Social Services Functions) of the Social Services and Well-being Act 2014
Procedure in accordance with the Social Services and Well-being Act 2014

**3 Instruments that raise issues to be reported to the Assembly
under Standing Order 21.2 or 21.3**

Negative Resolution Instruments

**CLA651 – The Reservoirs Act 1975 (Capacity, Registration, Prescribed Forms etc.)
(Wales) Regulations 2016 (Pages 6 – 69)**

Negative procedure; Date made: 27 January 2016; Date laid: 29 January 2016;
Coming into force date: 1 April 2016

CLA(4)–03–16 – Paper 2 – Report

CLA(4)–03–16 – Paper 3 – Regulations

CLA(4)–03–16 – Paper 4 – Explanatory Memorandum

4 Subordinate legislation that raises issues to be reported to the Assembly under Standing Order 21.7

CLA647 – Statutory Guidance under section 15 of the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 and section 60 of the Government of Wales Act 2006 (Pages 70 – 164)

Enhanced negative procedure: Date laid: 25 January 2016; Coming into force date: Unknown

CLA(4)–03–16 – Paper 5 – Report

CLA(4)–03–16 – Paper 6 – Guidance

CLA(4)–03–16 – Paper 7 – Explanatory Memorandum

5 Papers to note

(Pages 165 – 210)

CLA(4)–03–16 – Paper 8 – Letter from Rt Hon David Lidington MP, Minister of State for Europe

CLA(4)–03–16 – Paper 9 – Wales Governance Centre and Constitution Unit Report: Challenge and Opportunity: The Draft Wales Bill 2015

CLA(4)–03–16 – Paper 10 – Welsh Grand Committee, House of Commons Transcript: Draft Wales Bill

CLA(4)–03–16 – Paper 11 – Response from the Minister for Health and Social Services, Public Health (Wales) Bill

6 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:

(ix) any matter relating to the internal business of the committee, or of the Assembly, is to be discussed

UK Government's EU Reform Agenda

(Pages 211 – 219)

**CLA(4)-03-16 – Paper 12 – Paper on Committee's work on the UK Government's
EU Reform Agenda**

CLA(4)-03-16 – Research Service briefing on the negotiation process

Forward Work Programme

(Pages 220 – 221)

CLA(4)-03-16 – Paper 13– Forward work programme

CLA648 - The Cancellation of Student Loans for Living Costs Liability (Wales) Regulations 2016

Procedure: Negative

These Regulations govern the student loan liability of students who receive loans for living costs from the Welsh Ministers in respect of the academic year 2016/2017.

These Regulations provide for up to £1,500 of each borrower's living costs loan liability to be cancelled in certain circumstances, with effect from the day after the date on which their first loan repayment is considered to have been received.

CLA652 - The Education (Student Support) (Wales) (Amendment) Regulations 2016

Procedure: Negative

These Regulations amend The Education (Student Support) (Wales) (Amendment) Regulations 2015 ('the 2015 Regulations') that provide financial support for students who are ordinarily resident in Wales and taking designated higher education courses in respect of academic years beginning on or after 1 September 2015.

Further, these Regulations make amendments to the 2015 Regulations, which will apply to the provisions of support to students in relation to an academic year which begins on or after 1 September 2016. Also, these Regulations correct typographical errors in the 2015 Regulations.

CLA653 - The Child Minding and Day Care (Wales) (Amendment) Regulations 2016

Procedure: Negative

The Child Minding and Day Care (Wales) (Amendment) Regulations 2016 amend the Child Minding and Day Care (Wales) Regulations 2010 to:

- reflect the consequential changes arising from the Regulation of Child Minding and Day Care (Wales) Order 2016 which extends the upper age limit for the registration of childcare provision from 8 to 12 years;



- remove the requirement on applicants to provide Welsh Ministers with an application for an enhanced criminal record certificate and for the Welsh Ministers to countersign that application;
- remove the requirement for a certificate of registration to contain the name of the person in charge where one has been appointed;
- remove certain requirements relating to open access play provision.

CLA654 - The Childcare Act 2006 (Local Authority Assessment) (Wales) Regulations 2016

Procedure: Negative

These Regulations revoke and replace, with changes, the Childcare Act 2006 (Local Authority Assessment) (Wales) Regulations 2013 (The Regulations). The Regulations place a duty on Local Authorities to undertake childcare sufficiency assessments in their local authority area and also prescribe the matters to be included within the assessment, including consultation and publication requirements, action planning and annual reporting requirements.

CLA655 - The Child Minding and Day Care (Wales) (Amendment) Regulations 2016

Procedure: Negative

These Regulations amend the following with effect from 1 March 2016:-

- The NHS (General Medical Services Contracts) (Wales) Regulations 2004;
- The NHS (General Medical Service Contracts) (Prescription of Drugs etc) (Wales) regulations 2006;
- The NHS (General Dental Services contracts) (Wales) Regulations 2006; and
- The NHS (Personal Dental Services Agreements) (Wales) Regulations 2006

The amendments will:-

- allow a GMS contractor to accept a member of Her Majesty's armed forces as a patient for a maximum of two years;
- lift the current restriction on prescribing oseltamivir to infants under the age of one year;
- add avanafil to be added to the list of restricted treatments and remove apomorphin, thymoxamine and moxisylute from the list;
- disallow General Dental practitioners who contract with a local health board in Wales to use non-geographical telephone numbers when providing general dental services;
- extent the timescales which the estate of a deceased contract holder has to confirm to the health board that they wish to continue to hold the contract;
- provide for disputes arising from contracts deemed to be NHS general medical, dental or personal dental services contracts to be heard by the Welsh Ministers despite the contractor subsequently changing the status of the contract from an NHS contract to a non-NHS contract.



CLA658 - The Town and Country Planning (Pre-Application Services) (Wales) Regulations 2016

Procedure: Negative

These Regulations make provision under sections 61Z1 and 61Z2 of the Town and Country Planning Act 1990 for the provision of services by local planning authorities before a qualifying application is made.

CLA661 - The Planning (Listed Buildings and Conservation Areas) (Wales) (Amendment) Regulations 2016

Procedure: Negative

These Regulations correct an error in the Welsh text of the Planning (Listed Buildings and Conservation Areas) (Wales) Regulations 2012 (S.I. 2012/793 (W. 108)).

CLA662 - The Developments of National Significance (Application of Enactments) (Wales) Order 2016

Procedure: Negative

This Order applies various enactments to applications made to the Welsh Ministers for planning permission for development which is of national significance. The Order also modifies those enactments, where appropriate to do so.

CLA663 - The Developments of National Significance (Wales) Regulations 2016

Procedure: Negative

These Regulations deal with various matters in relation to development which is of national significance to Wales.

These Regulations:

- make provision under sections 61Z1 and 61Z2 of the Town and Country Planning Act 1990 (“the 1990 Act”) for the provision of services by local planning authorities and the Welsh Ministers before an application for planning permission is made for development of national significance (Part 2);
- prescribe functions relating to such applications and secondary consents() which are to be carried out by an appointed person on behalf of the Welsh Ministers (Part 3);
- make provision for the procedure to be followed in the examination of such applications (Parts 4 to 10);



- make provision for the manner in which secondary consents or applications for secondary consents are dealt with by the Welsh Ministers (Part 11);
- modify applicable enactments in relation to secondary consents (Part 11 and Schedules 2 to 10); and
- prescribe the applications made under section 73 of the 1990 Act (determination of applications to develop land without compliance with conditions previously attached) which are to be treated as nationally significant development applications (Part 12).

CLA664 - The Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2016

Procedure: Negative

The Order will amend the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 ("the 2012 Order"). The Order will change how planning related applications are submitted to local planning authorities, how they are handled, how they are publicised and how developers must notify the authorities before commencing work on site.

The Order makes provision for the following issues to implement the Planning (Wales) Act 2015 (PWA):

- Requirement to carry out pre-application consultation (Section 17 PWA);
- Invalid applications: notice and appeals (Section 29 PWA);
- Decision Notices (Section 33 PWA);
- Notification of Development (Section 34 PWA);
- Consultation in respect of certain applications relating to planning permission (Section 37 PWA);

CLA649 - The Qualifications Wales Act 2015 (Consequential Amendments) Regulations 2016

Procedure: Affirmative

These Regulations are made in consequence of the Qualifications Wales Act 2015 ("the Act"), which established Qualifications Wales as the independent regulator of qualifications in Wales. These Regulations update references in other legislation so as to reflect the new system of qualification regulation in Wales as a result of the Act.

CLA667 - The Children (Secure Accommodation) (Wales) (Amendment) Regulations 2016

Procedure: Affirmative

These regulations amend the Children (Secure Accommodation) (Wales) Regulations 2015. The purpose of the amendments is to -



- ensure that the requirements imposed on Welsh local authorities in relation to placements of children in secure accommodation apply regardless of whether children are placed in Wales or in England;
- Remove the prohibition on local authorities applying to the court for authority to place 16 and 17 year olds in secure accommodation where such children are accommodated under section 76 of the Social Services and well-being Act 2014;
- Ensure that the obligation on custody officer to move arrested juveniles to local authority accommodation applies to children under 18 years of age; and
- Maintain the requirement that a local authority required authorisation from the court in the event that a child is remanded to secure accommodation for a period exceeding 28 days.



Agenda Item 3.1

National Assembly for Wales

Constitutional and Legislative Affairs Committee

CLA651 – The Reservoirs Act 1975 (Capacity, Registration, Prescribed Forms, etc.) (Wales) Regulations 2016

Background and Purpose

These Regulations aim to ensure the safety of the public from uncontrolled release of water from reservoirs.

These Regulations are made under the Reservoirs Act 1975, and provide for:

- how to calculate the capacity of a large raised reservoir;
- registering information about large raised reservoirs;
- NRBW reports about large raised reservoirs;
- records to be kept by the undertaker of a high risk reservoir;
- the form of engineer certificates, reports and directions;
- information to be provided by engineers when intending to construct, or bring back into use, a large raised reservoir;
- reports to be made by undertakers, and sent to NRBW, relating to incidents of uncontrolled release of water from a large raised reservoir where emergency measures are taken.

The current regulations relating to registration, reporting and recording etc. are revoked.

Procedure

Negative

Technical Scrutiny

One point is identified for reporting under Standing Order 21.2(vii) in respect of this instrument, in that there appear to be inconsistencies between the meaning of its English and Welsh texts:

Schedule 5 prescribes the form of report for the purposes of carrying out a periodical inspection of a large raised reservoir.

The English text requires the report to include (among other things), any recommendations the engineer sees fit to make as to the time of the next inspection. The Welsh text does not include that requirement.

This means that a report under the Welsh text does not have to include as much information as a report under the English text.



Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Legal Advisers

Constitutional and Legislative Affairs Committee

01 February 2016



2016 No. 80 (W. 37)

**FLOOD RISK MANAGEMENT,
WALES**

**The Reservoirs Act 1975 (Capacity,
Registration, Prescribed Forms, etc.)
(Wales) Regulations 2016**

EXPLANATORY NOTE

(This note is not part of the Regulations)

For the purposes of the Reservoirs Act 1975 (c.23) (“the 1975 Act”), these Regulations provide for—

- (a) how to calculate capacity for the purposes of section A1 of the Reservoirs Act 1975 (regulation 3);
- (b) the information about a large raised reservoir that must be registered (regulation 4); notification of changes to, and the keeping and inspection of, the Welsh register (regulations 5 and 6);
- (c) the making and content of reports by the Natural Resources Body for Wales (“NRBW”) to the Welsh Ministers (regulation 7);
- (d) the form of record to be kept for a high-risk reservoir and the information to be given in that record (regulation 8);
- (e) the form of certificates of engineers (regulation 9); the form of reports of engineers (regulation 10); and the form of directions of engineers (regulation 11);
- (f) the information to be provided by undertakers when intending to construct or bring back into use a large raised reservoir (regulation 12); and
- (g) the making of reports by undertakers to the NRBW in relation to incidents relating to the uncontrolled release of water from a large raised reservoir where emergency measures are taken (regulation 13).

These Regulations also revoke the Reservoirs Act 1975 (Registers, Reports and Records) Regulations 1985 (S.I. 1985/177), the Reservoirs Act 1975 (Registers,

Reports and Records) (Amendment) Regulations 1985 (S.I. 1985/548) and the Reservoirs Act 1975 (Certificates, Reports and Prescribed Information) Regulations 1986 (S.I. 1986/468) (regulation 15). Those Regulations are replaced by the provisions in regulations 4, 6, 8 to 10 and 12.

Section A1(4) of the 1975 Act requires regulations to be made about how to calculate capacity for the purpose of establishing whether a raised structure or area is large under section A1(3) of the 1975 Act. Regulation 3 makes this provision.

Under section 2(2) of the 1975 Act the NRBW is required to maintain a register containing prescribed information about large raised reservoirs. Regulation 4 prescribes the information about large raised reservoirs that the Welsh register is to contain.

Regulation 5 provides for notification by the undertaker to the NRBW of any changes or proposed changes to the information required to be held in the Welsh register. Regulation 6 requires that the Welsh register and copies of it be kept at the principal office of the NRBW and that the NRBW ensure that certain information required to be in the Welsh register is in it.

Regulation 7 specifies the timing of reports to be made by the NRBW to the Welsh Ministers under section 3(1) of the 1975 Act; the information to be given in those reports.

Regulation 8 prescribes the form in which a record under section 11(1) of the 1975 Act which an undertaker of a high-risk reservoir is required to keep and the matters, additional to those specified in section 11(1)(a) and (b) of the 1975 Act, about which undertakers of high-risk reservoirs have to keep a record of.

Regulations 9 to 11 prescribe, as provided by section 20(1) of the 1975 Act, the form of various certificates, directions and reports where the 1975 Act requires the giving of certificates or directions or the making of a report by a civil engineer engaged in work in connection with a large raised reservoir.

Regulation 12 prescribes the information which must be contained in a notice under section 21(1) of the 1975 Act which an undertaker, who intends to construct or bring back into use a large raised reservoir, is required to serve on the NRBW.

Regulation 13 prescribes the form of, and specifies the incidents in relation to which, a report under section 21B of the Act is to be made.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared, as to the likely

costs and benefits of complying with these Regulations. A copy can be obtained from the Energy, Water and Flood Division of the Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

2016 No. 80 (W. 37)

**FLOOD RISK MANAGEMENT,
WALES**

**The Reservoirs Act 1975 (Capacity,
Registration, Prescribed Forms, etc.)
(Wales) Regulations 2016**

Made 27 January 2016

*Laid before the National Assembly
for Wales* 29 January 2016

Coming into force 1 April 2016

The Welsh Ministers, in exercise of the powers conferred by sections A1(4), 2(2) and (2C) to (2E), 3(1), 5, 11, 20(1), 21(1) and 21B of the Reservoirs Act 1975(1), make the following Regulations.

Title, commencement and application

1.—(20) The title of these Regulations is the Reservoirs Act 1975 (Capacity, Registration, Prescribed Forms, etc.) (Wales) Regulations 2016.

(21) These Regulations come into force on 1 April 2016.

(22) These Regulations apply in relation to Wales.

Interpretation

2.—(1) In these Regulations—

(1) 1975 (c.23). Sections A1, 2(2B) to 2(2E) and 21B were inserted in relation to England and Wales by section 33 of, and paragraphs 1, 2, 4 and 33 of Schedule 4 to, the Flood and Water Management Act 2010 (c.29). Sections 5, 11, 20 and 21 were amended in relation to England and Wales by paragraph 33 of, and paragraphs 5, 16 to 18, 23, 26, 28, 31 and 38 of Schedule 4 to, the Flood and Water Management Act 2010 (c.29). Sections 2, 3, 20 and 21 were amended by section 74 and 78 of the Water Act 2003 (c.37). Sections 2, 2A to 2D and section 21B were further amended by Article 4(1) of and paragraph 117, 119, 120 and 122 of Schedule 2 to, the Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755) (W. 90).

“the 1930 Act” (*“Deddf 1930”*) means the Reservoirs (Safety Provisions) Act 1930⁽¹⁾;

“the 1975 Act” (*“Deddf 1975”*) means the Reservoirs Act 1975;

“the NRBW” (*CANC*) means the Natural Resources Body for Wales;

“Welsh register” (*cofrestr Cymru*) means the register required to be established and maintained by the NRBW under section 2(2) of the 1975 Act;

“lowest natural level of any part of the surrounding land” (*“lefel naturiol isaf unrhyw ran o'r tir amgylchynol”*) includes the lowest bed level of any watercourse;

“natural level” (*lefel naturiol*) is the level of the natural land remaining after the construction or any alteration of a large raised reservoir;

“panel” (*“panel”*) means a panel of civil engineers constituted under section 4 of the 1975 Act⁽²⁾;

“structure” (*“adeiledd”*) means a dam, reservoir wall or embankment that retains water;

“surrounding land” (*“tir amgylchynol”*) means the land contiguous to a large raised reservoir;

“toe” (*“troed”*) means the point on the downstream side of a structure forming part of the reservoir where its base meets the lowest natural level of any part of the surrounding land;

“top water level” (*“lefel uchaf y dŵr”*) means—

- (a) in the case of a reservoir with a fixed overflow sill, the lowest crest level of that sill;
- (b) in the case of a reservoir, the overflow from which is controlled wholly or partly by moveable gates, syphons or otherwise, the maximum level to which water may be stored exclusive of any provision for flood storage; or
- (c) in the case of a reservoir designed for the purposes of holding back floodwater, the maximum level to which floodwater may be stored during any flood event exclusive of any provision for overflow.

(2) In these Regulations—

- (a) any information required or notification given must be in writing;
- (b) a reference to any document or information includes that document or information in electronic form;
- (c) any document or information communicated by electronic means is deemed—

(1) 1930 (c.51). This Act was repealed with savings by the Reservoirs Act 1975, sections 23 and 28.

(2) Section 4 was amended in relation to England and Wales by section 33 of, and paragraph 9 of Schedule 4 to, the Flood and Water Management Act 2010 (c.29).

- (i) to have been sent where the sender can produce a copy of the electronic communication which—
 - (aa) contained the document or information;
 - (bb) shows the time and date the message was sent; and
 - (cc) shows that the document was sent to the recipient;
- (ii) to have been sent by the person from whom it purports to originate; and
- (iii) not to have been tampered with or otherwise modified;
- (d) any requirement for a signature in a report, certificate or directions to which these Regulations apply may be satisfied by an electronic signature incorporated into the document;
- (e) “electronic signature” (*“llofnod electronig”*) means data in electronic form which are attached to or logically associated with other electronic data and which serve as a method of authentication.

Calculation of capacity

3.—(1) For the purposes of section A1(3) of the 1975 Act capacity of a large raised reservoir is to be calculated by measuring the maximum volume of water in cubic metres capable of being stored—

- (a) above the bed of the reservoir; and
- (b) between the toe of the reservoir and its top water level.

(2) Water below the natural level of any part of the surrounding land is not to be included in the calculation.

(3) In this regulation “bed of the reservoir” (*“gwely’r gronfa ddŵr”*) includes any silt or other material that is judged by the engineer giving a final certificate, or giving a certificate under section 13(2) of the 1975 Act, to be incapable of flowing out of the reservoir over natural land in the event of an uncontrolled release of water from the reservoir.

Registration requirements

4.—(1) For the purpose of section 2(2C) of the 1975 Act, the information that is to be registered with the NRW by an undertaker of a large raised reservoir is that prescribed in Schedule 1, paragraphs 1 to 7.

(2) The information prescribed in Schedule 1 must be registered—

- (a) before the end of the period of 28 days beginning with the day of the issue of a final

certificate given in accordance with section 7 of the 1975 Act⁽¹⁾ in relation to—

- (i) the construction of a new reservoir;
 - (ii) the alteration of an existing structure or area that prior to its alteration was not a large raised reservoir; or
 - (iii) the alteration of an area of a reservoir that prior to its alteration was not a large raised reservoir;
- (b) within 6 months of registration under section 2(2C) of the 1975 Act,
whichever is the sooner.

Notification of changes to the Welsh register

5.—(1) Where there has been a change or addition to any of the information registered in accordance with regulation 4, the undertaker must provide the NRBW with the relevant up to date information within 28 days of the date of the change or addition.

(2) The NRBW may request confirmation from the undertaker that any or all of the information given by that undertaker for the purposes of the Welsh register is up to date or complete.

(3) Where paragraph (2) applies, without prejudice to paragraphs (4), (6) and (8), the undertaker must within 28 days beginning with the day on which the NRBW requests such confirmation—

- (a) confirm that the relevant information is up to date or, where any of that information is not up to date, provide the up to date information; and
- (b) where any of the information is not complete or is missing, provide the complete or missing information.

(4) Where an alteration so as to increase or decrease the capacity of a large raised reservoir is proposed to be carried out, the undertaker must notify the NRBW not less than 28 days before the commencement of alteration works.

(5) A notification referred to in paragraph (4) must contain the following information—

- (a) the date of the proposed commencement of the alteration;
- (b) a description of the nature and extent of the proposed work to the large raised reservoir.

(6) Where it is proposed that the use of a large raised reservoir be abandoned under section 14 of the 1975

(1) Section 7 was amended in relation to England and Wales by section 33 of, and paragraphs 8 and 11 of Schedule 4 to, the Flood and Water Management Act 2010 (c.29).

Act(1), the undertaker must notify the NRBW not less than 28 days before any such proposed abandonment of use.

(7) A notification referred to in paragraph (6) must include the proposed commencement date of the abandonment of use.

(8) Where a construction, supervising or inspecting engineer is appointed for the purposes of the 1975 Act, the undertaker must notify NRBW of the date of the appointment within 28 days.

(9) The undertaker must notify the NRBW within 28 days of the date on which an engineer ceases to be—

- (a) the construction engineer before that engineer has issued a final certificate;
- (b) the inspecting or supervising engineer.

(10) An undertaker who intends to cease being an undertaker must notify the NRBW of—

- (a) the date on which the undertaker intends to cease being the undertaker;
- (b) the name and address of the person who is intended to be the new undertaker;
- (c) the date on which that person is intended to become the new undertaker.

Keeping and inspection of the Welsh register

6.—(1) The Welsh register must be kept at the principal office of the NRBW(2).

(2) The NRBW must record the information prescribed in paragraphs 8 to 10 of Schedule 1 in the Welsh register.

Reports by the NRBW to the Welsh Ministers

7.—(1) For the purposes of section 3(1) of the 1975 Act, the NRBW is to report to the Welsh Ministers –

- (a) in relation to the period 1 April 2016 to 31 March 2017 no later than 30 September 2017; and
- (b) at two yearly intervals thereafter.

(2) The NRBW must submit the report to the Welsh Ministers no later than 6 months after the end of the period to which the report relates.

(3) The report must confirm—

- (a) the number of large raised reservoirs that have been registered;

(1) Section 14 was amended in relation to England and Wales by section 33 of, and paragraph 27 of Schedule 4 to, the Flood and Water Management Act 2010 (c.29).

(2) The address of the principal office of the NRBW reservoir safety enforcement team is Reservoir Safety Team, Natural Resources Wales, Ty Cambria, 29 Newport Road, Cardiff CF24 0TP.

- (b) the steps (if any) that the NRBW has taken to ensure the undertakers of a large raised reservoir have complied with the requirements of the 1975 Act; and
- (c) if the NRBW is itself the undertaker for any large raised reservoir, a statement as to—
 - (i) the number of large raised reservoirs for which it is the undertaker; and
 - (ii) any steps it has taken to observe and comply with the requirements of the 1975 Act.

Records of water levels etc.

8. To comply with section 11(1) of the 1975 Act, the undertaker of a high risk reservoir must

- (a) keep a record in the form prescribed in Schedule 2; and
- (b) record the matters prescribed in Schedule 3.

Form of certificates of engineers

9. For the purposes of section 20(1) of the 1975 Act, the following certificates must be in the form prescribed in Schedule 4—

- (a) a preliminary certificate given under section 7(1) of the 1975 Act;
- (b) an interim certificate given under section 7(2) of the 1975 Act;
- (c) a final certificate given under section 7(3) of the 1975 Act;
- (d) a certificate of efficient execution of works given under section 7(6) or 8(7) of the 1975 Act⁽¹⁾;
- (e) a certificate given under section 10(5) of the 1975 Act⁽²⁾ as to the report of an inspecting engineer;
- (f) a certificate given under section 10(6) of the 1975 Act as to the carrying into effect of safety recommendations;
- (g) a certificate given under section 12AA(3) of the 1975 Act⁽³⁾ as to the satisfaction of the requirements of a direction to prepare a flood plan;

(1) Section 8 was amended in relation to England and Wales by section 33 of, and paragraphs 3 and 11 of Schedule 4 to, the Flood and Water Management Act 2010 (c.29) and section 75 of the Water Act 2003 (2003 c.37).

(2) Section 10 was amended in relation to England and Wales by section 33 of, and paragraphs 11 and 12 of Schedule 4 to, the Flood and Water Management Act 2010 (c.29).

(3) Section 12AA was inserted in relation to England and Wales by section 33 of, and paragraph 21 of Schedule 4 to, the Flood and Water Management Act 2010 (c.29).

- (h) an interim certificate given under section 13(1A) of the 1975 Act;
- (i) a certificate given under section 13(2) of the 1975 Act as to the completion and efficient execution of an alteration so as to discontinue a large raised reservoir;
- (j) a certificate given under section 14(3) of the 1975 Act as to the report of an engineer;
- (k) a certificate given under section 15(2) of the 1975 Act⁽¹⁾ as to the carrying into effect of safety recommendations; or
- (l) a referee's certificate given under section 19(4) of the 1975 Act⁽²⁾.

Form of reports of engineers

10. For the purposes of section 20(1) of the 1975 Act, the following reports must be in the form prescribed in Schedule 5—

- (a) a report under section 8(2) of the 1975 Act of an engineer made on the construction or alteration of a large raised reservoir;
- (b) a report under section 9(1) of the 1975 Act of an engineer made before the re-use of an abandoned large raised reservoir;
- (c) a report under section 10(1) of the 1975 Act made following an engineer's inspection of a high-risk reservoir;
- (d) a report under section 14(1) of the 1975 Act of an engineer as to measures that ought to be taken on abandonment of a large raised reservoir.

Forms of directions of engineers

11. For the purposes of section 20(1) of the 1975 Act, the following directions must be in the form prescribed in Schedule 6—

- (a) a direction made under section 11(2) of the 1975 Act (recording of water levels etc.);
- (b) a direction made under section 12(6) of the 1975 Act⁽³⁾ (supervision of reservoirs: visual inspection by undertaker);
- (c) a direction made under section 12AA(4) of the 1975 Act (flood plans: testing);

(1) Section 15 was amended in relation to England and Wales by section 33 of, and paragraph 26 of Schedule 4 to, the Flood and Water Management Act 2010 (c.29) and section 75 of the Water Act 2003 (c.37).

(2) Section 19 was amended in relation to England and Wales by section 33 of, and paragraph 14 and 22 of Schedule 4 to, the Flood and Water Management Act 2010 (c.29).

(3) Section 12 was amended in relation to England and Wales by section 33 of, and paragraph 17 of Schedule 4 to, the Flood and Water Management Act 2010 (c.29).

- (d) a direction made under section 12AA(7) of the 1975 Act (flood plans: revision); or
- (e) a direction made under section 19(4A) of the 1975 Act (reference of disputed recommendations to a referee: direction to engineer to issue a certificate).

Prescribed information under section 21(1) of the 1975 Act to be provided by undertakers when intending to construct or bring back into use a large raised reservoir

12. The information that is to be given in a notice served by an undertaker under section 21(1) of the 1975 Act on the NRBW is the information prescribed in Schedule 7.

Reports to the NRBW

13.—(1) This regulation applies in relation to any incident—

- (a) which results, or could result, in the uncontrolled release of water from a large raised reservoir; and
- (b) in respect of which emergency measures have been taken to prevent any or any further uncontrolled release of water and to minimise the danger to human life.

(2) Where this regulation applies, the undertaker must send to the NRBW—

- (a) a preliminary report of the incident as soon as practicable after the commencement of the emergency measures; and
- (b) a final report of the incident within one year beginning with the day after the day on which the emergency measures were commenced.

(3) The preliminary report must contain sufficient particulars to enable the NRBW to ascertain the date and time of the incident, the location of the reservoir and confirm the immediately observable facts.

(4) The final report of the incident referred to in paragraph (2)(b) must contain—

- (a) the facts of the incident;
- (b) analysis of its circumstances;
- (c) conclusions that can be drawn from that analysis with reasons for the conclusions;
- (d) confirmation of what steps are recommended to avoid a repeat of the incident.

(5) The NRBW may direct an undertaker to revise the final report but must —

- (a) explain the reasons why each revision is necessary; and

(b) specify a period, not less than three months, within which the undertaker must make the revisions.

(6) Revisions to the final report are not be effective unless—

(a) the undertaker has sent a version of the report to the NRBW which incorporates the revisions notified by the NRBW, and

(b) the NRBW has accepted the revisions.

Revocations

14. The following Regulations are revoked—

(a) the Reservoirs Act 1975 (Registers, Reports and Records) Regulations 1985(1);

(b) the Reservoirs Act 1975 (Registers, Reports and Records) (Amendment) Regulations 1985(2);

(c) the Reservoirs Act 1975 (Certificates, Reports and Prescribed Information) Regulations 1986(3)

Carl Sargeant,

Minister for Natural Resources, one of the Welsh Ministers

27 January 2016

(1) S.I. 1985/177.

(2) S.I. 1985/548.

(3) S.I. 1986/468.

SCHEDULE 1 Regulations 4 and 6

Information to be given in Welsh registers of large raised reservoirs

1. Name and situation of reservoir.
2. National grid reference of reservoir.
3. Name and address of all undertakers with responsibility for the reservoir.
4. A summary of the contents of all certificates or reports made under the 1975 Act, or the 1930 Act, including—
 - (a) the name and address of the engineer giving the certificate or making the report;
 - (b) the section of whichever Act the certificate is given under or the report is made;
 - (c) where no final certificate has been given under the 1975 Act, a statement of that fact;
 - (d) where no final certificate was given under the 1930 Act because the construction or alteration of the reservoir was completed before the commencement of that Act, a statement of that fact.
5. The following information if it is revealed by any certificate, report or statement—
 - (a) the category of the reservoir (whether impounding or non-impounding);
 - (b) year(s) in which the dam(s), reservoir walls or embankments(s) were completed;
 - (c) the construction of the dam(s), reservoir walls or embankments(s) (i.e. whether constructed of earth, rockfill, gravity, buttress or by other means);
 - (d) the level of the top of the dam(s), reservoir walls or embankments(s) of the reservoir with reference to Ordnance Datum;
 - (e) the top water level of the reservoir with reference to Ordnance Datum;
 - (f) the maximum height of the dam(s), reservoir walls or embankments(s) measured in metres from the lowest natural level of the surrounding land, to the top of the dam(s), reservoir walls or embankments, excluding the height of the wave wall;
 - (g) the capacity of the reservoir;
 - (h) the water surface area of the reservoir at top water level (in square metres or square kilometres).

6. Name and business address of the supervising engineer or, if the reservoir is under the supervision of the construction engineer, of that engineer.

7. Date when the next inspection is due under the 1975 Act or any date recommended for the next inspection under the 1975 Act by the supervising or inspecting engineer.

8. Particulars of any appointment made by the NRBW under section 15 of the 1975 Act.

9. Particulars of any appointment made by the NRBW under section 16 of the 1975 Act, including the date on which they were taken.

10. Whether the large raised reservoir is designated as a high risk reservoir.

SCHEDULE 2

Regulation 8

Prescribed form of record for a high-risk reservoir

In this Form

- “the 1930 Act” means the Reservoirs (Safety Provisions) Act 1930;
- “the 1975 Act” means the Reservoirs Act 1975;
- “fetch” means the effective length of the reservoir over which wind can build up waves;
- “top water level” means—
 - (a) in the case of a reservoir with a fixed overflow sill, the lowest crest level of that sill;
 - (b) in the case of a reservoir the overflow from which is controlled wholly or partly by moveable gates, syphons or otherwise, the maximum level to which water may be stored exclusive of any provision for flood storage;
 - (c) in the case of a reservoir designed for the purposes of holding back floodwater, the highest level of floodwater that may be stored during any flood event exclusive of any provision for overflow.
- Information is to be given in such a manner and at such intervals as the construction or inspecting engineer directs.
- If any item of information is not applicable to the reservoir this should be stated, giving the reason why.
- Information given may be supplemented by the use of any relevant drawings.

Name and situation of reservoir owned

National Grid Reference of reservoir

Owners of reservoir

| Name | Part of reservoir owned |
|---------|-------------------------|
| Address | |

Part 1 – Water levels and depth of water

- A record of water levels and depth of water including the flow of water over the waste weir or overflow must be kept by making the appropriate entries in the spaces provided below:

| Date | Water level in Reservoir measured relative to Top Water Level (TWL). (Positive above TWL, negative below TWL) | Signature and position of engineer or other person responsible for the entry |
|------|--|--|
| | | |
| | | |
| | | |
| | | |

| Date | Depth of water flowing over waste weir or overflow, in metres | Signature and position of engineer or other person responsible for the entry |
|------|---|--|
| | | |
| | | |
| | | |
| | | |

- Method of recording water levels
- Datum to which levels are referred, e.g. Ordnance Datum or the level of the overflow sill
- Details of directions given by the construction engineer or inspecting engineer as to the manner in which and specifying the dates and times at which information about matters to which this Part relates is to be recorded

Part 2 – Leakages, settlements of walls or other works and repairs and instrumentation readings

- A record of leakages, settlements of walls or other works and repairs must be kept by making the appropriate entries in the spaces provided below:

| Position and extent of any leakage from the reservoir or settlement of walls or other works, giving dates of discovery | Description of action taken consequent on discovery of leakage or settlement | Signature and position of engineer or other person responsible for each entry |
|--|--|---|
| | | |
| | | |
| | | |
| | | |

- A record of instrumentation readings must be kept by making the appropriate entries in the spaces provided below for each instrument

| Site reference number of instrument: | | | |
|--------------------------------------|--|---|---|
| Date and time of reading | Instrument reading including units, where relevant | Water level in Reservoir at time of reading, measured relative to Top Water Level (TWL) (Positive above TWL, negative below TWL) | Signature and position of engineer or other person responsible for each entry |
| | | | |
| | | | |
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| | | | |

- Details of directions given by construction engineer or inspecting engineer as to the manner in which and specifying the date and times at which information about matters to which this Part relates is to be recorded

Part 3 – Persons having a function in relation to the reservoir provided for by the 1975 Act

- Undertakers

| | |
|---|-----------------------|
| Name Address E-mail address, if available | Nature of undertaking |
|---|-----------------------|

- Natural Resources Body for Wales

| |
|---|
| Name Address E-mail address, if available |
|---|

- Construction engineer or engineer appointed for the purposes of section 8 of the 1975 Act

| |
|---|
| Name Address E-mail address, if available |
|---|

- Any engineer appointed under section 15 of the 1975 Act by the Natural Resources Body for Wales

Name

Address

E-mail address, if available

The purpose for which the appointment was made e.g. for the purposes of section 8 of the 1975 Act

- Inspecting engineer

Name

Address

E-mail address, if available

- Occasion for appointment of inspecting engineer (See section 10(2) of the 1975 Act (e.g. on recommendation of supervising engineer))

- Dates of appointment of—

| | | |
|---|-----------|---------|
| <ul style="list-style-type: none">• Construction engineer or engineer appointed under section 8 of the 1975 Act• Inspecting engineer• Engineer appointed under section 15 of the 1975 Act | From..... | To..... |
| | From..... | To..... |
| | From..... | To..... |

- Supervising engineer

Name

Address

E-mail address, if available

Office telephone number

Home telephone number

Part 4 – flood plan details

- A summary of flood plan information must be kept by making entries in the spaced provided below:

| Date of flood plan | Location of flood plan | Date of last test of flood plan |
|--------------------|------------------------|---------------------------------|
| | | |
| | | |
| | | |

Key actions from the flood plan to be taken by the undertaker to prevent an uncontrolled escape of water from the reservoir

Key actions from the flood plan to be taken by the undertaker to control or mitigate the effects of a flood

List of people and organisations sent a copy of the flood plan

| Name and contact details of person and organisation | Version of plan sent | Date sent |
|---|----------------------|-----------|
| | | |
| | | |
| | | |

Details of compliance with a direction by the Welsh Ministers

| Matters to be included and requirements of the Natural Resources Body for Wales | Manner of compliance |
|---|----------------------|
| | |
| | |
| | |

Part 5 – Access, capacity etc.

1. Description of access giving any restrictions on load, width or height of vehicles using access and details of the construction of the access route

2. Category:

Impounding

Non-impounding

3. The level up to which water may be stored, exclusive of flood storage, as it was last specified in a certificate given either under the 1930 Act or the 1975 Act

4. Capacity of reservoir

cubic metres

- At top water level
- Between the lowest natural level of any part of the surrounding land and top water level
- Between the lowest natural level of any part of the surrounding land and the level, as last specified in a certificate given under the 1930 Act or under the 1975 Act, exclusive of any provision for flood storage

5. Surface water area:-

m² or km²

- At level specified in item 3
- At top water level

6. Effective fetch to dam, reservoir wall or embankment in metres

Direction

Part 6 – Dam, reservoir wall or embankment

| | |
|--|--|
| Type (please tick the appropriate box) Earth <input type="checkbox"/> Rockfill <input type="checkbox"/> (specially sealing membrane or core) Gravity <input type="checkbox"/> Buttress <input type="checkbox"/> Other (please specify) | Date construction completed <input type="text"/> |
|--|--|

| | |
|---|---|
| Levels above Ordnance Datum in metres: of the top of the dam and reservoir wall or embankment <input type="text"/> | Maximum height in metres of the dam and reservoir wall or embankment from the lowest natural ground level at the toe (including stream bed) to top of the dam, wall or embankment (excluding wave wall) |
| of the top of the wave wall <input type="text"/> | <input type="text"/> |

| | | |
|---|--|----------------------|
| Details of: | | |
| <ul style="list-style-type: none"> draw off works | Maximum rate of discharge, m ³ /s | <input type="text"/> |
| <ul style="list-style-type: none"> bottom outlets | Maximum rate of discharge, m ³ /s | <input type="text"/> |
| <ul style="list-style-type: none"> any other means of lowering | Maximum rate of discharge, m ³ /s | <input type="text"/> |

Part 7 – Catchment and standard average annual rainfall on direct and indirect catchment areas

Direct Catchment area (m² or km²)

Indirect catchment area (m² or km²)

Method of bringing water into the reservoir from the indirect catchment area, with details of any control or pumps provided and of maximum inflow capacity

Physical characteristics of direct and indirect catchment areas which affect the rate of storage of water

Details of standard average annual rainfall on the direct and indirect catchment areas of the reservoir according to meteorological office records

Part 8 – Spillway works: their type, location and level and the safety provisions made in connection with their operation

(a) Type and location, if independent of main dam structure

(b) Particulars, with crest levels and lengths in metres of:

- fixed crest weirs
- syphons (state whether air regulated saddle syphons or not)
- other gates or valves not specified elsewhere in this Part
- movable crest gate
- tunnels or other features affecting discharge capacity
- emergency spillway

(c) Particulars of movable gates or valves (please tick the appropriate box)

- Methods of operation:
Manual automatic float control
- Sequence of operations
- Source of power
- Standby arrangements

Part 9 – Measures taken in the interests of safety or that might affect safety

| Details of any safety measures recommended under the 1975 Act or the 1930 Act | Dates when such recommendations were carried out |
|---|--|
| | |
| | |
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| | |
| | |

| Details of any action taken by either Environment Agency or Natural Resources Body for Wales under section 16 of the 1975 Act |
|---|
| |
| |
| |
| |

| Details of any measures taken that might affect safety | Dates when such Measures were carried out |
|--|---|
| | |
| | |
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| | |

Part 12 – Certificates, reports, directions, and referees

- A record of certificates given, reports made, directions given, or referees appointed under the 1930 Act or the 1975 Act must be kept by making entries in the spaces provided below:

Certificates

| Date | Type (e.g. preliminary certificate) | Section and subsection of whichever Act the certificate was given under (e.g. under section 7(1) of the Reservoirs Act 1975) |
|------|-------------------------------------|--|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

Reports

| Date | Section and subsection of whichever Act the report was given under (e.g. under section 10(3) of the Reservoirs Act 1975) |
|------|--|
| | |
| | |
| | |
| | |
| | |
| | |

Directions

| Date | section and subsection of the 1975 Act the direction was given under (e.g. under section 12(6) of the Reservoirs Act 1975) |
|------|--|
| | |
| | |
| | |
| | |
| | |
| | |

Appointment of Referees

| Name of referee | Date of appointment |
|-----------------|---------------------|
| | |
| | |
| | |

Part 13 – Re-use, abandonment and discontinuance of reservoirs

- Re-use

| Name and address of qualified civil engineer acting under section 9 of the 1975 Act | Date of engineer's appointment | Details of any action taken by the Natural Resources Body for Wales under section 9 of the 1975 Act |
|---|--------------------------------|---|
| | | |

- Abandonment

| Name and address of qualified civil engineer reporting under section 14 of the 1975 Act | Date of engineer's appointment | Details of any action taken by the Natural Resources Body for Wales under section 14 of the 1975 Act |
|---|--------------------------------|--|
| | | |

- Discontinuance

| Name and address of qualified civil engineer acting under section 13 of the 1975 Act | Date of engineer's appointment |
|--|--------------------------------|
| | |

Part 16 – Extent of opening of valves, gates and penstocks

- A record of the extent that valves, gates and penstocks are open must be kept by making the appropriate entries in the spaces provided below:

| Date | Type and location of equipment (gate, valve or penstock) | Extent of opening | Signature and position of engineer or other person responsible for the entry |
|------|--|-------------------|--|
| | | | |
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- Method of recording extent of opening for each type of equipment
- Procedures used for operating each type of equipment and for reading the extent of opening
- Details of directions given by the construction engineer or inspecting engineer as to the manner in which and specifying the date and times at which information about matters to which this Part relates is to be recorded.

SCHEDULE 3 Regulation 8

Prescribed matters relating to high-risk reservoirs of which an undertaker is to keep a record

Interpretation

1. In this Schedule “fetch” (*“cyrhaeddiad”*) means the effective length of the reservoir over which wind can build up waves.

Prescribed matters

2. An undertaker of a high risk reservoirs must keep a record of the following matters—

- (a) any person who has acted as an undertaker or engineer under the 1975 Act;
- (b) flood plan details;
- (c) means of access to the reservoir;
- (d) category of the reservoir (i.e. whether impounding or non-impounding), its use, the certified level up to which it may store water, its surface water area, capacity and fetch;
- (e) structural character of the dam(s), reservoir walls or embankments, their date of completion, height, level of the top of the dam(s), reservoir walls or embankments and of the wave wall above Ordnance Datum;
- (f) details of draw off works, bottom outlets, or any other means of lowering the water level, together with their maximum rates of discharge;
- (g) physical characteristics of direct and indirect catchment areas of the reservoir and method of filling from indirect catchment area;
- (h) standard average annual rainfall on direct and indirect catchment areas of the reservoir;
- (i) spillway works, their type, location and level and the safety provisions made in connection with their operation;
- (j) measures taken in the interests of safety on the recommendation of a qualified civil engineer;
- (k) supervising engineer directions and recommendations;
- (l) unusual events which could affect the safety of the reservoir;
- (m) certificates given under the 1975 Act or under the 1930 Act;

- (n) reports made under the 1975 Act or under the 1930 Act;
- (o) directions made under the 1975 Act;
- (p) appointment of referees under the 1975 Act;
- (q) re-use, abandonment and discontinuance;
- (r) drawing register;
- (s) instrumentation at the reservoir;
- (t) records of extent of opening of valves, gates and penstocks, related information and directions by an engineer.

SCHEDULE 4 Regulation 9

Certificates

The italicised letters in the forms of certificates in this Schedule indicate the information to be included as follows—

- (a) name of engineer;
- (b) address of engineer;
- (c) name of panel to which engineer is appointed;
- (d) name of undertakers;
- (e) name of reservoir;
- (f) situation of reservoir, with sufficient detail to identify it (including the National Grid Reference of the approximate centre of the reservoir);
- (g) level above Ordnance Datum to which water may be filled, excluding the allowance made for flood conditions;
- (h) level above Ordnance Datum to which water may be stored, excluding the allowance made for flood storage;
- (i) date of preliminary or interim certificate as appropriate;
- (j) conditions subject to which the reservoir may be filled with water or water may be stored up to the level specified;
- (k) date of report, certificate, direction, as appropriate;
- (l) date of completion of works;
- (m) period recommended in the report within which the next inspection should be made;
- (n) date of inspecting engineer's report;
- (o) name of inspecting engineer;
- (p) name of referee;
- (q) address of referee;
- (r) date of referee's decision;
- (s) name of person appointing referee;
- (t) volume of water that makes a reservoir a "large raised reservoir" under the Act;
- (u) the time by which the water level must be reduced.

In these forms of certificates, square brackets and the words within them are not to be included where they are inappropriate.

Reservoirs Act 1975

Preliminary Certificate

- I(*a*) of (*b*), being a member of the (*c*), appointed by (*d*) to be responsible for the
[construction of a new large raised]
[construction of a new large raised reservoir by the alteration of an existing]
[alteration to the capacity of a large raised]
[reuse of an abandoned]

reservoir known as (*e*) situated at (*f*), consider that the [alteration to the] reservoir can properly be filled [wholly]
[partially] with water up to a level of (*g*) [subject to the following conditions (*j*).]

[This preliminary certificate is given further to a previous preliminary certificate given by (*a*) of (*b*) on (*i*) and
supersedes that certificate in so far as it varies the [water level] [conditions] specified in that certificate.]

Signature of Engineer

Date of Certificate

Reservoirs Act 1975

Interim Certificate on Alteration of a Reservoir

- I(*a*) of (*b*), being a member of the (*c*), appointed by (*d*) to be responsible for an alteration to a large raised
reservoir, known as (*e*) situated at (*f*), consider that the alteration to the reservoir ought not to be filled
with water up to a level or subject to the conditions that, if this certificate were not given, would
otherwise be lawful, but that, until the issue of a preliminary certificate, it may be filled with water up to a
level of (*g*) [and any reduction of water level to (*g*) must be carried out by (*u*),] [subject to the following
conditions (*j*).].
[This interim certificate is given further to an interim certificate given by (*a*) of (*b*) on (*i*) and supersedes
that certificate in so far as it varies the [water level] [conditions] specified in that certificate.]

Signature of Engineer

Date of Certificate

Reservoirs Act 1975

Final Certificate

- I(*a*) of (*b*), being a member of the (*c*), appointed by (*d*) to be responsible for the
[construction of a new large raised]
[construction of a new large raised reservoir by the alteration of an existing]
[alteration to the capacity of a large raised]
[reuse of an abandoned]

reservoir known as (*e*) situated at (*f*), [for which a preliminary certificate was given on (*i*) (see Note 1)] am
satisfied that the [alteration to the] reservoir [is sound and satisfactory and (see Note 2)] may safely be used for
the storage of water up to a level of (*h*) (subject to the following conditions (*j*)).

[I am also satisfied that the recommendations as to measures to be taken in the interests of safety included in the
report dated (*k*) made by (Name of Engineer making report) have been carried into effect. (see Note 3).]

Signature of Engineer

Date of Certificate

Annex to Certificate (see Note 4)

Notes

- 1. Where a final certificate is given under section 8 of the Act it may be that no preliminary certificate has been issued.*
- 2. A final certificate given under sections 8 or 9 (except one given in the circumstances described above in section 8(5)) need not state that the engineer is satisfied that the reservoir, or the addition to it, is sound and satisfactory.*
- 3. If a final certificate does not, for the reasons given in Note 2 above, state that the engineer is satisfied that the reservoir is sound and satisfactory and a report made either under section 8(2) or 9(1) of the Act includes any recommendations as to measures to be taken in the interests of safety, the engineer must state that those recommendations have been carried into effect – sections 8(6) and 9(5) of the Act.*
- 4. The engineer must include in an annex to the certificate a note of the matters, if any, he considers need to be watched by a supervising engineer during the period before an inspection of the reservoir is made under the Act – section 7(5) of the Act.*

Reservoirs Act 1975

Certificate of Efficient Execution of Works under section [7(6)][8(7)]

- I (a) of (b), being a member of the (c), appointed by (d) to be responsible for the
[construction of a new large raised]
[construction of a large raised reservoir by the alteration of an existing]
[alteration to the capacity of a large raised]

reservoir known as (e) situated at (f), which was completed on (l) certify that [so far as I am able to ascertain (see Note 1)] those works have been efficiently executed in accordance with the drawings and descriptions annexed to this certificate (see Note 2).

Signature of Engineer

Date of Certificate

Annex to Certificate (see Note 2)

Notes

- 1. A certificate of execution of works given under section 8(7) of the Act should, unlike a certificate given under section 7(6), contain these words.*
- 2. Detailed drawings and descriptions giving full information of the works actually constructed including dimensions and levels and details of the geological strata or deposits encountered in trial holes or excavations made in connection with the works are required to be annexed by the sections mentioned in Note 1.*

Reservoirs Act 1975

Inspecting Engineers Certificate under section 10(5)

- I (a) of (b), being a member of the (c), appointed by (d) to carry out an inspection of the reservoir known as (e) situated at (f), made a report of that inspection on (k) which [does not include] [includes] recommendations as to measures to be taken in the interests of safety and which [does not include] [includes] recommendations as to the maintenance of the reservoir. [That report includes also a recommendation as to the time of the next inspection of the reservoir, which should be made within (m).]

Signature of Engineer

Date of Certificate

Reservoirs Act 1975

Certificate under section 10(6), as to the carrying out of safety recommendations

- I(*a*) of (*b*), being a member of the (*c*), appointed by (*d*) to supervise the carrying into effect at the reservoir known as (*e*) situated at (*f*), of measures taken in the interests of safety recommended in a report made on (*n*) by (*o*), [which was modified by the decision of (*p*) of (*q*), acting as referee, given on (*r*),] am satisfied that those measures have been carried into effect.

Signature of Engineer

Date of Certificate

Reservoirs Act 1975

Certificate under section 12AA(3), as to the requirements of a direction under section 12A(2)(a) and (b) being satisfied

- I(*a*) of (*b*), being a member of the (*c*), appointed by (*d*) to consult on the preparation of a flood plan under section 12A for the reservoir known as (*e*) situated at (*f*), am satisfied that the requirements of a direction under section 12A(2)(a) and (b) are satisfied.

Signature of Engineer

Date of Certificate

Reservoirs Act 1975

Interim Certificate under section 13(1A), on Discontinuance

- I(*a*) and (*b*), being a member of the (*c*), appointed by (*d*) to [design] [approve] and to supervise the alteration of the reservoir known as (*e*) situated at (*f*), so as to render it incapable of holding more than (*t*) cubic metres of water above the natural level of any part of the land adjoining it, consider that the level of the water in the reservoir should be reduced up to a level of (*g*) by (*u*) [subject to the following conditions (*j*)].

Signature of Engineer

Date of Certificate

Certificate under section 13(2), on Discontinuance

- I(*a*) of (*b*), being a member of the (*c*), appointed by (*d*) to [design] [approve] and to supervise the alteration of the reservoir known as (*e*) situated at (*f*), so as to render it incapable of holding more than (*t*) cubic metres of water above the natural level of any part of the surrounding land, am satisfied that the alteration has been completed and has been efficiently executed.

Signature of Engineer

Date of Certificate

Reservoirs Act 1975

Certificate under section 14(3), on Abandonment

- I(*a*) of (*b*), being a member of the (*c*), appointed by (*d*) to give a report as to the measures (if any) that ought to be taken in the interests of safety to secure that the reservoir known as (*e*) situated at (*f*), is incapable of filling accidentally or naturally with water above the natural level of any part of the land adjoining the reservoir or is only capable of doing so to an extent that does not constitute a risk, have today given a report under section 14(1) of the Act which [does not include] [includes] recommendations for measures to be taken in the interests of safety.

Signature of Engineer

Date of Certificate

Reservoirs act 1975

Certificate under section 15(2), as to the carrying out of Safety Recommendations

- I(*a*) of (*b*), being a member of the (*c*), appointed by the Environment Agency, following the failure of (Name of undertakers) to comply with a Notice from the Environment Agency requiring them to carry into effect recommendations contained in a report made under this Act by (*a*) on (*k*) [and modified by the decision of a referee] as to measures to be taken in the interests of safety at (*e*) situated at (*f*) to supervise the carrying out of those measures, am satisfied that those recommendations have been carried into effect.

Signature of Engineer

Date of Certificate

Reservoirs Act 1975

Referee's Certificate under section 19(4)

- I(*a*) of (*b*), being a member of (*c*), having been appointed by (*s*) to investigate the complaint of [Name of undertakers), undertakers for the reservoir known as (*e*) situated at (*f*), regarding a recommendation contained in a report dated (*k*) made by (Name of Engineer making Report) [as to measures to be taken in the interests of safety at] [and/or] [as to recommendations as to the maintenance of] [and/or] [as to the time of the next inspection of] the reservoir; have decided [not] to modify that report.
[Accordingly, I revise the certificate dated (*k*) which was given with reference to that report, in the following manner:-]

Signature of Referee

Date of Certificate

SCHEDULE 5 Regulation 10

Reports

In this Schedule references to an engineer's findings and recommendations include—

- (a) confirmation that the undertaker has recorded the information required under section 11 of the 1975 Act;
- (b) particulars of any directions given by the engineer specifying the dates and times at which, or the manner in which information is to be recorded under section 11 of the 1975 Act;
- (c) details of any recommendations regarding alterations or additions to works or the installation of instruments or gauges for measuring leakage, deflections, settlement, uplift, pore pressures or similar matters;
- (d) details of any movement of the surrounding land observed which might affect the stability of the reservoir;
- (e) findings as to the adequacy and condition of the waste weir or overflow and any channels connected with it;
- (f) a statement of any alterations the engineer has observed which affect the level to which water may be stored or to the level of the overflow sills since construction or since last inspection;
- (g) a statement as to the adequacy of the margin between dam(s), reservoir walls or embankments level and overflow level;
- (h) findings as to the efficiency of the scour pipe or discharge culvert or other means of lowering the level of the water in, and any means of controlling the inflow of water to, the reservoir.

In these forms of reports, square brackets and the words within them are not to be included where they are inappropriate.

Reservoirs Act 1975

Report of the Result of an Inspection made under section 8

[Construction] [Alteration] of a Reservoir

- Name and Situation of Reservoir, including National Grid Reference of its approximate centre
- Name and Address of Engineer
- Name of Panel of which Engineer is member
- Name and Address of Undertakers who appointed Engineer or confirmation that the Natural Resources Body for Wales appointed the Engineer, as appropriate
- Date of Dates of Engineer's Inspection
- Engineer's findings regarding the [construction] [alteration] of the reservoir, including any recommendations the engineer sees fit to make as to measures to be taken in the interests of safety.

Signature of Engineer

Date of Report

Reservoirs Act 1975

Report of the Result of an Inspection made under section 9

Re-use of Abandoned Reservoir

- Name and Situation of Reservoir, including National Grid Reference of its approximate centre
- Name and Address of Engineer
- Name of Panel of which Engineer is a member
- Name and Address of Undertakers who appointed Engineer or confirmation that the Natural Resources Body for Wales appointed the Engineer, as appropriate
- Date of Dates of Inspection
- Engineer's findings regarding the re-use of the Reservoir including any recommendations the engineer sees fit to make as to measures to be taken in the interests of safety.

Signature of Engineer

Date of Report

Reservoirs Act 1975

Report of the result of an Inspection made under section 10

Periodical Inspection of a Large Raised Reservoir

- Name and Situation of Reservoir, including National Grid Reference of its approximate centre
- Name and Address of Engineer
- Name of Panel of which Engineer is a member
- Name and Address of Undertakers who appointed Engineer or confirmation that the Natural Resources Body for Wales appointed the Engineer, as appropriate
- Date or Dates of Inspection
- Engineer's findings, including any recommendations the engineer sees fit to make as to the time of the next inspection or as to measures that should be taken in the interests of safety or as to the maintenance of the reservoir; and a note of any matters the engineer considers the supervising engineer needs to watch during the period before the next inspection of the reservoir under section 10
- A statement as to whether all of the safety measures recommended in the previous report have been taken; and, either recommendations to take any outstanding safety measures or an explanation of why a recommendation is no longer required

Signature of Engineer

Date of Report

Annex to Report (if required by section 26 for reservoirs completed before the 1930 Act came into force and not inspected under that Act)

Reservoirs Act 1975

Report made under section 14

Abandonment of Large Raised Reservoir

- Name and Situation of Reservoir, including National Grid Reference of its approximate centre
- Name of Panel of which Engineer is a member
- Name and Address of Undertakers who appointed Engineer or confirmation that the Natural Resources Body for Wales appointed the Engineer, as appropriate

- Date or Dates of Inspection of the Reservoir (if any)
- Engineer's recommendations as to the measures (if any) that ought be taken in the interests of safety to secure that the reservoir is incapable of filling accidentally or naturally with water above the natural level of any part of the land adjoining the reservoir or is only capable of doing so to an extent that does not constitute a risk

Signature of Engineer

Date of Report

SCHEDULE 6 Regulation 11

Directions

The italicised letters in the form of directions in this Schedule indicate the information to be included as follows—

- (a) name of engineer;
- (b) address of engineer;
- (c) name of panel to which engineer is appointed;
- (d) name of undertakers;
- (e) name of reservoir;
- (f) situation of reservoir, with sufficient detail to identify it (including the National Grid Reference of the approximate centre of the reservoir);
- (g) level above Ordnance Datum to which water may be filled, excluding the allowance made for flood conditions;
- (h) level above Ordnance Datum to which water may be stored, excluding the allowance made for flood storage;
- (i) date of preliminary or interim certificate as appropriate;
- (j) conditions subject to which the reservoir may be filled with water or water may be stored up to the level specified;
- (k) date of report, certificate, direction as appropriate;
- (l) date of completion of works;
- (m) period recommended in the report within which the next inspection should be made;
- (n) date of inspecting engineer's report;
- (o) name of inspecting engineer;
- (p) name of referee;
- (q) address of referee;
- (r) date of referee's decision;
- (s) name of person appointing referee;
- (t) volume of water that makes a reservoir a large raised reservoir under the 1975 Act.

In these forms of directions, square brackets and the words within them are not to be included where they are inappropriate.

Reservoirs Act 1975

**Direction under section 11(2) by [Construction Engineer]
[Inspecting Engineer], as to the intervals and manner of
recording specified information prescribed by regulations made
under section 11(1)**

- I (*a*) of (*b*), being a member of the (*c*), appointed by (*d*) to [supervise the construction of] [inspect] the reservoir known as (*e*) situated at (*f*), direct that the following prescribed information must be recorded at the intervals and in the manner stated.

| Information to be recorded | Manner of recording the information | Interval between records |
|----------------------------|-------------------------------------|--------------------------|
| | | |
| | | |
| | | |

Signature of Engineer

Date of Direction

Notes

1. The matters to be recorded are any of those listed in the form of record prescribed by regulations made under section 11(1) of the Act.
2. Additional rows should be added to the table as necessary.

Reservoirs Act 1975

Direction under section 12(6) by Supervising Engineer, as to the periodic visual inspection by the Undertaker of a reservoir

- I(*a*) of (*b*), being a member of the (*c*), appointed by (*d*) to supervise the reservoir known as (*e*) situated at (*f*), direct that the reservoir must be inspected not less than [*daily*][*weekly*][*monthly*][*Quarterly*][*annually*] for the purpose of identifying anything that might affect the safety of the reservoir, the interval commencing on (*k*).

Particular attention should be paid to the matters below as part of the inspection of the whole reservoir.

| Matters for particular attention |
|----------------------------------|
| |
| |
| |

Signature of Engineer

Date of Direction

Reservoirs Act 1975

**Direction under section 12AA(4) by [Supervising Engineer]
[Appointed Engineer], as to the testing of a flood plan**

- I(*a*) of (*b*), being a member of the (*c*), appointed by (*d*) to [supervise][consult on the preparation of a flood plan under section 12A for] the reservoir known as (*e*) situated at (*f*), direct that the flood plan be tested as specified below, the interval commencing on (*k*). A report of the test must be provided to assess the need for revision of the plan.

| Element of flood plan | Manner of testing | Interval between tests |
|------------------------------|--------------------------|-------------------------------|
| | | |
| | | |
| | | |

Signature of Engineer

Date of Direction

Notes

1. Not all elements of the flood plan need to be tested at the same intervals.

Reservoirs Act 1975

**Direction under section 12AA(7) by [Supervising Engineer]
[Appointed Engineer], as to the revision of a flood plan**

- I(*a*) of (*b*), being a member of the (*c*), appointed by (*d*) to [supervise][consult on the preparation of a flood plan under section 12A for] the reservoir known as (*e*) situated at (*f*), direct that the flood plan be revised as specified below.

| Element of flood plan | Revision required | Timing |
|-----------------------|-------------------|--------|
| | | |
| | | |
| | | |

Signature of Engineer

Date of Direction

Notes

1. Not all elements of the flood plan need to be revised with the same urgency.

Reservoirs Act 1975

Direction under section 19(4A) by a Referee, as to the issue of a Certificate for the purposes of section 12AA(3)

- I(*a*) of (*b*), being a member of (*c*), having been appointed by (*s*) to investigate the complaint of (Name of undertakers), undertakers for the reservoir known as (*e*) situated at (*f*), regarding the refusal of (Name of Engineer) to issue a certificate under section 12AA(3), as to the requirements of a direction under section 12A(2)(a) and (*b*) being satisfied; have decided after due consideration that the requirements of a direction under section 12A(2)(a) and (*b*) are satisfied.

Accordingly, I direct (Name of Engineer) to issue a certificate under section 12AA(3), as to the requirements of a direction under section 12A(2)(a) and (*b*) being satisfied, stating that the requirements are satisfied.

Signature of Referee

Date of Direction

SCHEDULE 7 Regulation 12

Information to be given in a notice under section 21(1) of the 1975 Act

1. Name and address of undertakers serving notice.
2. Name and situation of reservoir.
3. National grid reference of approximate centre of the reservoir.
4. Whether the undertakers intend—
 - (a) to construct a new large raised reservoir; or
 - (b) to bring a large raised reservoir back into use after that use has been abandoned.
5. The date when it is intended that construction will commence or the date when it is intended the reservoir will be brought back into use, as the case may be.
6. Name and address of the construction engineer or, in the case of re-use, of the engineer appointed for the purposes of section 9 of the 1975 Act.
7. The following information about the reservoir as it will be when constructed, or brought back into use as proposed—
 - (a) category (i.e. whether impounding or non-impounding);
 - (b) date(s) or approximate date(s) of completion of the dam(s), reservoir walls or embankments(s);
 - (c) construction of the dam(s), reservoir walls or embankments(s) (i.e. whether constructed of earth, rockfill, gravity, buttress or by other means);
 - (d) maximum height of the dam(s), reservoir walls or embankment(s) (in metres), measured from the lowest natural level of the surrounding land contiguous to it, to the top of the dam(s), reservoir walls or embankment(s), excluding the height of the wave wall;
 - (e) the height of the dam(s), reservoir walls or embankment(s) (in metres) measured from the lowest natural level of the surrounding land contiguous to it to top water level;
 - (f) the level of the top of the dam, the walls or embankment of the reservoir with reference to Ordnance Datum;
 - (g) the top water level of the reservoir with reference to Ordnance Datum;
 - (h) capacity (in cubic metres), measured from the lowest natural level of the surrounding land contiguous to it to top water level;

- (i) the water surface area at top water level (in square metres or square kilometres).

Explanatory Memorandum to ‘The Reservoirs Act 1975 (Capacity, Registration, Prescribed Forms etc.) (Wales) Regulations 2016’

This Explanatory Memorandum has been prepared by the Department for Economy, Skills and Natural Resources and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister’s Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Reservoirs Act 1975 (Capacity, Registration, Prescribed Forms etc.) (Wales) Regulations 2016.

I am satisfied that the benefits outweigh any costs.

Carl Sargeant AM
Minister for Natural Resources
29 January 2016

1. Description

The Reservoir Act 1975 was introduced to enforce adequate safety provisions for reservoirs. However, this Act was conceived in an era where there was little information available on risk from individual reservoirs. Advances in mapping and data now allow the enforcement authority, Natural Resources Wales (NRW), to rank reservoirs by their level of risk to human life. This means that the full suite of the Reservoirs Act 1975 Regulations, which is based on volume of water as opposed to level of risk, is disproportionate for low risk Large Raised Reservoirs (LRRs).

The Reservoir Act 1975 currently applies to all reservoirs with a capacity of more than 25,000 cubic metres (roughly equivalent to 10 Olympic-sized swimming pools) above the level of the natural ground. The Flood and Water Management Act 2010 amends the Reservoirs Act 1975 to introduce new arrangements for reservoir safety, allowing for a risk-based approach to the regulation of reservoirs in place of the prescriptive (volume-based) approach in the Reservoir Act 1975 to ensure appropriate measures are in place to protect the public from a reservoir breach.

The Flood and Water Management Act 2010 allows for the extension of regulation to smaller reservoirs where risks to the public exist; hence, it is proposed that the 'threshold' capacity for regulation should be reduced to 10,000 cubic metres and above. This is based on a general consensus within the dam engineering profession, which suggests that 10,000 cubic metres represents the lowest level that could pose risks to the general public (i.e. anything below this level would not pose risk to human life).

This SI sets out in regulations the following:

- how to calculate capacity for the purposes of the Reservoirs Act 1975;
- the information about a large raised reservoir that is to be registered, notification of changes to, and the keeping and inspection of, the Welsh register;
- the making and content of reports by NRW to the Welsh Ministers;
- the form of record to be kept for a high-risk reservoir and the information to be given in that record;
- the form of certificates and reports of engineers and the form of directions of engineers;
- the information to be provided by undertakers when intending to construct or bring back into use a large raised reservoir; and
- the making of reports by undertakers to NRW in relation to incidents relating to the uncontrolled release of water from a large raised reservoir where emergency measures are taken.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

There are no matters of special interest to the Constitutional and Legislative Affairs Committee.

3. Legislative background

These Regulations will be made under sections A1(4), 22 and (2C) to (2E), 3(1), 5,11, 20(1) and 21(1) and 21B of the Reservoirs Act 1975.

Powers under the Reservoirs Act 1975 initially vested in the Secretary of State for Wales, so far as exercisable in relation to Wales, and were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1999/672). They now vest in the Welsh Ministers by virtue of section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

These Regulations are subject to approval by the National Assembly by the negative resolution procedure under section 5 of the Reservoirs Act 1975.

4. Purpose & intended effect of the legislation

The overall aim of this SI is to ensure the safety of the public from an uncontrolled release of water from a reservoir by imposing statutory obligations upon undertakers. The aim of the amendments to the Reservoirs Act 1975 as set out in Schedule 4 to the Flood and Water Management Act 2010 is to introduce a risk based approach to reservoir safety.

The intent of this legislation is:

- to define a process for calculating the capacity of a large raised reservoir;
- to set out the information that is required by NRW for a large raised reservoir to be registered, this also includes setting out how and when changes to recorded information needs to be notified to NRW and where the Welsh register of large raised reservoirs is kept;
- to set out when NRW should make reports to the Welsh Ministers on undertaker compliance with the Reservoirs Act 1975 and what, as a minimum should be included within these reports;
- to provide forms for undertakers to record information about their reservoir including water levels and depths, leakages and settlement of walls or other works;
- to provide forms for use by engineers for providing certificates, reports and directions;
- to provide the information that is required by undertakers when intending to construct or bring back into use a large raised reservoir; and
- to set out the requirements for making reports by undertakers to NRW in relation to incidents relating to uncontrolled releases of water from a large raised reservoir where emergency measures are taken.

Defining capacity

The Regulations will set out a number of points clarifying how to calculate the capacity of a reservoir for the purposes of the Reservoirs Act 1975. The capacity that is important is the volume of water and silt that could escape from a reservoir in the event of an uncontrolled release. It is considered that this is the maximum volume that can be stored within the reservoir and is related to the top water level as defined by the lowest fixed spillway crest.

In defining the calculation of capacity this will include:

- The escapable volume of water within the reservoir.
- The escapable volume of the reservoir is assessed at the time of construction or any subsequent enlargement, whether by raising the reservoir structure(s) or excavating the bed of the reservoir.
- Silt or other material that accumulates on the bed of a reservoir within the raised volume is included in the calculation of capacity.
- This is to apply to all reservoirs whether impounding or non-impounding, online flood storage reservoirs and offline flood storage reservoirs.

The following will be excluded:

- Any volume of the reservoir below the lowest natural ground level.
- Any volume within a reservoir that cannot escape over natural ground within a reservoir.

Registration requirements:

Regulations 4, 5 and 6 set out the following:

- the information required when registering large raised reservoirs with NRW
- the timing in which information must be provided when registering reservoirs, or after changes are made to reservoirs
- changes to information held on the register
- the location of the register

Schedule 1 of this SI sets out the information undertakers should provide to NRW to be held on the Welsh register of large raised reservoirs.

Those reservoirs over 25,000 cubic metres in capacity and, therefore, currently captured under the Reservoirs Act 1975 will have the full information required in terms of registration documentation. This will already be registered with NRW.

Initially, when registering reservoirs with a capacity between 10,000 and 25,000 cubic metres they will only be asked to provide basic information prior to the reservoir being designated. Any reservoirs designated as not high risk will not be required to have the full inspection regime and, therefore, undertakers will not be required to provide certificates of inspections.

As the enforcement authority for reservoirs, NRW are required to keep and maintain a register of large raised reservoirs which the Regulations set out will be kept at the principle office of NRW.

NRW reports

Until the creation of NRW in April 2013, biennial reports were made by the Environment Agency and covered England and Wales, providing information on undertaker compliance with the Reservoirs Act 1975.

Following the creation of NRW, they now become responsible for providing these reports, on a two yearly basis.

These reports must include:

- the number of large raised reservoirs that have been registered;
- the steps (if any) that NRW has taken to ensure undertakers of a high risk reservoir have observed and complied with the requirements of the Reservoirs Act 1975; and
- where NRW is an undertaker for any large raised reservoir, a statement as to—
 - the number of large raised reservoirs for which it is the undertaker for; and
 - any steps it has taken to observe and comply with the requirements of the Reservoirs Act 1975.

Prescribed forms

Schedules 2 to 6 of this SI provide the forms to be used by undertakers to record information and by engineers to provide certificates, reports and direction to undertakers.

Schedule 7 provides a form for undertakers to use when they intend to construct or bring back into use a large raised reservoir.

The intent of these forms is to provide clarity on the information required and consistency of information and format by which it is supplied.

Undertaker reports to NRW

This SI sets out the requirements for undertakers to report to NRW on any incident which results or could result in an uncontrolled release of water from a large raised reservoir and what emergency measures have been taken to prevent further release of water and minimise danger to human life. The Regulations set out the timings of reports to include a preliminary report as soon as practicable after the event and commencement of emergency measures and a full report six months later. Lessons learnt from such incidents, or near miss incidents are vital learning opportunities for the industry. The Regulations also set out what will be included within the preliminary and final reports.

Impacts

The Regulations within this SI relate to all large raised reservoirs with a capacity of over 10,000 cubic metres which will be included once Schedule 4 to the Flood and Water Management Act 2010 is fully commenced, even those where undertakers have been informed that they are not high risk. The Regulations setting out how to calculate capacity of a reservoir is required to confirm that a reservoir is over 10,000 cubic metres and, therefore, should be included on the register.

The biggest impact on undertakers will be the requirement to register, particularly for undertakers of reservoirs between 10,000 and 25,000 cubic

metres that have not previously been included within the register. NRW are working on guidance for these undertakers, and once the SI has been made, will begin a campaign to inform potential undertakers.

Risks of not implementing

Should these new Regulations not be implemented smaller, high risk reservoirs would not be brought under legislation and there would be no deregulation of those reservoirs that are deemed not to have a high risk to human life.

Not commencing Schedule 4 to the Flood and Water Management Act 2010 could result in large raised reservoirs in locations where they pose no harm to human life if a breach occurred remaining fully regulated, whilst smaller reservoirs in key locations, therefore, posing a huge risk if an uncontrolled release were to occur would be left without formal monitoring and inspection.

Without this SI there will be no set process for registering large raised reservoirs with NRW, calculating capacity, NRW reporting to Welsh Government or undertakers reporting incidents to NRW.

There will also be no requirement to use consistent forms prescribing the information to be used by undertakers and engineers, therefore, no consistency in the information provided.

5. Consultation

A Regulatory Impact Assessment (RIA) has been completed alongside this Explanatory Memorandum.

Details of the consultation are included within the RIA.

PART 2 – REGULATORY IMPACT ASSESSMENT

Options

There are only 2 options in terms of implementing these amendments to the Reservoirs Act 1975 as set out in Schedule 4 to the Flood and Water Management Act 2010; do nothing or bring into force the provisions.

Do nothing: this would see none of the provisions with Schedule 4 to the Flood and Water Management Act 2010 enacted. This would not bring the smaller reservoirs under legislation and not deregulate those reservoirs that are deemed not to have a high risk to human life. It would also not allow for regulations to be made to set out the process for calculating capacity, requirements for registration or provide consistent forms for use by undertakers and engineers.

Option 1: Bring into force the provisions of Schedule 4 to the Flood and Water Management Act 2010 to reduce the capacity of a large raised reservoir to those larger than 10,000 cubic metres, bring in a designation process and allow for regulations to be made including those around calculating capacity, registration, reporting and the use of specific forms.

Costs & benefits

Costs:

Do nothing: The 'do nothing' option would see no new regulations regarding reservoir safety as proposed by Schedule 4 to the Flood and Water Management Act 2010 made meaning no additional costs to undertakers. However this would also see no deregulation of large raised reservoirs deemed not to be at high risk and therefore no benefit to those undertakers of reservoirs unlikely to cause harm to life.

Option 1: Bringing into force the provisions of Schedule 4 to the Flood and Water Management Act 2010 - this would allow for the regulations to be made around registration requirements, calculation of capacity, reporting and forms for reports/certificates.

NRW have confirmed that initially they will not be making any charges to undertakers for registration of a reservoir as they consider this could be a barrier to registration and therefore compliance with the Act. Therefore no costs associated with registration of reservoirs with a capacity of 10-25,000 cubic metres which will come under the Reservoirs Act 1975 once Schedule 4 to the Flood and Water Management Act 2010 is fully commenced

These regulations should not bring in any additional costs to undertakers. Costs will only be incurred where the employment of a qualified civil engineers is required for a high risk reservoir as set out in The Reservoirs Act 1975 (Exemptions, Appeals and Inspections) (Wales) Regulations 2016.

There are currently 228 large raised reservoirs registered with NRW in Wales (with a capacity of over 25,000 cubic metres) with an additional 160 expected to be added with a capacity of over 10,000 cubic metres.

Benefits

These regulations ensure that there is a consistent way of registering large raised reservoirs, calculating capacity and recording information.

The regulations around reports from NRW to the Welsh Minister ensure that the compliance of undertakers with the Reservoirs Act 1975 is recorded.

The regulations around reports from undertakers to NRW on incidents ensure that NRW are made aware of incidents which result in, or could result in an uncontrolled release of water. The regulations set out that a requirement for a preliminary and final report. This will provide initial information about the information and then a fuller report where lessons learnt can be identified.

Consultation

Welsh Government jointly consulted with Defra on amendments to the Reservoirs Act 1975 through a 12 week public consultation between 23 February and 17 May 2012. This consultation sought views on the various different amendments brought about by Schedule 4 to the Flood and Water Management Act 2010. 72 responses were received to this consultation which included responses from local authorities, environmental bodies, agricultural bodies, professional bodies (such as Institution of Civil Engineers), consultants, utility companies, representative bodies (such as RSPB) and individuals (predominantly panel engineers).

The consultation set out a proposed approach to clarifying how to calculate the capacity of a large raised reservoir for the purposes of the Act. The responses stated that in calculating the capacity, it should only include material that could escape from the reservoir in the event of an uncontrolled release, which could include silt if mobilised. Only water, silt or other material that could not escape would be excluded from the capacity calculation.

The consultation set out timings and the information to be required for the registration of a large raised reservoir and asked respondents three questions around the proposals. Whilst generally supportive, there were questions raised around the timings to register or inform NRW of changes. It was decided that the 28 days proposed was appropriate and consistent with other sections of the amended Reservoirs Act. 1975.

Whilst legislation allows NRW to charge for registration of large raised reservoirs, at this time NRW have agreed not to make any charges as this could be seen as a barrier to registration for undertakers of reservoirs over 10,000 cubic metres to be included within the Reservoirs Act 1975 for the first time.

There was no public consultation question around when reports by NRW will be required by Welsh Ministers and what these reports should contain. These reports contain information around undertaker compliance with the Act. These reports have always been provided on a biennial basis by the Environment Agency covering Wales and England. The 2013-15 reporting period is the first occasion that NRW will provide this report for reservoirs only in Wales.

There was no public consultation question around the inclusion of prescribed forms that are included within the schedules to these regulations.

The consultation asked respondents whether they agreed with the proposal to require a specific person to report incidents which affected or could affect the safety of the reservoir. There was general agreement for this proposal. By bringing in a six month time limit for completion of the final report, this will allow for lessons to be learnt from incidents or near misses quickly.

A copy of the summary of responses to this consultation can be found on the [Welsh Government website](#)

A second consultation was carried out in Wales only from 18 June to 13 August 2013 to discuss options for commencing Schedule 4 to the Flood and Water Management Act 2010. The original joint consultation had put forward a 2 phased approach to commencement to firstly introduce the amendments to the Reservoirs Act 1975 to all reservoirs currently registered (with a capacity of over 25,000 cubic metres) and then to bring in the reduction to 10,000 cubic metres. This approach was proposed prior to the creation of NRW in April 2013 and was suggested in order to allow NRW as the enforcement authority time to establish and be better equipped to deal with the changes in the legislation. As time progressed in developing this legislation it was deemed that a phased approach was contradictory to Parliament's intent which was to take a risk based approach to reservoir safety. In addition NRW has now been established for over two years and have been working closely with officials to plan and prepare for these changes to come into effect. Responses to the second consultation were in agreement that all of Schedule 4 to the Flood and Water Management Act 2010 in relation to reservoir safety should be commenced in one go.

A copy of the summary of responses to this consultation can be found on the [Welsh Government website](#)

Competition Assessment

There are no expected detrimental effects on competition as the water sector is currently classed as a monopoly utility, therefore no market exists. In addition, the impacts of this legislation will be on all reservoir undertakers who will be required to comply with the safety regime set out in the Reservoirs Act 1975 (as amended).

| The competition filter test | |
|---|---------------------|
| Question | Answer yes or no |
| Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share? | No |
| Q2: In the market(s) affected by the new regulation, | No |

| The competition filter test | |
|--|---------------------|
| Question | Answer yes or no |
| does any firm have more than 20% market share? | |
| Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share? | No |
| Q4: Would the costs of the regulation affect some firms substantially more than others? | No |
| Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation? | No |
| Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet? | No |
| Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet? | No |
| Q8: Is the sector characterised by rapid technological change? | No |
| Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products? | No |

Post implementation review

The regulations provide clarity to the Reservoirs Act 1975 in relation to registration of large raised reservoirs, calculating the capacity of a reservoir for the purposes of the Act, reporting requirements and the provision of forms to be used by undertakers and engineers.

Section 3 of the Reservoirs Act 1975 requires NRW to provide a report on a regular basis to the Welsh Ministers outlining steps that they have taken to enforce compliance with the Act. This will allow for the requirements of the new regulations to be monitored and reviewed. These will be biennial reports.

In addition, Welsh Government will review and report on the impacts of these regulations within 5 years of them coming in to force. This will allow Government to ensure that the policy objectives are being met and having the intended effect and consider whether any further legislation is required. A review and report of the regulations will then be carried every 5 years.

Agenda Item 4.1

National Assembly for Wales Constitutional and Legislative Affairs Committee

CLA647 - The National Training Framework on violence against women, domestic abuse and sexual violence

Background and Purpose

This statutory guidance sets out a National Training Framework for those providing services to victims of violence against women, domestic abuse and sexual violence. The guidance is issued under section 15 of the Violence against women, Domestic Abuse and Sexual Violence (Wales) Act 2015 (“the 2015 Act”) and section 60 of the Government of Wales Act 2006.

Procedure

The procedure for issuing this guidance under section 16 of the 2015 Act is similar to the affirmative procedure used for statutory instruments. The Welsh Ministers must lay a draft before the National Assembly for Wales. In the absence, within a defined period of time, of a resolution of the National Assembly that it does not approve the draft, the Welsh Ministers must issue the guidance.

Scrutiny

Section 15(4)(b) of the 2015 Act requires the Welsh Ministers to state the date on which the statutory guidance takes effect. No such date is provided in the draft. Officials of the Welsh Government have indicated that the date will be stated in the final version of the guidance issued in the event that a resolution is not made. This is not a defect but is drawn to the attention of the Committee for information in accordance with Standing Order 21.7(i).

Legal Advisers

Constitutional and Legislative Affairs Committee

02 February 2016





Llywodraeth Cymru
Welsh Government

www.gov.wales

The National Training Framework on violence against women, domestic abuse and sexual violence:

Statutory guidance under section 15 of the
Violence against Women, Domestic Abuse and
Sexual Violence (Wales) Act 2015 and section 60
of the Government of Wales Act 2006

January 2016

Ministerial foreword

The Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act received Royal Assent on 29 April 2015. It is a landmark law, the first of its kind in the UK. We are very proud of this ground-breaking legislation, and will work hard to make sure that its intentions are delivered in the coming years.

One of the key mechanisms for delivering the Act is the National Training Framework on violence against women, domestic abuse and sexual violence. I am pleased to launch this statutory and supporting guidance which outlines the Framework and its requirements; less than one year after the Act was brought into force.

Those experiencing violence against women, domestic abuse and sexual violence access a range of public services for many reasons. They may be in contact with police about the abuse they are receiving. But all too often this is not the case. It is much more likely that they are in contact with public services about housing issues, require medical attention or are part of the education system. Each of these services must provide a gateway to support for victims and opportunities for early intervention and prevention.

The first of its kind in the United Kingdom, our National Training Framework will offer proportionate training to strengthen the response provided across Wales to those experiencing these issues. It will formalise the requirements of those offering specialist and universal services and raise awareness and understanding of such violence and abuse. It will do this within a national context which ensures the quality of training and the required professional practice is standardised. This will help us to make sure that no matter where a victim lives in Wales, the professional response they receive is consistently good.

I have been grateful for the feedback stakeholders have provided on the National Training Framework through the consultation period. This has offered practical advice to get the Framework right and taken into account the views of survivors who have helped us understand why and where training is required and what the training should cover.

I am confident that this framework, alongside future forthcoming guidance and policy, will transform our response to those affected by all forms of violence against women, domestic abuse and sexual violence. The requirements of the Framework range from increased awareness for all staff, specialist training for relevant frontline workers and professional qualifications for certain key staff.

It marks an important first step in ensuring that, no matter where in Wales a victim lives, they can be confident of finding an effective, empathetic service and response.

Leighton Andrews AM

Minister for Public Services

The Wales National Training Framework on violence against women, domestic abuse and sexual violence.

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1. The language used within the Framework

The National Training Framework on violence against women, domestic abuse and sexual violence addresses all forms of gender-based violence, domestic abuse and sexual violence. However, the Framework is named to ensure a focus – through delivery - on particular forms of violence and abuse which are disproportionately experienced by women and girls. Evidence shows that women disproportionately experience repeat incidents of domestic abuse, all forms of sexual violence and other forms of violence and abuse such as forced marriage and female genital mutilation.

Whilst it is important that this disproportionate experience is acknowledged and communicated through training delivery, the purpose of the Framework is to ensure that professionals are trained to provide an effective response to anyone affected by any form of gender-based violence, domestic abuse and sexual violence. References in this guidance to “violence against women, domestic abuse and sexual violence” or “violence and abuse” should therefore be read to capture all forms of gender-based violence, domestic abuse and sexual violence as defined in section 24 of the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015.

Some forms of violence and abuse which meet these definitions are experienced within family settings and relationships, including same sex relationships, between family members and by men who are abused by women. As such, training for each group within the Framework will acknowledge the disproportionate impact of these forms of violence and abuse on women but will be inclusive of all potential victims.

The specialist subject syllabus will include some training which will focus only, or mainly, on the experience of women and some training may focus only, or mainly, on the experience of men. This will depend on the subject matter of the training and acknowledges that the experience of men and women of these forms of violence and abuse can be different and often requires a different professional response which takes these differences into account.

The National Training Framework requires a nuanced approach to training delivery which provides for effective responses to women and men, accounts for their different experiences and properly addresses their needs. Both the training needs analysis required by this guidance and the wider strategic needs assessment required for the development of local gender-based violence, domestic abuse and sexual violence strategies will assist local areas to offer proportionate and needs-led training.

2. Definitions

Abuse: Physical, sexual, psychological, emotional or financial abuse.

Accreditation: For the purposes of this guidance the term “accreditation” describes authority or sanction to a training course provided by an official body when recognised standards have been met.

“Ask and Act”: A process of targeted enquiry across the Welsh public service in relation to violence against women, domestic abuse and sexual violence and a process of routine enquiry within maternal and midwifery services mental health and child maltreatment settings.

Client: Client is used here as a term to describe a person experiencing violence against women, domestic abuse and sexual violence. The term encompasses the terms “victim”, “survivor”, “service user” and “patient”. Different partners use different words to define their relationship to the person at risk and so the guidance reflects this.

In practical terms it is suggested a person experiencing violence against women, domestic abuse and sexual violence selects the term they prefer, where a term is required. It should generally be possible to use a client’s name rather than other descriptive terms.

Domestic abuse: Abuse where the victim of it is or has been associated with the abuser.

A person is associated with another person for the purpose of the definition of “domestic abuse” if they fall within the definition in section 21(2) or (3) of the Violence against women, domestic abuse and sexual violence (Wales) Act.

Female Genital Mutilation: An act that is an offence under sections 1, 2 or 3 of the Female Genital Mutilation Act 2003 (c. 31).

“Gender-based Violence”

- (a) violence, threats of violence or harassment arising directly or indirectly from values, beliefs or customs relating to gender or sexual orientation;
- (b) female genital mutilation;
- (c) forcing a person (whether by physical force or coercion by threats or other psychological means) to enter into a religious or civil ceremony of marriage (whether or not legally binding);

Harassment: A course of conduct by a person which he or she knows or ought to know amounts to harassment of the other; and for the purpose of this definition:

(a) a person ought to know that his or her conduct amounts to or involves harassment if a reasonable person in possession of the same information would think the course of conduct amounted to or involved harassment of another person, and

(b) “conduct” includes speech;

Independent Domestic Violence Adviser: Trained specialist worker who provides short to medium-term casework support for high risk victims of domestic abuse.

Independent Sexual Violence Adviser: Trained specialist worker who provides short to medium-term casework support for victims of sexual abuse

Local Authority: A county or county borough council.

Public service: Public services are services delivered for the benefit of the public. This can include services delivered through the third sector, through social enterprise or through services that are contracted out.

In the context of the National Training Framework the public service is defined based on an estimate of 'devolved public sector workers' in Wales – this includes the devolved civil service, local authorities, health, education authorities and WGSBs. Although not devolved, Police Authorities are included as they are partly funded by WG. 'Devolved public sector workers' excludes non-devolved civil servants (such as those working for HMRC and the DVLA), military personnel and people employed by Public Corporations (such as S4C and Cardiff Bus etc) in Wales.

Relevant authorities: county and county borough councils, Local Health Boards, fire and rescue authorities and NHS trusts.

Sexual exploitation: Something that is done to or in respect of a person which (a) involves the commission of an offence under Part 1 of the Sexual Offences Act 2003 (c. 42), as it has an effect in England and Wales, or

(b) would involve the commission of such an offence if it were done in England and Wales.

Sexual Violence: Sexual exploitation, sexual harassment, or threats of violence of a sexual nature.

The Act: The Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015.

Violence against women: The experience of gender based violence by women.

3. Executive summary

This document describes and provides guidance on the National Training Framework on violence against women, domestic abuse and sexual violence.

Section 4 of the guidance is issued under section 15 of the Act and outlines specific requirements on relevant authorities (as defined in section 14 of the Act) in relation to the Framework.

The remainder of the guidance is issued under section 60 of the Government of Wales Act 2006 and outlines guidance to assist Relevant Authorities in implementing the National Training Framework as well as to assist interested persons to engage with and benefit from the Framework. References in this document to the main National Training Framework guidance is a reference to the remainder of this guidance.

Those who experience violence against women, domestic abuse and sexual violence are some of the most vulnerable in our society. They utilise a broad range of public services whose staff must have an awareness of the issues and their impact, be skilled to identify the indicators of violence and abuse, engage clients effectively and ensure services are provided to families.

Moreover, those whose profession it is to provide specialist services to victims of such violence and abuse must be expert, offering the highest standard of care and working in services with strong leadership.

The National Training Framework has been mapped against the possible journeys a victim of such violence or abuse could take through public and specialist services. The purpose of this mapping is to work from the broadest needs assessment – ranging from awareness and prevention, to proactive identification, assertive and supportive engagement through to longer term recovery and support. A Framework based on this needs assessment will produce training linked to early and crisis intervention, high risk behaviours and vulnerabilities and longer term support around trauma and complex needs.¹

To ensure a consistent standard of care for those who experience violence against women, domestic abuse and sexual violence and an unfailing standard of service throughout the public service to this client group, the Framework has two main functions:

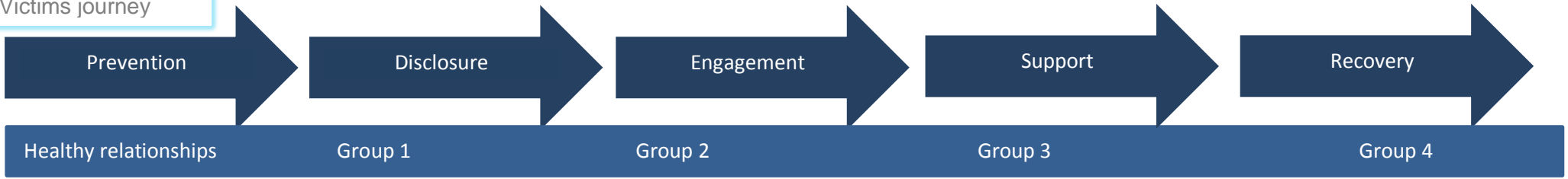
- 1) To provide consistent, proportionately disseminated training for relevant authorities to fundamentally improve the understanding of the general workforce and, therefore the response to those who experience violence against women, domestic abuse and sexual violence.
- 2) To align existing specialist training to further professionalise the specialist sector, to improve consistency of specialist subject training provision nationally and to set core requirements of specialist service provision.

¹ The Welsh Government acknowledge those who experience gender-based violence, domestic abuse and sexual violence may not identify with the term “victim” and may prefer “survivor” or “client”. The Welsh Government use the term “victim” here to describe the experience of abuse and violence but recognises experiences are individual.

The Framework and the content of this document have been developed in partnership with stakeholders and in consultation with those who have experienced or sought help for using abuse and violence. Quotes from service users are used throughout this document to illustrate the purpose and need for the National Training Framework on violence against women, domestic abuse and sexual violence.

The following illustration outlines how the groups within the National Training Framework align to the potential interaction of a victim of violence against women, domestic abuse and sexual violence with the Welsh public service and specialist sector and the purpose such interaction can serve; from prevention and awareness raising through to crisis services.

The Victims journey



Prevention Awareness raising Ask and Act crisis intervention high risk behaviours vulnerabilities recovery

| | | | | | |
|------------------|---|---|--|---|--|
| Public education | All staff, all public bodies, devolved, non devolved, third sector | Those likely to be meeting those experiencing abuse | Those who will provide a service (within a general role) to those experiencing abuse, e.g. | Those who provide specialist crisis intervention (IDVA, Refuge) | Those who provide specialist intervention (Outreach, floating support) |
| | Domestic abuse, sexual violence, Forced Marriage, "Honour" Based Violence, Female Genital Mutilation, slavery, stalking and harassment | | | | |
| | <ul style="list-style-type: none"> • What is it? Who does it affect? • What should be done about it? • Who can help? | "Ask": Broaching the subject | Immediate Safety | | |
| | | Act: Information sharing Signposting/referring | Care pathways and multi agency work | | |
| | | Care pathways and multi agency work | | | |

Group 5: management training

National Occupational Standards

Accreditation

Statutory, mandatory training: safeguarding children, safeguarding vulnerable adults

Group 6 STRATEGIC ENGAGEMENT: Strategy, Policy, Effecting change

General minimum standards (10,000 safer lives)

Specialist service standards for specialist service provision

Improved awareness

Increased disclosure

Improved engagement

Effective support

Long term cessation/shorter abusive relationships

4. Guidance issued under section 15 of the Violence Against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015

This section of the guidance is issued under section 15 of the Act. The majority of the guidance is issued to all relevant authorities as defined in section 14 of the Act². Where the guidance is only to apply to a single, or a particular number of relevant authorities, specific reference is made. Where no reference is made, all relevant authorities must adhere to this guidance.

In accordance with section 17 of the Act relevant authorities, or particular relevant authorities to which specific requirements in this section of the guidance are addressed, must follow the course set out in this section of the guidance.

A relevant authority is not however required to follow this section of the guidance if:

1. It thinks there is a good reason for it not to follow the guidance in particular categories of case or at all,
2. it decides on an alternative policy for the exercise of its functions in respect of the subject matter of the guidance, and
3. a policy statement issued by the authority in accordance with section 18 of the Act is in effect.

Section 18 of the Act provides that the policy statement issued by a relevant authority must set out how the relevant authority proposes that functions should be exercised differently from the course set out in this section of the guidance and the authority's reasons for proposing that different course. The policy statement must be published and a copy sent to the Welsh Ministers.

Section 19 of the Act enables the Welsh Ministers to direct relevant authorities to take any action which the Welsh Ministers consider appropriate for the purpose of securing exercise of functions by the authority in accordance with this section of the guidance where the Welsh Ministers consider that the authority's alternative policy (in whole or in part) is not likely to contribute to the pursuit of the purpose of the Act³. A direction is enforceable by mandatory order on application by, or on behalf of, the Welsh Ministers to the High Court. Failure to follow a mandatory order is contempt of court and is punishable by fine.

Local training plans

Relevant authorities must prepare a training plan which must be submitted to the Welsh Ministers by the 31st March 2017.

² Local Authorities (defined in section 24(1) as councils of a county or county borough in Wales), Local Health Boards, fire and rescue authorities and NHS trusts.

³ The purpose of the Act is defined in section 1 of the act as: to improve – (a) arrangements for the prevention of gender-based violence, domestic abuse and sexual violence; (b) arrangements for the protection of victims of gender-based violence, domestic abuse and sexual violence; and (c) support for people affected by gender-based violence, domestic abuse and sexual violence.

A training plan template will be issued to all relevant authorities by the Welsh Government. The template must be used when drafting the training plan.⁴

Local training plans must either be submitted on a regional basis as per the regional footprints identified under group 2 or as a single relevant authority (see page12).

Where relevant authorities develop training plans upon the regional footprint:

- The local authorities and Local Health Board for each region must elect a Local Authority (“elected authority”) within the regional footprint which will submit the local training plan on behalf of the other relevant authorities within the region.
- The elected authority must nominate a person within the authority that will be a regional lead for co-ordination and implementation of the National Training Framework on violence against women, domestic abuse and sexual violence (“regional lead”). This person will co-ordinate the production of the local training plan.
- Where a regional co-ordinator for violence against women, domestic abuse and sexual violence is in place they should lead this work.
- When producing the local training plan, the regional lead must consult with any Local Authority Domestic Abuse Co-ordinators.
- The Local Health Board, NHS trusts and Fire and Rescue Authority for every region must nominate a person that will lead on the local training plan. The regional lead must consult with this person when producing the local training plan.

Where relevant authorities develop training plans as a single relevant authority:

Each relevant authority must nominate a person that will lead on the local training plan. This person will co-ordinate the production of the local training plan. In preparing the local training plan, relevant authorities must have regard to a local training needs analysis undertaken by the authority (see further below in respect of the local training needs analysis), any needs assessments made in pursuance of the Social Services and Well-being (Wales) Act 2014⁵ and any assessments of local well-being under the Well-being of Future Generations (Wales) Act 2015.

The local training plan must (as a minimum):

- provide a five year delivery plan of training which meets the requirements of the National Training Framework;
- provide details on the steering group/board or partnership which will oversee and monitor delivery of the local training plan;
- identify the local professional or professionals who will lead and co-ordinate the delivery plan;

⁴ The Welsh Government aim to publish this template in September.

⁵ At the time this guidance was issued, the Care and Support (Population Assessments) (Wales) Regulations 2015 had been made under the Social Services and Well-being (Wales) Act 2014. The Regulations state that the first population assessments should be produced by 1 April 2017

- explain how regional training consortia will be established, including the partnership formation based on the Local Health Board regional footprint to meet the requirements of groups 2 and 3 of the Framework.⁶
- address how the regional training consortia will be co-ordinated and sustained;
- provide details on how relevant authorities will implement the requirements in relation to groups 1 to 5 and the specialist subject syllabus as set out below;
- include a quality assurance plan to assess the standards of training offered at a local level and a plan to address any dropping level of quality. Quality Assurance must include learner feedback.

Under section 5 of the Act, a Local Authority and Local Health Board must prepare a local strategy. Under section 6 of the Act, the local strategy must be published by the Local Authority and Local Health Board.

Prior to the development of the local strategy, a Local Authority and Local Health Board must publish their local training plan on their website. The local training plan must be published within 12 weeks of the 31st March 2017 (23rd June 2017).

When a Local Authority or Local Health Board has a local strategy, the local training plan must form part of this document⁷.

NHS Trusts and Fire and Rescue Authorities must publish their local training plan on their website. The local training plan must be published within 12 weeks of the 31st March 2017 (23rd June 2017).

Local training needs analysis

The local training plan must be based upon a local training needs analysis, which in turn, is based around the requirements of each group within the National Training Framework.

The training needs analysis must include (as a minimum):

- consideration of the experience of adult victims, children and perpetrators of violence against women, domestic abuse and sexual violence as defined by the Act;
- an outline of the training delivered locally which pre-dates the introduction of the National Training Framework but which addresses the learning outcomes within the Framework and the reach of this training;
- an outline of the gaps in local training provision, based around the requirements of the Framework;
- Consideration of the local population and how this affects local professional training need (including delivery of training in both the English and Welsh language);
- how many professionals within the Local Authority fall into each group.

⁶ This is required even where an authority works alone to develop a training plan and must align to the supplementary delivery model linked to “Ask and Act. See Welsh Government guidance on “Ask and Act”.

⁷ Local authorities and Local Health Boards must have a local strategy by May 2018.

Executive responsibilities

The National Training Framework must be incorporated into the responsibilities of a member of the relevant authorities strategic or executive Board.

| Relevant authority | Responsible member |
|---------------------------|--|
| LHB | A member of the Executive Board (chair of the Safeguarding Board/Director with corporate responsibility for Safeguarding). |
| LA | Chief Executive or Director (with knowledge/corporate responsibility for safeguarding or HR). |
| NHS Trust | A member of the Executive Board (chair of the Safeguarding Board/Director with corporate responsibility for Safeguarding). |
| Fire and Rescue Authority | Chief or Assistant Chief Fire Officer |

- The responsible member will have responsibility for the oversight of implementation and monitoring of the National Training Framework and for organisational co-ordination of the related work. The responsible member must:
- Update the relevant board on issues relating to the National Training Framework on violence against women, domestic abuse and sexual violence;
- Report to the relevant board progress against the training plan;
- Consider, with the relevant board, how the National Training Framework can be integrated with corresponding training arrangements related to safeguarding.

The annual report

Relevant authorities are required to take reasonable steps to deliver the objectives specified in their local training plan. In respect of each financial year, relevant authorities must prepare an annual report of the progress they have made regionally or locally in delivering the actions specified in the plan.

The annual report must be submitted to the Welsh Ministers within eight weeks of the end of the financial year to which the report relates, the first being due for the 2017-2018 financial year.

The annual report must:

- outline the training delivered within the past year and how that measured against the objectives of the local training plan and addresses the requirements in relation to each group of the National Training Framework as set out below in this section of the guidance;
- report completion rates of training for all groups within the Framework;

- report on the training offered locally (to include the numbers of professionals reached, from which professional groups, in relation to which subjects);
- outline how training was delivered and demonstrate that the training courses offered or funded by the Welsh Government were considered to meet the delivery requirements.
- provide a learner-led evaluation of locally delivered training and an action plan to address any identified issues;
- identify whether the local training plan remains fit for purpose at the end of the reporting period and outline any required delivery changes to ensure planned progress.

The annual report will be used to monitor activity against the national and regional aims of the National Training Framework on violence against women, domestic abuse and sexual violence. The report will be used to identify concerns regarding progress and to monitor the training objectives likely to be included in the National Strategy.

Relevant authorities must also adopt the following approach in relation to each group within the National Training Framework.

Group 1

Relevant authorities are required to provide training which meets the learning outcomes for group 1 of the National Training Framework (as set out in the main NTF guidance) to all staff within the following timeframes:

50% of a relevant authority's staff must be trained within 12 months of the date of issue of this guidance.

100% of a relevant authority's staff must be trained within 24 months of the date of issue of this guidance.

Relevant authorities are required to incorporate training which meets the learning outcomes for group 1 of the National Training Framework into induction training to ensure newly appointed staff have access to the training. This should be implemented within 6 months of the date of issue of this guidance.

Relevant authorities are required to monitor quarterly completion rates of this training and undertake activity to ensure all staff complete the training within the specified time period.

Relevant authorities are required to provide refresher training which meets the learning outcomes for group 1 of the National Training Framework every three years.

Group 2

Local Authorities and Local Health Boards are required to deliver training to meet the outcomes of groups 2 and 3 of the National Training Framework (as set out in the main NTF guidance) through regional training consortia aligned to the Local Health Boards regional footprint, as follows:

- The Aneurin Bevan Health Board with the Newport, Torfaen, Blaenau Gwent, Caerphilly, and Monmouth Local Authorities.
- The Cardiff & Vale University Health Board with the Cardiff and Vale of Glamorgan Local Authorities
- The Abertawe Bro Morgannwg University Health Board with Swansea, Neath Port Talbot and Bridgend
- Hywel Dda Health Board with Ceredigion, Carmarthenshire and Pembrokeshire Local Authorities
- Cwm Taf Health Board with Rhondda Cynon Taf and Merthyr Local Authorities
- Betsi Cadwaladr University Health Board with Anglesey, Gwynedd, Conwy, Denbighshire, Flintshire and Wrexham Local Authorities
- Powys Teaching Health Board and Powys Local Authority.⁸

These consortia must give consideration to the inclusion of, and demonstrate consultation with, the local Fire and Rescue Authorities and NHS Trusts for inclusion within the regional consortia.

These consortia must also invite specialist services (to include those in the third sector), police and probation to participate in the regional consortia.

The Welsh Ambulance Service Trust is required to incorporate training for groups 1,2,3 and 6 into their existing learning and development framework and submit to the Welsh Ministers their own training plan, training needs analysis and annual plan based on this.

Relevant authorities are required to ensure that any members of the regional consortia from relevant authorities are trained on the Welsh Government endorsed and provided Train the Trainer course. Reasonable steps should also be taken so that other members of the consortia receive the same training.

Local Authorities and Local Health Boards are required to provide training (via the regional training consortia) which addresses the learning outcomes for group 2 of the National Training Framework to professional groups which meet the criteria outlined for group 2 of the National Training Framework (as set out in the main NTF guidance), aligned to the local training plan.

Relevant Authorities are required to provide refresher training which meets the learning outcomes for group 2 of the National Training Framework every two years.⁹

Group 3

Relevant authorities are required to ensure a proportionate number of members of the regional consortia from Relevant Authorities are trained on the Welsh

⁸ This footprint mirrors that used to implement the training requirements of the Social Services and Wellbeing (Wales) Act 2014.

⁹ Section 7 (page 31) outlines the formats in which this can be offered to address capacity issues within organisations.

Government endorsed and provided Train the Trainer course for group 3 of the NTF (as set out in the main NTF guidance).

Relevant authorities are required to provide training (via the regional training consortia) which addresses the learning outcomes for group 3 of the National Training Framework to professional groups which meet the criteria outlined for group 3 of the National Training Framework (see the main NTF guidance), aligned to the local training plan.

Relevant authorities are required to provide refresher training which meets the learning outcomes for group 2 of the National Training Framework every two years.

Group 4

Relevant authorities are required to ensure any employee, and to take reasonable steps to ensure any worker, currently working as an Independent Domestic Violence Advisor, Independent Sexual Violence Advisor, outreach worker, project worker, case worker, floating support worker, refuge worker, key worker, crisis worker, advocacy support worker, children and young peoples worker, perpetrator group work facilitator or any other role which provides specialist support to those experiencing violence against women, domestic abuse and sexual violence is trained to an appropriate level within 12 months of issue of this guidance (as outlined in the NTF). Guidance on appropriate training courses is provided in section 3 of the main NTF guidance.

Relevant authorities are required to ensure any employee, and to take reasonable steps to ensure any worker, recruited to work as an Independent Domestic Violence Advisor, Independent Sexual Violence Advisor, outreach worker, project worker, case worker, floating support worker, refuge worker, key worker, crisis worker, advocacy support worker, children and young peoples worker is trained to an appropriate level within 12 months of the commencement of their employment.

Relevant authorities are required to ensure any employee, and to take reasonable steps to ensure any worker, working as an Independent Domestic Violence Advisor, Independent Sexual Violence Advisor, outreach worker, project worker, case worker, floating support worker, refuge worker, key worker, crisis worker, advocacy support worker, children and young peoples worker, perpetrator group work facilitator or any other role which provides specialist support to those experiencing violence against women, domestic abuse and sexual violence completes an appropriate Continuous Professional Development programme, relevant to the role per year (as detailed below).

The Continuous Professional Development requirements for specialist workers should be applied on a pro rata basis as follows:

| Professional contracted hours | Continuous Professional Development requirement |
|--------------------------------------|--|
| 28 hours – 37.5 hours per week | 35 hours CPD per year |
| 17.5 – 27 hours per week | 21 hours CPD per year |
| 0 – 17 hours per week (to include | 10.5 hours CPD per year |

| | |
|-------------------------------------|--|
| sessional and out of hours workers) | |
|-------------------------------------|--|

The Continuous Professional Development of these workers can be evidenced through a personal development plan which incorporates any of the following with a corresponding time allocation:

Formal learning and development accessed through training courses (whether accredited or not). Where appropriate these courses should be aligned to the Specialist Subject Syllabus;

Conference attendance;

Opportunities offered “in house” such as guest speaker attendance at team meetings, shadowing, and team learning events.

These personal development plans should be submitted as an appendix to the annual report. A template document for this purpose will be issued in due course.

Group 5

Relevant Authorities are required to ensure any employee, currently working as a specialist violence against women, domestic abuse and sexual violence community-based service manager, refuge manager, team leader or in a lead/Senior role is trained to an appropriate level, as outlined for group 5 of the Framework (see main NTF guidance).

Relevant Authorities are required to ensure any employee, recruited to work as a specialist violence against women, domestic abuse and sexual violence community based service manager, refuge manager, team leader or in a lead/Senior role is trained in an appropriate course within 12 months of the commencement of their employment.

The specialist subject syllabus

Relevant Authorities are required to ensure that all training offered by their organisation, which relates to any form of violence against women, gender-based violence, domestic abuse or sexual violence meets the learning outcomes of the relevant unit of the specialist subject syllabus.

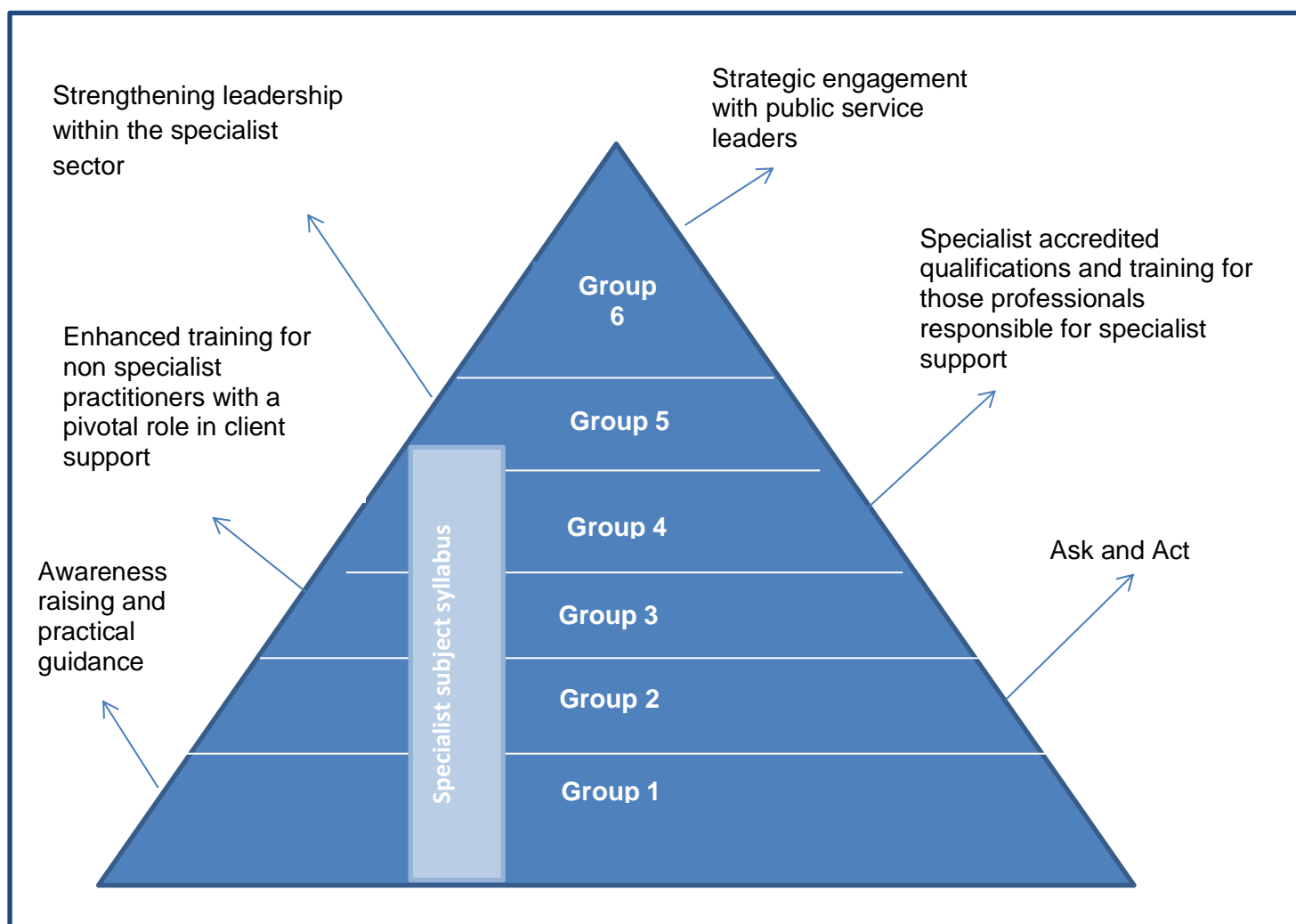
Relevant Authorities are required to ensure that all training attended by employees of their organisation on any form of violence against women, gender-based violence, domestic abuse or sexual violence meets the learning outcomes of the relevant unit within the specialist subject syllabus.

5. The National Training Framework on violence against women, domestic abuse and sexual violence.

Group facilitator: "What do professionals need to know or do better?"

Service user: "Everything. Care, awareness, education, know what organisations are available out there, not to judge, listen, multi agency working, resourcing, choice of gender, protection, trust, victim support, believe, understand"¹⁰.

The National Training Framework is formed of six groups and a specialist subject syllabus. Although there is some progression within the Framework, generally each part of it relates to a specific group of professions who, following training will form part of a workforce working towards a collective aim; to improve the response to those who have experienced violence against women, domestic abuse and sexual violence.



¹⁰ Comments from service users during a service user consultation session on the National Training Framework

An outline of the target audience, content, learning outcomes, learner competencies and National Occupation Standards which should be addressed for each group of the National Training Framework are provided within this document.

The Framework is essentially in two parts:

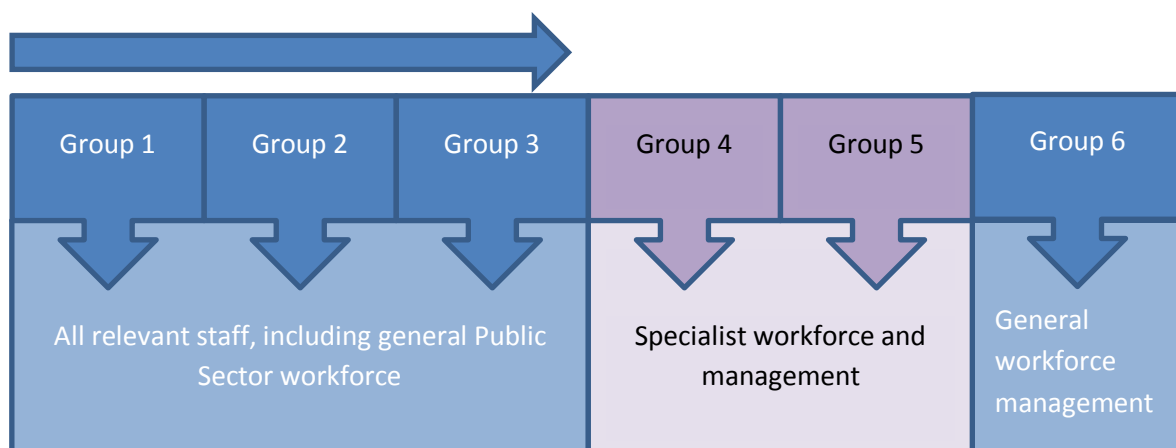
- 1) Consistent, proportionately disseminated training for relevant authorities to fundamentally improve the understanding of the general workforce and, therefore the response to anyone who experiences forms of violence against women, domestic abuse and sexual violence.
- 2) Alignment of existing specialist training to further professionalise the specialist sector, to improve consistency of specialist subject training provision nationally and to set core requirements of specialist service provision (Groups 4 and 5).

The content to be provided to groups 1, 2 and 3 of the Framework builds on that provided to preceding groups, i.e. those in group 2 should complete the training requirements for group 1 and those in group 3 will generally be expected to achieve the training outcomes for group 2.

Together these groups will be able to recognise violence and abuse and provide enhanced support to those experiencing violence against women, domestic abuse and sexual violence.

Groups 4 and 5 of the Framework include only those whose specialism is violence against women, domestic abuse and sexual violence or to specialist subject areas.

Group 6 includes relevant authority leadership to support improvement of the organisational response to those experiencing violence against women, domestic abuse and sexual violence, either as members of the workforce or as service users.



Audience

The Framework, and the guidance contained in this document, is primarily aimed at the Relevant Authorities named in section 14 of the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015, i.e. Local Authorities, Local Health Boards, fire and rescue authorities and NHS trusts. However, the Welsh Government strongly encourages participation within the Framework by all

organisations who interact with those at risk or who experience violence and abuse who may therefore also find the guidance contained in this document useful.

Supporting local implementation

The aim of the National Training Framework on violence against women, domestic abuse and sexual violence is to create a consistent and quality assured approach to training on these issues. In order to meet this aim, the framework incorporates central and localised delivery which offers national standards of delivery alongside a flexible approach to local implementation. A summary of these delivery methods is below:

Localised delivery

- **Local training needs analysis**

A local training needs analysis should be compiled immediately prior to drafting the training plan. The training needs analysis should consider the training requirements as outlined within each group of this Framework and map these against any existing training on offer locally. The training needs assessment should also outline the numbers of professionals who require training.

Where existing training fulfils only some of the learning outcomes for each group these courses should be developed to meet the requirements fully. Where existing training is identified which fully meets the requirements, the training needs assessment should specify the reach of that training and use this information when developing the training plan.

It is advised that anyone who was trained on a pre-existing course more than two years ago be offered training through the regional training consortia to ensure the implementation of “Ask and Act” has impetus created through knowledgeable professionals who understand the case for change.

As they become available, the training needs analysis should also be informed by the assessment of care and support needs in the area (the population assessment) under the Care and Support (Population assessments) (Wales) Regulations 2015 and the broader assessment of the economic, social, environmental and cultural well-being of the area (the assessment of local well-being) as defined in the Well-being of Future Generations (Wales) Act 2015. It is noted that these will not be available in early phases of National Training Framework implementation.

- **Training plans**

The training plan should be developed based on an understanding of the training needs analysis and outline of how each area will implement the National Training Framework.

This plan should demonstrate how the National Training Framework will be implemented locally whilst ensuring that local strategic aims and good practice is

taken into account and pre-existing training activity is submitted to satisfy the National Training Framework requirements.

The local training plan should be overseen and monitored by a steering group. Such a group would best sit within existing local structures to ensure appropriate governance and would form an example of an operational partnership referenced in the statutory guidance issued under section 15 of the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 on effective Multi Agency Collaboration. In terms of overarching governance arrangements the steering group should feed into the strategic board required by the Multi Agency Collaboration guidance. Where an existing Board is utilised for this purpose, Safeguarding Boards are likely to be the most suitable governance partnerships as they draw together senior leadership in relevant fields and provide an opportunity for strong integration of the National Training Framework with other training requirements under the Social Services and Wellbeing Act (2014).

Where relevant authorities have separate Safeguarding Boards for children and vulnerable adults, monitoring of local implementation of the National Training Framework should be allocated to one of these but considered relevant to both. Boards should communicate and cross report with each other.

In due course the training plan should form an integral part of the local strategy jointly prepared by local authorities and Local Health Boards under section 5 of the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015.

When developing their local training plans relevant authorities should include service user engagement. Local training plans will be enhanced where they are subject to service user advice and scrutiny. This will be particularly important in relation to the prioritisation and planning of local training provision.

Whilst centralised resource for each training activity will be provided separately, the Social Care Workforce Development Programme (SCWDP) grant circular will require consideration and local integration of training linked to the Social Services and Wellbeing Act (2014) and the Violence against Women, Domestic Abuse and Sexual Violence Act (2015) from 2016-2017.

- **Regional training consortia**

Training for groups 2 and 3 of the National Training Framework will be delivered through regional training consortia. Regional training consortia should be formed against the Local Health Board regional footprint.

The consortia will be formed of nominated professionals from within the Local Health Board, each Local Authority and the relevant Fire and Rescue Authority. Local specialist services, police and probation should also be invited to participate in the regional consortia to address identified local need and utilise local expertise.

In order to ensure that those within the regional training consortia deliver training regularly enough to ensure they retain the required knowledge and maintain a level of confidence, it is recommended that members of the training consortia are released

from their core duties to deliver training to group 2 between 3 and 6 times per year and that those trained to deliver training to group 3 are released to deliver training 5 times per year.

Further guidance on the role of the regional consortia is available in section 7.

- **A learning outcome based approach**

Learning outcomes are clearly outlined for each group of the Framework and authorities should look to work towards meeting these outcomes through any training or development product used for this group.

Within the Framework, an accredited suite of units forms the first tranche of a learning outcomes based syllabus of specialist subjects to guide local training delivery.

Centralised, funded delivery

A far-reaching, national programme of training will be funded to ensure that within each region in Wales there is a cohort of practitioners with the skills and knowledge to support regional delivery of training which meets the requirements for group 2 and 3 of the National Training Framework. Such an approach supports regional priorities and flexible implementation within local and organisation specific infrastructure.

- **Provision of training products**

The Welsh Government, in partnership with stakeholders has developed nationally available training products to meet the outcomes for specific groups of the National Training Framework.

A 45 minute eLearning package, designed around the outcomes of group 1 of the National Training Framework will be available on the Learning@NHSWales portal and the All Wales Academy, accessible to all public service staff and available free of charge.

The Strengthening Leadership Series – a series of short films related to strategic leadership and violence against women, domestic abuse and sexual violence are available on the Welsh Government YouTube channel. These films satisfy the outcomes for group 6 of the National Training Framework.

Time frame

Initial implementation planning of the framework is based over five years. Towards the end of this period, national reach and effectiveness will be assessed and further national and regional planning will take place.

Alignment to other frameworks and learning models.

Several other frameworks and learning models exist which offer alignment opportunities for delivery of the National Training Framework. These tend to be

linked to safeguarding and are summarised here and in the table in appendix 2 which outlines potential opportunities for integration, which can be explored locally. There is also further guidance available on addressing the overlap between the National Training Framework on violence against women, domestic abuse and sexual violence and existing Child Safeguarding training on page 45.

Should such an integration approach be taken, it is important that violence against women, domestic abuse and sexual violence are not **only** presented as issues of child protection or safeguarding vulnerable adults. The purposes of the National Training Framework on violence against women, domestic abuse and sexual violence is to acknowledge these issues as significant social care, public health and social justice issues, directly affecting a significant proportion of the Welsh population, including children, young people and older people, as primary issues.

Should other frameworks be preferred to deliver elements of the National Training Framework on violence against women, domestic abuse and sexual violence and elements of other learning models, it is imperative that the learning outcomes of both frameworks are specified and delivered.

The Safeguarding Children and Young people: Roles and Competences for Healthcare Staff 2014 Intercollegiate document.

This document outlines a competency framework for healthcare staff which focusses on increasing professional capacity to recognise child maltreatment and to take effective action as appropriate. The competences are a combination of skills, knowledge, attitudes and values which are required for safe and effective practice.

The Framework identifies five levels of competence, and gives examples of groups that fall within each of these. The levels are as follows:

Level 1: All staff including non-clinical managers and staff working in health care settings

Level 2: Minimum level required for non-clinical and clinical staff who have some degree of contact with children and young people and/or parents/carers

Level 3: Clinical staff working with children, young people and/or their parents/carers and who could potentially contribute to assessing, planning, intervening and evaluating the needs of a child or young person and parenting capacity where there are safeguarding/child protection concerns

Level 4: Named professionals

Level 5: Designated professionals

Care Council for Wales Continuing Professional Education and Learning: A Framework for social workers in Wales

The Care Council for Wales is the social care workforce regulator in Wales and is responsible for promoting and securing high standards across the social services and social care workforce.

Several areas of the work of the Care Council for Wales offer integration or delivery options for elements of the National Training Framework on violence against women,

domestic abuse and sexual violence. Moreover, the work already underway in local areas, in relation to activity linked to the role of the Care Council may assist in discharging the requirements outlined in this guidance. Some potential examples to explore at a local level are below:

Basic awareness in Safeguarding Training Pack

A training pack is available for use across each of the Local Authorities to provide basic safeguarding information and development. This training pack is available for use in the induction of Local Authority social care workers, social care workers and volunteers in third sector organisations and for the induction of social care staff in the independent care sector in Wales. This training resource will be amended to convey a basic awareness of violence against woman and domestic violence.

The Social Care Workforce Development Programme (SCWDP) Plan

The Social Care Workforce Development Programme grant is provided to local authorities to support social care workers to further develop skills and knowledge. The award of the grants is based on rigorous planning related to workforce development. It is suggested that local areas incorporate the requirements of the National Training Framework into their Social Care Workforce Development Programme (SCWDP) planning to ensure opportunities for cross pollination are exploited, duplication is limited and existing training needs analysis is utilised.

As outlined later in this document, separate resourcing for training to meet the requirements of the National Training Framework is also planned.

The Continuing Professional Education and Learning (CPEL) Framework

The Care Council for Wales are developing a Continuing Professional Education and Learning (CPEL) Framework for Social Workers in Wales. The overall aims are to improve the standard of social work practice and to support social workers as they progress from being newly qualified to experienced social workers at the top of their profession.

The CPEL Framework describes the minimum arrangements for the continuing professional education and learning of social workers after initial qualification. The requirements of groups 2 and 3 of the National Training Framework align with the ethos and standards outlined in the CPEL Framework and reflect well the existing direction and development of the Social Care workforce.

Diverse and marginalised service users

Training under the Wales National Training Framework on violence against women, domestic abuse and sexual violence includes training on the experience of these issues by any potential or direct victim. It will be delivered within a gendered context which will acknowledge the disproportionate experience of women and girls.

It is acknowledged the experience of violence against women, domestic abuse and sexual violence differs where associated to, or connected to protected characteristics

listed in the Equality Act 2010¹¹. It is important training is on offer in Wales which explores the inter-relationship between the protected characteristics and the experience of gender-based violence, domestic abuse and sexual violence. The specialist subject syllabus of the Framework will offer a specific focus on the protected characteristics and how they can affect vulnerability and risk, increase the impact of abuse and require additional skills and knowledge of the professional.

However, the Welsh Ministers are clear that marginalised groups and those with diverse needs should not be considered as an add-on to any training. An ability to respond to and consider the needs of these individuals must be integral within the skill set of public service teams and as such the content on offer for each group will inter-weave issues of diversity and consider a breadth of individual needs in its presentation.

¹¹ Age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, sexual orientation.

Outcomes

Group 6: Strong leaders creating a culture which acknowledges VAWDASV as public service issues, requiring a quality response

Group 5: Capable, specialist managers, running strong services and managing effective practitioners

Group 4: Expert practitioners able to offer efficient, informed intervention to every referral received

Group 3: Key staff, ready and able to support colleagues and clients when victims of VAWDASV are identified.

Group 2: Skilled practitioners, in the right place, proactively identifying and offering support to victims of VAWDASV

Group 1: A workforce, alert and aware to violence against women, domestic abuse and sexual violence

The National Training Framework learning outcomes and competencies

| Training aim | Proposed learning outcomes: Following completion of this training participants will: |
|---|---|
| <p>Group 1</p> <p>Participants will have heightened awareness of violence against women, domestic abuse and sexual violence</p> | <p>LO1.1: Understand what violence against women, domestic abuse and sexual violence is.</p> <p>The learner can describe forms of violence against women, domestic abuse and sexual violence</p> <p>LO1.2: Recognise the signs of violence against women, domestic abuse and sexual violence</p> <p>The learner can recognise the types of behaviours linked to violence against women, domestic abuse and sexual violence</p> <p>LO1.3: Understand their role in tackling violence against women, domestic abuse and sexual violence</p> <p>The learner is aware of the helpline number and Live Fear Free website as a professional resource (in addition to a service user resource).</p> |
| <p>Group 2</p> <p>Group 1 + Recognise signs and symptoms, respond appropriately to unprompted disclosure, ask appropriate questions and respond to answer.</p> | <p>LO2.1: Recognise the signs and symptoms of violence against women, domestic abuse and sexual violence</p> <p>The learner can recognise indicators of violence against women, domestic abuse and sexual violence.</p> <p>The learner can describe how violence against women, domestic abuse and sexual violence can affect anyone and the experience of it is not linked to any particular culture, religion or socio-economic status.</p> <p>LO2.2: Understand the purpose of and demonstrate an ability to undertake targeted enquiry</p> <p>The learner can state the reason the targeted enquiry is required and their role in this work.</p> <p>With client safety as primary concern; the learner can ask questions of those displaying signs and symptoms which relate to their possible experience of violence against women, domestic abuse and sexual violence.</p> <p>The learner can respond to the client's response appropriately and understands their potential responsibilities if receiving "first disclosure".</p> <p>The learner can describe additional diverse and complex needs they will consider as they ask questions.</p> <p>LO2.3 Demonstrate knowledge around data protection and the duty of confidentiality</p> <p>The learner can reference information sharing legislation</p> |

The learner demonstrates understanding of their duties/ ethical considerations in relation to confidentiality and data sharing.

The learner demonstrates legal, good practice record keeping.

LO2.4: Understand the purpose of risk identification in relation to some forms of violence against women, domestic abuse and sexual violence¹²

The learner understands the meaning of risk in relation to violence against women, domestic abuse and sexual violence.

The learner can use a nationally agreed Risk Identification Checklist if necessary.

LO2.5: Be able to implement the targeted enquiry care pathway

The learner is aware of the service choices, referral options and multi agency fora available to those experiencing violence against women, domestic abuse and sexual violence.

The learner can explain these to their clients and facilitate referrals based on the choice of the client.

Where the client or related person is at risk of serious harm the learner can demonstrate the action they will take to safeguard those at risk, including children.

LO3.1 Be able to consider violence against women, domestic abuse and sexual violence in the context of a whole family

The learner will have knowledge of the link between violence against women, domestic abuse and sexual violence and the risk to children.

The learner will have knowledge of the common characteristics of perpetrators of violence and abuse within intimate relationship.

LO3.2 Have an ability to assess risk in appropriate cases of violence against women, domestic abuse and sexual violence

The learner will be able to consider risks faced by the victim, posed by the perpetrator and experienced by children; and

Take appropriate actions to minimise these risks and address the immediate safety requirements of family members experiencing violence against women, domestic abuse and sexual violence either

Group 1 and 2 +
Consider the risk posed to the client, take appropriate actions for their immediate safety, engage appropriately in multi agency work.

¹² Risk identification is not a requirement of “Ask and Act”. Local areas will determine whether this work is done in house or if care pathways are used for this purpose. Relevant staff will be trained to facilitate either approach.

through action or referral.

LO3.3 Demonstrate an ability to support colleagues in relation to violence against women, domestic abuse and sexual violence.

Group 3

The learner will be able to demonstrate a process of decision making in relation to data sharing.

The learner will be able to demonstrate an understanding of local multi agency operational fora and the role of their organisation within that.

Group 4

Offer specific, expert interventions with those experiencing violence against women, domestic abuse and sexual violence issues and their children.

Specific, accredited programme with relevant accrediting body for specific role.

Group 5

Management and strategy: specialist providers

LO5.1 Understand the management and leadership qualities required of those who deliver violence against women, domestic abuse and sexual violence services.

LO5.2 Understand the Co-ordinated Community Response and work effectively within this.

LO5.3 Demonstrate an ability to plan the strategic direction of the service.

LO5.4 Understand the importance of monitoring and evaluation in relation to service provision to those affected by violence against women, domestic abuse and sexual violence.

Group 6

Strategic engagement plan for Public Service leadership

Violence against women, domestic abuse and sexual violence are issues both for service users and for the workforce. Cultures need to be created where the work of the remaining groups of the NTF are acknowledged as crucial to the work of relevant public service departments and within the workplace.

6. Group 1 of the National Training Framework

“It took a lot to open up. I couldn’t hold a thought in my head, I thought I was crazy”

“You are too scared to say how you feel”

“No one believes you”

The purpose of group 1 of the National Training Framework is to ensure that all employees of the relevant authorities have a basic level of awareness of violence against women, domestic abuse and sexual violence. It will be aimed at public service staff as outlined below. The intention of training for group 1 of the National Training Framework is not to specify practice change and there is no increased formal burden or responsibility on the individual learner. Instead it is hoped that this training will challenge attitudes and raise awareness of these issues.

Aim

Participants will have heightened awareness of violence against women, domestic abuse and sexual violence.

Audience

Group 1 of the National Training Framework is intended to capture the widest audience, including at least 284,000¹³ public service employees.

Delivery

An eLearning package provided by the Welsh Government delivers the learning outcomes for group 1 of the National Training Framework on violence against women, domestic abuse and sexual violence and it is recommended that this package is utilised by the relevant authorities. Completion of this elearning meets the requirements for group 1 (as outlined above) without an additional cost implication (beyond staff time) to the relevant authorities.

It is recognised that in some cases, providing access to elearning is not possible due to the IT infrastructure of the organisation. For this reason the Welsh Government have produced a workbook which mirrors the eLearning but does not require continued use of a computer. The requirements of group 1 can be met in further alternative ways (such as face to face training) but the cost implication for this will lie with the relevant authority.

The eLearning is free to access and hosted on Learner Management Systems most used by the intended audience. These hosts include Learning@NHSWales and the All Wales Academy.

These sites are most heavily used by Health and Local Authority staff but also offer access to anyone in Wales who wishes to complete the eLearning. The Welsh

¹³ This is 85% of the total Welsh Public Service employee number and does not include the DVLA, HMRC, MoD or Cardiff Bus.

Government encourage access and completion of the eLearning by as wide an audience as possible. The host sites also offer reporting opportunities which will enable local and national monitoring of completion.

The eLearning will be available bilingually and in a variety of other formats to mitigate technological access risks and to increase accessibility for a diverse group of learners.

The Welsh Government eLearning package is complemented by a series of awareness raising campaigns highlighting the signs and symptoms of violence against women, domestic abuse and sexual violence. A series of resource materials are also available to strengthen and endorse the messages of the eLearning. A direct link to the Live Fear Free website is provided in the package. This link will allow the learner to access further learning should they wish to. This will include access to additional learning tools on each of the subjects covered, additional films, practical tools and resources.

Outcomes

Any training to address the learning outcomes for group 1 of the National Training Framework should be evaluated based on increase in learner knowledge, the confidence of the learner to recognise the signs of possible violence and abuse and to signpost colleagues, friends and family to specialist services.

Accreditation

There is no requirement that delivery of training for group 1 of the Framework be accredited. However, aligned to the recommendations of the independent review of specialist training provision on violence against women, domestic abuse and sexual violence across Wales¹⁴, training for group 1 should conform to the following National Occupational Standards (NOS). Moreover, all reasonable measures must be taken to ensure any training delivered for group 1 is CPD compliant across a range of professions.

| NOS ID | NOS Title |
|---------------|--|
| AG4 | Recognise and respond to suspected abuse of people from vulnerable groups |
| BH202 | Challenge public attitudes to domestic violence and abuse |
| GK504 | Provide access to information and support for victims and survivors of sexual violence |

Ongoing support

Practice based feedback based on early implementation of the eLearning has shown that the package can lead to the identification of personal experiences of abuse and

¹⁴ Agored Cymru final report: The co-ordination of practical, expert-led advice to the Welsh Government on the Content Areas of Part of the Group 4 National Training Framework for Violence Against Women, Domestic Abuse and Sexual Violence.

requests for help and advice from managers. In order to support managers to support staff who require additional help following completion of the eLearning the Welsh Government has published additional guidance for managers which is available on the Live Fear Free website.¹⁵

This guide is provided for line managers to:

- assist them to introduce the elearning to staff;
- address any concerns or worries they or their staff have about the content and the impact of the elearning;
- offer assistance and support to colleagues experiencing violence against women, domestic abuse and sexual violence.

¹⁵ <http://livefearfree.gov.wales/policies-and-guidance/elearning-guidance-for-line-managers?lang=en>

7. Group 2 of the National Training Framework

“This is basic training, [asking the question] is just a sentence”

“You don’t need the pills, you need someone to speak to”

Group 2 describes the group of professionals who will “Ask and Act”. This section of the National Training Framework outlines the learning outcomes and competencies to support the principle of “Ask and Act”.

Training for group 2 should only be delivered by Welsh Government endorsed trained trainers and should include the entire Ask and Act training course developed by the Welsh Government for this purpose.

“Ask and Act” is a principles based approach of targeted enquiry for domestic abuse, sexual violence and some other forms of gender-based violence. Further detailed guidance on “Ask and Act” will be published separately by the Welsh Government and will describe the detail of the approach and advice for implementation. It will also refer to this guidance **which concentrates specifically on the training element of “Ask and Act”**.

The Welsh public service has a vital role to play in supporting disclosures by victims of domestic abuse and sexual violence and strengthening the services they receive. A more consistent approach to identifying victims and referring appropriately is required across Wales.

The primary objective of “Ask and Act” is to enable relevant professionals to “ask” potential victims about the possibility that they are experiencing domestic abuse, sexual violence or other forms of gender-based violence in certain circumstances and to “act” so suffering and harm as a result of the violence and abuse is reduced.

The term targeted enquiry describes the recognition of indicators of these behaviours, including medical symptoms, behavioural or emotional signs, information cues and an acknowledgement of the professional settings being accessed.

Aim

Participants will be skilled, able and confident to “Ask and Act”.

Audience

Group 2 includes the public service staff who are most likely to be making contact with those experiencing domestic abuse, sexual violence and other forms of gender-based violence as part of their roles (see appendix 1 for further guidance).

In order to assess whether a professional role is suitable for training for group 2 of the Framework the following criteria should be applied:

The professional is:

- in a public facing role, coming into regular contact with the general public; and

- in a role where the experience of their client group of these forms of violence and abuse complicates and impacts on the nature of the clients engagement with the service offered in that role.

Priority for training should be given to those professionals with the greatest face to face contact with potential victims and with families and such professionals should be selected from across the relevant authorities.

There is an emerging body of research which illustrates the impact and co-occurrence of violence against women, domestic abuse and sexual violence with other professional areas including physical and mental health, social care, substance use and education.¹⁶ This research forms a useful starting point for regions to develop their delivery plans. Regional training needs analysis will also help to identify professions to be prioritised.

The Welsh Government have prioritised the following groups for “Ask and Act” training. This list is not exhaustive but over the five year initial delivery plan each region is expected to have provided training to professionals meeting the training criteria within these groups.

Maternity and post partum settings

Primary care

Emergency Departments

Substance misuse

Mental Health

Child and Adolescent Mental Health Service (CAMHS)¹⁷

Social Work

Education

Housing, Housing options and Homelessness

Youth Offending Teams

Fire and Rescue

Paramedics, emergency medical technicians and urgent care teams

CAFCASS Cymru¹⁸

Delivery

Delivery to group 2 of the Framework will take place through a regional dissemination model; local professionals, representative of region, specialist knowledge and audience will be trained to train other professionals within their region to “Ask and Act” using a Welsh Government developed training pack.

¹⁶ A summary of this research is outlined in the Welsh Government “Ask and Act” guidance

¹⁷ ¹⁸ Several service users identified CAFCASS as an organisation requiring training on violence against women, domestic abuse and sexual violence. This organisation was not recognised within the Public Consultation. Moreover, whilst one organisation responding to the Public Consultation referenced the training needs of the Child and Adolescent Mental Health Service (CAMHS) within their response, this was raised more frequently by service users.

Selection for the Regional Training consortia will be managed by Welsh Government funded regional advisors or domestic abuse co-ordinators and should be based upon the following:

1. The prospective trainer has specialist knowledge of domestic abuse, sexual violence or other forms of violence against women gained through practice in this area or;
2. The prospective trainer has a strong working knowledge of the area of work of one of the prioritised audiences and will champion the approach within that profession; and
3. The prospective trainer has experience of training delivery.

All training for group 2 of the NTF should be delivered by two trainers; one who represents point one above, the other who represents the second point. At least one of the two should have experience of training delivery.

These trained trainers will form regional training consortia. These consortia will form part of the delivery model for groups 2 and 3 of the National Training Framework and will allow regions and organisations to take a flexible approach to training local professionals.

The consortia (led by regional advisors or domestic abuse co-ordinators) will be asked to contribute to the development and implementation of the training plans. These plans should include a five year plan to deliver training to locally prioritised professions to “Ask and Act”.

The regional training consortia model offers an opportunity to include local experts in the training of “Ask and Act”, manage local training needs flexibly, to include organisations which are not named as relevant authorities as is deemed appropriate and to provide regular refresher training. The formation of the regional training consortia should align to the annual priorities outlined in the training plan.¹⁹

Regional training consortia are likely to form the most effective method through which to reach Local Authority and Local Health Board staff. However, they may not work as effectively for Fire and Rescue Authorities or certain NHS Trusts such as the Welsh Ambulance Service Trust (WAST), Public Health Wales, Velindre or the National Blood Service. These organisations do not always fit neatly within any regional footprint and, specifically, in the case of WAST, have training processes for staff which are rigorously planned years in advance and are not flexible.

In the case of such organisations it is encouraged that they seek training of staff through the regional training consortia (it may be appropriate to link in with several regions for this purpose) and use these trained staff to deliver training for their relevant staff within groups 2 and 3 within their own learning and development plans. These arrangements should be reflected within local or regional training plans. Where this is not possible due to geographical or structural restrictions the organisation should seek further advice from the Welsh Government who will consider whether organisation specific training would be more suitable.

¹⁹ The regional training consortia should not be confused with local training groups formed for purposes other than the delivery of groups 2 and 3 of the National Training Framework.

The regional footprint identified in the guidance under section 15 in relation to group 2 will be re-considered following any local government reform and further guidance will be provided.

Outcomes

An evaluation package will be provided within the resources and materials provided to the regional training consortia, to gather pre and post training views from participants. A summary of this feedback should form part of the annual report. Evaluation of training for group 2 will be made against the following measures:

- Reaction criteria: how trainees were affected by the training and any resulting attitudinal change.
- Learning criteria: how the training delivery measured against the learning outcomes. This should consider learner perception of knowledge, confidence and intention to implement.
- Behavioural criteria: the effects of the training on actual performance. This may involve a follow up measure.
- Results criteria: this will involve consideration of the longer term impact of the training, how useful it is perceived to be by the relevant authorities and how relevant the impact of the training is seen to be on practice change. This will be addressed by Welsh Government commissioned evaluations.

In addition to the measures described above, additional outcomes linked to the process of “Ask and Act” will be measured via an independent evaluation of the approach. This evaluation will seek to consider:

- identification rates of violence against women, domestic abuse and sexual violence;
- referral rates to specialist services;
- cessation in abuse;
- local repeat victimisation rates;
- earlier intervention.

Accreditation

The Train the Trainer Training to skill up the regional training consortia will be accredited. However, the training which will be disseminated through the consortia will not be. The size of the audience to be trained at this level prohibits individual accreditation. However, aligned to the recommendations of the independent review of specialist training provision on violence against women, domestic abuse and sexual violence across Wales²⁰, it will conform to the following National Occupational Standards (NOS).

²⁰ Agored Cymru final report: The co-ordination of practical, expert-led advice to the Welsh Government on the Content Areas of Part of the Group 4 National Training Framework for Violence Against Women, Domestic Abuse and Sexual Violence.

| NOS ID | NOS Title |
|---------------|--|
| AG4 | Recognise and respond to suspected abuse of people from vulnerable groups |
| BI101 | Communicate and engage with victims and survivors of domestic violence and abuse |
| GK101 | Provide access to information for victims and survivors of domestic violence and abuse |
| GK401 | Address callers sensitively |
| GK402 | Establish requirements of callers |
| GK502 | Communicate and engage with victims and survivors of sexual violence |
| GK504 | Provide access to information and support for victims and survivors of sexual violence |

Ongoing support

It is acknowledged that capacity within relevant authorities will challenge the availability of staff to undertake formal refresher training to “Ask and Act” in the same form that the initial training will be delivered (in room training).

The requirement to provide refresher training can be met through the provision of blended and online learning and materials will be made available in due course to meet this requirement.

8. Group 3 of the National Training Framework

“Explore the real problem. Make the extra effort”

“Look at the whole family – make a proper assessment”

“They don’t understand the impact on children, no one listens to the children’s voices, they need to be heard too”

Group 3 of the Framework describes those who are working closely with families experiencing forms of violence against women, domestic abuse and sexual violence in their current job role (but who do not specialise in this area) and those who perform a champion role for their organisation (see appendix 4 for a definition of this role).

This section of the Framework outlines the learning outcomes and competencies which must be met through training for the following purposes:

- to ensure that in each of the relevant authorities a proportion of professionals who are currently working with those experiencing violence against women, domestic abuse and sexual violence as part of their existing role, are trained to an enhanced level (beyond that provided to group 2) and;
- to ensure any public service employee who is required by their organisation to act as an officer level “champion”²¹ in relation to these issues is trained to an enhanced level (beyond group 2).

Lessons of various Serious Case and Domestic Homicide Reviews repeatedly indicate improved inter agency practice and information sharing is required to better identify and respond to those experiencing domestic abuse. It is also clear many organisations should improve their identification of the indicators of abuse and be better equipped to identify risk factors and issues of concern.

Professionals in group 3 will need an enhanced understanding of domestic abuse, sexual violence and other forms of gender-based violence, the potential impact on the safeguarding of children and risk management of perpetrators. They will support their organisations to mitigate against risk and protect adult victims and their children. They may also work (in a non specialist capacity) with perpetrators and assist colleagues to work through decision making in relation data sharing.

Aim

Participants will hold enhanced knowledge relating to violence against women, domestic abuse and sexual violence and be able to implement effective practice to support colleagues and ensure that all members of a family experiencing violence and abuse are offered effective interventions.

Audience

²¹ Linked to the 10,000 Safer Lives project. A role description is provided at appendix 4.

This training will be relevant to:

- any professional who has a lead responsibility for their profession in terms of violence against women, domestic abuse and sexual violence (e.g. safeguarding nurses, specialist midwives);
- those who are working with a client group experiencing high prevalence of violence against women, domestic abuse and sexual violence (such as social workers, those working in mental health and substance use settings) or;
- Those who are required by their organisation to fulfil a “champion” role within a frontline team.

Delivery

Delivery to group 3 of the Framework will also take place through a regional dissemination model, based on a Welsh Government developed training pack. A smaller group of trainers will be required to disseminate training to group 3 and as such only a selected proportion of the consortia will be accepted onto the group 3 Train the Trainer course. It is suggested that this course will be best delivered by those with specialist knowledge of domestic abuse, sexual violence and other forms of violence against women.

This training will take a blended learning approach utilising both independent and classroom based learning methods.

Delivery of training to group 3 should mirror the delivery plan for group 2 training to ensure all group 2 professionals have access to the support and enhanced knowledge of professionals within group 3.

The suggested ratio for Trainees within group 2 to trainees within group 3 is 1:10. It is expected that there be a higher ratio within departments whose client group tends to include victims of violence against women, domestic abuse and sexual violence, such as social care, mental health and substance use.

In order to ensure a group of professionals with enhanced understanding of violence against women, domestic abuse and sexual violence is known and available to all those working with these issues, a minimum of 100 professionals, per year, per region should be trained within group 3 in the first five years of roll out. This will support delivery to over 3500 professionals with enhanced knowledge across the relevant authorities. (This amounts to 10% of the priority professionals in group 2).

Accreditation

Both the Train the Trainer training and the training to be disseminated via the regional training consortia will involve formal assessment and accreditation. It will also conform to the following National Occupational Standards (NOS) and all reasonable measures will be taken to ensure it is CPD compliant across a range of professions.

| NOS ID | NOS Title |
|---------------|---|
| AG4 | Recognise and respond to suspected abuse of people from vulnerable groups |
| AG5 | Support the safeguarding and protection of people from vulnerable groups |
| BI101 | Communicate and engage with victims and survivors of domestic violence and abuse |
| BI203 | Contribute to the assessment of victims and survivors of domestic violence and abuse |
| BI302 | Contribute to plans which manage the risk of harm to victims and survivors of domestic violence and abuse |
| GK101 | Provide access to information for victims and survivors of domestic violence and abuse |
| GK102 | Deliver interventions towards increasing the safety of victims and survivors of domestic violence and abuse |
| GK502 | Communicate and engage with victims and survivors of sexual violence |
| GK503 | Carry out an assessment to identify the needs of and risks to victims and survivors of sexual violence |
| GK504 | Provide access to information and support for victims and survivors of sexual violence |
| GK505 | Work in partnership with agencies to address sexual violence |
| GK510 | Contribute to the support of people from vulnerable groups who have experienced trauma |

9. Group 4 of the National Training Framework

[My specialist support worker] helps me communicate better and brings expertise which is missing otherwise [to family assessments]

“They saved my life”

“No one else wanted to know. This is the only place that really helped”

Group 4 of the National Training Framework includes those in specialist roles working directly and only with those who have experienced violence against women, domestic abuse and sexual violence.²² Whilst the job titles of workers in this field may be replicated across the public service, group 4 relates only to those workers who provide specific services only to those affected by violence against women, domestic abuse and sexual violence. These will most often be placed within specialist violence against women, domestic abuse and sexual violence services.

Aim

To ensure all specialist professionals are appropriately trained to ensure clients have access to expert practitioners at the point at which they seek help resulting in;

uniformity in the resulting practice of the trained professional and improved services to those who experience violence against women, domestic abuse and sexual violence.

Audience

Group 4 includes those in specialist roles who require specialist training in order to practice. These roles include Independent Domestic Violence Advisors, Outreach Workers, Case Workers, Floating Support Workers, Refuge/Key Workers, Independent Sexual Violence Advisors, Crisis Workers, counsellors, children and young peoples workers or group facilitators on perpetrator programmes.

Content

Several roles are utilised within the specialist sector to provide services to those who have experienced violence against women, domestic abuse and sexual violence.

The title, descriptions and commissioned purpose of such roles vary locally. However many of the roles vary more in title than in function and therefore often require a similar skill set. It is not possible in this guidance to provide a comprehensive list of all local roles as many are named to reflect local needs, commissioning fund, or the context of the area in which the role functions. The table

²² It is acknowledged the majority of specialist professions are situated outside of the relevant authorities, within the specialist charity sector. The Welsh Government encourages all specialist workers to access appropriate training, regardless of the host organisation.

in appendix 3 categorises the roles into subject area, provides typical job titles linked to these and a brief summary of purpose.

The roles included here relate to practical, advocacy and counselling based support.

All specialist professionals should be qualified to level 3 (Open College Network) or at certificate level on the Qualification and Credit Framework or above on a role-specific training programme. This is a course which is designed to skill up a professional to perform a professional role, rather than a subject specific course which would enhance the professional's knowledge of one particular subject.

For specific roles, such as IDVAs or refuge workers, the training should usually be at 24 credits in total or above. This may be lower in the case of training on perpetrator work, crisis workers, counsellors and children and young peoples workers.

It is recommended that the training completed be vocational, role specific and accredited.

Domestic abuse focussed courses must include content on:

- understanding domestic abuse;
- understanding, planning for and responding to the diverse needs of clients;
- safeguarding children;
- honour based violence, forced marriage, female genital mutilation and no recourse to public funds;
- sexual exploitation;
- sexual violence;
- the impact on health;
- stalking and harassment;
- perpetrator characteristics.

Skills

- engaging clients;
- the stages of change;
- motivational interviewing;
- risk identification, assessment and management;
- case management;
- multi agency collaboration;
- role definitions, remit and purpose;
- self care and vicarious trauma;
- information sharing.

Client options

- the Criminal Justice System (working with the police, Crown Prosecution Service and Probation);
- accessing civil law remedies;
- mental health;
- substance use;
- homelessness and housing options.

The sexual violence focussed courses should provide relevant content as above plus additional content on:

- the human response to trauma;
- the impact of historic abuse on children and adults;
- sexual health;
- sexual violence needs assessment;
- the layout and function of the Sexual Assault Referral Centre;
- sexual violence perpetration;
- pre court therapy;
- offering support though the criminal justice system.

The perpetrator focussed courses should provide the following content:

- understanding those who use violence and abuse;
- the process of working in groups with those who use violence and abuse;
- understanding risk in the context of work directly with perpetrators of domestic violence and how to respond to changes in risk;
- making assessments;
- avoiding collusion and holding perpetrators accountable;
- analysing violent incidents;
- sexual respect;
- safeguarding children and vulnerable adults within the context of work with perpetrators;
- case management, supervision and treatment management.

The children focussed courses should provide the following content:

- the impact of violence against women, domestic abuse and sexual violence on children and young people (both in their own and in parental relationships);
- attachment theory;
- trauma responses;
- safeguarding children and young people experiencing violence and abuse;
- engaging children and young people;
- negotiating criminal justice, civil law and contact proceedings involving children

The preferred, suitable courses of the Welsh Government are outlined in appendix 3.

Delivery

Several courses which meet the criteria above are on offer in Wales. Currently the Home Office and Ministry of Justice fund national providers to provide a number of funded training places per year. This is likely to be available until March 2016. The Welsh Government will monitor provision thereafter and consider what additional training needs exist for group 4 of the Framework on an annual basis.

Accreditation

All specific courses for specialist roles should be accredited at the level and credit requirement outlined above.

Ongoing support

Specialist workers must be alert to the changing landscape of violence against women, domestic abuse and sexual violence service provision, legislation and policy to ensure that the advice and support they provide to their client group is expert and up to date. It is for this reason that this guidance introduces a requirement of Continuous Professional Development for group 4 of the National Training Framework. It also aligns the professional standards of these professions with those of other similar professions such as social workers.

10. Group 5 of the National Training Framework

Group 5 of the Framework includes those who manage specialist advocacy and support services for those experiencing violence against women, domestic abuse and sexual violence. These services are often small and rely on effective management in order to offer high quality, sustainable service provision.²³

The training requirements for this group aim to equip service managers, senior or lead professionals to implement effective case management structures, provide appropriate performance management data and consider staff welfare. It will also equip them to lead their service through commissioning arrangements, fundraising, Domestic Homicide Reviews and Serious Case Reviews

Aim

Training for group 5 should equip participants to understand the processes required to manage a service to those affected by violence against women, domestic abuse and sexual violence and to enhance the performance of frontline workers through strong management and leadership.

Audience

The posts targeted by this training would include community based service managers, refuge managers, SARC managers, team leaders and senior staff such as lead/Senior IDVAs or ISVAs.

Delivery

Training for group 5 of the Framework should be delivered through some classroom training. However blended learning, workshops and action learning sets may also be used where appropriate.

The Welsh Government contracted SafeLives to deliver this training in 2014-2015 with a possible extension into 2015-2016. This is the Welsh Government preferred training for service managers in Wales as it has been developed to a specification based on the National Training Framework and offers a consistent, national message. The training brings together service managers from across Wales, providing networking opportunities and opportunities for peer support across the wider sector.

Accreditation

Training for group 5 should be accredited, no lower than 12 credits at level 4 (OCN) to ensure it is a higher academic level than courses for group 4 of the Framework. This design provides academic progression between group 4 and 5 which will further

²³ It is acknowledged the majority of specialist professions are situated outside of the relevant authorities, within the specialist charity sector. The Welsh Government encourages all specialist workers to access appropriate training, regardless of the host organisation.

professionalise the specialist sector and offer opportunities which contribute to the retention of skilled staff.

Service standards

The learning outcomes designed for group 5 of the National Training Framework provide a basic standard for the management of specialist services and a starting point for a quality assurance framework for specialist service provision which will be built upon over time.

11. Group 6 of the National Training Framework

Group 6 of the Framework aims to encourage building towards a culture and infrastructure which provides leadership and management support to introduce and implement the knowledge and practice direction held within groups 1 to 5. Delivery to group 6 combines an annually reviewed Strategic Engagement Plan with a series of relevant supporting materials.

Aims

To engage public service leadership through awareness raising and education on violence against women, domestic abuse and sexual violence as both a workforce and service delivery issue.

To create a culture and infrastructure which support the aims of the National Training Framework on violence against women, domestic abuse and sexual violence.

Audience

Group 6 of the Framework is aimed at the Senior Leadership of the public service. This includes (but is not limited to) Chief Executive Officers, Council Leaders and councillors, Personnel Directors, Workforce Directors, Training and Development Managers, Trade Union leaders, Chief Constables, Fire and Rescue Authority Chiefs, relevant commissioners and partnerships.

Content

The content delivered to group 6 of the Framework will evolve depending on strategic priorities and identified implementation challenges. An annual plan for group 6 delivery will be issued by the Welsh Government which will, where appropriate, include case studies and testimonials from service users.

Delivery

Delivery to group 6 of the Framework is the responsibility of the Welsh Government and will be taken forward in two work streams.

- 1) A Strategic Engagement Plan
- 2) The Strengthening Leadership Series

1) A Strategic Engagement Plan

The Strategic Engagement Plan will involve direct intervention to engage public service leadership and gain commitment to particular courses of action, to raise awareness and to inform on policy and legislative updates.

The Strategic Engagement Plan consists of a timetable of relevant events which are aimed at public service Leadership, which already influence strategy and direction and which Leadership already engage with. A summary of the type of events this will include is below:

| Forum type | Specified activity |
|----------------------------------|---|
| Boards/meetings/ partnerships | Effective Services for Vulnerable Groups Board Meeting of the Main Delivery Group (G42) Violence against Women, Domestic Abuse and Sexual Violence Advisory Board Fire and Rescue Services Personnel and Organisation Development Group (PODG) Workforce Partnership Council Local Authority Counsellor Leads WLGAs Directors of Human Resources Group Meeting of NHS Workforce Directors NHS confederation Domestic Abuse Co-ordinators Forum |
| Welsh Government meetings | Business Group Operations Group |
| Events | Appropriate Conferences Welsh Government convened conferences /events Wales Public Health Conference |
| Publications | Councillor Connect Municipal Journal Staff newsletters |
| Letters/ communication | Ministerial letters CEO letters – Welsh Government Sponsored Bodies |

It is intended Ministerial presentations, the presence of senior Government officials and, in time, attendance of the National Adviser, at these events will offer information and the opportunity to influence public service leadership, in the company of their peers, without making unnecessary additional demands on their time. This is likely to result in stronger engagement and wider reach.

2) The Strengthening Leadership Series

The Strengthening Leadership Series will be published to support the messages disseminated through the Strategic Engagement Plan. The series will share the expertise of the specialist sector, provide implementation guidance on Welsh Government policy and direct information from the Minister to offer regular communication on violence against women, domestic abuse and sexual violence issues.

This series will contain content presented through a variety of formats, designed for quick access and maximum engagement. These formats may include:

Video clips: Short vignettes which provide specific information on a topic. This may include a message from the Minister on the progress of implementation of the

Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 or a subject expert talking to a related issue.

Webinars: These may be recorded or live streamed and provide detailed consideration of a subject or area of implementation. They may involve peer to peer learning and the sharing of best practice. Live stream webinars would be interactive, providing for questions, answers and discussion.

Briefings: Video clips and webinars would be accompanied by briefings which would provide additional guidance. These can be used to support delegation of related tasks such as review of the workplace policy or creation of referral pathways.

Live streaming: Where possible live events and conferences would be recorded for virtual access. Moreover, recorded clips of such events would be made available subsequently.

Outcomes

Outcomes linked to culture changes and strengthened infrastructure will be considered. These outcomes will include:

- ✓ Improved awareness of violence against women, domestic abuse and sexual violence amongst senior public service leadership
- ✓ Reach of events
- ✓ The number of White Ribbon organisations and Ambassadors in Wales
- ✓ Workplace policy monitoring
- ✓ Written commitment to specific areas of work

Accreditation

Delivery to this group of the Framework will not be accredited. It will conform to any relevant National Occupational Standards (NOS) and all reasonable measures will be taken to ensure it is CPD compliant across a range of professions.

12. The specialist subject syllabus

The specialist subject syllabus should form the basis of all training offered or attended by relevant authorities on domestic abuse, sexual violence or other forms of violence against women.

Consideration of how the ongoing training needs of professionals within the relevant authorities are to be met should be aligned to the specialist subject syllabus.

Aim

To compile content, learning outcomes and competencies related to domestic abuse, sexual violence, gender-based violence and specifically violence against women into a centrally managed syllabus which offers consistency and assurance of quality, regardless of locality, resulting in;

uniformity in the resulting practice of the trained professional and improved services to those who experience violence against women, domestic abuse and sexual violence.

Audience

Those who require training on specific subject matters in order to respond to emerging client need. This may include a health visitor who would benefit from training in Female Genital Mutilation in order to identify the risks of this abuse taking place and respond effectively.

There are a significant amount of training courses already available across Wales. Some of these courses are offered as part of a national drive to professionalising the response to those who experience violence against women, domestic abuse and sexual violence, whilst others are borne of local initiatives to address emerging need.

It is not the intention for those training courses which are developed to meet identified need to be stifled by the Framework. It is recognised these often have a valuable role in responding to local circumstances but it is important nonetheless they align with the Framework's aims of consistency and quality assurance.

Content

Group 2 and 3 of the Framework will receive the fundamental content to enable them to provide an effective response to those experiencing violence against women, domestic abuse and sexual violence.

The training offered for group 2 and 3 will be limited to fundamental concepts, principles and practice requirements linked to violence against women, domestic abuse and sexual violence and cannot encompass the breadth of complexity and associated vulnerabilities associated with these issues.

Additional learning on violence against women, domestic abuse and sexual violence should be recognised as a requirement of relevant public service Continuous Professional Development and training for group 2 and group 3 should become the

basis of further learning on these subjects. This learning should be led by individual management reviews, local vision and organisational strategy.

Where professionals, management and leadership identify specific areas in which they or their staff would benefit from improved knowledge the professional training aimed at specialist roles, offered for group 4 are unlikely to be appropriate due to cost and time requirements, however shorter, more focussed, subject specific courses may be suitable.

This type of short, focussed training has been offered across Wales for several years and is often offered by specialist service providers or through partnerships such as the Local Safeguarding Children's Board, Community Safety Partnership or Local Service Boards.

A varied and inclusive set of subject areas are covered in locally derived and delivered training courses and, in relation to subject area coverage, there are very few omissions.²⁴ However, such training is not coordinated across Wales. All training is not available in all parts of Wales, potential learners are not aware of the availability of different areas of learning and the structure of the courses is disparate.

The specialist subject syllabus provides an accredited, learning outcome-based set of essential units, relevant to the Continuous Professional Development of all professionals. Development of the syllabus will include annual activity, in partnership with stakeholders and the breadth of subject matters covered within it will evolve over time. Up to date versions of the syllabus will be available on www.gov.wales/livefearfree.

The Specialist Subject Syllabus will be formed of Quality Assured Lifelong Learning (QALL) units which will be compiled at both a basic and enhanced level to reflect the learning needs of specialist and non specialist professionals and will sit alongside existing accredited learning available at level 3 and above that can be used by stakeholders and mapped against current delivery.

Delivery

The units outline the basic learning outcomes required of any training related to the subjects they cover which is delivered by the relevant authorities either individually or in partnership.

The units will be freely available on the Welsh Government Live Fear Free website and local training providers will be required to use these models to form the basis of Welsh Government endorsed training on this subject. Should the provider of the training be in a position to offer QALL accredited courses, the courses can also be offered with accreditation.

²⁴ Agored Cymru final report: The co-ordination of practical, expert-led advice to the Welsh Government on the Content Areas of Part of the Group 4 National Training Framework for Violence Against Women, Domestic Abuse and Sexual Violence.

Useful resources and exemplar materials will also be listed with the units to support consistency of training, as will a set of required evaluation measures. Evaluation of locally delivered training will be monitored periodically by the National Adviser for Violence Against Women and other forms of Gender-based Violence, Domestic Abuse and Sexual Violence to assess the impact of the recommended model of training and address any shortcomings.

It is also important that the delivery and assessment of these units are subject to quality assurance measures. All trainers delivering local training should be experienced in an associated field of violence against women, domestic abuse and sexual violence and have the correct level of learning (accredited or non-accredited) for delivering training. For example, if delivering level 3 (QALL) or certificate level training, they should be qualified above this level.

The minimum expectation for assessment of accredited training is normally set by the relevant Awarding Body. Typically the minimum expectation for assessors and internal quality assurers is as follows.

Assessors must:

- have current and/or relevant experience in assessing;
- have undertaken relevant training if new to assessing;
- have good knowledge and understanding of assessment requirements;
- be familiar with the level of the unit(s)/qualification(s) being delivered;
- have good subject knowledge and understanding and/or experience of the unit(s)/ qualification(s) being assessed (this might have further stipulations e.g. 3 years current experience).

Internal quality assurers must:

- have current and/or relevant experience in assessing and internal verification;
- have undertaken relevant training if new to internal quality assurance;
- have good knowledge and understanding of internal verification requirements.

New subjects or courses

As outlined above, the syllabus will be expanded and developed over time to reflect changing training needs, enhance accreditation options and widen subject coverage.

Where the need for a new course is identified locally, the following steps will be required to list this course within the Welsh Government's endorsed specialist subject syllabus.

The course details should be submitted to the Welsh Government run Content Development Group for consideration, via the Welsh Government Violence against Women and Domestic Abuse team.

These details should include:

- the training needs analysis which demonstrates the need for this course;
- the trainer criteria for this course (to include practice and training experience);
- the proposed audience for the course;
- the course set up (learner numbers, training method);
- learning outcomes, evaluation outcomes and materials; and
- how it maps to relevant National Occupational Standards (NOS).

The Content Development Group will provide a quality control process for the submission of training courses. They will consider whether the course is of sufficient quality for listing on the syllabus, whether the course overlaps with other listed courses, the suitability of the course for multi agency audiences and whether it links in appropriately with national referral pathways linked to specialist provision and Ask and Act.

Where a course is approved for inclusion on the Framework it becomes Welsh Government endorsed and therefore the recommended model of training on a particular subject.

This process will sit alongside the ongoing development work initiated through Welsh Government.

Accreditation

Over time the suite of QALL units will be extended to increase the levels of training available and the breadth of subject areas covered. Integration of all courses into an accredited package of learning, accessible over time, at varied academic levels will form part of a longer term piece of work.

The overlap between violence against women, domestic abuse and sexual violence training and training on child protection and safeguarding.

The National Training Framework utilises the definitions of gender-based violence, domestic abuse, sexual violence and violence against women, as outlined in the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act (2015). The Act does not provide an age range for the experience of these issues and therefore includes children and young people.

It is expected therefore that a distinction will be necessary between training which relates to safeguarding children, with child protection and safeguarding processes as the focus and courses which relate to violence against women, domestic abuse and sexual violence and the direct impact of these issues. For this reason the specialist subject syllabus will list subjects of violence against women, domestic abuse and sexual violence which are safeguarding issues and which will require setting within this context, it does not however list broader safeguarding children's training which is a mandatory requirement of relevant professionals already and in existence locally.

Whilst violence against women, domestic abuse and sexual violence are safeguarding issues, it is important they are not **only** seen as issues of child protection. To do so may exclude adults from services they require and miss the wider needs of families affected by these issues. The purposes of this specific, focussed Framework is to acknowledge violence against women, domestic abuse and sexual violence as significant social care, public health and social justice issues, directly affecting a significant proportion of the Welsh population, including children and young people, as primary issues.

We accept however, that for many professions integration of elements of the National Training Framework on violence against women, domestic abuse and sexual violence into existing training focussed on child protection will be an efficient and sensible way to deliver its requirements and that, conversely to enforce a seemingly arbitrary separation of training to staff who have little time to dedicate to learning and development, may stifle the required reach of this information.

Where integration of the subjects is planned it is imperative that issues relating to violence against women, domestic abuse and sexual violence are framed appropriately, delivered to the learning outcomes and assessment criteria outlined within the framework and are acknowledged as issues in their own right and separated from concerns to be considered only when focussed on safeguarding children.

13. Delivery plan and dissemination of the National Training Framework

| | <u>2014-2015</u> | <u>2015-2016</u> | <u>2016-2017</u> | <u>2017-2018</u> | <u>2018-2019</u> |
|----------------|--|---|--|--|--|
| Group 1 | Design eLearning package and launch | eLearning package forms part of mandatory induction training | eLearning package forms part of mandatory induction training | eLearning package forms part of mandatory induction training | eLearning package forms part of mandatory induction training |
| Group 2 | | Launch test of Ask and Act training | National rollout of Ask and Act begin | | → |
| Group 3 | | Launch test of training for group 3 | National rollout to group 3 training begins | | → |
| Group 4 | Welsh Government funded IDVA training to up to 48 professionals. Encourage Welsh participation of Ministry of Justice funded training for ISVAs | Encourage Welsh participation of Home Office funded training for IDVAs and ISVAs. ²⁵ Specialist subject syllabus launched Consider training needs of professionals working with those affected by sexual violence. | Specific Welsh specialist training | Specific Welsh specialist training | Specific Welsh specialist training |
| Group 5 | Launch specialist service management support course to up to 48 service managers | Deliver specialist service management support course to up to 48 service managers (dependent on demand) | National rollout linked to budget and demand | | → |
| Group 6 | Strategic Engagement Plan Strengthening Leadership Series | Strategic Engagement Plan Strengthening Leadership Series | Strategic Engagement Plan Strengthening Leadership Series | Strategic Engagement Plan Strengthening Leadership Series | Strategic Engagement Plan Strengthening Leadership Series |

²⁵ Relevant specialist subjects will be funded where possible based on identified need.

Funding plan

| NTF training group | Delivery summary | Funding |
|--------------------|---|---|
| Group 1 | Welsh Government designed eLearning package available to all public service workers in Wales via Learning@NHSWales or the All Wales Academy. | Fully funded by the Welsh Government and free to access. |
| Group 2 | Training on “Ask and Act” should only be delivered by the Welsh Government endorsed regional training consortia. | <p>Development and Delivery of the Train the Trainer course and the time of the regional consortia to train up to 35,000 professionals between 2014 and 2020 will be funded by the Welsh Government.</p> <p>The budget allocation will be split between funding development and rollout of the initial training by a central provider and an allocation to each region to subsidise and support the Train the Trainer model. The allocation over the next five years will be informed by pilot work to be undertaken during financial year 2015-2016. Initial planning suggests a regional allocation of between £10,000 and £14,000 per year will subsidise the required delivery.</p> |
| Group 3 | Training for group 3 should only be delivered by the Welsh Government endorsed regional training consortia. | Development and Delivery of the Train the Trainer course and the time of the regional consortia to train up to 3,500 professionals between 2014 and 2020 will be funded by the Welsh Government. |
| Group 4 | <p>For specialist professional roles:</p> <p>Training courses which meet the criteria outlined within guidance will be deemed suitable to meet the requirements for specialist professionals in group 4. Should an additional course to those</p> | <p>Training for 96 IDVAs was funded during 2013-2015 to subsidise existing Home Office funding.</p> <p>Funding will be available for selected training per annum. Selection will be based on Welsh Government strategy and identified need.</p> |

| | | |
|----------------|--|--|
| | <p>listed in appendix 3 be under consideration locally, training selection should be verified by the Welsh Government.</p> <p>All locally delivered training in relation to violence against women, domestic abuse and sexual violence must confirm to the outcomes outlined in the specialist subject syllabus.</p> | <p>The development and overall accreditation of the syllabus is funded by the Welsh Government.</p> <p>Local accreditation of individual learners is not funded and would be borne by the learner or the learner's employer. (Accreditation in relation to the syllabus is optional)</p> |
| Group 5 | The Welsh Government preferred training course for service managers will be the procured programme of the time.. | Fully funded by the Welsh Government for financial years 2014-2016. Demand led thereafter and subject to re-tender. |
| Group 6 | Responsibilities related to group 6 lie with the Welsh Government. The Strategic Engagement plan and Strengthening Leadership Series will be funded and delivered centrally. | Fully funded by the Welsh Government and free to access. |

Appendix 1

Professionals identified during public consultation for prioritisation for group 2.

| Local Health Board | |
|---|---|
| <i>Included in original guidance</i> | <i>Additional requests following public consultation</i> |
| Midwives Health Visitors General Practitioners Accident and Emergency staff Substance misuse staff within each tier of the Substance Misuse treatment framework for Wales Community Psychiatric Nurses Mental Health Crisis team District nurses Child and Adolescent Mental Health Service (CAMHS) | Sexual Health Nurses Children's Nurses District Nurses Practice Nurses Phlebotomists (particularly those working in midwifery) Oncology staff Physiotherapists Chaplaincy within hospitals Dental staff Psychiatric liaison staff Radiographers/Sonographers |
| Local Authority | |
| <i>Included in original guidance</i> | <i>Additional requests following public consultation</i> |
| Child Protection Social Workers Safeguarding Vulnerable Adults Social Workers Teachers Safeguarding leads in Education School nurses Housing, Housing options and Homelessness officers Youth Offending Service caseworkers | Public Service Centre operators Occupational Health Flying Start staff Inclusion Welfare Officers Human Resources staff Domestic care workers All social workers (additional to the specific social workers named in the guidance) Staff in LA centralised customer service centres Education Social Worker's, college and university lecturers, Refuse collectors Carers |
| Fire and Rescue Authority | |
| All firefighters with community based responsibilities | |
| NHS Trusts | |
| Paramedics, emergency medical technicians and urgent care teams | |
| The Welsh Government | |
| CAFCASS Cymru ^{26 27} | |

²⁶ Several service users identified CAFCASS as an organisation requiring training on violence against women, domestic abuse and sexual violence. This organisation was not recognised within the Public Consultation. Moreover, whilst one organisation responding to the Public Consultation referenced the training needs of the Child and Adolescent Mental Health Service (CAMHS) within their response, this was raised more frequently by service users.

²⁷ Only professions employed within the relevant authorities are listed here. However it should be noted that the following professions were also suggested during the public consultation on the content and structure of the NTF: 101 call handlers, Police Officers and Community Support Officers, Special Constables, Response officers, Neighbourhood beat officers, Charitable stakeholders (suggestion was to change term from third sector), Resolution Family Solicitors, Citizens Advice Bureaux, Youth workers, Criminal justice including court services and probation/Community Rehabilitation Company, Armed Forces, Housing association staff, Agencies dealing with money, debt and welfare benefits

Appendix 2

Potential integration of the NTF with existing learning models

| | | Audience | Aligns to | Specific overlapping content | Suggested delivery options |
|--------------------------|---------|--|--------------------|---|---|
| Intercollegiate Document | Level 1 | All staff in health care settings | Group 1 NTF | Child maltreatment including trafficking and FGM The impact of domestic abuse on children | Use the Welsh Government eLearning package (which meets the requirements of group 1 of the NTF) within or in addition to group 1 safeguarding training. (Where only face to face training) Incorporate learning outcomes of NTF group 1 into community based group 1 safeguarding training. |
| | Level 2 | Non clinical and clinical staff in contact with children and young people and parents and carers | Group 2 NTF | Referring a child at risk of trafficking, child sexual abuse and FGM Sharing appropriate and relevant information with other teams | Through group 2 (NTF) training |
| | Level 3 | All clinical staff working with children, young people and parents and who could | | Participation of SCRs. | Through group 2 (NTF) training |

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| | | contribute to assessing the needs of a child or young person where there are safeguarding concerns | | | |
|--|--|--|--|--|--|

Appendix 3

Appropriate training courses, compliant with the outcomes for specialist professionals of group 4 of the NTF

| Specific courses for specialist roles | | | | | |
|--|--|---|--|---|--|
| | Role | Role purpose | Service provided to those who have experienced: | Client group for whom service provided | Appropriate training courses |
| Domestic abuse | Independent Domestic Violence Advisor (IDVA) | To offer crisis and medium term support to those at the highest risk and to co-ordinate client centred, multi agency collaboration. | Domestic abuse, sexual violence within intimate relationships, “Honour” based abuse, forced marriage, stalking and harassment within intimate relationships. | All client groups served. | The SafeLives IDVA training ²⁸ |
| | Outreach Workers/Case Workers | To offer crisis and medium term support to those who are not at high risk. | | May be women only, depending on host organisation | The SafeLives IDVA training Welsh Women’s Aid certificate |
| | Floating Support Workers | To provide emotional and practical support in a clients own home. May include tenancy support. | | May be women only, depending on host organisation | The SafeLives IDVA training Welsh Women’s Aid certificate |

²⁸ A competitive tender for a provider of training for Home Office funded IDVAs was won by SafeLives (then known as CAADA) in 2011. Safelives are the only organisation currently funded by the Home Office to provide IDVA training. This contract runs until April 2016. The Welsh Government has subsidised the Home Office IDVA training provision to ensure access to Wales-based professionals during 2012 – 2014. This qualification is a requirement of the Welsh Government for the IDVA role.

The funding provision for such training by the Home Office is likely to be reviewed shortly after the time of writing and the Welsh Government will further consider the training needs of professionals in Wales following that decision. We are supportive of including additional training for this purpose.

| | | | | | |
|-----------------|---|---|---|---|--|
| | Refuge/Key Workers | To provide practical and emotional support to residents within a refuge. | | Most refuges are single sex only and the majority in Wales provide services to women (although some male only units are available). | The SafeLives IDVA training Welsh Women's Aid certificate |
| Sexual violence | Independent Sexual Violence Advisors (ISVA) | To offer needs led support and expertise on the criminal justice process and forensic DNA retrieval. | Sexual violence within intimate relationships and where perpetrator is a stranger or acquaintance Historic sexual abuse. | All client groups served. | The Survivors Trust ISVA training Lime Culture ISVA training SafeLives IDVA-ISVA conversion course (where the ISVA has previously completed the SafeLives IDVA training) |
| | Crisis Workers/Advocacy workers | To offer immediate support at the time of report and through any forensic or medical examination following sexual violence. | Sexual violence within intimate relationships and where the perpetrator is a stranger or acquaintance | All client groups served. | Welsh Government crisis worker training The Survivors Trust ISVA training Lime Culture ISVA training SafeLives IDVA-ISVA conversion course |

| | | | | | |
|--------------------------------|-----------------------------------|---|---|---|--|
| | Sexual violence counsellors | To offer medium to longer term, therapeutic services following sexual violence. | Sexual violence within intimate relationships and where perpetrator is a stranger or acquaintance Historic sexual abuse. | All client groups served | Welsh Government sexual violence counsellor course |
| Perpetrator work | Group work facilitators | To work directly with perpetrators of domestic abuse in a voluntary group work setting | With those who have used (rather than experienced) violence and abuse against partners or ex-partners. | Most groups are men only | The Respect “Running Groups for Men Using Intimate Partner Violence (IPV), Essential Skills for Group work Facilitators” training |
| Children and Young People work | Children and Young People workers | To work directly with children and young people affected by violence against women, domestic abuse and sexual violence (in either a one to one or group work setting) within a specialist violence against women, domestic abuse and sexual violence service. | Parental domestic abuse, intimate partner violence, “honour” based abuse, forced marriage, stalking and harassment within intimate relationships. | Those under the age of 18 regardless of gender. | It is not possible to identify a well accepted qualification related to this role. Development of such training will be considered in the future. Well used courses are listed below: Children’s and Young Peoples’ ISVAs: The Survivors Trust ISVA training Lime Culture ISVA training |

| | | | | | |
|--|--|--|--|--|---|
| | | | | | Domestic abuse: Respect toolkit accredited by Respect UK STAR toolkit accredited by Welsh Women's Aid |
|--|--|--|--|--|---|

Appendix 4

Suggested role of the violence against women, domestic abuse and sexual violence champion (officer level)

In order to work effectively with victims, professionals need to have a common understanding of the issues and be able to provide a coherent and consistent response. Champions will help promote this understanding among professionals within their agencies to ensure the needs of victims and their families are considered when delivering services in their area.

Champions will:

- Be trained to an enhanced level on violence against women, domestic abuse and sexual violence (within group 3 of the National Training Framework)
- Act as a point of contact for information within their organisation (or service area) relating to violence against women, domestic abuse and sexual violence.
- Raise awareness of the issues of violence against women, domestic abuse and sexual violence throughout the organisation and generate action in response.
- Promote national and local domestic abuse campaigns as part of the organisation's communications and social media strategy, including ensuring posters/leaflets are displayed and available.
- Participate in the development and implementation of the Single Integrated Plan (and later Wellbeing Plans) ensuring that it addresses local need and addresses violence against women, domestic abuse and sexual violence and, in due course, support the development and implementation of the Local Strategy on Violence against Women, Domestic Abuse and Sexual Violence.
- Act as the link between your organisation (or service area) and partner organisations to support effective multi agency working.
- Proactively promote good practice within your organisation (or service delivery area), highlighting partnership and multi agency work which is key to providing an effective, consistent and integrated service and improved outcomes for individuals and families experiencing domestic violence and abuse.
- Promote and engage with service user groups in the development and delivery of services.
- Support and promote to staff the requirements of the National Training Framework and the Ask and Act Process.
- Support the organisation's own Workplace Policy and promote to staff.
- Work proactively with the Community Safety Partnership Manager and Domestic Abuse Coordinator and, in due course, the Regional Adviser, relevant Strategic Leads, Directorates and Officers to ensure a co-ordinated and strategic approach to Domestic Abuse across your organisation (service delivery area)
- Work with the relevant officers and partners to highlight any issues or concerns regarding violence against women, domestic abuse and sexual violence and to propose solutions.

- Attend relevant meetings as and when required.

Appendix 5

The violence against women, domestic abuse and sexual violence specialist subject syllabus

| Domestic abuse | Sexual violence | Violence against women, domestic abuse and children | Understanding modern slavery | Violence against women | Violence against women, domestic abuse, sexual violence and equality and diversity | Multiple, complex needs |
|---|--|---|--|----------------------------------|---|--|
| Pre requisite (minimum level 2 – initial eight units) | | | | | | |
| Domestic abuse awareness | Sexual violence awareness | The impact of violence against women, domestic abuse and sexual violence on children and young people | Modern slavery awareness | Violence against women awareness | Understanding equality and diversity in relation to violence against women, domestic abuse and sexual violence | Violence against women, domestic abuse and sexual violence and working with those with co-existing multiple support needs. |
| Optional development units (level 3 and above) | | | | | | |
| Risk identification and the Multi Agency Risk Assessment Conference (MARAC) | The role of the crisis worker | Young peoples experience of intimate partner violence | The role of the Senior Responsible Officer | Forced marriage | Working with Lesbian, Gay, Bisexual and Trans victims of violence against women, domestic abuse and sexual violence | Dual diagnosis: mental health and domestic abuse |
| Adolescent to parent abuse | The role of the sexual violence counsellor | The impact of domestic abuse on children | | Female Genital Mutilation | Working with those with No Recourse to Public Funds and violence against women, domestic abuse and sexual | Homelessness and domestic abuse |

| | | | | | | |
|---|--|-------------------------------------|--|------------------------------------|---|--|
| | | | | | violence | |
| Working with perpetrators of domestic abuse | | Child sexual abuse | | Violence against women and the law | Working with male victims of domestic abuse and sexual violence | Working with sex workers |
| A whole family approach to domestic abuse | | Working with child victims of abuse | | Honour based violence | Working with older victims of domestic abuse | Substance use, mental health and domestic abuse – the “toxic trio” |
| Domestic abuse and the law | | Child Sexual Exploitation | | | | Dual diagnosis: substance abuse and domestic abuse |

This is provided as an example only. The Specialist Subject Syllabus will develop based on stakeholder engagement and partnership. The table above demonstrates how the syllabus could be formed and the potential for mini qualifications within it. The syllabus may include these units, plus others identified over time which relate to any client group and the issues of violence against women, domestic abuse and sexual violence.

EXPLANATORY MEMORANDUM

Statutory Guidance under Section 15 of the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015.

National Training Framework

This explanatory memorandum has been prepared by the Education and Public Services Group and is laid before the National Assembly for Wales in conjunction with the above guidance made under the Act, and in accordance with Standing Orders 27.1 and 27.14.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the National Training Framework Statutory Guidance under the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015. I am satisfied that the benefits outweigh any costs.

[Leighton Andrews]

Minister for Public Services
25 January 2016

1. Description

This document sets out the design and requirements of the National Training Framework on violence against women, domestic abuse and sexual violence.

The section for specific consideration by the National Assembly for Wales, in accordance with section 16 of the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 (“the Act”), is section 4 of the guidance. It is proposed that subject to the approval of the Assembly, this section will be issued under section 15 of the Act and outlines specific requirements on relevant authorities (as defined in section 14 of the Act) in relation to the Framework.

The remainder of the guidance will be issued under section 60 of the Government of Wales Act 2006, and as such is not being laid before the Assembly in accordance with section 16 of the Act. However, the whole document has been laid before the Assembly to provide context and transparency. The remainder of the document provides guidance to assist relevant authorities in implementing the National Training Framework as well as to assist interested persons to engage with and benefit from the Framework.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

The Committee may wish to note that this Statutory Guidance is the first guidance document to be laid before the Assembly under section 16 of the Act.

3. Legislative background

The Act received Royal Assent on 29 April 2015. The Act ensures a focus across the public sector on the prevention of these issues, the protection of victims and the support for those affected by such issues.

The provisions within the Act strengthen the leadership and strategic approach to violence against women, domestic abuse and sexual violence.

Section 15 of the Act provides the Welsh Ministers with the power to issue guidance to relevant authorities on how in the exercise of their functions they could contribute to the achievement of the purpose of the Act. Section 16 of the Act requires the guidance to be laid before the Assembly in draft before being issued.

Section 60 of the Government of Wales Act 2006 enables the Welsh Ministers to do anything which they consider appropriate to promote or improve the economic, social and environmental well-being of Wales. The guidance published under section 60 will provide further assistance to relevant authorities and other bodies in relation to violence against women, domestic abuse and sexual violence.

4. Purpose and intended effect of the Statutory Guidance

The guidance outlines the National Training Framework on violence against women, domestic abuse and sexual violence. Section 4 of the document issues guidance under section 15 of the Act to relevant authorities on how they should exercise their functions in relation to the delivery and standards of training on violence against women, domestic abuse and sexual violence.

In establishing the Framework the Welsh Government aims to create a consistent standard of care for those who experience violence against women, domestic abuse and sexual violence. To ensure an unfailing standard of service throughout the public service the Framework has two main functions:

- 1) Consistent, proportionately disseminated training for relevant authorities to fundamentally improve the understanding of the general workforce and, therefore the response to those who experience violence against women, domestic abuse and sexual violence.
- 2) Alignment of existing specialist training to further professionalise the specialist sector, to improve consistency of specialist subject training provision nationally and to set core requirements of specialist service provision.

5. Consultation

Two consultations have been undertaken in relation to the National Training Framework. The first focussed on the content and structure of the Framework to facilitate needs led and stakeholder informed delivery whilst the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 progressed through Assembly scrutiny. This consultation was held between 23 October - 19 December 2014 and engaged forty six respondents. A parallel survivor engagement exercise was run at the same time which engaged fifty eight participants who had both experienced abuse and who were seeking help due to their use of abuse within intimate partner relationships.

The second consultation ran for twelve weeks between 31 July – 23 October 2015 with a total of 51 responses received. A consultation event was also held in October, which engaged 44 participants.

Links to both consultations are provided below:

<http://gov.wales/consultations/people-and-communities/national-training-framework-on-gender-based-violence/?lang=en>

<http://gov.wales/consultations/people-and-communities/national-training-framework-on-violence-abuse/?lang=en>

The summary of responses to the formal consultation is published alongside this document. The response to the consultation, and to the National Training Framework itself, was overwhelmingly positive and included:

- Support for the level of engagement and stakeholder participation within development of the NTF;
- Support for the inbuilt flexibility of the model (although one or two respondents called for more prescriptive information in some examples); and
- Strong support for regional implementation.

In order to further improve the statutory guidance respondents to the consultation called for:

- More detail in some elements of the Framework and a stronger focus on engaging leadership and holding this group to account.
- The NTF to be applied beyond the parameters of the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 to apply the requirements of the statutory guidance to professionals working in the non devolved, contracted and third sectors.
- Improved alignment of implementation of the NTF with training activity linked to the Social Services and Well-being (Wales) Act 2014.
- Additional references to children's experience of violence against women, domestic abuse and sexual violence.

The main issues which have been revised in the Statutory Guidance following the consultation are:

- Revisions to the requirements to strengthen local governance arrangements for implementation of the National Training Framework and leadership engagement in oversight and monitoring.
- Clarification over regional implementation and co-ordination.
- A requirement for explicit references to the needs of all family members within the local training needs analysis to ensure that the needs of both adults and children are sufficiently assessed in local implementation and the inclusion of child focussed professionals within group 4 of the Framework.
- Additional references to corresponding legislation (specifically the Social Services and Well-being (Wales) Act 2014 and the Well-being of Future Generations (Wales) Act 2015 to improve alignment in the implementation of the legislation (this is also further improved in supporting policy and pilot work).
- Clarified timescales for implementation and rollout of the group 1 training.
- An explicit requirement regarding "refresher" training.
- A clarified requirement regarding Continuous Professional Development for specialist services.

More detailed responses to the consultation are available in the formal consultation response document which is provided at appendix 1.

6. Regulatory Impact Assessment (RIA)

No separate RIA has been prepared as the Impact Assessment prepared for the Act is still relevant and a copy can be found on the Welsh Government website:

<http://gov.wales/docs/dsjlg/publications/commsafety/150501-explanatory-memorandum-vawdasv-en.pdf>

Appendix 1

A response from the Welsh Government to the public consultation on the draft statutory guidance on the National Training Framework on violence against women, domestic abuse and sexual violence.

Introduction

This document outlines a summary analysis of the responses received to the public consultation on draft statutory guidance on the National Training Framework on violence against women, domestic abuse and sexual violence. It will outline the responses received in the consultation and how these responses have informed how the Welsh Government intend to further develop and implement the Framework. The report will outline the general themes of the feedback and focus primarily on those pieces of feedback we received multiple times.

It is not possible in this document to represent individual comments or one-off pieces of feedback but each response received to the consultation has been considered individually. Individual response shave also been published separately.

The Welsh Government would like to thank each individual and organisation who submitted a response to the consultation and those who attended the consultation event held in October 2015. Each response submitted as part of this exercise is valued and has been considered carefully.

Summary or respondents

The entire consultation exercise engaged 95 individuals.

51 responses were received to the written public consultation. A summary of the profiles of these respondents is provided below:

| Organisation profile | Number of individual responses |
|-----------------------------------|---------------------------------------|
| Housing | 4 |
| Local Government/Local Authority | 12 |
| Health | 9 |
| Fire and Rescue Authority | 3 |
| Police/PCC | 1 |
| Probation | 1 |
| Specialist sector/interest groups | 16 |
| Care Council for Wales | 1 |
| Union | 2 |
| Individual other | 2 |
| Total | 51 |

A consultation event was also held on the 9th October 2015. This event engaged 44 attendees. A summary of the profiles of these attendees is provided below:

| Attendee profile | Number of individuals |
|-------------------------|------------------------------|
|-------------------------|------------------------------|

| | |
|--|-----------|
| Health | 6 |
| Specialist sector/interest groups | 15 |
| Police | 4 |
| Local Government/Local Authority | 13 |
| Probation/Community Rehabilitation Company | 6 |
| Total | 44 |

A full list of respondents (excluding those who requested anonymity) is provided in appendix a.

Summary of key issues

The consultation process provided an overwhelmingly positive response on the NTF. It was welcomed by every respondent and most constructive feedback received through the written consultation focussed on the detail of the Framework and the intricacies of implementation.

“We are very supportive of Welsh Government proposals to develop the NTF to foster a more consistent and coherent approach to training for public sector professionals in these areas. We believe that this approach has the potential to have a significant impact on the lives and experiences of victims of Wales. We congratulate Welsh Government on being the first administration in the UK to commit to a holistic approach to training across the public service on these issues”. (Respondent 023)

Although the consultation event also aimed to facilitate discussions at this level (and did to a certain extent), more operational feedback was provided here, including the challenges associated with rolling out elearning in localities and requests for a prescribed approach to what local leadership would look like.

There was support for the level of engagement and stakeholder participation within development of the NTF so far. The inbuilt flexibility of the model was welcomed although one or two respondents called for more prescriptive information in some examples. There was strong support for regional implementation.

“The existing arrangements for Local Safeguarding Children Boards, regional collaboration boards, community safety partnerships naturally lend themselves to multi agency collaboration and joint planning around agreed priorities, the aspiration for regional planning and consistency of delivery doesn't lend itself to isolated working practices”. (Respondent 011)
“Regional Safeguarding Boards would provide the strategic infrastructure. Many have training sub groups in place”.

More constructively, respondents also called for more detail in some elements of the Framework and a stronger focus on engaging leadership and holding this group to account. Many respondents requested that the NTF be applied beyond the parameters of the Violence against Women, Domestic

Abuse and Sexual Violence (Wales) Act 2015 to apply the requirements of the statutory guidance to professionals working in the non devolved, contracted and third sectors.

Specific commentaries on the themes of the feedback are provided below, along with a summary of comments related to each group within the Framework.

1. The requirements proposed under section 15 of the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015.

The consultation responses outlined general support for the requirements of the NTF and the way such requirements would be evidenced (the training needs analysis and plan). The specific suggestions received to further develop the requirements are listed below:

- For the need for inclusion for all forms of violence against women, domestic abuse and sexual abuse to be specified in the requirements relating to the needs analysis to ensure some less well recognised elements of violence against women, domestic abuse and sexual abuse would not get missed.

“It is imperative that the Training Needs Analysis, on which the plan is based, pays equal attention to the requirements of each group within the National Training Framework and ensures that the learning needs of each group, with regards to sexual violence, are fully recognised”. (Respondent 028)

- A child specific training analysis be incorporated into the general requirements currently outlined in the guidance, to be informed by the child and young person elements of the population needs assessments and the local assessments of wellbeing, as required by the Social Services and Well-being (Wales) Act 2014 (“Social Services Act”) and the Well-being of Future Generations (Wales) Act 2015 (“Well-being Act”).
- Activity related to fulfilling the requirements of the NTF should be made a requirement of the local Social Care Workforce Development Partnership (SCWDP) plan.
- A further requirement be placed on regional education consortia to ensure that workforce development programmes delivered within education include the requirements of the relevant groups within the NTF.
- Two respondents suggested that reference to the United Nations Convention on the Rights of the Child be specified as a requirement of the training needs analysis and that this also be considered when Ministers review submitted analyses and plans.

- One respondent suggested a requirement that the training plans of each relevant authority be published.
- Calls were made for a formal requirement of refresher training for group 1 to be outlined within the guidance. Some respondents requested that completion of the eLearning be a bi-annual requirement.

Welsh Government response

Each of these proposals were considered for inclusion.

In relation, specifically to the United Nations Convention on the Rights of the Child; a specific reference to this is not required because when developing the NTF guidance, the Welsh Ministers have had regard to the UNCRC (A Children’s Rights Impact Assessment is published alongside this response). As a result, the relevant authority’s will indirectly have had regard to it.

Moreover, section 7(2) of the Social Services and Well-being (Wales) Act 2014, requires that when a local authority and Local Health Board is exercising functions in relation to children under that Act, they must have regard to Part 1 of the UNCRC. This would include the function of conducting the section 14 population needs assessment. When developing their local strategy, a local authority and LHB are under a duty to have regards to the needs assessment. The first population assessment is due no later than 1 April 2017.

Sanctions

Some respondents requested further advice on the sanctions which would be imposed on relevant authorities if they did not comply with the statutory guidance or deliver against their submitted plans.

Welsh Government response

As outlined in section 17 of the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015, relevant authorities are required to follow any guidance that is issued under section 15. However, they do not have to follow the statutory guidance if it “would be unreasonable for them to do so” or the following criteria are met:

- there is a good reason for them not to;
- they have an alternative policy; and
- they issue a policy statement in accordance with section 18 of the Act.

If the relevant authority does not provide a policy statement setting out an alternative approach or the Welsh Ministers consider the alternative approach outlined in the policy statement is not likely to contribute to the purpose of the Act, the Welsh Ministers may “direct” them to take any action which the Welsh Ministers consider appropriate. The relevant authority must comply with the

direction which is enforceable by mandatory order. The order would be sought at the High Court by or on behalf of the Welsh Ministers.

Failure to follow a mandatory order is contempt of court and is punishable by fine.

In addition to the power outlined above, it would be possible for a person to challenge the compliance or delivery of a relevant authority against the statutory guidance by way of judicial review. In such a case a variety of remedies are available to the court.

These sanctions will not be further outlined in the guidance as they are referred in the Act.

“Funded workers”

There were also multiple questions as to whether the requirement for relevant authority “funded “ workers placed a duty on the funder or the workers organisation in relation to meeting the training need for groups 4 and 5 of the Framework.

Welsh Government response

Following detailed consideration of these comments, reference to funded workers has been removed from the guidance. The reason for this removal is to avoid an unintended consequence that a requirement to supply a funded worker’s professional development could have a detrimental impact on the current salary rate of specialist workers (which is not consistent) should the finances to resource this requirement be sourced from existing monetary sources rather than from additional funding.

The Welsh Government will seek to provide further clarity around funding for specialist workers and their professional development as part of the development of subsequent future guidance and complementary policy activity related to commissioning and regional service provision.

2. Leadership and governance

Regional Safeguarding Boards were repeatedly named as the governance structure most relevant to the NTF and the multi agency forum most suitable to oversee regional implementation. There were also a few suggestions that governance be strategically integrated with Public Service Boards. Respondents want clear and careful monitoring of implementation of the NTF via the governance board.

There were some calls for clarification over the role of the current Domestic Abuse Co-ordinators in relation to delivery of the NTF. These calls mainly came from the Domestic Abuse Co-ordinators themselves but some respondents also suggested that local leads for the implementation of the NTF be further clarified beyond the current guidance which states:

“The local training plan is to be co-ordinated by the Local Authority, i.e., the regional lead of violence against women, domestic abuse and sexual violence within the Local Authority”.

Feedback in relation to this was particularly strong in the consultation events.

“What is required is a single point of contact who would, on behalf of the "region" undertake the work to design, develop, and monitor the training plan reporting back within the designated governance structure. It would make sense if this was the regional domestic abuse strategic coordinator”
(Respondent 011)

Welsh Government response

The guidance will be reviewed to ensure that options for governance and operational co-ordination are laid out clearly.

It is acknowledged that the corresponding policy areas relating to pilot regionalisation of Violence against Women, Domestic Abuse and Sexual Violence co-ordination, funding and service provision and commissioning inter-relate to oversight of the National Training Framework. The parallel development of this work has led to questions about what the future of leadership and co-ordination in this area will look like. These developing policy areas will provide clarity in time and but at this stage the Welsh Government aim to provide guidance which is reasonable and allows flexibility of implementation which is determined by local need and infrastructure.

3. Regional application

There was general support for regional implementation of the NTF. Some comments were made regarding the challenges associated with developing training plans and needs analysis across Local Authorities and Health Boards and some requests were made that Local Authorities and Health Boards develop their own plans and these are dealt with separately and reviewed through individual regional governance structures.

Whilst there was general support for the lead for regional implementation to be placed within the Local Authority, this support did not extend to responses received from Health who suggested a separate health-based lead, possibly within the safeguarding team, should hold this specific responsibility for health. Some questioned why the lead for the work had been linked to Local Authorities. This link had been made as the current Domestic Abuse Co-ordinator role is based within the Local Authority and the future Regional Advisor role, currently being piloted by the Welsh Government will also be based here. It is hoped that the Regional Advisor will have a strategic role which can draw in all relevant authorities.

“Unclear why it is proposed that the local training plan be co-ordinated by the Local Authority as HBs cover more than one LA. May be better for HBs to complete their own training plans”. (Respondent 011)

Whilst some respondents favoured a multi agency training plan across all relevant authorities within a region (primarily specialist third sector respondents), others referenced the challenges of multi agency training delivery when balancing the capacity of relevant staff (primarily respondents working within the relevant authorities).

The role of Workforce development teams was referenced in several responses as key to the implementation of the NTF. Feedback in relation to this was particularly strong in the consultation events.

“Workforce Development Teams in Social Services will need to play a pivotal role in this. Whilst the training needs to be delivered to those outside the Social Care Sector WDT teams are already in a position to capture training records for staff in Local Authorities and to be able to report data in this area”. (Respondent 003)

Welsh Government response

The Welsh Government agree that Workforce development teams have an important role to play in rollout of the National Training Framework and will continue to seek to engage with this audience.

In terms of training delivery, the regional implementation of the NTF relates most directly to groups 2 and 3 of the Framework. We will consider further, as part of the “Ask and Act” pilot work underway this year and next, the opportunities and challenges relating to regional implementation and reflect this learning in the “Ask and Act” guidance.

The National Training Framework guidance will be reviewed to consider the opportunities and challenges associated with planning and implementing the requirements of the National Training Framework on a regional basis.

4. The scope of the National Training Framework.

Multiple questions regarding the scope of the NTF were received during the consultation. Respondents expressed an appetite for widening the scope beyond the relevant authorities named in the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 to non devolved organisations such as police, probation and the prison service and to organisations which may be sub-contracted to deliver some of the functions of the relevant authorities such as domiciliary care workers who work for private contractors or Registered Social Landlords. There was also significant appetite for the requirements of the guidance to apply to the Third Sector. Some concerns were raised that the NTF is based on risk or safeguarding thresholds. Also, a small group of respondents expressed concern that the NTF should apply to violence against women, domestic abuse and sexual violence, rather than domestic abuse.

The role of NHS Trusts and their place in regional rollout must be considered further in order to ensure that these organisations are engaged appropriately either as single organisations or within regional implementation and the good work already underway in these organisations is built upon.

“The training plan should take account of how local consortia engage with the wider public sector such as specialist NHS Trusts”. (Respondent 029)

Welsh Government response

The Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 applies to “relevant authorities”. In the Act, “relevant authority” means:

- (a) a local authority;
- (b) a Local Health Board;
- (c) a fire and rescue authority in Wales constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 (c.21), or a scheme to which section 4 of that Act applies;
- (d) a National Health Service trust established under section 18 of the National Health Service (Wales) Act 2006

The National Training Framework statutory guidance is issued under section 15 of the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015. It is not possible for the Act (or the guidance) therefore to place requirements on anyone outside of these “relevant authorities”. However, as the guidance stipulates wider organisations are encouraged to engage in the Framework and implementation work to date has included organisations beyond the relevant authorities.

The NTF will not relate to risk as a basis for its application. The NTF is mapped against a victims journey through the Public Sector and groups 1 and 2, particularly, form part of improving earlier intervention and prevention. Risk and needs assessment are referenced in the content of some groups of the Framework in order to reflect common and accepted good practice in relation to service provision based on these assessments and to assist the relevant authorities decision making. This is not included to determine or exclude anyone from a service and the guidance will be reviewed to ensure this is clear.

The NTF does apply to the full breadth of the definitions of violence against women, domestic abuse and sexual abuse as outlined in the Act. This is reflected in the title and in the content of training developed under the Framework so far.

The roles of the NHS Trusts will be further considered and outlined in the revised guidance.

Ask and Act

Several respondents requested further detail regarding Ask and Act within the NTF.

There was some confusion amongst a small number of respondents between the regional training consortia and any training sub groups which are being set up locally to support implementation of the NTF.

A few requests were received for further guidance on the length of training required for “Ask and Act”.

Welsh Government response

“Ask and Act” is a large and detailed area of policy and in order to provide the requisite level of detail on this approach separate guidance has been published. This guidance is also open to public consultation until 27th January 2016. This guidance will address the comments received to this consultation.

Aligning Welsh Government legislation.

Some calls were received in the consultation response to ensure that at both central and local levels the requirements of the Social Services Act, the Violence against Women, Domestic Abuse and Sexual Violence Act and the Well-being Act were aligned. Such calls related particularly to mechanisms of implementation, including the significant training ask associated with the legislation.

“I would therefore welcome requirements for a child-specific training needs analysis to be contained in the statutory guidance and for this analysis to be informed by the child and young person elements of the population needs assessments and the local assessments of wellbeing, as required by the Social Services and Wellbeing Act 2014 and the Wellbeing of Future Generations (Wales) Act 2015 respectively”. (Respondent 050)

In a linked comment, one respondent called for a clearer outline of the role of the Care Council for Wales within the NTF.

Welsh Government response

The teams responsible for implementations of each Act are in liaison regarding potential integration and alignment of training activity related to each piece of legislation.

Implementation

Several respondents suggested that the 12 month rollout period for group 1 training was not long enough. No suggestions were received for a more suitable rollout period.

Some respondents were concerned that the 12 month eLearning rollout was the rollout period for the entire NTF (including Ask and Act). A small number of respondents commented on planning time for implementation and requested further clarification on how long they would have to plan.

Welsh Government response

The 12 months reference relates only to the group 1 training. The NTF rollout has an initial rollout phase of five years.

The time frame for planning and implementation will be further considered as the guidance is refined.

Capacity

The issue of capacity within the relevant authorities and within the specialist sector was raised during the consultation and this was particularly relevant to the consultation event. Concerns have been raised that there is limited capacity within relevant authorities to attend and deliver training, further hampered by similar training programmes which are being rolled out linked to other Welsh Government legislation and potential forthcoming funding cuts. There is also concern that groups 2 and 3 training which support “Ask and Act” will lead to demand on specialist services beyond existing capacity.

“I am supportive of the prudent approach taken to address the training requirements within this subject area and recognition of the importance of proportionality. However, it needs to be recognised that there are ever increasing demands placed on staff for more and more training coming from subject matter experts. Whilst not wishing to undermine this very important subject, there needs to be recognition that this is only one of a range of subjects that have training requirements. From an organisational perspective, it is essential that we consider these demands as a whole and look at the impact of them across the organisation from a staff perspective”. (Respondent 044)

Several respondents expressed support for integration of NTF implementation with that of the Social Services and Well-being (Wales) Act 2014 training programme. There were also calls to align the language associated with the Social Services and Well-being (Wales) Act 2014 with the language of “Ask and Act” and the NTF, such as the term “adult at risk”.

The role of the manager was referenced in several responses; particularly the role of Public Service line managers and their role in managing staff who disclose their own experiences of abuse following training. There were some calls that managers are prioritised for group 3 training in order to support staff appropriately.

Welsh Government response

The VAWDA team are in liaison with the teams implementing the overlapping training programmes to assess opportunities for integration to reduce the burden on the audience delivering against the legislation.

It is hoped that the pilot work related to this training and to the establishment of an infrastructure to support “Ask and Act” will lead to an enhanced understanding of what any increase in service need is and this learning will influence the development of the forthcoming guidance on commissioning which is being developed by the Welsh Government.

Prioritisation of staff training for groups 2 and 3 will be determined by the relevant authority and this should allow them to prioritise managers where necessary.

Specific feedback provided for each group of the Framework.

Group 1

Many responses linked the requirements for group 1 training to mean a requirement to complete the Welsh Government elearning. This is not the case and is an important point given some of the feedback provided below. One respondent suggested that additional resource would be required to ensure that all staff with FRAs could complete the elearning. However, this response was not replicated across other relevant authorities.

Several respondents called for the reach of the eLearning to be widened to anyone who wanted to complete it.

There was strong support for the elearning to form part of induction processes within the Public Service although some respondents raised concerns that this become nothing more than a “tickbox exercise” and that clear support for staff was available within each relevant authority following completion of the elearning.

Some concerns were raised that the technology of the relevant authorities was not able to support the elearning and that versions of the elearning should be created which met some of the additional needs of the relevant authorities. A small number of respondents requested that face to face training be used for group 1 where appropriate.

“E-learning assumes that all staff will have a sufficient level of IT literacy. This is not the case for some employees. Also not all staff have access to a computer”. (Respondent 012)

Closed captions are available on the elearning for those who cannot hear or do not have sound enabled on their machines and an audio book is also available for those who are visually impaired. Some respondents suggested

that the accessible versions be made more widely available. A hard copy workbook is also being developed.

A few respondents raised a preference for local monitoring of elearning completion, rather than centralised monitoring. This feedback was particularly relevant to those in DAC roles who felt that such monitoring was part of their roles and would form part of recording requirements made locally on them. Some DACs also raised a concern regarding access to the elearning on the All Wales Academy being hampered by a license agreement between the portal and the local authorities.

Welsh Government response

The Elearning is available on Learning@NHSWales which is technically accessible to all (it is also available on the All Wales Academy but this is less accessible outside of local authorities). However the Welsh Government accepts that accessing the elearning through this portal may feel unwieldy to the general public.

In order to make the eLearning available to a wider audience it would need to be placed on a public facing website. The Welsh Government are not currently in a position to do this. It is not possible through such an approach to monitor completion of the eLearning or enhance the wellbeing and safety checks inbuilt within the package. The Welsh Government will, however continue to assess the reach of the elearning and its placement and host.

The Welsh Government are in conversation with the All Wales Academy regarding the issues raised by the Domestic Abuse Co-ordinators and the guidance will be revised in line with the outcomes of these conversations. The guidance will also reference more clearly the alternative versions of the elearning which are available on all portals.

Group 2

Calls were made for a formal requirement to be made that refresher training at this level be outlined within the guidance.

One respondent highlighted the importance of ensuring those on relevant degrees (specifically social care in this example) were informed and aware of the legislation as part of this programme.

There were calls that community based organisations be included in the regional consortia. Similar (although less) calls were made in relation to the role of Registered Social Landlords.

Additional content on Multi Agency Risk Assessment Conferences was requested for the group 2 learning outcomes.

Welsh Government response

As the NTF and “Ask and Act” guidance outlines, the inclusion of specialist third sector organisations within the regional consortia is encouraged, especially in relation to group 3 which will rely on the expertise of the specialist third sector.

The developer contracted to develop the training for groups 2 and 3 on behalf of the Welsh Government will be provided with the responses to both the NTF and the “Ask and Act” consultations in order to use this feedback during the development of the training.

The Care Council for Wales has been engaged throughout the development of the National Training Framework and will continue to be as the guidance is further refined and the links between the NTF and the training linked to the Social Services Act are explored further.

Group 3

Calls were made for a formal requirement to be made that refresher training at this level be outlined within the guidance.

Additional content on Multi Agency Risk Assessment Conferences was requested for the group 3 learning outcomes.

Two respondents suggested that more content on children be added to the learning outcomes of group 3.

There was general support for the accreditation offered for group 3 trained professionals.

Some respondents suggested that group 3 training should be delivered prior to local rollout of group 2 training to ensure champions were in place to support the roll out of “Ask and Act” and managers were able to support any increased disclosures within the workplace.

Welsh Government response

The developer contracted to develop the training for groups 2 and 3 will be provided with the responses to both the NTF and the “Ask and Act” consultations in order to use this feedback during the development of the training.

The suggestion regarding the order of group 2 and 3 training will be shared with the contracted training developer for consideration in the “Ask and Act” pilot.

Group 4

One respondent called for volunteers to be included in the professional groups listed in group 4.

There was some suggestion that the requirements of group 4 of the NTF be built into national guidance relating to commissioning arrangements. A few questions were received in relation to the requirements for 35 hours CPD for this group of the NTF. Respondents have requested more clarification on what would comply as CPD and how this could be delivered. One respondent suggested that the credit value currently assigned to acceptable courses at this level be reduced to incorporate existing courses which are acceptable to their organisation. There were also a few calls for clarity that existing qualifications were acceptable at this level and that professionals already qualified to a suitable level would not have to re-train. A number of respondents suggested that more emphasis be placed on children and young people in this group and that children and young people's workers be included within this group.

One respondent suggested that training beyond the Safelives IDVA training be acceptable for IDVAs working in Wales and suggested that this was the case in England. They also suggested that courses beyond those funded for particular purposes by the Welsh Government be listed as acceptable for professionals in groups of the Framework.

Welsh Government response

Practice based feedback suggests that it is not uncommon for specialist workers to be provided access to a vocational qualification or course and for this to mark the end of their formal learning and development. Given the changing landscape of violence against women, domestic abuse and sexual violence service provision, legislation and policy this means that many practitioners may not have the opportunity to ensure they are up to date on changes affecting their work. This is not the case for other professions such as social work or midwifery where formal professional development is a requirement of that profession.

The parameters of the CPD requirement will be further considered in the revised guidance with additional advice provided. This will be considered within a context of compromised capacity within specialist services and flexibility will be considered carefully.

Those specialist workers already trained on one of the courses listed in the guidance would not need to retrain – their current training would comply with the guidance requirements on relevant authorities.

The Welsh Government will consider the credit value and course requirements at this level in line with the feedback received and the consequences relating to alternative courses beyond those funded by the Welsh Government in delivering a consistent Framework.

Group 5

Several responses highlighted the sensitivities experienced across the specialist sector in relation to commissioning and welcomed the peer support

element of this level, acknowledging a need for partnership and consortium working linked to commissioning and funding arrangements.

“The peer support network for managers is a specific area that should be supported. The competitive climate of commissioning and funding circles can be detrimental for relationships between service managers where they may not feel able to openly discuss difficulties and concerns. Group 5 training offers a possible safe and equal space where this support and sharing can be facilitated”. (Respondent 008)

A few respondents raised concerns that group 5 of the NTF related to domestic abuse services only.

There were some calls that group 5 training also be applied to wider managers working across the Public Service but not managing specialist services, and to commissioners. One respondent suggested that LCM qualifications be included for group 5.

Several respondents welcomed the inclusion and current provision of this training by the Welsh Government and requested that further funding is allocated to the delivery of the training beyond financial year 2015-2016.

Welsh Government response

The training for group 5 applies to anyone in a management or leadership role within a specialist service relating to any form of violence against women, domestic abuse and sexual violence. Uptake of training in this area to date would indicate that this is primarily domestic abuse and sexual violence services as specific services relating to other forms of violence against women are far rarer. The training at group 5 is co-developed and delivered by a domestic abuse charity (Safelives) and a sexual violence charity (New Pathways) and the feedback of learners indicates it is being very positively received. Feedback will be further monitored following training delivery during 2015-2016 and learning from this exercise will influence future delivery. The aims of group 5 of the NTF were not originally intended to apply beyond the specialist sector. The current focus of this group is acknowledging, validating and strengthening the leadership roles played within the specialist sector. Additional training needs of managers within the Public Service, more generally, will be met through group 3 of the Framework.

Group 6

Several respondents called for a more formal and targeted approach to group 6 of the National Training Framework to ensure that the aims of this group were more robustly addressed. Several calls for greater accountability of this group were received.

Many respondents acknowledged the role of leadership as key to the success of the National Training Framework and that the strategic engagement plan linked to the Framework was important. There were some calls that the National Safeguarding Board be included in the plan.

“Engagement with Group 6 professionals should be more targeted, and participation of leaders across public authorities should be monitored”.
(Respondent 048)

Welsh Government response

The Welsh Government will further consider how the Public Service leadership can be targeted and engaged effectively in the implementation of the NTF and will seek further advice on engaging relevant strategic forums. This will include liaisons with the National Adviser for Violence against Women, other forms of Gender-Based Violence, Domestic Abuse and Sexual Violence.

Specialist subject syllabus

There was strong support for the creation and ongoing development of the Specialist Subject Syllabus. Some respondents raised concerns that the syllabus could be too accessible and that the materials and outcomes be listed on the Live Fear Free website be restricted to only a select group of providers or “members”. One respondent urged that the creation of the syllabus should not impact on the income generation of the specialist third sector through training.

Welsh Government response.

It is not the intention of the Welsh Government for the existence of the Specialist Subject Syllabus to affect the income generation of the specialist third sector through training. It is hoped that the existence of the syllabus will add value to the training offer of this sector as the units listed on the syllabus are accredited and quality marked by the Welsh Government. The aim of the syllabus is to begin to create some consistency across localised training provision and to strengthen and formalise this offer for potential participants so it complies with CPD requirements.

Enquiries are being made regarding “members only” areas of the Live Fear Free website.



Foreign &
Commonwealth
Office

Agenda Item 5

Minister for Europe
King Charles Street
London SW1A 2AH

26 January 2016

David Melding AM
Chair
National Assembly for Wales
Constitutional and Legislative Affairs Committee
Cardiff Bay
Cardiff, CF99 1NA

Dear Mr Melding,

Thank you for your letter of 5 January inviting me to give evidence to your Committee on the afternoon of either Monday 29 February or Monday 7 March in Cardiff. I acknowledge and welcome the strong interest in this issue in the National Assembly for Wales and the Constitutional and Legislative Affairs Committee.

I regret that I am unable to attend on either date, however, please be assured that we are considering the interests of all of the UK. There are many opportunities for engagement between the UK and Welsh Government and Assembly on this issue, namely:

My recent meetings and telephone calls with Jane Hutt AM; the Foreign Secretary's meeting with the First Minister on 16 December; and at the Joint Ministerial Committee's Europe meetings where this issue is on the agenda.

This issue is also under scrutiny by the UK Parliament, which includes MPs from Wales; two Welsh MPs are members of the European Scrutiny Committee.

We feel that these opportunities provide the Committee with the information it needs at this time.

RT HON DAVID LIDINGTON MP

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.](#)

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Welsh Grand Committee

DRAFT WALES BILL

Wednesday 3 February 2016

(Morning)

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Draft Wales Bill

*General debate in progress when the Committee adjourned till this day at
Two o'clock.*

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not later than

Sunday 7 February 2016

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY
FACILITATE THE PROMPT PUBLICATION OF
THE BOUND VOLUMES OF PROCEEDINGS
IN GENERAL COMMITTEES

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The Committee consisted of the following Members:

Chairs: MR DAVID HANSON, †ALBERT OWEN

- | | |
|--|---|
| † Andrew, Stuart (<i>Pudsey</i>) (Con) | † Irranca-Davies, Huw (<i>Ogmore</i>) (Lab) |
| Bebb, Guto (<i>Aberconwy</i>) (Con) | † Jones, Mr David (<i>Clwyd West</i>) (Con) |
| † Brennan, Kevin (<i>Cardiff West</i>) (Lab) | † Jones, Gerald (<i>Merthyr Tydfil and Rhymney</i>) (Lab) |
| Bryant, Chris (<i>Rhondda</i>) (Lab) | † Jones, Susan Elan (<i>Clwyd South</i>) (Lab) |
| † Cairns, Alun (<i>Parliamentary Under-Secretary of State for Wales</i>) | † Kinnock, Stephen (<i>Aberavon</i>) (Lab) |
| Clwyd, Ann (<i>Cynon Valley</i>) (Lab) | † Lucas, Ian C. (<i>Wrexham</i>) (Lab) |
| † Crabb, Stephen (<i>Secretary of State for Wales</i>) | † Lumley, Karen (<i>Redditch</i>) (Con) |
| † David, Wayne (<i>Caerphilly</i>) (Lab) | Moon, Mrs Madeleine (<i>Bridgend</i>) (Lab) |
| † Davies, Byron (<i>Gower</i>) (Con) | † Morden, Jessica (<i>Newport East</i>) (Lab) |
| † Davies, Chris (<i>Brecon and Radnorshire</i>) (Con) | † Morris, David (<i>Morecambe and Lunesdale</i>) (Con) |
| † Davies, David T. C. (<i>Monmouth</i>) (Con) | Rees, Christina (<i>Neath</i>) (Lab) |
| † Davies, Geraint (<i>Swansea West</i>) (Lab/Co-op) | † Sandbach, Antoinette (<i>Eddisbury</i>) (Con) |
| † Davies, Glyn (<i>Montgomeryshire</i>) (Con) | † Saville Roberts, Liz (<i>Dwyfor Meirionnydd</i>) (PC) |
| † Davies, Dr James (<i>Vale of Clwyd</i>) (Con) | † Smith, Nick (<i>Blaenau Gwent</i>) (Lab) |
| Doughty, Stephen (<i>Cardiff South and Penarth</i>) (Lab/Co-op) | Smith, Owen (<i>Pontypridd</i>) (Lab) |
| † Edwards, Jonathan (<i>Carmarthen East and Dinefwr</i>) (PC) | † Stevens, Jo (<i>Cardiff Central</i>) (Lab) |
| † Evans, Chris (<i>Islwyn</i>) (Lab/Co-op) | Tami, Mark (<i>Alyn and Deeside</i>) (Lab) |
| † Flynn, Paul (<i>Newport West</i>) (Lab) | † Thomas-Symonds, Nick (<i>Torfaen</i>) (Lab) |
| † Griffith, Nia (<i>Llanelli</i>) (Lab) | † Williams, Craig (<i>Cardiff North</i>) (Con) |
| † Harris, Carolyn (<i>Swansea East</i>) (Lab) | † Williams, Hywel (<i>Arfon</i>) (PC) |
| † Hart, Simon (<i>Carmarthen West and South Pembrokeshire</i>) (Con) | † Williams, Mr Mark (<i>Ceredigion</i>) (LD) |
| † Hoare, Simon (<i>North Dorset</i>) (Con) | |
| | Glenn McKee, Liam Laurence Smyth <i>Committee Clerks</i> |
| | † attended the Committee |

Welsh Grand Committee

Wednesday 3 February 2016

(Morning)

[ALBERT OWEN *in the Chair*]

Draft Wales Bill

[Relevant documents: oral evidence taken before the Welsh Affairs Committee on 26 October, 9, 16 and 30 November and 9 December 2015, and written evidence to the Committee, reported to the House on 16, 23 and 30 November and 7 December 2015, on the pre-legislative scrutiny of the draft Wales Bill, HC 449.]

9.30 am

The Chair: Before we start, it might be helpful if I remind Members of the timing of this debate. This session will go until 11.25 am, and we will meet again at 2 pm to debate the motion for a further two hours, until 4 pm. I have no power to limit the length of speeches, but I ask Back Benchers and Front Benchers to appreciate the fact that a number of people are down to speak, many of whom are speaking in their first Grand Committee.

Paul Flynn (Newport West) (Lab): On a point of order, Mr Owen. A fortnight ago, my hon. Friend the Member for Clwyd South raised in the Chamber the issue of the languages permitted in Grand Committee. She rightly pointed out that when this Committee meets in Wales, we can use either of the two beautiful languages of Wales. The Leader of the House said he was unaware that we are confined to one language when we meet in Westminster and said it was a serious point. Have you had any information from the Leader of the House on which languages will be permitted today?

The Chair: The hon. Member knows I have sympathy with the point he raises, but I have had advice that London is not in Wales and the rules have not changed, so the language of this Committee will be English. If Members wish to mention Welsh names or use Welsh phrases, I ask that they do so in English to follow. That is the ruling on the use of the Welsh language.

9.31 am

The Secretary of State for Wales (Stephen Crabb): I beg to move,

That the Committee has considered the matter of the draft Wales Bill.

May I start by welcoming you to the Chair, Mr Owen? It is a particular pleasure to serve under your chairmanship. In the past 18 months, while I have been Secretary of State, I have tried not to burden colleagues with too many of these meetings, after taking soundings from Members from Welsh constituencies. We had organised a meeting of the Welsh Grand Committee for 1 July, with the aim of discussing the Queen's Speech and the Budget statement together, but at the request of the then shadow Secretary of State for Wales, the hon. Member for Pontypridd, that meeting was cancelled.

I am glad we now finally have a chance to meet and to discuss the Bill. Today is an opportunity to update Members on the progress of the draft Wales Bill and for right hon. and hon. Members to make their views known; I look forward to hearing them. The draft Wales Bill is, of course, still undergoing pre-legislative scrutiny by the Select Committee on Welsh Affairs, ably chaired by my hon. Friend the Member for Monmouth, and we await the Committee's report with interest.

Before we get into the real meat of the Bill, I will take a step back to remind Members of what we are doing with the Bill and how we got to this point. It is fair to say that a number of Members—particularly Government Members, myself included—were not initially natural devolutionists, but once it became clear that that was what the people of Wales wanted, we were determined to make Welsh devolution work. In 2011, the coalition Government held the referendum whereby full law-making powers were devolved to the Assembly for the first time.

Following that, the then Wales Office Ministers, my right hon. Friends the Members for Chesham and Amersham (Mrs Gillan) and for Clwyd West, established the Silk Commission to undertake a broad consultation and to make recommendations on the future direction of devolution in Wales. As Members will be aware, the commission's first report made recommendations about fiscal devolution that we then took forward in the Wales Act 2014. The Silk Commission's second report looked more widely at the balance of powers between Westminster and Cardiff and made recommendations on a broad range of areas, from the model of the devolution settlement itself all the way through to specific recommendations about new powers that should be devolved from Westminster to Cardiff.

It is important to note that although the Silk Commission included representatives of the four main political parties in Wales, those representatives had no mandate to bind their parties to the recommendations the commission made. That is why, following the Scottish referendum, I decided to take forward what we called the St David's day process, to identify the recommendations that could command political consensus. The resulting St David's day document set a clear path for the future of devolution in Wales, and in the Conservative party's manifesto last year, we committed to implement the St David's day agreement in full.

All the main political parties in Wales, at Westminster level and Cardiff level, were involved in the St David's day discussions, and it would be wrong of any of the parties represented on this Committee to seek to distance themselves from that process. The fact that we decided not to implement the Silk Commission's recommendations to devolve policing and justice was as much to do with the views of the official Opposition as with ours—the Labour party at the time took a very clear view, as did my party, that we would not take forward those recommendations—and the recommendation in the St David's day package to devolve fracking licensing was as much to do with how hard Plaid Cymru pressed for it to be included. The fingerprints of all the main parties in Wales are on the St David's day document.

Hywel Williams (Arfon) (PC): I agree fully with the Secretary of State's point on policing. Can he explain the status of the St David's day process? Did he see it as determining—defining—what the Bill would be, or was

that, as I and my right hon. Friend Elfyn Llwyd recall, a matter of consultation with the Opposition parties and fully owned by the Government who wrote it?

Stephen Crabb: Of course we own the Bill that we write. The purpose of being a Government is to write legislation. The hon. Gentleman will recall that what was enumerated in the St David's day document was a recommendation about a set of powers that all parties agreed on. We were absolutely clear throughout the process and on the day that the Prime Minister and the then Deputy Prime Minister made the announcement in Cardiff that it was entirely up to other parties to go further than the St David's day recommendations. In fairness to Plaid Cymru, they did that. In fairness to the Liberal Democrats, their manifesto at last year's general election went further than St David's day. St David's day represented a baseline around which the process showed that all parties were in consensus.

Jonathan Edwards (Carmarthen East and Dinefwr) (PC): Does the Secretary of State think that the St David's day process was more comprehensive than the Silk Commission, which took a number of years and consulted widely with the people of Wales and all political parties, whereas the St David's day agreement was a couple of backroom meetings with Westminster politicians?

Stephen Crabb: The hon. Gentleman can caricature the discussions in that way if he wants to, but he will remember that they were a lot more meaningful and substantive than he gives them credit for. The Silk Commission, which my right hon. Friends the Members for Chesham and Amersham and for Clwyd West established, took a broad range of evidence not just from politicians but from stakeholders, who included representative of the parties. If hon. Members read the Silk document, as I have done several times in great detail, they will see that some of the recommendations lack a lot of detail; some of them do not give a precise, clear policy steer. There is a lot of good in the Silk Commission documents, but it is up to elected politicians to decide how to take forward the recommendations, which is why the official Opposition, the Labour party, could not sign up to the recommendations around the devolution of policing and justice.

Mr Mark Williams (Ceredigion) (LD): I think there were rather more than two meetings, and I am not sure they were quite as characterised by my hon. Friend the Member for Carmarthen East and Dinefwr. However, with hindsight and given some of the problems the Secretary of State has encountered since the publication of the draft Bill, does he regret that the St David's day process was not more inclusive of our colleagues in the National Assembly?

Stephen Crabb: The process was inclusive. I had discussions with them in Cardiff Bay as a group; we had discussions in this place with the Cardiff Bay leaders of the parties here; and I met with them all individually as well, so it was a process that encompassed both the Cardiff Bay bit of the Welsh political parties and Westminster.

The Conservative party went into last year's general election with a clear package of new powers that we put to voters and the people of Wales made their decisions at the election. The package included putting in place an historic funding floor in the relative level of Welsh funding, as we committed to do in the St David's day agreement. Members will recall that during Labour's leadership election last year, the right hon. Member for Leigh (Andy Burnham) revealed that when he was Chief Secretary to the Treasury he knew that Wales was being sold short by the Barnett formula but admitted that he could not do anything about it. It took Conservatives in government to do something about the Barnett formula and bring forward an historic funding floor.

The St David's day package also included making further progress on income tax. Hon. Members will know that in his autumn statement the Chancellor announced a decision to remove the referendum requirement for devolving a portion of income tax to Wales. We are doing that in recognition that the debate has moved on from the Wales Act 2014, and because we believe that income tax devolution will help deliver more accountable, responsible devolved government for Wales. Within the mature devolution settlement that the draft Bill will deliver, the Welsh Government simply cannot continue to be a purely spending Department. They need to take responsibility for raising money as well as spending it.

As part of the devolution package, we are also legislating for a new reserved powers model through the Wales Bill. Hon. Members for Welsh constituencies who have been in this House for a number of terms will recall that the call for a reserved powers model has been around for some time. I remember during discussion of the Bill that became the Wales Act 2014 a former Secretary of State, the former Member for Torfaen, saying on the Floor of the House, "Now is the time to move to a reserved powers model." That was, of course, before we took forward the St David's day process. At that time I warned that simply moving to a reserved powers model, in and of itself, is not a panacea. It does not fix all the complexities around the Welsh devolution settlement—in fact, moving to a reserved powers model throws up new complexities. Moving to a reserved powers model is not a quick fix that clarifies Welsh devolution. The detail of the wiring underneath is what matters, and that is where a lot of the controversy around the current Bill lies.

Nick Thomas-Symonds (Torfaen) (Lab): On reserved powers, does the Secretary of State agree that it certainly does not bring clarification if there are 34 pages of reservations in the Bill?

Stephen Crabb: I broadly agree with that sentiment, but looking at the Scottish settlement, the list of reservations is also pretty long in the Scotland Act 1998. The point is to get the reservations right, spelling out which Government is responsible for what. We should not get hung up on how long the list is.

I said in evidence to the Welsh Affairs Committee and to the Welsh Assembly's Constitutional and Legislative Affairs Committee that the list of reservations is one of the things I want to look at, along with the necessity test and ministerial consent, so that we get the detail right as we move from a draft Bill to a full one.

Hywel Williams: A point arose yesterday at the launch of the excellent document, “Challenge and Opportunity: The Draft Wales Bill 2015”, by the Constitution Unit and the Wales Governance Centre, which I recommend to all right hon. and hon. Members. One participant questioned the inclusion of a provision in schedule 1—new schedule 7A, page 34, section B14(54)(a) and (b), which deals with licensing of the provision of entertainment and late night refreshment. I do not want to trip up the Secretary of State—I am sure he is conversant with the reasoning behind all these inclusions—but can he tell me why that provision is in there?

The Chair: Order. Before the Secretary of State responds, interventions should be short. Those intending to speak later are eating into their own time and that of other Members.

Stephen Crabb: It would not be the first time I get tripped up on the subject of night-time entertainment. The whole purpose of publishing a draft Bill is to address issues such as that. When we include a list of reservations in the Bill, what is the balance to be struck around broad drafting of a policy area and being specific so that it is spelled out clearly? The hon. Member for Arfon highlights a very specific example. The less specific we are, the more scope there is for vagueness. If one of the objectives of the Bill is to put far more specificity into the devolution settlement for Wales than there is at the moment, there will be times when we have to spell out in detail what those reservations are. We are looking at all the reservations at the moment.

Pre-legislative scrutiny has shone a spotlight on what I think is becoming a new orthodoxy in Cardiff Bay around Welsh devolution, so I would like to spend a few moments addressing that. On the devolution boundary, there is now a view in Cardiff Bay that the Supreme Court, through the agricultural wages decision, has effectively redrawn the devolution boundary way beyond what Parliament intended for the Welsh devolution settlement, and in some respects way beyond the Scottish devolution settlement. I discussed that with the Presiding Officer of the Welsh Assembly and her team on Monday, asking her specifically, “Do you now regard the Supreme Court as having effectively redrawn that devolution boundary beyond what the Scottish devolution settlement is?” Their response was that, yes, that is their view. That was never the intention of Parliament when Labour Ministers drafted the existing devolution settlement, nor is it this Government’s position. We believe that it is the role of elected politicians to draw the devolution boundary, and not the role of the courts and judges to decide where the devolution boundary is.

An important purpose of the Bill is to make it clear where the boundary lies and to bring an end to the confusion and argument about which Administration, Cardiff or London, is responsible for which areas of policy. Regardless of whether parties in the Assembly or in this place choose to try to block the draft Bill, no one should underestimate the Government’s intention to fix where the devolution boundary lies. We are not willing to carry on with a situation where the boundary is unclear for large swathes of policy and where the settlement is silent on which Administration is responsible for which area.

Geraint Davies (Swansea West) (Lab/Co-op): I hear what the Secretary of State is saying, but does he agree that the Welsh people’s consent was given by the most recent referendum in which they argued that more, not less, devolution should occur? He is now arguing that we should move backwards, behind that battle line, and in fact many laws that have been passed in Wales would not have been passed under the legislation he is now proposing.

Stephen Crabb: The hon. Gentleman’s charge is untrue on so many levels. The Conservative-led coalition Government held the referendum and we recognise that that was a game changer in terms of devolution for Wales. A large majority of people who participated in that referendum voted for full law-making powers in the areas that were devolved. They were never asked to agree that the devolution boundaries should be redrawn. It is the role of elected Governments to make decisions about where the devolution boundary lies.

Carolyn Harris (Swansea East) (Lab): How does the Secretary of State expect the Assembly to function as a law-making body without the ability to change the laws?

Stephen Crabb: We absolutely do want it to be a law-making body. We want it to have the freedom to give expression to its law-making powers. That means having the ability to change the law to enforce its legislation—I think that is the point the hon. Lady is getting at. Nothing in the Bill prevents the devolved Government from doing that. We do not want inhibitions around the Welsh Government making law in the areas that are devolved to them. However, when there are spillover effects from making law the Bill, rightly in my view, raises a safeguard—a boundary, a hurdle—so that those spillover effects are not more than is necessary.

Jonathan Edwards *rose—*

Antoinette Sandbach (Eddisbury) (Con) *rose—*

Huw Irranca-Davies (Ogmore) (Lab) *rose—*

Stephen Crabb: I will give way to the hon. Gentleman who is shortly to be a Member of the Assembly.

Huw Irranca-Davies: Indeed, I have a vested interest in this in more ways than one. The Secretary of State is trying valiantly to play a very difficult hand, but I suspect he is running out of cards. How does he respond to this week’s report that highlighted in depth, with detailed analysis, both fundamental and detailed points of principle that were wrong? The conclusion was that that suggests an unwillingness to take Wales seriously. I ask him, in all seriousness, how he responds to that.

Stephen Crabb: I respond to the hon. Gentleman by saying, in all seriousness, that this Government take Wales very seriously. We take Wales so seriously that we did not do what his Administration did, when he was a Minister in the previous Labour Government, and bury our heads in the sand over the inequities of the Barnett

formula. They have admitted that they were unwilling to address that issue. We are bringing forward the funding floor. This Government took the decision to have a referendum for the people of Wales on having full law-making powers.

Huw Irranca-Davies: This Bill does not do it.

Stephen Crabb: In the details of the report that came out today, and in other academic reports, there are some good and important points. We have taken the report away and are looking at it very closely. The whole point of having pre-legislative scrutiny is to use it as an opportunity to think again and take views from a very broad range of stakeholders.

I have to say, having read some of the evidence presented to the Welsh Affairs Committee and to the Welsh Assembly's Committee, sometimes the people giving that evidence are asking a different question from the question we are asking. The question they are asking is, "How do we craft a piece of legislation that expands the remit of Welsh government and Welsh law-making?" If that is your only question, of course you will find failings and limitations in the Bill. If you are trying to balance that question with the question of how to regulate the interface between the two legitimate Governments for Wales: the UK Government and the Welsh Government—how to ensure clarity about who is responsible for what, how to build in respect for the devolution settlement so that we do not get Governments crossing over one another's boundaries, changing each other's functions without a clear consenting process in place—then you cannot avoid coming up with some of the procedures and mechanisms in the Bill.

Jonathan Edwards: The Secretary of State is a well-known pragmatist; I was hoping he would come to the Chamber this morning with a slightly more flexible approach, but it seems to me as if he is digging a trench around the Bill as it stands. As he knows, even his own party will vote against the Bill in the legislative consent motion when it comes before the Assembly. Will he respect the vote in the National Assembly if his party decides not to support the Bill?

Stephen Crabb: The hon. Gentleman is trying to take me down a road that we are not going down today. On the earlier point of his intervention, as I said to the Welsh Affairs Committee and to the Assembly's Committee, we will be using this process to look again at some of the details and I have listed three broad areas that we are looking at: reservations, ministerial consents and the necessity test. My purpose today is to remind Members from Wales, who perhaps have not participated in the Welsh Affairs Committee proceedings or followed what the Assembly Committee has been saying, of some of the broad principles behind our approach to what is a really complicated and difficult issue.

The second bit of what I regard as a new, emerging orthodoxy in Cardiff Bay is this: they believe that the Welsh Government and the National Assembly should have completely unfettered freedom to legislate in devolved areas. They believe that they should have complete freedom in those policy areas that are clearly the competence of the Welsh Government. That is a proposition I agree

with and am very comfortable with. I want the Welsh Government and Welsh Assembly to exercise their law-making powers freely. What I do not agree with is what they then go on to say about these law-making powers—that when Welsh legislation has spillover effect in terms of affecting reserved matters, in terms of affecting the law as it applies to England or in terms of the way it affects the underlying principles of English and Welsh law—the single jurisdiction—somehow the Welsh Government should have the unfettered ability to make changes in those areas.

That is what the necessity test in this Bill is designed to do—not to stop the Assembly enforcing its legislation, but to make clear where the boundaries of their competence lie. However, this test has now become a point of warfare because they do not believe there should be any boundary or safeguard to those powers. When I put the question to them—when I asked the Presiding Officer and Carwyn Jones why the Welsh Assembly should have unfettered ability to make law without having any regard to the impacts on England or on reserved matters—I simply got a shrug of the shoulders in response. That is not a proposition that we can endorse.

The Bill is not designed to serve the agendas of those who believe that the next stage of devolution should be about driving a wedge between England and Wales and creating more separation. The purpose of the Bill is to provide clarity and to ensure that the two legitimate Governments for Wales, the UK Government and the Welsh Government, can work together in clarity so that Ministers in Cardiff Bay and in Westminster understand which areas of policy they are responsible for.

The answer to the complexities around this is not, as the First Minister now suggests, to create a separate legal jurisdiction. A separate jurisdiction would be expensive, unnecessary and, in the words of a partner of a major law firm in Cardiff, would result in a flight of legal talent from Wales. Let us be clear. If the Labour party had won the general election and had taken forward a devolution Bill, it would not be entertaining the creation of a separate jurisdiction.

Nia Griffith (Llanelli) (Lab): On a point of order, Mr Owen. The First Minister has not advocated a separate legal jurisdiction. He has talked of a distinct legal jurisdiction, as indeed have the Constitutional Affairs Committee at the Assembly and all the Members of the Assembly, including all the Conservative Members, and that was backed in a motion at the Assembly.

The Chair: That is not a point of order, but it is very welcome and I am sure the Secretary of State will want to respond.

Stephen Crabb: I will, and I will be very clear. In my discussions with Carwyn Jones, he told me that he regards "distinct" and "separate" as the same thing. They are words. He said that he regards a distinct and separate jurisdiction as amounting in practical terms to the same thing.

What I do believe is that as the body of Welsh-specific law grows, the judicial system will need to take account of the distinctiveness within Wales. I have discussed that with the Lord Chief Justice and the Lord Chancellor here. Work is needed to ensure effective delivery of the

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justice function in Wales to take account of the growing body of Welsh law, but that does not necessarily lead to a path of separate jurisdiction and splitting the single England and Wales jurisdiction, which has served the people of Wales well for centuries.

Liz Saville Roberts (Dwyfor Meirionnydd) (PC): Surely we need to look more closely at what “separate and distinct” means. “Separate” implies a different legal profession with a whole new set of courts. “Distinct” does not have to mean that. What we are hearing from the Assembly is “distinct”. All the requirements that go alongside that—necessity clauses—are what we would require to make this Bill work.

Stephen Crabb: The hon. Lady, for whom I have huge respect, is very knowledgeable about legal and constitutional matters. If, through the Select Committee of which she is a member or independently, she would like to provide me with details of what she regards as a distinct jurisdiction, we can measure it against what other people are saying they regard as a distinct jurisdiction.

Part of the problem is that no one knows what “distinct jurisdiction” means. We understand what “separate jurisdiction” means, but people are bandying about this term “distinct jurisdiction” as if it is now the answer, in the same way as people used to say, “We need a reserved powers model; that will sort out Welsh devolution” without thinking of the complexity underneath it. People are now saying “separate jurisdiction” or “distinct jurisdiction” without really having thought through what it means.

Hywel Williams: The Secretary of State is being generous with his time. He has conceded that there is a growing body of Welsh law that will need to be responded to and he says he has had discussions with the Lord Chief Justice and the Lord Chancellor. Can he give the Committee an indication of when these considerations will come to fruition, so that we have clarity on the nature of our Welsh law and Welsh jurisdiction, whether distinct, separate or whatever? Does he see this as part of the full Bill when it comes before the House or over the horizon?

Stephen Crabb: The hon. Gentleman asks an important question. We are in the early stages of that work and we are having discussions about it with a view to being clear about what distinctive arrangements Wales needs to make sure there is effective delivery of justice in Wales that takes account of the growing body of Welsh law. We will make some announcements about that in due course, but that work does not need to happen within the context of the Bill. It does not need to be put into legislation to give effect to it. A lot of practical work can just be got on with fairly quickly.

Ministerial consent is another controversial area in the Bill that we are looking at again. Let me put on the record some thoughts about it. Much has been said about the consent requirements in the draft Wales Bill. They are intended to provide flexibility for the Assembly to legislate but with a demarcation of responsibility between the Assembly and the UK Government. It is

only right that the Minister’s consent is required to amend the functions of reserved bodies that are accountable to UK Ministers, just as it is right that the UK Government seek the Assembly’s consent to make changes to the law in devolved areas.

I am told that when making legislation that changes the responsibilities of UK Ministers or the functions or duties of a reserved body—a public body that is the responsibility of a UK Minister—the Welsh Government should have the ability to do that without the relevant UK Minister in Whitehall being able to have any say on that. To any fair-minded Welsh man or woman, that is not a reasonable proposition, because the United Kingdom Government are responsible for those areas of policy. However, this seems to be emerging as the new consensus in Cardiff Bay. We are told that we need to take away the draft Bill and remove the consenting requirements. The threat is that the Bill will be blocked if there is any attempt to make the Welsh Government more responsible in making changes to things that are the responsibility of UK Ministers. We do not believe that is a credible position.

I know from my discussions with business leaders and others in Wales that there is a large body of pragmatic and reasonable opinion on devolution, which does not endorse the rhetoric and criticism of the Bill that is coming out of Cardiff Bay which says the Welsh Government should be able to change the functions of a UK Minister, and change the duties and functions of a UK public body that is the responsibility of a UK Minister, without any consenting requirement. This is about basic respect in the devolution settlement. It is a key principle of ours that we respect the Welsh Government in recognising the areas for which they are responsible. When we make legislation in this place that touches on devolved areas, there is rightly a process of seeking the consent of the Welsh Government. We believe that the principle should work in reverse. I do not think that is an unreasonable proposition.

We have hit a number of major stumbling blocks with the Bill on the differences of viewpoint between how we see the devolution settlement working and how the Cardiff Bay Welsh Government want it to work. They believe that the draft Bill should give legislative effect to the new consensus that they believe in with the expanded devolution boundary that they believe the Supreme Court has given them with the ability to make law unfettered that affects reserved matters or England without any hurdle or boundary or safeguard around that, or any requirement for consent. That is not something that we can go along with.

I appeal to Members of this place and Assembly Members to try to understand the devolution settlement from the viewpoint of the interests of the UK Government, in the same way as I have spent a lot of time trying to understand the devolution settlement from the perspective of Cardiff Bay and the Assembly,

I am going to wrap up there to allow other Members to speak. We have heard language such as “English veto”. There is nothing in the Bill which provides an English veto. When the First Minister uses that phrase, he is talking about the UK Government—the UK Parliament. He is saying that all of us sitting here are English—the hon. Member for Newport West is English, and the hon. Member for Llanelli is English, because they are part of the UK Government. Let us be absolutely

clear—this goes to the core of my approach to the Wales Bill—Wales has two legitimate Governments: the UK Government, who exist for the benefit of all parts of the United Kingdom, including Wales; and the devolved Welsh Government, who exist to create law in devolved areas. The purpose of the legislation is to create clarity and respect about the roles of those Governments. It is not to delegitimise and push back the role of the UK Government and say that Wales has an elected Government in Cardiff Bay who are the primary legitimate Government for Wales.

Mr Mark Williams: The Secretary of State talks about respect and says he hopes our colleagues in the National Assembly will be listening to what he says as much as we are here today. Does that extend now to a meaningful dialogue with the Assembly and the officials at the National Assembly on the core issues he has identified—the necessity test and ministerial consents and reservations? I do not doubt the primacy of this place to make the law, but will a meaningful dialogue remedy those issues with the National Assembly now?

Stephen Crabb: My door is always open. I do not think anybody has tried to bend over backwards and be more pragmatic and flexible on this stuff than I have. I have spent the past 18 months moving the position of the UK Government, compromising on a number of very key areas that have proved controversial. From our perspective, it feels as if we have made all the movements on our side, and we have run into the buffers of stubbornness and a lack of reasonableness.

Ian C. Lucas (Wrexham) (Lab): Would not the Secretary of State's argument carry a great deal more force if he were not the Secretary of State who had colluded in diminishing the rights of Members of Parliament from Wales to have a voice on issues that directly affect our constituents? Is not what he says about English votes for English laws and the lack of consultation that took place with Members an absolute disgrace?

Stephen Crabb: I do not know how to dignify that question with a response. It is a nice try to attempt to confuse the issues before us today.

I will wrap up my remarks after I have reiterated my answer to the hon. Member for Ceredigion. I am determined to get the legislation in a position that not only Assembly Members and the Welsh Government, but Members here are comfortable with—a piece of legislation that strikes the right balance and achieves our aims, which I think most fair-minded people in Wales would agree with. I will not allow this legislation, through the force of criticism from Cardiff Bay, to be changed into a piece of legislation that we are not comfortable with. As I said previously, if the Labour party were in power in the UK Government, its Members would not take forward a Bill that delivers a separate jurisdiction. They would not be doing things that the Welsh Government are calling for.

Kevin Brennan: As my hon. Friend the Member for Wrexham said, these matters are intertwined. For example, 9,000 English students, many of whom are registered to vote in Cardiff, attend Cardiff University. In the recent vote we had in this House on their student maintenance

grants, Welsh Members were effectively denied the opportunity to influence the ultimate outcome of that vote. Those students, who are disfranchised, have no one to vote for them. Their MP cannot represent them in such a vote because the students are registered to vote in Wales. Does the draft Bill do anything to re-enfranchise the people this Government are disfranchising?

Stephen Crabb: If we follow the logic of what the hon. Member for Cardiff West just said, it is an argument against devolution in the first place. Arguments about those kinds of disparities were exactly the kinds of arguments made by people who opposed devolution in the first place. The health service is another example of one of the challenges of devolution. There are English residents who are patients in Wales and Welsh residents who are patients in England. Devolution throws up those complexities. *[Interruption.]*

The Chair: Order.

10.8 am

Nia Griffith: It is a pleasure to serve under your chairmanship, Mr Owen.

The draft Wales Bill has understandably led to lively debate since it was published in October. I asked the Secretary of State to convene this Committee so that Members could be part of that debate, and to scrutinise the draft Bill before a new version is presented to the House. The draft Bill is the end product of some five years of work including the Silk Commission, the St David's day process, and the Government's White Paper. We expected a draft Bill that was worthy of the years of work that led up to it—a landmark constitutional moment giving more powers to Wales. Instead, we have a shambles of a draft Bill that has been criticised by academics, trade unions, lawyers, the Assembly's Presiding Officer, the Church in Wales, the Equality and Human Rights Commission, the Welsh Language Society and every party in the Assembly, including the Welsh Conservatives. In fact, when the Assembly's Constitutional and Legislative Affairs Committee launched its inquiry on the draft Bill, it was left in the unprecedented situation where practically no one supported it.

A new report by University College London and the Wales Governance Centre describes the draft Bill as “constricting, clunky, inequitable and constitutionally short-sighted.”

In plain English, it is junk. The Secretary of State should be ashamed that he has presented such a weak and unworkable draft Bill because the people of Wales deserve better.

Labour Members support a move to a reserved powers model, which Silk recommended, and we support the new powers proposed in the Bill on energy, transport and the Assembly's own affairs. Labour set up the Assembly and gave it greater powers through the Government of Wales Act 2006 and the 2011 referendum. We support the Assembly's having more powers, and that is exactly why we will not support this Bill unless it is radically amended.

Jonathan Edwards: I congratulate the hon. Lady on her appointment as shadow Secretary of State. I am absolutely delighted by that appointment, but can she

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explain why, as the Secretary of State said, the biggest roadblock during the St David's day process was the Labour party? I understand that she was not in those negotiations, but is she entirely happy with the position taken by her predecessor?

Nia Griffith: Today's subject is the Bill before us, and we want a Bill that actually works, so that is what we need to scrutinise now; that is what we need to be looking at.

Just last year, the Secretary of State said:

"I want to establish a clear devolution settlement for Wales which stands the test of time."—[*Official Report*, 27 February 2015; Vol. 593, c. 35WS.]

Elsewhere, he referred to

"a clear, robust and lasting devolution settlement".

We have only to take one look at this Bill and it is plain that he has completely failed to do that. The Bill as drafted is not clear. It does not meet the Secretary of State's stated aims. Those are not just my words; they are also those of the Assembly's Constitutional and Legislative Affairs Committee, chaired, incidentally, by a Conservative Assembly Member. Its inquiry heard

"grave concerns about the complexity of the draft Bill"

from the

"overwhelming majority of...consultees and witnesses".

It heard

"a clear, unanimous voice from legal experts and practitioners that the complexities of this Bill will lead to references to the Supreme Court."

This Government have been particularly trigger happy in taking the Assembly to court ever since it has had primary law-making powers. Those cases cost the taxpayer tens of thousands of pounds and lead to long delays before the Assembly's laws come into force.

Antoinette Sandbach: Does the hon. Lady agree that the Agricultural Sector (Wales) Bill decision drove a coach and horses through the Government of Wales Act and in effect conferred a reserved powers model on the Assembly, which requires legislation to address the issues that arose out of that case?

Nia Griffith: An awful lot more cases will go to the Supreme Court if we do not get this Bill correct. That is the problem. The Assembly has passed 14 Bills, parts of which various commentators are suggesting could not have been passed if this legislation had been in place. The fact that they are arguing over that is the reason why we would end up with people—not just the UK Government or the Welsh Government, but any individual—taking things to the Supreme Court, and thousands of pounds would be spent trying to sort that out. That is simply not the way we want to proceed.

Geraint Davies: Does my hon. Friend agree that the logic of English votes for English laws was that there would be Welsh votes for Welsh laws and that the direction of travel of this Bill is in fact English votes for Welsh laws? That will generate all sorts of confusion, some of which has just been alluded to.

Nia Griffith: The issue is, more than anything, the confusion. Everybody wants a clear settlement that will not cause problems. I am not the only one saying this. David Melding, the Conservative Assembly Member for South Wales Central, warns:

"Judicial review could become, if not the norm, then far from the exception. Welsh legislation would be drafted in an atmosphere of profound uncertainty, which itself would curtail its scope and ambition."

Therefore, the Secretary of State has comprehensively failed his first test—clarity.

If the Secretary of State had really wanted to make the devolution settlement clearer, he could easily have reduced the number of tests that the Assembly has to satisfy before it can legislate. Those are the tests that decide whether a Bill is within the Assembly's competence. This Bill increases them from nine to 13. Of course, the most controversial, understandably, are the so-called necessity tests. Quite why those tests were dreamt up is not clear. What is clear is that they will make it significantly harder for the Assembly to legislate. That is not just my view, but that of Paul Davies, the Tory Assembly Member for Preseli Pembrokeshire—a colleague from the same constituency as the Secretary of State. He said that

"it's clear from the evidence...that introducing these tests would restrict the Assembly's competence."

As the Law Society said in its evidence to the Welsh Affairs Committee, "necessity" is not a term that is well understood by lawyers. It does not have an established meaning. In fact, the Assembly's Director of Legal Services has pointed out that there are at least three completely different ways in which the term "necessity" can be understood. Quite frankly, it could mean anything, and the only way to establish what it means will be through reference to the Supreme Court, which is profoundly undemocratic.

Mr David Jones (Clwyd West) (Con): I have considerable sympathy with what the hon. Lady is saying. The word "necessity" is not a term of science nor is it even a term of art. Nevertheless, does she not agree that it is entirely right that the Assembly should not legislate in areas that are beyond its defined competence, so a term has to be arrived at that achieves that?

Nia Griffith: Absolutely. There have to be certain consents and criteria, but our difficulty with the Bill is that it does not provide the clarity that we all want in legislation.

Stephen Crabb: I am interested in what the hon. Lady just said. Is she saying therefore that she supports the retention of some kind of test, whether that is necessity or some other formula, or does she want to remove it altogether?

Nia Griffith: Our worry is that we might turn the clock back to a time pre-2006. The purpose of the Bill is to define powers, but what we have at the moment is confusing. That confusion has arisen for several reasons, but particularly with regard to the non-devolution of certain parts of the law.

Stephen Crabb: I am grateful to the hon. Lady for giving way again. In answer to my right hon. Friend the Member for Clwyd West, she appeared to say that we clearly need some kind of test. Is it her view, and the

view of her party, that, whether it is the necessity test or another formula that commands legal respect, we need some kind of boundary or legal phrasing in the Bill, rather than no test at all?

Nia Griffith: We need a framework that successfully explains to people what it actually is, not one that is confused and suggests, for example, that we might be looking at Bills that have been passed in the Assembly such as the Renting Homes (Wales) Bill.

Stephen Crabb: The hon. Lady has made strong points about the need for clarity by posing a specific question, which she now appears to have muddled. Does she support having some kind of test around the spillover impact when the Welsh Government make law that affects reserved areas, matters affecting England, and civil and criminal law? Does she support having some kind of test within the framework?

Nia Griffith: There has to be some sort of framework to define exactly where the Welsh Government can legislate. What we do not want is a situation where we continually dispute that, as that would not help.

Mr David Jones: I am grateful for the direction of travel that the hon. Lady is taking. Will she perhaps suggest a term that could be used to achieve the clarity that she desires?

Nia Griffith: It is for the Secretary of State to produce a Bill with some form of words that explains exactly how and when the Assembly can legislate. We want to see that in the Bill in a way that will actually work. At the moment, we have turned the clock back, and it looks as if we are asking for many different types of consent. We do not have clarity, but that is what we need. We have a situation where even Bills that have been passed will be contested.

Mr David Jones *rose*—

Nia Griffith: I will not give way any more. It is for the Secretary of State to introduce better legislation. It is simply undemocratic to go continually to the Supreme Court, because it is not for judges to decide this, that or the other about what can be subject to legislation. We want legislation that makes the position clear, rather than having to go to court time after time.

The real problem is the sense that we are going back pre-2006, and rolling back things that have been introduced by the Assembly in the past few years. The Welsh Government have listed no fewer than 14 Acts in this Assembly's term that would require additional permission from Whitehall if the Bill were in force. The Secretary of State has said that this all about respect, but where is the respect in making it harder for the democratically elected Assembly to pass laws? The people of Wales did not vote in 1997 and 2011 for a Welsh Assembly hamstrung by Whitehall, able to legislate but only when UK Ministers allowed it. That completely undermines the autonomy of the Assembly and is a major step backwards. As Conservative Assembly Member David Melding has highlighted, that ends with the constitutionally unacceptable

position of UK Ministers, who are not accountable to Assembly Members, telling the Assembly what it can and cannot do.

Of course, ministerial consent exists under the current system, but if the Secretary of State really wants to clarify and simplify the settlement, he would clear up the consent process. As the Silk Commission recommended, there should be general transfer of ministerial functions in devolved areas from Whitehall to Cardiff Bay, just as happened in the Scotland Act. The Secretary of State has given no good reason why Wales should be treated any worse than Scotland.

The Bill would make the system significantly more complicated, with the effect of rolling back the Assembly's powers. In the words of the Assembly's Constitutional and Legislative Affairs Committee:

"It is clear to us that the cumulative effect of the approach being adopted...is to reduce the Assembly's legislative competence."

Yet again the Bill would fail to deliver a fair and lasting settlement. Instead, it would take powers away from Wales and make it harder for the Assembly to do its job.

Let us turn to the reservations themselves. A primary purpose of the Bill is to introduce a reserved powers model, in order to bring greater clarity to the devolution settlement. The Silk Commission report says:

"In a reserved powers model, the settlement would set out clearly the limits of devolved competence. We would expect law-makers to legislate with greater confidence...rather than being constrained by uncertainty".

Clarity is about the last thing that comes to mind when reading the 34 pages of reservations in the Bill, covering 267 separate powers, on everything from Antarctica to zebra crossings. Everyone agrees that the list is far too long. Indeed, Angela Burns, the Conservative Assembly Member for Carmarthen West and South Pembrokeshire, has described the list as unworkable. She said:

"The reservations, as they stand, will hinder the development of policy, will impact on the coherence and unity of legislation and will, in my view, muddy the waters between legislatures."

Even the Secretary of State has said:

"When I read through the list of reservations I can see for myself that there are things where I think, you know, 'For goodness' sake, why is that being held back as reserved?'"

It is his Bill.

Stephen Crabb: Draft Bill.

Nia Griffith: As a bare minimum, we should expect the Secretary of State to have confidence in his own draft legislation, not to rush forward with some half-baked set of reservations that not even he supports.

The failure of the Wales Office to challenge Departments to explain what needs to be reserved, not just what they want to have reserved, is quite remarkable. In the words of the Assembly's Constitutional and Legislative Affairs Committee:

"The absence of a principled approach has contributed to the excessive number and complexity of the reservations."

In this week's report by the Wales Governance Centre and University College London, they describe the failure to think rationally about what needs to be reserved as a "fundamental defect" in the Bill.

[*Nia Griffith*]

Perhaps if the Secretary of State and his Department commanded more respect in Whitehall we would not have ended up with a shoddy list of reservations that literally no one supports.

The biggest problem with the reservations is the completely ill-advised decision to reserve the entirety of criminal and civil law. That makes absolutely no sense and is the clearest example of the Bill rolling back the Assembly's powers. The Assembly is a law-making body, so preventing it from having any ability to change the law is both illogical and unacceptable. It reduces the status of the Assembly to a second-class legislature. It is directly contrary to the Silk Commission's warning that the reserved powers model must

"do nothing to restrict the existing and future ability of the National Assembly to create criminal sanctions where it is necessary".

The rationale behind the decision to reserve the entirety of the law is given in the explanatory notes. The Bill seeks to provide

"a general level of protection for the unified legal system of England and Wales, whilst allowing the Assembly some latitude to modify these areas of law".

But the 2011 referendum was about giving the Assembly full powers to legislate in the areas devolved to it, not some latitude to modify the law. So the Secretary of State needs to reconsider this crucial aspect of the Bill. One solution would be to introduce a distinct legal jurisdiction for Wales, as recommended by the Assembly's Constitutional and Legislative Affairs Committee and endorsed unanimously by the Assembly.

Craig Williams (Cardiff North) (Con): Since the hon. Lady is fond of quoting, will she comment on the view of Lord Morris of Aberavon, her predecessor and a Labour Attorney General, who ruled out the single jurisdiction? If she supports that, will she explain what she means by "distinct"? Does she have a simple term for it? What does it mean?

Nia Griffith: The term "distinct" has been used to suggest that we would not need to have separate courts, that lawyers could practice on both sides of the border—we would have, if you like, a separate book, separate legislation, but not a separate court system. As I just said, that is one solution that might be suggested; it is not the only solution. If the Secretary of State can show us what other plans he might have, perhaps he can bring forward something different, but it clearly needs to be looked at. We understand the problem: we have not yet had a solution from the Secretary of State.

The Parliamentary Under-Secretary of State for Wales (Alun Cairns): The hon. Lady has tried to define "distinct legal jurisdiction", but the Presiding Officer in the Assembly, for example, has called for a high court of Wales. Does that fit the "distinct" model?

Nia Griffith: The "distinct" model does not have to have a separate high court: that is the whole point.

Antoinette Sandbach: Will the hon. Lady give way?

Nia Griffith: No; I think I have said enough on this. What we need from the Secretary of State is a solution, a way forward. We need a way to make it possible for

the Assembly to legislate in the areas in which it has competence, which people voted for in 2011, not to make it more difficult. If we remember, the Secretary of State said he was going to deliver,

"the most robust and ambitious package of further devolution to Wales in a generation".

However, it is pretty clear that the consents, the necessity test and the Bill in general would roll back the powers of the Welsh Assembly. The Bill is not robust, ambitious, lasting or clear. In fact, the Secretary of State has failed every one of his own tests. What he has proposed is a second-class settlement, a system that is unduly complex, regressive and unworkable, and we will not support the Bill unless it is radically amended. It is clear that the Secretary of State has badly mismanaged this entire process, including failing miserably to ensure the cross-party consensus that characterised both the Silk and Smith Commissions. In fact, he has not even got consensus within his own party.

Hywel Williams: I am listening to the hon. Lady with great interest. She seems to be batting into the Bill very hard indeed and criticising it. In response to my hon. Friend the Member for Carmarthen East and Dinefwr I think she repudiated the stance taken by her predecessor. Does she think there is a case to be made for reopening discussions between the parties on what the Bill should be, rather than the dog's dinner that we have before us?

Nia Griffith: I would welcome the opportunity to have another look at how the Bill could work, but what I want to hear from the Secretary of State is a willingness to be more open about that, rather than digging this big trench around himself and saying that he is not going to change this, not going to change that, and not going to change the Bill radically.

Stephen Crabb: I hesitate to interrupt the hon. Lady, because I am enjoying her speech a lot, but just to clarify, at no point have I said that I am not going to change this and not going to change that. She has put words in my mouth there. What I have said today is that there are areas of the Bill which we need to look at and change—I have said that very clearly—but also there are fundamental principles behind what we are trying to do, in ensuring the integrity of the UK Government and Parliament and the integrity of the Welsh Government and Assembly.

Nia Griffith: The problem is that we had the hon. Member for Montgomeryshire telling us that he may not even vote for the Bill; he describes it as an abysmal failure. We had the hon. Members for Vale of Clwyd, for Brecon and Radnorshire, for Monmouth, and for Gower—I see he has left his place—and, indeed, the right hon. Member for Clwyd West, all saying publicly that the income tax devolution that will be included in the final Bill is disrespectful to the Welsh people. So there is utter chaos on the Conservative Benches about the Bill. It is a remarkable situation.

Mr David Jones: I need to clarify the hon. Lady's point. I did not say that I would oppose the devolution of taxation powers. What I said was that to impose such powers without a referendum of the Welsh people was, I felt, disrespectful to the people of Wales.

Nia Griffith: That is precisely my point.

Nick Thomas-Symonds: In her excellent speech my hon. Friend gave a series of quotations from Conservative Assembly Members and Conservative Members of Parliament. We certainly need an amended Bill to reduce conflict over the Supreme Court, and we need an amended Bill to reduce conflict in the Conservative party.

Nia Griffith: My hon. Friend put that very well indeed —[*Interruption.*]

The Chair: Order.

Nia Griffith: It is remarkable that we have seen the entire Conservative group in the Assembly, including the leader of the Welsh Conservatives, supporting a series of motions that savage the Secretary of State's Bill. I hope he will take the time to sort out this Bill, but his inability to convince even his own colleagues hardly fills me with confidence.

The Secretary of State said last year that it is vital that we get the Welsh devolution settlement right. For that to happen, the Bill needs a radical rewrite. It is not enough for the Wales Office just to go through the motions and tinker with it at the margins. Yes, we need fewer reservations; yes, we want an end to the necessity test; yes, ministerial consents must follow the Scottish system. But that is not enough to make this shoddy Bill work. Unless it is radically overhauled, Labour MPs will vote against it on Second Reading, not because we do not want the Assembly to have more powers, but for exactly the opposite reason. The Opposition will not vote for a Bill that deliberately rolls back the Assembly's powers, makes it harder to pass laws and will almost certainly lead to thousands of pounds of taxpayers' money being wasted on legal challenges.

The Bill is not the clear and lasting settlement that the Secretary of State promised. It is not what the Welsh public voted for in the 2011 referendum. It is poorly drafted, unduly complicated and unworkable. The people of Wales deserve better.

10.31 am

Liz Saville Roberts: It is a great pleasure to serve under your chairmanship, Mr Owen. After the Scottish independence referendum in 2014, the Prime Minister made a promise to the people of Wales that just as the rights of Scottish voters would be respected, reserved and enhanced, so too would the rights of Welsh voters. He promised that Wales would be at the heart of the devolution debate. Since then, the Wales Office has published a draft Wales Bill and presented it as the UK Government's response to the cross-party Silk Commission. However, it was immediately apparent that the draft Bill has utterly failed to deliver the recommendations of the Commission, which the Tories established. I believe that there are people present in this room who were party to that.

Throughout Wales's devolution journey, Plaid Cymru has consistently sought the best possible deal for everyone who has chosen to make Wales their home. That has and always will be our driving motivation as Wales's national party. We hold true to the principle that the people who live in Wales are best placed to make decisions for Wales.

Jonathan Edwards: Does my hon. Friend accept that it is for people living in Britain to make decisions about what is in Britain's best interests?

Liz Saville Roberts: It was distressing to hear about the students in Cardiff who have no one to speak for them. We recognise, however, that not all parties share this view. That is why we agreed to sign up to the Silk Commission—a cross-party Commission with nominees from each of the four parties represented here and in the Assembly, along with academic experts. It carried out extensive engagement and consultation with the public across all parts of Wales. It was a truly representative Commission.

It was deeply disappointing, therefore, to find the Secretary of State then choosing to forego genuine consensus in favour of a process that can only be described as a means of determining the lowest common denominator. Far from being an agreement, as the Secretary of State likes to call it, "Powers for a Purpose" and the resulting draft Wales Bill that we are discussing today fall well short of the consensus that Silk worked so hard to achieve.

The heavy criticism that the draft Bill has received from all sides, including the Secretary of State's party, is striking when contrasted with the consensus previously evident in Wales. What happened to the consensus that Wales's natural resources should be in the hands of the people of Wales? What happened to the consensus that Wales's Welsh language television channel should be in the hands of the people who use it? We find ourselves with a cherry-picked menu that trusts people in Wales to set their own speed limits, but considers drink-drive limits far too complicated.

Jonathan Edwards: I congratulate my hon. Friend on her passionate speech. Does she agree that perhaps the most revealing aspect of these proceedings is the way the new shadow Secretary of State for Wales is distancing herself from her predecessor's position?

Liz Saville Roberts: I cannot say because I was not here at that time, but that is what I understand.

It is interesting that the menu on offer considers water to be too valuable a resource to be left in the hands of the people of Wales, but—fair play—it gives us control over sewage.

I have many concerns regarding the current list of reserved policy fields and will return to this later in my contribution, but I will start by focusing on the foundations of the draft Bill. I should stress first that Plaid Cymru warmly welcomes the move to a reserved powers model as a matter of principle; that is, to move away from the current model whereby the devolution settlement lists areas where the Assembly can legislate, to a model in which the settlement lists areas where it cannot.

There was an unusual and welcome consensus across all six of Wales's biggest parties on the need to move to a reserved powers model over a number of years. This consensus stems from the frequency with which Welsh legislation is challenged in the Supreme Court and the lack of clarity on where responsibility lies, especially when compared with the Scottish dispensation. Moving to a reserved powers model was also about shifting the mentality and attitudes towards devolution. It should

[Liz Saville Roberts]

put the onus on the UK Government to justify why something should be reserved, rather than justifying why something might be devolved—devolution based on subsidiarity rather than on retention.

However, those principles—the foundations of the argument in favour of a reserved powers model—have been lost, and the result is a Bill that is simply not fit for purpose. We have unfortunately gone from a position as recently as May last year where all four parties represented in this Chamber today, as well as UKIP and the Greens, agreed on a way forward, to a position where, I am sad to say, it appears the Secretary of State is the only person who thinks the Bill delivers a workable settlement.

Stephen Crabb: The hon. Lady is making a good and important speech. Agreeing on moving to a reserved powers model, to use her phrase, is the easy bit. Of course, everybody can sign up to the principle of moving to a reserved powers model. The really hard bit is doing the wiring underneath it. How do you do that in the context of preserving the combined England and Wales jurisdiction? Even if one moves down the road of a distinct or separate jurisdiction, one does not get over the complexities. The hard bit is doing the detailed work to get the wiring right to make the reserved powers more able to work.

Liz Saville Roberts: Perhaps that is why the Presiding Officer of the Assembly has asked for a consolidation of previous Welsh legislation, because we are effectively building on the previous conferred models and trying to build a reserved model out of that. That is part of the problem we face. I will return to distinct legislation anon.

We are facing a draft Bill that claws back the powers for which the people of Wales voted overwhelmingly in favour in 2011; a draft Bill that, had it been implemented in that year would have required 20% of the current Assembly's Acts to seek the consent of UK Government Ministers. We are facing a draft Bill that would allow Welsh legislation to be enacted only if it passes no fewer than 10, or perhaps a debatable number of tests on each provision within the Bill in question—certainly a wide range, a battery, of tests. Incidentally, distinguished legal experts have described the tests as

“a failure of comparative legal method”

and claimed that they

“jar with basic constitutional principle”.

Members of the Welsh Affairs Committee have been warned that this could lead to situations whereby legislators would choose to avoid amending the law—a chilling effect—despite it being the better option, for fear of opening a Pandora's box of debate about what constitutes “necessary”.

Perhaps the most concerning legal aspect of the draft Bill is the reservation of criminal law and private law. These are not policy reservations, they are mechanisms—means—necessary for the enforcement of law. They are what animates the law. They will put policies into effect. They were not discussed as part of the St David's day process, and, as Professor Thomas Glyn Watkin told the Welsh Affairs Committee, the introduction of these restrictions

“appears to deliberately ignore the express decision of the people of Wales regarding their Assembly's legislative powers”.

Placing restrictions on the Assembly's ability to make such modifications to the law not only drastically rows back on the 2011 referendum, but also restricts directly elected Welsh Governments from implementing their policies. It is no wonder that so many people have described the Bill as unworkable.

In fairness, it is proposed that the Assembly should be able to make modifications where such modification is:

“(a) necessary for a devolved purpose or is ancillary...to a provision which has a devolved purpose, and (b) has no greater effect on the general application of the private law than is necessary to give effect to that purpose.”

Simple. I hope Members will have detected that I did not understand what I have just said, although I may have said it with confidence. It asks the question of who is to decide whether a modification to the law is necessary for a devolved purpose or whether a modification has no greater effect than is necessary to give effect to a provision's purpose. This is not a matter of semantics and niceties; it is a lawyers' playground.

Mr David Jones: I agree with the hon. Lady. The word “necessary” is unworkable. Does she have an alternative formulation that would define the boundaries between what is and what is not devolved?

Liz Saville Roberts: I will come to that anon, rather than trying to answer briefly and then repeating myself. As I said, this is a lawyers' playground and, exactly as the Secretary of State said earlier, means that we will end up in the Supreme Court, which is what we do not want.

Stephen Crabb: Nobody has argued more forcibly than Plaid Cymru that the Welsh devolution settlement should mirror the Scottish devolution settlement. However, the necessity test, which the hon. Lady has taken a few minutes to malign and attack, appears in the Scottish devolution settlement.

Liz Saville Roberts: It does appear in the Scottish devolution settlement but it appears three times in the draft Bill. In Scotland, it refers to reserved matters but here, it also refers to criminal and private law. That is the significant question.

I challenge anyone to justify making a Government accountable to a judge rather than to a legislature, as the draft Bill effectively promotes. The report released this week by the Wales governance centre at Cardiff University and the constitution unit at UCL states:

“To restrict the choice of National Assembly members in matters likely to form parts of a great many Assembly Acts may be said to undercut their role as primary legislators, and to deny the institution...proper esteem in ‘the union of the nations of Wales and England’.”

The reasons that these mechanisms are listed as reserved is, according to the Secretary of State,

“to protect the unified legal system of England and Wales”.

All the criticisms that the Secretary of State has faced since the publication of the draft Bill—the cries of “unworkable,” “badly drafted,” “overly complex,” and soon—are a consequence of his blind loyalty to preserving

the unified legal system, which has almost unanimously been described to the Welsh Affairs Committee by the legal profession as unnecessary, damaging and paradoxical.

Plaid Cymru, along with many legal experts, believes that it would be a sensible and—crucially—sustainable solution, to create a separate legal system for Wales and the Welsh legislature. As the Wales governance centre's report says,

“it would bring Wales more into the mainstream of sub-state constitutional arrangements in the common law world”.

It is noteworthy that that is also the long-term aim of the Labour Welsh Government.

We acknowledge that it would have financial and practical implications that would need careful consideration but, if the UK Government are serious about delivering a devolution settlement that stands the test of time, they need to adopt a long-term approach. Although that would be Plaid Cymru's preferred solution, we recognise that not all parties have caught up with our position. The same cannot be said, however, for the creation of a so-called distinct but not separate jurisdiction. The evidence that the Welsh Affairs Committee has heard has been overwhelmingly in favour of this solution, as has that heard by the Constitutional and Legislative Affairs Committee in the National Assembly. I suspect that those who remain sceptical of this solution mistakenly fear the practical and financial implications that a separate jurisdiction might have, and do not fully understand—or perhaps do not want to fully understand—the simplicity of what is actually being proposed.

Creating a distinct jurisdiction need not be any more complicated—perhaps this is the definition that we have been looking for—than simply acknowledging in statute the existence of the law of Wales and the law of England that extend to the territory of Wales and the territory of England respectively.

Antoinette Sandbach: Can the hon. Lady explain why Welsh law does not have that current status and why she feels it needs to be put into statute? Surely it has that status already.

Liz Saville Roberts: Because we are arguing about the leeway and lock model, and the necessity clauses in criminal and private law, and that is creating so much complication. With this acknowledgment, we could move ahead.

Stephen Crabb: The hon. Lady is making an incredibly intelligent speech. I was struck by what she said about the geographical boundary and that moving to a distinct jurisdiction is as simple as that. Would she acknowledge that the Welsh Government, through their law making in the Assembly, have the ability to have impacts on reserved matters and matters affecting England? The draft Bill preserves that, albeit with a necessity test. What she is proposing with that geographically sharp distinction ends their freedom to do that altogether.

Liz Saville Roberts: It does seem to be a way forward in dealing with the necessity clauses, which are such a problem. The territory acknowledgement—

Stephen Crabb: That is rolling back.

Liz Saville Roberts: If I may continue, creating a distinct jurisdiction need not entail establishing a separate system of courts and separate legal professions, and it would evidently avoid the costs associated with doing so. It would, however, provide clarity on the territorial extent of the laws of the National Assembly for Wales, thus avoiding the need for the complex and restrictive drafting in the Bill, which has been the subject of such criticism.

The National Assembly does not want to legislate for England. It wants to legislate for Wales, and a distinct jurisdiction would allow it to do so effectively. In the words of the Lord Chief Justice of England and Wales:

“there is no reason why a unified court system encompassing England and Wales cannot serve two legal jurisdictions”.

The Secretary of State can hardly accuse the Lord Chief Justice of being a “nationalist lawyer”.

Returning to the list of reservations more broadly, the draft Bill is 71 pages long. Some 34 of those pages—half of the Bill—is a list of reservations. Provisions need only “relate to” one of the more than 220 matters in that list, making the Bill all the more problematic. As the report by the Wales governance centre and UCL states:

“Complexity is piled on complexity...The potential for legal challenge casts a long shadow.”

As I have said, the shift to a reserved powers model was supposed to be made in tandem with a shift in mentality to determine what needed to be reserved, rather than what might be devolved. It is clear that the Secretary of State has instead facilitated a Whitehall trawl of powers based on no evident principles. If he is serious about creating a lasting devolution settlement, he cannot simply flip the current settlement from the conferred powers model to the reserved model and then just allow Whitehall to pick and choose what powers it wants. The process must be built on the principles of clarity and workability, coherence and subsidiarity.

The Silk Commission expressed hope that the move to a reserved powers model would be an opportunity to rewrite the settlement to remove the defects of haste and inconsistency that have so far marred legislative devolution in Wales. The list of reservations certainly does not reflect that hope. The authors of the report by the Wales governance centre and UCL go as far as to say that

“it even suggests an unwillingness to take Wales seriously.”

In practical terms—this is only to be regretted—it will undoubtedly lead to even more partisan blame-shifting between Cardiff and London, which is the last thing that the public of Wales want or deserve.

The original report from the Wales governance centre, which was released before the draft Bill was published, offered a list of considerations for identifying functions that should be devolved:

“Is its retention...necessary for the functioning of the UK as a state... Does retention of a particular function make the governance of the UK generally less clear or comprehensible?... Does retention of a particular function undermine the workability, stability or durability of the devolution settlement?”

I will not return to the examples, but it is easy to put the reservations listed in the draft Bill through that test and to come up with some obvious questions. Those are the questions that the Secretary of State should be asking himself for each and every reservation in the Bill. He should

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justify each individual reservation. Simply making hundreds of reservations for no good reason is not acceptable. I welcome his comment that he will shorten the list of reservations in the Bill, but I hope he hears the calls of commentators and those of us in this Room today that all reservations need to be individually justified.

The draft Bill has come under heavy criticism from all directions: from academia, business experts, legal experts and all four parties, including the Secretary of State's. The workability of the Bill and the legal drafting—including the necessity tests, ministerial consents and the reservation of criminal and private law—stem from the Secretary of State's obsession with maintaining a unified legal jurisdiction. The same unified legal jurisdiction was the excuse for opposing Wales-only legislation in the 1880s and the creation of a Secretary of State for Wales in the last century. Most recently, it was the reason for not giving Wales a reserved powers model from the outset of devolution. It is an unnecessary and damaging block on Welsh devolution that has affected, and continues to affect, the effectiveness of Welsh governance. The Tory party cannot deny the existence of the National Assembly of Wales, which, by existing, makes self-evident the existence of legislation that is distinct to Wales.

As the Wales Governance Centre and UCL report concludes, there is no quick fix to the legal problems in this draft Bill. It is not possible simply to replace the term "necessary" with an alternative such as "appropriate". The problem is not terminology but the whole model, which the report calls

"the leeway and lock model"

and which is built around the unnecessary preservation of the unified legal system.

I recognise that the Secretary of State wants to hurry this Bill through and get the job done, but this issue is too important to pass legislation on with a nod and a wink. This Bill will be the foundation upon which the Welsh Government will operate for the foreseeable future—how it will govern health, education and economic development. It is in everybody's interest that the Wales Bill makes devolution work better.

I hope that the Secretary of State will please recognise that the criticisms he faces are not merely political attacks. They are criticisms from experts, legal and otherwise, who want to see something that achieves exactly what he himself says he wants to achieve: a clear and lasting devolution settlement. The Bill as it stands will move us further away from achieving that goal.

Members will have read the conclusion of the comprehensive second report from the Wales governance centre and UCL, which recommended that Assembly Members reject the Bill. The opportunity to shape Wales's constitution does not come around very often. This Bill is crucial to all of us who care about the future of our country, and when the time comes to vote, I do not want to be forced to vote against it. There are many things in the Bill that we welcome: powers over fracking; devolving further planning consenting powers over energy; electoral arrangements; and so forth. I should also take this opportunity to say that we welcome and are grateful for the opportunity to discuss a draft Bill. I think we have discussed it very thoroughly.

For Plaid Cymru—the party of Wales, whose primary purpose is to empower the nation and the people of Wales to run their own affairs—to vote against those powers would be a painful decision. I sincerely hope that the Secretary of State will not force me to do so. I urge him to take these criticisms on board in the constructive spirit in which they are intended, and to make the necessary changes before publishing the Bill itself. Finally, I urge him to reflect on the significance of what he is building. I suggest that the task of reshaping Wales's constitution is far more important than keeping a date with a particular time slot in the parliamentary calendar. I am encouraged by his comments that suggest that the Bill will be drastically altered before it is published, as a result of this pre-legislative stage, but the Bill requires reconstruction and not mere tinkering. The Secretary of State needs to pause, to listen to the concerns of everybody around him and—please—to come back with a different Bill.

10.53 am

David T. C. Davies (Monmouth) (Con): I begin by offering a word of support for the point of order that was raised earlier. The Conservative party, as a party that has always prided itself on providing support for the Welsh language, would be quite happy about and would look positively at the possibility of allowing Welsh to be used during Welsh Grand Committees. Why would we not be? After all, I gather that in the last few minutes alone there has been an announcement of extra funding for S4C, the Welsh language television channel, which, of course, was set up by a previous Conservative Government. The Conservative party will always be a huge supporter of the Welsh language.

I find myself in a slightly difficult position in talking about this Bill, because even as we speak, of course, members of the Welsh Affairs Committee are considering their own positions on the draft report, which I hope will be a unanimous report full of recommendations about this Bill. Obviously, as has become clear already, different Members from different parties, and even different Members from the same party, have taken somewhat different positions on this Bill, so talking about it is challenging. In fact, when it comes to trying to get a unanimous Bill through, I think I know how the Prime Minister feels in Europe.

Consequently, I will skirt around some of the issues. I understand the wish of the Government and the Minister to bring some clarity to the devolution settlement—I certainly support that principle. However, I have to put on record my disappointment over the issue of taxation. I have been around long enough to know which way the wind is blowing and I can see what is going to happen. I have to say, with all due respect to the Minister, I personally think it would have been better to have a referendum.

One thing I want to talk about is scrutiny, because regardless of what people have been saying, it is clear to me that this Bill will lead to the Welsh Assembly having significant further powers when it finally goes through, and one issue that has been raised all the way through our Select Committee evidence has been the Welsh Assembly's ability to conduct good scrutiny. It has become even more important that it can do so because of the extra powers that it can have.

There are two areas where the scrutiny process could be improved. The first, of course, is the Assembly Committees. They are the equivalent of our Select Committees. The Select Committee process, ever since the late 1970s, has been one of the great success stories of Parliament, but the reform that happened in 2010, when Select Committee Chairs started to be elected by all Members of the House, was very important. I cannot understand how those of us who were here before that could have tolerated a situation in which party leaders were simply sticking in people who they thought would be compliant and handing out those positions almost as a kind of prize.

That system was totally unacceptable, and nobody would ever go back to it, yet we still have it in the Welsh Assembly, and there have been controversies where leaders of various political parties have allegedly removed people or put people in place as Select Committee Chairs because they held a view that was more likely to be supportive of the political party that they represented. Even the suggestion that that could have happened undermines confidence in the process, so I think that the situation is unacceptable and that somehow we ought to persuade the Welsh Assembly Members of the success of the reforms that have been made in Parliament.

Antoinette Sandbach: That was proposed by Assembly Members, including Lord Elis-Thomas, myself and Nick Ramsay in the current Assembly. Very regrettably, those proposals were not taken up, largely because the party leaders want to hand out the baubles of chairmanships of Committees, and it allows them to control the casting votes in those Committees. It is—

The Chair: Order. Before the democratically elected Chair of the Welsh Affairs Committee continues, I point out that we are talking about this draft Bill in this House, not procedures in the National Assembly.

David T. C. Davies: Thank you, Mr Owen. If I may, I will continue not so much on Select Committees, because that was a side issue, but on the overall issue of scrutiny. A lot of evidence came to us from people who were basically calling for there to be more Welsh Assembly Members, and they included the Speaker of the Assembly. I want to pick up on that, because one thing that I said when I campaigned against the Assembly in the late 1990s was that it would be a case of 60 people doing a job that was previously done by three—then, of course, we had two junior Ministers. In one sense, I got that one wrong, as we all did, because of course in Parliament there are 1,400 people who can scrutinise legislation: Members of the House of Lords and Members of the House of Commons. I think that in the Welsh Assembly there are 13 Ministers and junior Ministers, which leaves 47 people, or thereabouts, who can actually scrutinise legislation. That clearly puts them at a disadvantage, and various people have suggested various solutions to the problem over the years.

One suggested solution was that scrutiny could be conducted by the Welsh Grand Committee or even by the Welsh Affairs Committee. I would not mind putting myself forward for such a role, but in reality it would be completely politically unacceptable for Members of Parliament to scrutinise Welsh Assembly legislation.

Another solution that has been offered is some kind of Ty'r Arglwyddi—a Welsh House of Lords—but again that would be politically very difficult to get through and would involve huge cost, so people have started talking about more Assembly Members. That was the solution put to us in the evidence we took. I believe that Rosemary Butler mentioned a figure of 80 to 100 Assembly Members—I do not want to put words in her mouth. David Melding said something similar. We were definitely being told by one witness after another that we needed between 80 and 120 Assembly Members to do the job, rather than 60, but I think all of them recognised that that would be a very difficult sell to the public, so respectfully I want to put forward an alternative solution, based on the thought that, assuming this Bill goes through in some form, the Assembly will have the extra powers and there will be a need for a much higher level of scrutiny than there is currently.

I think there is an obvious solution. We have 22 local authorities. I believe that those local authorities could easily send four members, based on some sort of party balance, to sit in the chamber of the Welsh Assembly—perhaps on one day a month. They could carry out good scrutiny of the legislation that is being passed. They would have a democratic mandate to do that because they would all be elected. They would have the expertise to do it because local authority members often carry out the functions of legislation passed by the Welsh Assembly, particularly in education and social services, and they will clearly be in a position to know what will work and what will not work. I am not suggesting for one moment that local councillors should be able to block or overturn legislation, but they could have a role in forcing the Assembly to think again and add amendments.

Geraint Davies: Does the hon. Gentleman accept that in such a model there would be a tendency for more money to go towards local authorities and for less money to go towards health?

David T. C. Davies: There would clearly be pressure from local authority members to reconsider the local government funding formula, and I assume that members from areas such as Brecon and Monmouth would want to do that because, despite the Minister giving extra money to the Welsh Assembly, areas such as Monmouthshire are seeing a huge cut in funding, and there is absolutely no reason for that. Brecon is even worse, because I believe that about 4%—

The Chair: Order. The hon. Gentleman is drifting slightly from the Bill. I would expect him, as Chairman of the Select Committee on Welsh Affairs, to be succinct in both time and subject matter.

David T. C. Davies: I can take a hint. There is a good argument from local government members for allowing such a committee to take place.

I hear some of the criticisms of the Bill, and I hear criticisms of the English votes for English laws mechanism. I say to the hon. Member for Wrexham, who raised the criticism, that we were making those arguments in the 1990s. We—that is to say I—lost that argument. There is a recognition that Wales will be able to do things in

[David T. C. Davies]

health and education and that England will have no part in that. It is not unfair or inconsistent to say that the English should be able to take the same decisions. Of course people will be affected by that. There always have been and always will be people who have their health treatment, or who go to school or university, on one side of the border but who live on the other side. That was the case in the 1990s, when the Welsh Assembly was set up. All the Government have done is to bring a slightly consistent view to it. If it discourages Members of the Welsh Assembly from asking for yet more powers because they are afraid that their party colleagues might lose control over other things, such as policing, then as a Unionist I am pleased for it. It is a good thing and a step forward.

Kevin Brennan: Disgrace.

David T. C. Davies: It is not a disgrace. It is no more of a disgrace than the Welsh Assembly in the first place, which I argued strongly against.

Kevin Brennan: The Welsh Assembly was established—the hon. Gentleman knows this well, because he and I were on opposite sides of the argument back in the late 1990s—after a long debate, after a referendum and after considerable parliamentary time and scrutiny was devoted to it. His party made Members, including himself, second-class MPs by using the mechanism of the Standing Orders of this House. It is a constitutional aberration and a disgrace.

David T. C. Davies: It was a manifesto commitment, and people voted for a Conservative Government because of that express manifesto commitment. If the hon. Gentleman went down to the streets of England and said, “Do you think that Welsh MPs, who are not allowed to have any say over what happens to the health service in Wales, should be able to tell the English what to do?”, I know what the answer would be. The Government are carrying out a manifesto commitment that was democratically voted for, and it is completely consistent with what Opposition Members have done. [Interruption.]

The Chair: Order. The hon. Gentleman is absolutely right that there was a Conservative commitment. We have also had long debates on it in the past. It is not the purpose of this Grand Committee to continue those debates. I ask him to bring his remarks to a close.

David T. C. Davies: Thank you, Mr Owen. I would simply say one last thing: as somebody who was opposed to the Welsh Assembly, I completely accept that it is there forever. I hope that we will not constantly see more powers handed over to it. I see powers as being not a one-way street but possibly a two-way street, but there will be people voting at the next Assembly elections in May who were barely born when it was set up, so the idea that we can somehow scrap it has now long gone. Opposition Members have said that matters affecting Wales should be decided in Wales, which is an interesting principle. I would like to see matters affecting Britain being decided in Great Britain, which is why I will be

joining the Vote Leave campaign at some point this afternoon. I look forward to the support of Plaid Cymru Members.

11.5 am

Ian C. Lucas: I am interested by that characteristically reflective speech from the Chairman of the Welsh Affairs Committee. I am pleased to follow it and will pursue some of the points he raised.

Academics do not generally favour demolitions, but anyone who attended yesterday evening’s briefing on the draft Wales Bill by the Wales governance centre at Cardiff University and the constitution unit at University College London saw an exception to the rule. It exposed the incoherence of the draft Bill that we are considering today, and it is clear that, unloved and unsupported as it is, it will effectively proceed no further in its present form. It is yet another example of constitutional vandalism, fraying the edges of the United Kingdom’s constitution while diminishing the governance of the UK as a whole. As Vernon Bogdanor, professor of government at King’s College London, argued in a lecture in the House of Lords last night, we need a constitutional convention to address the long-term future of constitutional arrangements in the UK.

Almost unseen, this Secretary of State for Wales has presided over the sidelining of Welsh MPs on issues that directly affect the people whom we represent. Representatives are elected from north Wales to play a part in the governance of foundation hospitals in England but, under the EVEL proposals, MPs from Wales will be excluded from stages of legislation affecting those hospitals. The reality is that the Conservative position is illogical and does not in any way reflect the position on the ground. Moreover, the Conservatives have refused to apply the EVEL principles to Wales. There are no Welsh votes for Welsh laws and no Scots votes for Scots laws. Even though there are devolved institutions, some issues that directly affect Wales are not devolved to the National Assembly. S4C is one example. Issues relating to S4C, which is precious to Wales, could be decided by a majority of English MPs, overriding the views of Welsh MPs. The rules for English MPs do not apply to Welsh MPs.

Jonathan Edwards: Going back to the hon. Gentleman’s point about a constitutional convention, does he support the comments of the former right hon. Member for Neath, who now sits in the other place? He made the case for a confederal model, whereby the historic nations would decide what powers they wanted to be held in their part of the state and then an agreement would be made at the UK level, as opposed to the current model, whereby the UK decides what is devolved down to the historic nations.

Ian C. Lucas: I do not think that I can deal with the constitutional question in response to an intervention, but I welcome any consideration or detailed assessment of the constitution as a whole. I want to get away from the principle of trying to deal with such issues piecemeal across the United Kingdom, which is a massive mistake.

Alun Cairns *rose*—

Ian C. Lucas: I am not going to give way to those on the Front Bench, because they have had far too many interventions.

Craig Williams: Will the hon. Gentleman give way to me?

Ian C. Lucas: I will give way to the Back Bencher opposite.

Craig Williams: The hon. Gentleman touched on S4C. Does he welcome the fantastic announcement that its budget will be protected by this Parliament and this Government?

Ian C. Lucas: I do welcome that. I tabled parliamentary questions on that very issue earlier this week. I am pleased that Welsh MPs across the Chamber have had a strong voice in the matter.

Hywel Williams: Will the hon. Gentleman give way?

Ian C. Lucas: I will make a little progress, because I am conscious that others want to speak.

I want to turn to the Chairman of the Welsh Affairs Committee's comments. The EVEL proposals, appalling as they are, actually contain a kernel of something that could take constitutional considerations further. In general, I welcome the introduction of geographical Committees in the UK Parliament, because the public do not want more politicians. At the heart of Tony Blair's defeat on his proposals for a north-east regional assembly was the powerful image of such an institution being a white elephant. Basically, for the general public it was unacceptable to have yet more politicians—the very problem that the hon. Member for Monmouth mentioned earlier. The creation of an English Grand Committee made up of MPs who are already elected creates a body capable of scrutiny with no additional costly elected members. It is a possible model for the scrutiny of legislation and budgets not only in England but throughout the UK.

As an MP from Wales, I am conscious of the differentiation of roles created by the devolution settlement across the UK. Some political roles are devolved to the Welsh Government, the most prominent of which is health, yet my constituents have a limited appreciation of the level of government that deals with their issues. Frankly, they do not care. They think that if they have a problem that is of sufficient importance for them to go to their MP about it, he should deal with it. That view extends not only to matters devolved to the Welsh Government. Barely a weekly surgery goes by without an issue being brought to me that is the responsibility of the local council. I deal with such issues, and I know that my parliamentary colleagues in England do exactly the same, yet the parliamentary process makes little concession to either the devolution settlement or the developed role of MPs as constituency advocates.

Politicians at different levels of governance operate as if they were on different floors of an office block that governs: local government on the ground floor; devolved jurisdictions, Members of the Scottish Parliament, Assembly Members or Members of the Legislative Assembly on the second floor; Members of Parliament on the third floor; and Members of the European Parliament on the floor above them. The time is right, in appropriate cases, to put those representatives on the same floor to scrutinise together in the interests of our constituents. The EVEL proposals, which suggest the creation of a

separate parliamentary Committee to deal with appropriate legislation on a geographical basis, give an indication of how to achieve that.

For many years, as an MP from Wales I have advocated MPs and AMs working together on joint Committees for the benefit of our constituents. That should be considered further in the draft Bill. The health issues I have set out are examples of issues that need joint work to reflect the reality of NHS provision to my constituents. There has been great resistance to this proposal. Some see it as undermining the principle of devolution, but devolution is not separatism. It is incumbent on those of us who want devolution to work to work together, not separately, to make it work in practice. We must leave separatism to the nationalists.

Parliament needs to recognise in its procedures the role of devolved institutions by incorporating them into the scrutiny process. It must also recognise that, in England, that will mean MPs working in joint Committees with local government. Such Committees must, of necessity, be constituted on a regional basis. Just as the Conservatives propose creating a Committee of MPs in England in their EVEL proposals, Labour should go one step further and create Committees of MPs on a regional basis within England to scrutinise matters relating to that region. In England, that will mean extending Committee membership to local government leaders. In Wales and Scotland, it will mean Scottish Parliament and Welsh Assembly Committees admitting MPs, and parliamentary Committees admitting MSPs and AMs, as well as, where appropriate, local government leaders.

In appropriate cases, such Committees could extend across national boundaries, so that they could deal with issues that transcend boundaries, reflecting the reality of the situation on the ground for, for example, constituents in the part of the cross-border region of England and Wales that I represent. Such Committees would more accurately reflect the present governance of the UK. Governance is a process that integrates different levels of government, and such Committees would do the same.

Mr David Jones: I have a great deal of sympathy with what the hon. Gentleman is suggesting. Does he agree that the issue is not simply one for parliamentarians but for Government Ministers—the Executive—as well? There should be far more discussion of the alignment of policies between Governments.

Ian C. Lucas: I agree with that entirely. I do not pretend that what I have said this morning is a solution, but it is a starting point for a debate. The right hon. Gentleman knows that there is an appetite for cross-border working in Parliament, as shown by the recent establishment of the all-party parliamentary group for the Mersey-Dee and north Wales region.

The concept of regional representation in Government and in Parliament is neither novel nor past. As Prime Minister, Gordon Brown introduced regional Ministers. They were abolished by the coalition Government in 2010, but they were very effective. I dealt with them when I was a Minister in the Department for Business, Innovation and Skills. The Conservative Government have now created a Minister for the northern powerhouse. We should have a Committee to hold such people to

[*Ian C. Lucas*]

account. Bit by bit, the Government are adopting the model through their proposals for regional devolution. To develop regional institutions within Government, we need the parliamentary equivalents. To work with other organisations, we need local government and devolved institutions to take matters forward. The move should be against the separatism that the Government have promulgated through EVEL. We should establish a Committee of elected representatives—MPs, AMs and councillors—who can hold the institutions of Government to account and more properly reflect the situation on the ground.

The tragedy of far too much of the constitutional reform since 1999 is that it has tinkered in a piecemeal way with our constitution, and the draft Bill is another example. Unfortunately, the Government are unlikely any time soon to consider an overall constitutional convention, which is what we need. Those of us who dearly love the United Kingdom need to agree to create such a convention to regularise the rules that we have. Until that happens, the proposal for a regional Committee, which can, if necessary, transcend boundaries, is a good way of taking forward a more accountable and effective governance structure that would address the needs of the people whom we represent.

11.17 am

Mr David Jones (Clwyd West) (Con): It is a huge pleasure to serve under your chairmanship, Mr Owen. May I commence by congratulating the hon. Member for Llanelli on calling for this Welsh Grand Committee today? I have often felt that this Committee contributes more than is frequently recognised to the political life of Wales, and I am glad that we are sitting here again. I also congratulate the hon. Member for Dwyfor Meirionnydd on an excellent contribution to the debate.

This forum is important for Welsh MPs. I am pleased that we have the opportunity today to discuss the draft Wales Bill, which is the latest in an increasingly long line of measures put forward by successive Secretaries of State to address devolution in Wales. Our principal problem is that the devolution settlement as originally implemented was grossly defective. It was put in place in a hurry by the Blair Administration, and successive Governments since have had to make attempts to repair the damage done to the constitution of the United Kingdom as a consequence.

Like the Secretary of State, I started my journey as an avowed devo-sceptic. I have since become, as has the Lord Murphy of Torfaen, a devo-realist, because it is clear that devolution will be a feature of the constitution of this country, at least for the foreseeable future. I congratulate the Secretary of State on attempting to put right what is in my view a defective settlement. However, I have huge concerns about this draft Bill, which I shall touch on later. Many have called for a move from a conferred powers model of devolution to a reserved powers model. The view that I have always taken, as has my right hon. Friend, is that simply to do that is not a panacea. We can have the same issues, but in mirror image, so to speak.

The proposed reserved powers model addresses some issues of concern, most importantly those of the silent subjects, which proved so problematic in the Agricultural

Wages Board case. However, it is perfectly clear from today's contributions in this Chamber and externally from experienced commentators that what is now proposed does not go far enough.

I do not want to deal with the specific provisions of the Bill at great length. However, I applaud my right hon. Friend for the reservation of policing from the devolution settlement. Policing is one of the three great public services. From a pragmatic point of view, it is perfectly clear that the Assembly has not so far proved successful in their stewardship of either health or education. I believe to confer competence for policing would be a step too far.

Jonathan Edwards: Is it the right hon. Gentleman's position that policing should be re-reserved in the case of Scotland and Northern Ireland?

Mr Jones: I believe that is correct in the case of Wales. England and Wales, as we have heard at length today, is a conjoined jurisdiction. It makes far more sense for such an important public service as policing to be reserved. Furthermore, from a pragmatic point of view, let me say quite bluntly that I do not believe the Welsh Government would be able to handle policing. I think it would be beyond them.

I also have concerns about the proposed devolution of competence for harbours. Harbours are an important part of our economy. Again, I have concerns about the capacity of the Assembly to deal with them. On what may appear to be a minor matter, I think that the proposal to devolve competence for speed limits is, quite frankly, potty.

The problem with the draft Bill is not what is devolved and what is reserved. Those are matters for discussion, negotiation and rethought. The principal problems lie in schedule 2. This has been the subject of much discussion this morning. The core of the problem lies in the use of the word "necessary". To decide the limits of devolution by an interpretation of the word "necessary" is a positive invitation for many more references to the Supreme Court.

It should be possible to arrive at a terminology. I had hoped that, when I intervened on the Shadow Secretary of State, she might have given thought to this matter and have a formulation herself, but it would appear not. Nevertheless, I suggest to my right hon. Friend the Secretary of State that considerable further thought needs to be given to the use of the word "necessary". Otherwise, we will see many more cases referred to the Supreme Court, which is the last thing that anyone in this Chamber wants.

On the expression "reserved authority", I see the need to refer to it. Increasingly, legislation emanating from the Assembly has imposed greater and greater burdens on non-devolved authorities and Ministries of State. It is quite right that those burdens should not be imposed and I believe, therefore, that they should be constrained. The expression "leeway and lock" has been used by the Wales governance centre in its recent paper. "Leeway and lock" sounds like the opening words of the 1951 test match. Nevertheless, I believe that it is important to define the area of competence wherein the Assembly operates and it is absolutely right that it

should not be passing legislation that has unforeseen consequences on the reserved authorities referred to in the draft Bill.

It is right that, before any such burdens are imposed, the consent of the relevant Minister should be sought. It is, after all, the flipside of the provision that provides that where the Assembly's competence is being invaded, the legislative consent motion should be sought. This can also be addressed by making provisions for a timescale

within which consent can be given, or, as I think the Wales governance centre suggested, by a presumption in favour of a consent, unless consent is withheld within a certain time.

11.25 am

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at Two o'clock.

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Welsh Grand Committee

DRAFT WALES BILL

Wednesday 3 February 2016

(Afternoon)

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Draft Wales Bill

Resumption of general debate.

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The Committee consisted of the following Members:

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Andrew, Stuart (*Pudsey*) (Con)
 Bebb, Guto (*Aberconwy*) (Con)
 Brennan, Kevin (*Cardiff West*) (Lab)
 Bryant, Chris (*Rhondda*) (Lab)
 † Cairns, Alun (*Parliamentary Under-Secretary of State for Wales*)
 Clwyd, Ann (*Cynon Valley*) (Lab)
 † Crabb, Stephen (*Secretary of State for Wales*)
 † David, Wayne (*Caerphilly*) (Lab)
 † Davies, Byron (*Gower*) (Con)
 † Davies, Chris (*Brecon and Radnorshire*) (Con)
 † Davies, David T. C. (*Monmouth*) (Con)
 Davies, Geraint (*Swansea West*) (Lab/Co-op)
 † Davies, Glyn (*Montgomeryshire*) (Con)
 † Davies, Dr James (*Vale of Clwyd*) (Con)
 Doughty, Stephen (*Cardiff South and Penarth*) (Lab/Co-op)
 † Edwards, Jonathan (*Carmarthen East and Dinefwr*) (PC)
 Evans, Chris (*Islwyn*) (Lab/Co-op)
 Flynn, Paul (*Newport West*) (Lab)
 † Griffith, Nia (*Llanelli*) (Lab)
 † Harris, Carolyn (*Swansea East*) (Lab)
 Hart, Simon (*Carmarthen West and South Pembrokeshire*) (Con)
 † Hoare, Simon (*North Dorset*) (Con)

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 † Jones, Mr David (*Clwyd West*) (Con)
 † Jones, Gerald (*Merthyr Tydfil and Rhymney*) (Lab)
 † Jones, Susan Elan (*Clwyd South*) (Lab)
 † Kinnock, Stephen (*Aberavon*) (Lab)
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 † Morden, Jessica (*Newport East*) (Lab)
 † Morris, David (*Morecambe and Lunesdale*) (Con)
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 Tami, Mark (*Alyn and Deeside*) (Lab)
 † Thomas-Symonds, Nick (*Torfaen*) (Lab)
 † Williams, Craig (*Cardiff North*) (Con)
 † Williams, Hywel (*Arfon*) (PC)
 † Williams, Mr Mark (*Ceredigion*) (LD)

Glenn McKee, Liam Laurence Smyth, *Committee Clerks*

† **attended the Committee**

Welsh Grand Committee

Wednesday 3 February 2016

(Afternoon)

[MR DAVID HANSON *in the Chair*]

Draft Wales Bill

[*Relevant documents: oral evidence taken before the Welsh Affairs Committee on 26 October, 9, 16 and 30 November and 9 December 2015, and written evidence to the Committee, reported to the House on 16, 23 and 30 November and 7 December 2015, on the pre-legislative scrutiny of the draft Wales Bill, HC 449.*]

2 pm

Question again proposed,

That the Committee has considered the matter of the draft Wales Bill.

The Chair: I advise hon. Members that about nine hon. Members are seeking to catch my eye before the end of the debate. I intend to call the winding-up speeches from 3.30 pm. The right hon. Member for Clwyd West was on his feet.

Mr David Jones (Clwyd West) (Con): Welcome to the Chair, Mr Hanson.

Before we adjourned, I was expressing both support for what the Wales Office is seeking to do via the Bill and concern about whether the Bill is the best vehicle for achieving that. The difficulty we have in this country is that, as other hon. Members have said, we have experienced piecemeal devolution over many years, going back to the original defective settlement imposed in 1999. We have asymmetric devolution, which that is not necessarily a bad thing. One of the strengths of this country is the inherent flexibility of its institutions, so I do not think that the asymmetry is the problem. I think that having had years of piecemeal devolution, we are continuing the process and keep tinkering with the devolution settlement. We are trying to fix the big end when what we need is a completely new engine.

I commend to members of the Grand Committee the work being carried out by the Public Administration and Constitutional Affairs Committee, of which I am a member, as are the hon. Members for Merthyr Tydfil and Rhymney and for Newport West. That Committee is carrying out an extensive inquiry into the British constitution, and evidence we have heard in recent weeks follows a pattern, which is that progress of further devolution is proceeding too quickly, with too little thought and, frankly, not in a holistic manner.

For example, we visited the Welsh Assembly some weeks ago and were told by Dame Rosemary Butler, the Presiding Officer, that changes to the devolution settlement are being rushed. Only yesterday we heard evidence from Lords Forsyth and Lang, former Scottish Secretaries, who expressed the same concern; and that concern was echoed in the report by the Wales Governance Centre published yesterday. I know there is anxiety and keenness within the Government that the Bill should proceed as quickly as possible, but I ask my right hon. Friend the Secretary of State to give careful consideration to the

evidence that is emerging, not only from the Public Administration and Constitutional Affairs Committee, but from external sources, that if we carry on at this pace of reform, we are going to make an even bigger mess.

Suggestions have been made, for example by the First Minister, that there should be a constitutional convention. That suggestion has been echoed to a certain extent by Lord Norton of Louth, who has called for a constitutional convocation. There have also been suggestions that a high commission on the constitution should be established. There is merit in giving consideration to all those suggestions.

What we are all seeking is a constitutional settlement that ultimately will settle the question of devolution. I remember when I arrived in this House in 2005 being told by Lord Hain, who was then Secretary of State, that the Bill that became the Government of Wales Act 2006 would settle the issue of devolution for Wales for a generation, and here we are talking about it again. There has to be a terminus to this process and it has to be a terminus that is fair and reflects all the interests of all the people of this country. I do not believe that the bolt-on approach represented by the Bill is the right approach.

I entreat my right hon. Friend the Secretary of State not to proceed at such great speed. I know that, from the point of view of the press, there is tremendous attraction in a Wales Bill being introduced to the House on 1 March—the St David's day Bill. We need something much more substantial than that. While fully applauding my right hon. Friend's desire to put right the mess that we inherited from previous Parliaments, I ask him to think about pausing the process. I ask him to give the whole process more time, to listen to the interested parties who are now increasingly making their voices heard, and to consider with his colleagues in Government putting in place a process that gives the people of this country the opportunity to have a devolution settlement that endures, not one that—God forbid—we have to revisit in five years' time.

2.5 pm

Nick Thomas-Symonds (Torfaen) (Lab): It is a pleasure to serve under your chairmanship for my first Welsh Grand Committee, Mr Hanson.

Our starting point has to be what the Secretary of State for Wales says in the foreword to the draft Wales Bill:

“We are determined to ensure the people of Wales have a clear and lasting devolution settlement... For too long Welsh politics has been dominated by constitutional debates about what is and is not devolved.”

I fear that, as it is, the draft Wales Bill is likely to create more and more debate, much of which will end up before the UK Supreme Court unless stringent and significant changes are made to the Bill. I shall give a few examples, starting with the issue of ministerial consent.

The provisions on ministerial consent on page 73 of the draft Bill mean that if the Assembly wants to legislate in a way that affects the power of a UK Government Minister, it must first ask for consent. In and of itself, that creates great uncertainty, because the powers of UK Government Ministers are set out in hundreds of statutes. Let me give one example of the kind of absurd consequences that could arise and why the provisions are an example of devolution being rolled back, not forward:

the Control of Horses (Wales) Act 2014. Reservation 184 in the draft Bill is about arbitration. Section 7 of the 2014 Act contains a dispute resolution procedure to resolve disagreements between horse owners and local authorities. Under the draft Bill, that Act would have to be subject to ministerial consent. There we have it: horses in Wales having to be subject to a UK Government Minister in London. I do not know the Secretary of State's view on horses, but no doubt we will have to find out if the draft Bill becomes a permanent fixture.

The Silk Commission said that one way to resolve uncertainties would be to transfer the powers in the devolved areas. I urge the Secretary of State to look at ministerial consents to see whether there can be such a simplification. Otherwise, we will simply be piling up work for the UK Supreme Court.

In an intervention on the Secretary of State this morning, I raised the issue of reserved powers. Yes, of course, a reserved powers model can work extremely well. I think the right hon. Member for Clwyd West pointed out that my predecessor as MP for Torfaen, who was twice Secretary of State for Wales, had spoken about the reserved powers model. There is nothing wrong with the model. The problem is that, first, it has to be pretty clear and, secondly, the number of powers that are and are not reserved has to be in line with the expectations of the Welsh people.

Conservative Assembly Member David Melding said of the reserved powers in the draft Bill:

"They are numerous. Quite literally, they cannot be counted, although most who have attempted enumeration put the figure somewhere above 250. This is ominous."

The Secretary of State really should take that into account as he looks at how he can redraft the Bill. Dame Rosemary Butler put it this way:

"there is significant roll-back in the reservations themselves. A large number of matters which are not exceptions from the Assembly's current competence have been made into reserved matters in the draft Bill."

That is devolution being rolled back.

The Secretary of State for Wales (Stephen Crabb):

The hon. Gentleman highlights an important point and refers to comments by the Presiding Officer of the Welsh Assembly. Does he agree with the Presiding Officer's presumption that all of those silent subjects were intended to be devolved, and therefore the Supreme Court judgment on the Agricultural Sector (Wales) Bill effectively makes all of those subjects devolved now if they can be linked in some way to a devolved purpose? Alternatively, does he agree with me that we should go back and understand Parliament's intentions in making the existing devolution settlement and then extend the devolution boundary by a political process, rather than rely on the courts?

Nick Thomas-Symonds: With the greatest of respect to the Secretary of State, I do not think he has quite picked up the point I am making, which is this: the Assembly has already legislated on a number of matters that, under this Bill, it will have to seek his consent to legislate on. Another example of where his consent would have been required is the Human Transplantation (Wales) Act 2013. I am sure he is a generous man with his consent, but the reality of the situation is that where the Assembly has been able to legislate, the Bill now requires his consent to do it. That is a roll-back of devolution; it is as simple as that.

Stephen Crabb: The hon. Gentleman is getting confused. Under the existing settlement, the Act to which he just referred required ministerial consent. That consent was given, with no problem at all. Under the new settlement, because that Act has an impact on reserved matters or functions of a UK Minister of the Crown, it would still require consent. We should not see consents as some great problem. We need a way of regulating the interface between the UK Government and the Welsh Government.

Nick Thomas-Symonds: With respect, the Secretary of State has to understand that simplicity is the most important thing. The Silk Commission said—this is what the Presiding Officer of the Welsh Assembly was also referring to—that there must be scope for the situation where consent is not required in the 20 devolved areas. I cannot understand why the Secretary of State cannot see that. The roll-back of the devolution process is the danger of the Bill.

Stephen Crabb: Confused.

Nick Thomas-Symonds: If we want to talk about confusion, let us move on to necessity, because we will have some fun on that with the Secretary of State.

Let us be clear what the test of necessity actually means. The Assembly has to be convinced that Acts are necessary before it can act—that is what the necessity test says. There are plenty of examples in the Bill; there is one on page 69, if Members want to look at it. Let me tell the Secretary of State what the Wales Governance Centre at Cardiff University said:

"The concept of necessity-testing in the draft Bill represents a failure of comparative legal method... The use of necessity-testing in the draft Bill jars with basic constitutional principle."

Why does it say that? It says that because necessity-testing is a concept that has essentially been taken from Scottish law, but in Scottish law it would refer only to cases where the law has to be modified in a very narrow, consequential way in relation to reserved matters, and not in the very broad sense that it is being attempted to include in the Bill. That is the central problem.

This morning, the right hon. Member for Clwyd West kept asking, "What do you replace necessity with?" It is true that we could use a different word. We could use "reasonable" or "sufficient" if we wanted to, but none of that would deal with the basic problem, which is that that would ultimately have to be a subject of interpretation by the judiciary. The real problem is that the Secretary of State has to revisit the framework in which the necessity test arises; it has to be about the overall framework.

I practised in the courts in England and Wales for many years, and one problem is that the necessity test could end up before the criminal courts and the civil courts on a daily basis. That is what the Law Society of England and Wales has said about the extraordinary worry that there is about the Wales Bill. We could have the law being challenged on an almost daily basis, which certainly cannot be what the Secretary of State intends.

Further to those confusions, David Melding AM—my new favourite Conservative—said on 13 January:

"Judicial review could become, if not the norm, then far from the exception. Welsh legislation would be drafted in an atmosphere of profound uncertainty, which itself would curtail its scope and ambition. Taken to extremes, the very exercise of the legislative function could be compromised."

[Nick Thomas-Symonds]

My hon. Friend the shadow Secretary of State also referred to that pretty stinging criticism. With all this stuff floating around, I certainly would not mind being a fly on the wall at the next meeting between the Conservative AMs and MPs.

The Secretary of State now has an opportunity to take another look at the Bill. He has previously said, and I take him at his word, that he is in listening mode. I hope that he is still in listening mode and that he is willing to go back and look at the Bill. The organic growth of devolution went from the Government of Wales Act 1998 to the 2006 Act and the referendum, and we are moving another step forward on the journey. We certainly do not want—to change the metaphor—the devolution car to go into reverse. Since the first Welsh Secretary of State took office in 1964, he is the only one under whose tenure the powers of Welsh Members of Parliament have been taken away. Not one of the previous Secretaries of State—

Stephen Crabb: Nonsense.

Nick Thomas-Symonds: Well, find me an example under a previous Secretary of State of English votes for English laws. You will not find one. Secretary of State, do not make a disastrous devolution Bill your second contribution to history.

2.16 pm

Dr James Davies (Vale of Clwyd) (Con): It is a pleasure to serve under your chairmanship, Mr Hanson, as it is to speak in my first Welsh Grand Committee since being elected in May. I am a member of the Welsh Affairs Committee and we have all enjoyed the pre-legislative scrutiny over recent weeks, so I do not intend to speak at length about the issues covered by the Committee, but I do have a few points to make.

The Bill's key feature is delivering a reserved powers model, in theory to create additional clarity and reduce legal challenges, about which we have had some discussion today. We heard from a multitude of witnesses in our Select Committee and received conflicting legal advice from various quarters. I am a doctor, not a lawyer, but the list of reservations must as a starting point accurately reflect what the UK Government intended in their conferred model when the last piece of devolution legislation was passed. The length of the list is not what is important.

Elements of the draft Bill also constitute the delivery of further powers to Cardiff Bay, the basis for which is the St David's day agreement. For those of us in Wales who believe strongly in the United Kingdom, as I believe the vast majority do, the level of government where powers are based should be rooted in common sense and the potential to achieve the best outcomes for the people of Wales, not on the simple expectation of a continual one-way transfer of powers from Westminster to Cardiff.

The general public and, it is fair to say, many politicians are often unaware of where powers are currently held in Wales. We need greater clarity, which will help accountability. The best way of achieving clarity is to ensure, as I said, that constitutional decisions on devolution are based on a strong underlying rationale. The draft Bill contains a few examples of new powers arising from the St David's day agreement of which I would urge further study.

The first is fracking. It is proposed to devolve the licensing powers of the Oil and Gas Authority to the Assembly, but not the licensing powers of the Coal Authority. That is interesting because the Coal Authority licenses underground coal gasification, which, as you will know, Mr Hanson, is the type of unconventional gas extraction of most interest to our part of north Wales. In my opinion, energy production and security is best managed at a UK level, but I am led to believe that some of the decisions made in the St David's day agreement might have been based more on what was in the headlines at the time, and prominent issues of the day, than on the overall picture.

The second issue is speed limits. Local authorities and the Assembly Government control the speed limits that are put in place to increase safety. Unless I am mistaken, what is suggested now is the devolution of the national limits—in other words, the largely un-signposted 30 mph limit in built-up areas, the 60 mph limit and the motorway limit of 70 mph. As we all know, many roads cross the England-Wales border; in fact, people often have no notification that they are moving from England to Wales or vice versa, so is the proposal workable? Is it in any way desirable? Are the cars in use in Wales or the safety of the roads so significantly different that there should be a different policy on a national speed limit? I very much doubt it, and I think the issue should remain reserved. If the powers will not be used anyway, why on earth would we want to devolve them?

The third issue to mention is voting systems. I have no issue with the Assembly having a greater say over its voting system, but do we want confused voters to be faced with a second set of electoral boundaries, a different voting age and so forth? I come back to accountability—there is a risk that politicians will become less accountable.

We have heard voices advocating more separatism in this debate, and that does not reflect the views that I hear in my part of Wales. People are concerned about the success of the local economy and the quality of local services. When services have been devolved, such as in the health service and education, there is often great concern about their performance in Wales.

Jonathan Edwards (Carmarthen East and Dinefwr) (PC): My position is that Wales should be an independent country. Is the hon. Gentleman's position that the National Assembly should be scrapped?

Dr Davies: I respect the view of the people of Wales. I was too young to vote in the devolution referendum, but I would not have supported devolution had I had that choice.

Jonathan Edwards: In 2011?

Dr Davies: No, when the Assembly was first formed.

Local people want to see true devolution to localities, as the UK Government are pursuing, for instance the devolution of business rates in England and planning powers over many offshore wind farms. Sadly, in Wales, all too often we see the centralisation of powers in Cardiff. I urge both the UK and Welsh Governments to devolve to local communities in Wales, and particularly north Wales. They need to empower local authorities and others in north Wales to pursue the issues that are particular to the region, which largely relate to our strong links to the north-west of England.

There is, of course, an economic sub-region spanning north Wales and north-west England, with 50,000 cross-border commutes daily, equating to about 1 million a month. Earlier today I met the North Wales Business Council, which emphasised the need for the North Wales Economic Ambition Board to be allowed to develop into a body with powers analogous to a local enterprise partnership. That would assist the development of a much needed growth deal in partnership with the Cheshire and Warrington LEP.

North Wales clearly has a key opportunity to be part of the northern powerhouse, especially through the upgrading of transport infrastructure. That would be an important way to address deprivation and unemployment in my part of the world. Parts of north Wales have untapped workforce availability, and therefore, an associated cost to the taxpayer through out-of-work benefits. Better links would help the strategic and united growth of the north Wales and north-west region, and the political barriers that have developed post-devolution could be addressed through true devolution—not along the M4 to a very distant Cardiff, but out to the communities of Wales.

2.23 pm

Mr Mark Williams (Ceredigion) (LD): It is a privilege to serve under your chairmanship this afternoon, Mr Hanson. Whether you are calling me to speak from the Liberal Democrat Front Bench or the Liberal Democrat Back Bench, I do not suppose it matters much these days—[*Interruption.*] It is a Bench, that's right.

It is a great pleasure to follow the hon. Member for Vale of Clwyd. He used the word “enjoy” liberally as he reflected on our deliberations and pre-legislative scrutiny in the Welsh Affairs Committee. With no disrespect to our Chairman over there—the hon. Member for Monmouth—it has not exactly been enjoyable, but none the less, the process we have been undertaking is incredibly worthwhile and important.

To respond to a point made by the hon. Member for Vale of Clwyd, is the draft Wales Bill the great talking point in the aisles of Morrisons in Aberystwyth or in the mart in Tregaron? I suspect not. However, the heart of our democracy involves clarity and coherence. People need to know who to go to—whether it is their Assembly Member or Member of Parliament—and what powers such people have. The Secretary of State is right to seek a much clearer devolution settlement through the Bill, and, on those grounds alone it is important that it proceeds.

Many of the points that have been made today are ones that I and my colleagues in the Welsh Assembly have made since the draft Bill was published. There are genuine concerns about the Bill, and the Secretary of State has been big enough and realistic enough to acknowledge that there are challenges. It is a draft Bill, and as part of the process we want it to morph into something more substantive. We will have Second Reading in the Chamber to address many of our concerns.

The draft Bill has a fair number of Liberal fingerprints on it. Its origins were in the coalition Government with the creation of the Silk Commission I and II, the referendum and the St David's day agreement. I was privileged to be part of those discussions. However, it would be difficult for me as a Liberal Democrat to support the draft Bill. We are where we are and part of the process of pre-legislative scrutiny is to seek remedies

to the problems and for the Secretary of State to listen to the overwhelming evidence that expresses those concerns, which has certainly been heard by the Select Committee.

The Secretary of State candidly talked about his history, and his journey to being a devo-pragmatist. I, too, remember those early days on the Select Committee when he did not always have the views he has now. I celebrate that movement towards devolution, whatever the motivation behind it. He has given us a challenge to get a Bill that is right.

As the Select Committee deliberated, it was sometimes quite hard. We had discussions about what really underpins the Bill. Is it an attempt to remedy a failing system based on existing legislation? The right hon. Member for Clwyd West described it as a “bolt-on” and I think he is right in that analysis. It is certainly there to alleviate problems. Is it simply seeking to import a model from Scotland? Maybe parts of it, yes, and there are failings there, because Scotland has a very different system from what we need and require in Wales. If we could start again, I would like to see the principle of subsidiarity embedded in the legislation far more clearly: the notion that powers are best exercised at different levels of government, as close as possible to the people we serve.

The Secretary of State has wisely said that the list of reservations must be diminished, and diminished it must be. I will quickly go through the list of issues controlled by London, not all 267 of them, I hasten to add: hovercraft; knives; pedlars and street trading; dangerous dogs; gender recognition; sports ground safety; driving instruction; auctions and mock auctions; hallmarking; gun-barrel proofing; regulation for the carriage of animals on aircraft; fire safety; pedestrian crossings; traffic signs; exemptions from speed limits; insurance of motor vehicles; coal; the sale and supply of alcohol; misuse or dealing in drugs or psychoactive substances; the classification of film and video recording; licensing and the provision of entertainment and late-night refreshment; betting, gaming and lotteries; Sunday trading; railway services; the Boundary Commission for Wales; the regulation of estate agents; timeshares and package travel and package holidays; the regulation of unsolicited goods and services and trading schemes; railway heritage.

Hon. Members: Hooray!

Mr David Jones: I do not know if the hon. Gentleman is suggesting that all those issues should be devolved to Wales. I notice he mentioned gender recognition. Would that mean that someone could be a man in England and a woman in Wales?

Mr Mark Williams: I thank the right hon. Gentleman, if only because he has given me a chance to catch my breath. Would seeing those powers controlled in Wales mean the unravelling of our constitution and the end of the Union? Should we have not started from the principle that what is devolved to Scotland and Northern Ireland should be devolved to Wales? Better still, if one believes in subsidiarity, should we have not started with the principle that all powers are devolved, and it is for the Secretary of State and Westminster to argue the case for reserving them to Westminster?

However, we are where we are and we have this Bill. The hon. Member for Wrexham, who is not in his place, talked about the need for a constitutional convention and the right hon. Member for Clwyd West said he was

[Mr Mark Williams]

open to the case for that. He described the Bill as a “bolt-on”. That and the devolutionary drift in other parts of the UK points to the need to look at such matters in the round. My party has always believed in a federal Britain, with home rule for Wales, and we need a constitutional convention to look into that.

Some have asserted that there should be a pause and, on balance, I agree. Too many concerns have been expressed, as the Select Committee will reveal at some point in the future. The question is: how much of a pause should there be? If a pause means that we lose a legislative slot for the Wales Bill to carry forward devolution, I would be immensely concerned. However, the issues on which the Secretary of State has openly reflected, such as looking again at the necessity test, or whatever form of words we use for that, ministerial consents and the scale of the list of reservations, are a big body of work that needs to be done urgently.

I would not say that the Secretary of State was disdainful when I talked about the need for robust dialogue with Assembly colleagues, but that dialogue needs to happen. I was privy to discussions between Westminster MPs representing the four parties and our Assembly colleagues and given the level of concern expressed since the draft Bill was published, that needs addressing. There are rumours of delays to the suspected date of Second Reading. I do not expect to get a date at the end of the Committee, but we need to be mindful of that and of the work that needs to be done.

The Secretary of State said that he wants the matters to be settled. The issue of a distinct jurisdiction has gained much traction in discussions, with various questions fired around the Committee today asking people to define what that means. I am not a lawyer—perhaps that is obvious—so I cannot give that definition.

Craig Williams (Cardiff North) (Con): Will the hon. Gentleman give way?

Mr Mark Williams: I will carry on. I hope that the hon. Gentleman will forgive me.

Craig Williams: I hope he answers my question anyway.

Mr Mark Williams: I know his question, but I am not going to give him an answer because he tried it on the hon. Member for Llanelli. A debate is going on about the question of a distinct—not separate—jurisdiction. The genie is out of the bottle and if the Secretary of State wants a resolution—I know he is sincere about that—that issue must be addressed and I think it should be addressed in the Bill.

Sir Paul Silk said that politicians should be open to a review between the Assembly Government and the Westminster Government and a time period of 10 years was referred to, which is probably too long, given the debate that we have had. That issue will not go away. Hon. Members still here in a few years’ time—I hope to be—will have to revisit the Welsh jurisdiction issue unless it is dealt with soon.

Stephen Crabb: The hon. Gentleman is making a good speech. I urge a bit of caution in the discussion about distinct and separate jurisdiction, because I fear

that history is slightly repeating itself. Two or three years ago in Welsh Grand Committee and on the Floor of the House people were saying, “We need the reserved powers model,” but simply to say that we will move to a distinct jurisdiction would not tackle the problems of the complexities of consenting that we have been talking about. It does not tackle the complexities around the spillover effects of the Welsh Government making law that affects reserved matters or has an impact in England. All those really difficult and contentious issues still need to be addressed, whether we are maintaining the joint jurisdiction or somehow moving to a distinct or separate jurisdiction.

Mr Mark Williams: Of course, the Secretary of State is right. That is the difference between the draft Bill and the final Bill that he will present before us in due course. He partially answers my point. He is right that three or four years ago people were talking about a reserved system. That is what is being proposed now. My point is that unless the issue of a distinct jurisdiction is dealt with, he or his successors will have to deal with it in a few years’ time.

I will end in the same way as the hon. Member for Dwyfor Meirionnydd, my neighbour in west Wales, ended her speech. I want to vote for the Bill. I want the march to devolution—in my party’s case, to home rule—to continue. I want to vote for the Bill on Second Reading, but I can only do so if certain changes are made. The Secretary of State is making very encouraging noises about listening to people. He needs to address the concerns that we and others in Wales right across the board in civil society, as well as our colleagues in the National Assembly, have raised. He needs to make those changes.

2.36 pm

Glyn Davies (Montgomeryshire) (Con): I apologise for not having been here for the opening speech today, Mr Hanson. It was impossible for me to be here. It is a pleasure to serve under your chairmanship and to follow a very thoughtful speech by the hon. Member for Ceredigion.

I congratulate the Secretary of State on the draft Bill. We need change and reform, and publishing the Bill in draft form gives us the opportunity to comment on it and to speak as we are speaking today in this forum and as we have been able to speak for some time, and to give other organisations a chance to comment on it. For the main Bill then to be brought forward taking into account what everybody has said is a very good way to proceed.

We all have the same objective: we all want a stronger, fairer, more stable devolution settlement. In 1997, I was not in favour of establishing the National Assembly for Wales—I campaigned and voted against it. But when such a body is established, the purpose of a party is to do everything possible to make it successful. The steps we have taken since then have been steps on the road to make it successful, but there is one more step to take, and I congratulate the Secretary of State on delivering that.

We have looked at broadcasting and I wanted to make the briefest of references to today’s S4C agreement, which is brilliant news, and to congratulate my hon. Friends the Members for Carmarthen West and South Pembrokeshire and for Aberconwy on the sterling work they put in. Though unsung, they were like a couple of

I will move on to the subject under discussion. I want to speak in general terms, not on the details of the Bill, because it is a large Bill and some of the details will change, but on two hugely important issues. I want to speak positively about the Bill. Many of the comments I have heard have been quite negative. Some people have been quite negative about the Bill today, without saying what should go in its place. I thought the presentation of the report from academics and constitutional experts that came out this week was incredibly negative and was not at all helpful. I have massive respect for a member of the group who talked about the recommendation that Assembly Members should not approve the Bill because there had been absolutely no change from the draft Bill, but that will not be the position. It provided a meaningless headline and gave a negative feel to the response to the Bill, when it is something that we can all build on and make something we want of it. I think the negative response was a mistake.

I want to touch on two major changes. The first is the move from a conferred model to a reserved powers model. That was never going to be easy. I have always favoured it since the Assembly were established. During my period in the Assembly as chairman of the legislative Committee, I always thought a reserved model was right. But it is a hugely difficult step to take. Not only that, it will not remove the legal arguments about what is devolved and what is not—those will continue—but I think it is the right step to take.

A list has been produced, which has caused a great deal of entertainment and amusement as people list what seems inappropriate, but the Secretary of State has made it clear to me that he will look at this list and we will have a different list. So it may cause amusement to talk about unlikely things that should be reserved, but we should not set aside how important it is to move to a reserved powers model. It changes the nature of devolution, it is the biggest step in the Bill and we should welcome it and congratulate the Secretary of State on bringing it forward. It should have been there in the beginning.

The second big issue is income tax powers. There are divisions over this issue, of course, even on my side. I remember speaking in favour of income tax powers in the main Chamber, when there had been no referendum. I felt I was alone at the time, but I must say that that has changed. I thought that a referendum was no more, in many people's minds, than a blocking mechanism. I suspect that my friends on the Opposition Benches will do everything they can to avoid having the financial responsibility that comes with income tax powers. A Parliament does not grow up until it is responsible for both sides of the ledger—what it spends on the one hand and what it raises on the other. If we had a referendum on that, the arguments would be completely different—it would be simply a blocking mechanism.

The Bill is an incredibly courageous step by the Secretary of State to introduce the change that is desperately needed to make devolution grow up and become a proper Parliament, which is what it should be, and give the people that chance. The people voted for us knowing that that was the position, and we should go forward and include it in the Bill.

The background to where we are has for ages been the Barnett formula. Again, I do not want just to pass by on the Barnett formula. For ages, that dominated

discussion: in a debate like this, it was all that was talked about. What we now find is that Government spending in Wales has reached a level that the Barnett formula would deliver, so it is not an issue. We should congratulate the Government on funding Wales and continuing that funding throughout this Parliament at a level that meets the requirements that critics have argued for over many years. It is a major step forward.

Another background issue is the debate about the police. It is recommended that policing should be devolved. I am not against that—I never have been—but it has to be on the basis of an understanding that policing will be improved. We could be satisfied if policing would be improved, but I do not think we have ever seen that. Policing is something that is a bit different; we should look not just at the devolution aspect, but at how effective it is. If policing can be devolved and be as effective as it is now, it is something that a lot of us could live with.

The point is that no one will agree with everything in a draft Wales Bill—dispute and disagreement will inevitably occur. I am going to have to bite the bullet of devolving greater energy powers, knowing full well that the present Welsh Government are intent on granting permissions that will destroy mid-Wales. That is what they want to do. Also, it is a hugely centralising Government. Only last week they took power to themselves to deal with energy projects over 10 MW: those are small energy powers but the Welsh Government want to take them. It is an anti-localism strategy and I very much hope that leaving power to the people becomes a feature of the debate in the Welsh Assembly election.

Devolution is not just about transferring power to Cardiff, it is about transferring power to the people, and the Welsh Government are accumulating power to themselves every chance they get. There is a lot of talk about wanting a pause. I am sure that the Secretary of State will consider that we do not want a pause just because it is too difficult to confront. A pause has to be for a genuine reason, not because there are some tough decisions to take before an election so you pause to avoid taking them. That is just not good enough.

There is much talk about a constitutional convention. That may well be sensible, but I cannot help but feel that my Opposition friends are very keen on a constitutional convention because it is the ultimate in long grass—they think, “We will not have to take any of these decisions; we can just talk about them forever and a day.”

2.45 pm

Carolyn Harris (Swansea East) (Lab): May I say what a pleasure it is to serve under your excellent stewardship for the second time this week, Mr Hanson, for my very first Welsh Grand Committee?

As members of the party that was the architect of devolution, my colleagues and I would naturally support a Bill that moved to elevate the Assembly to a reserved powers model, but the draft Bill we have been presented with is, in reality, an instrument to roll back the powers of the Assembly and make its ability to govern effectively restrictive and cumbersome.

As a member of the Welsh Affairs Committee, I have spent many long hours pondering the Bill and hearing substantial evidence on it. The conclusion I have reached is that the Bill is, at best, fragmented, patchwork and arguably a complete shambles. Throughout the evidence

[Carolyn Harris]

sessions of the Committee, we repeatedly heard widespread condemnation of the draft Bill from the legal profession and noted academics. We read in the press that there has also been condemnation from within the Conservative party itself.

I will touch on two areas today: energy and the necessity test. I welcome the initiative to allow the Welsh Assembly to have authority over onshore oil and gas extraction, including fracking. I also welcome the move to allow the Welsh Assembly to grant planning consent for energy projects of a capacity of up to 350 MW. However, I am sure that large renewable investors in Wales will be disappointed with that limit.

It could be argued that if the renewables industry in Wales is to survive, companies need to be confident that they have a guaranteed price for energy—a so-called subsidy-free contract for difference. They need confidence in planning decisions for both developments and the associated grid, so the draft Wales Bill should allow planning decisions on both those things to be made in Cardiff, not in Westminster. The renewable energy industry needs that boost; it needs the confidence to allow it to continue to attract investors.

Craig Williams: Does the hon. Lady welcome, in the spirit of the Bill and localism, the fact that the power she succinctly puts forward is coming to local authorities in Wales through the Energy Bill? Local authorities will be able to grant that power.

Carolyn Harris: I can only speak for those in the industry who have lobbied me, who feel that the Wales Bill will give them no confidence to attract investors. The current provisions are not sufficient.

The Government of Wales Act 2006, which governs how the Assembly currently operates, contains basic tests that the Assembly must meet before it can legislate. However, the draft Bill increases the number of tests from nine to 13. The Assembly's own Presiding Officer and others have pointed out that that will make the work of the Assembly far more complicated.

There is much controversy around the necessity test. The remit of the test is that the Assembly must be convinced the Act to be passed is necessary. The draft Wales Bill is littered with references to the necessity test. For example, the Welsh Assembly will only be able to modify the law if it is convinced that that will have "no greater effect on the general application of the private...law than is necessary".

Even "necessity" has various definitions. The Assembly's director of legal services agreed with that point and referred to necessity's several different meanings in law. As a consequence, more cases could end up in the Supreme Court to decide what necessity means in each particular context. That will only cause confusion, slow down the Assembly's work and ultimately cost the taxpayer significant money.

The Law Society of England and Wales, as my hon. Friend the Member for Torfaen mentioned, also warned that the necessity tests are drafted in such a way that they could be challenged in the course of ordinary civil or criminal cases. Surely the Assembly, as an elected body, should be allowed to make decisions on the policy areas that are devolved to it. There should be no demand

on it to justify a policy it wants to implement as necessary. It would be in the interests of all if the necessity test were entirely removed from the Wales Bill.

I would like to thank the Secretary of State and his officials for all their hard work but I suggest they go away, sleep on it and come back with a completely different draft Bill.

2.50 pm

Craig Williams: May I say what a pleasure it is to serve under your chairmanship, Mr Hanson, and to take part in my first Welsh Grand Committee? I would say that I will be brief, but along with many words we have spoken today, it seems that in the Grand Committee, the word "brief" does not quite mean what I thought it did. I hope to contain my remarks.

As a Member of the Welsh Affairs Committee, I would like to pay tribute to our Chairman. He has brought Members within and across parties together on many of these issues.

My hon. Friend the Member for Swansea East is the only Member I know who could get away with claiming the architecture of devolution and then go on in the same breath to complain how complex it is. It amuses me no end but she carried it off with her usual charm.

I support the process in which the Bill has come forward. I had to pinch myself on a couple of occasions during the debate to remind myself that we are discussing the draft Bill. We are not discussing the end Bill, which I am sure will dominate the Welsh Affairs Committee and the normal legislative process in the House once we get it. This is a draft Bill and that is the way I have approached it, with the constructive criticism that a lot of people from all parties have brought to the Wales Office. It is not just that. It seems to have taken Welsh academia and the Welsh Governance Centre by surprise that we are talking about constitutional issues and are again seeking to empower Wales a little bit more.

I was 12 years old at the time of the 1997 referendum and I have no doubt that when my grandchildren are 12 they will still be talking about a separate jurisdiction. The genie is out of the bottle. I pay tribute to the hon. Member for Dwyfor Meirionnydd for the way that she approaches the issue in a clear and concise manner, and I understand completely where Plaid Cymru comes from, although I disagree fundamentally with her on most of the points she has made in Committee and, more broadly, in the Chamber. We need to understand as Welsh politicians that it is okay to disagree and to disagree forever. I cannot see how we think we are all going to get round a table and finally agree forever on Welsh devolution. That is simply never going to happen and is an aspiration that none of us should share. As a proud Welshman and a Welsh MP, I love Committees. I love joining Committees, I love serving on Committees and I love setting up Committees. I just think we need to be mindful of this constitutional journey we are on. There will be no terminus, no end, but there will be significant movements, and this is one the most significant that I have seen and studied.

Of course, this is the beginning of the process and it is always interesting to hear calls for people to pause at the beginning of anything, but during this draft stage it is very welcome. I do accept the premise of my right hon. Friend the Member for Clwyd West about the piecemeal

nature of devolution. Is it where we want to be? I do not think so; it is not where I want to be as a proud Welshman in terms of protecting the Union forever. The United Kingdom has a glorious unwritten constitution which has worked for a couple of years, and I suppose we are just seeing the nations in this Union coming together now and stapling. I recognise where the constant call is coming from with Plaid Cymru but I am bemused and confused at the noises—

Stephen Kinnock (Aberavon) (Lab): I am very interested in the hon. Gentleman's comment about being uncomfortable with the piecemeal nature of devolution. He must surely then support the idea of constitutional convention.

Craig Williams: I do not at this moment. I can see the argument for looking holistically at the Union, at the four nations and how to draw this together within our glorious unwritten constitution, but the political calls for that being made at the moment are tied to the Bill and efforts to pause it, and not for good reasons. I understand the broader opinion about protecting the Union—I take it that the hon. Gentleman is a proud Unionist, as I am—but I do not accept that we should link that to the Bill and further powers for Wales. This is an important juncture for Welsh politics and the Assembly, and we should crack on and take a pragmatic approach.

The Wales Governance Centre and academia have commented on the Bill, but what are we going to do as a nation if we cannot draw together? It seems to me that the Government come up with ideas, happily produce them for public scrutiny, take it all on the chin, then everyone reacts. There is never a response along the lines of, "This is what we as a Welsh nation, academics and legal experts have come up with after consideration." It should not take anyone by surprise that we are in this position. The onus is on those people to come up with more practical solutions—or just some solutions, not constant entirely negative feedback.

Briefly—I have fallen into my own trap straightaway, as I am not very brief—in this regard, my Labour fan, since we are picking fans from alternative parties, is Lord Morris of Aberavon. His clear view on the single jurisdiction is out there. The starkness of what the First Minister has said—and is saying—is not apparent to me. I do not know why we keep referring to the single jurisdiction. What does the shadow Secretary of State mean by "distinct jurisdiction"? I did not get clear and concise answer—she requested one from the Secretary of State—and I am more than happy to give way if she has come up with a meaning.

That is the nub of the issue. What on earth is a distinct jurisdiction? If it is a different jurisdiction, we have that in housing in Wales. The Assembly has cracked on and, in layman's terms, we have a distinct jurisdiction on housing law as it comes through the Assembly and as it develops. We are talking about only 3% of UK—England and Wales—laws; 3% are effected by the Assembly. Why on earth are we looking at getting that 97% down to the Assembly? It simply does not make sense to think about a separate jurisdiction, and it does not make sense to go for a distinct jurisdiction. It sounds like a political soundbite in the run-up to the Assembly elections. I get the political sentiment behind the proposal, but I do not get any sense of a legal rationale.

Liz Saville Roberts (Dwyfor Meirionnydd) (PC): Have we not been told that we cannot even consider a distinct legal jurisdiction? We have not even got to the position where we discuss maturely what this actually means. That surely is something that we should look at and go into greater detail, but we have not had the room to discuss it properly.

Craig Williams: I have never known Plaid Cymru to wait for permission to discuss or look at something. If the hon. Lady is suggesting that she should seek our permission before exploring anything, I welcome that due deference, but I do not think that that is the case. If someone had a clear definition of "distinct jurisdiction" it would have been published and it would be out there. There would be a clear answer, but no one in the Committee can answer the question of what a distinct jurisdiction is.

Liz Saville Roberts: To be fair, there are three models in the Bill.

Craig Williams: At least. The hon. Lady emphasises my point for me. She is asking for clarity in the draft Bill, and this is the panacea that people come up with. There are already three models. If we want clarity, "distinct jurisdiction" does not solve the problem. I think that in many areas of law Wales already has it, so I do not see why we need to make reference beyond this practical solution. I accept what the Secretary of State said about protocol and looking at the way in which our legal system operates. That is a separate issue—a distinct issue—from what we are talking about, but there is bit of maturity in Welsh politics and where the Assembly is at. We should recognise that it now has the power to effect laws, and it has, for the sake of argument, a distinct jurisdiction, but I still hold my hands up, as I have no idea what that means.

On reserved matters, we have seen some welcome movement by the Secretary of State and the Wales Office, but I see the complications. Space is an obvious one. Why on earth is that in the Bill? I wholly welcome the spaceport—it should of course go to north Wales. The industry, the sector and the technology are developing and they need to be future-proofed. The Bill should be future-proofed, and space should be a reserved matter—but we could argue at length about hovercraft.

To conclude, there is a clash between political reality and academia. I find completely bemusing the emotive terms that some academics and Welsh politicians have used when discussing the Bill. I can see how people can get emotional about a Commonwealth games bid from Wales and about the city deal for Cardiff and the transformational effect on south Wales, but I cannot see how people can get so emotive about the deep constitutional debates that we are having at the moment. Of course, the onus is on us to get excited about it, because if we do not get excited, I do not think anyone in Morrisons in Aberystwyth, or in Tesco or Asda in Cardiff, will be getting excited at all. I call for a mature, pragmatic approach to the Bill, which is a huge step for Wales. I welcome the responsibility that the Bill would bring to Wales with income tax devolution—true responsibility for the Welsh Government.

3.1 pm

Stephen Kinnock (Aberavon) (Lab): It is pleasure to serve under your chairmanship, Mr Hanson. It is also a pleasure to participate in my first Welsh Grand Committee.

[Stephen Kinnoek]

I want to engage in a spirit of pragmatism and problem solving, which is needed particularly when we are dealing with what are often relatively technical issues. To an extent, there is an opportunity to take some of the politics out of this and to adopt a positive, problem-solving approach, and it is in that spirit that I make my speech. I also defer to colleagues who have been involved for far longer than I in some of these areas, so I am not going to dive down into the weeds of some of the issues.

The benefit of being a relative newcomer is that one is perhaps more able to apply a common-sense test, and that is where the red lights start to flash for me. I see a real risk of what I would call constitutional red tape. I know that the Conservative party is a great enemy of red tape and is passionately committed to removing it whenever it possibly can, so let us examine some of the red tape of the Bill, which contains a 34-page list of 267 powers. I feel convinced that if someone in the Department for Business, Innovation and Skills came forward with a new proposal for regulating business in this country and it consisted of 34 pages of 267 new sets of regulations, the Secretary of State for Wales would be jumping up and down and ringing alarm bells. The Bill really does not pass the test for which we are looking: streamlined, well co-ordinated, smooth and effective government.

Jo Stevens (Cardiff Central) (Lab): Never mind our test, that clearly fails the test of the Secretary of State for Business, Innovation and Skills of one rule in, two rules out.

Stephen Kinnoek: I agree absolutely with my hon. Friend. It is an issue of clarity, common sense and making progress. The message that the Secretary of State for Wales has received from both sides of the Committee, and from our very own favourite AM, Mr David Melding, will be heard loud and clear. The critical point is to ensure that the Bill is not made in London, but is developed in collaboration with Wales. I welcome all the feedback that has been given today.

The lack of clarity also means that we run the risk of the Bill being questioned from the point of view of politicising the approach. For example, clauses 13 to 16 state that Westminster will retain control of ports with a turnover of £14.3 million. Lo and behold, that means that Milford Haven would remain under UK Government control. To my knowledge, the Secretary of the State has not made it entirely clear—it is not clear from the Bill—why it is necessary for Milford Haven to remain under Westminster's jurisdiction. I am sure that the right hon. Gentleman would want to make that clear in the Bill and to dismiss any damaging speculation that it might be because the Government are preparing to privatise the port.

Stephen Crabb: The hon. Gentleman is making a thoughtful and interesting speech. May I allay his fears on this point? One of the voices that has not had enough air time in this whole constitutional debate is that of the business community. However, on the issue of ports, and especially a large, strategic energy port such as Milford Haven, the voice of the business community came through loud and clear. This is entirely to do with UK strategic issues, despite any scaremongering that we might hear from the hon. Gentleman or his political colleagues regarding potential privatisation.

Stephen Kinnoek: I thank the Secretary of State for his intervention and welcome the clarity that it brings. I am trying to make a broader point: when there are gaps, loopholes or a lack of understanding, they open up the risk of speculation about the motives behind a policy. That is why clarity is so important and I cite that example simply to illustrate that risk.

The necessity test is another prime example of how the Bill risks creating uncertainty and ambiguity. We must take with the utmost seriousness the quote by our favourite Assembly Member, Mr David Melding, about the possibility of legislative gridlock, or the very basis of legislative function being compromised.

All hon. Members in the room will recognise the broader point that politics and politicians are not always and universally held in the highest regard by the public. Anything that looks as if it might mean more and more Committee meetings, more and more bureaucracy and more and more legislative ping-pong between Westminster and Cardiff has the potential to bring the Assembly and this place into disrepute. I am sure that all Members would not want that to happen. Although the hon. Member for Cardiff North has told us how much he enjoys sitting endlessly in Committees, I am sure that he agrees with that point.

My final specific concern is about ministerial consent and the risk that this process is seen as tantamount to an English veto. We must be absolutely clear that the direction of travel for devolution is more devolution and more decentralisation. The referendum in Wales in 2011 made that clear and we need to recognise the democratic voice of the people of Wales in that context. Anything that looks as if it may be a way—even through the back door—of pulling powers back from Cardiff to London must be treated very carefully indeed and could again create concerns, with some speculating about a possible hidden agenda.

I conclude with the broader point that I sympathise with the Secretary of State for Wales because I feel that he has been asked to take on the task of creating something that is very important, even though, as hon. Members have said, it might not be what gets the average constituent of Aberavon out of bed in the morning. It is very important because it is about saving the United Kingdom. I am proud to be Welsh and I am very, very proud to be British. I believe passionately in the integrity of the United Kingdom. In a rapidly globalising world, with huge challenges coming at us from all angles, the last thing that we should be doing is diminishing the role, power and influence of the United Kingdom on the global stage.

The draft Bill must be seen in that context. We are not talking in isolation about reserved powers, the necessity test and the question of distinct or separate. We are talking about the architecture of the United Kingdom. The debate around the Scottish referendum was, of course, very passionate, but it demonstrated that the constitutional foundations upon which this country is built are cracking beneath our feet. The main reason why they are cracking beneath our feet is because we have had this piecemeal, sticking-plaster, botch-it-and-scarper approach to building our constitution over the years. That is why we need a constitutional convention—so that the things we are discussing today can be discussed within a broader context.

I know that the Secretary of State for Wales is an avid fan of rugby, our favourite and national sport. In some ways, he has been asked to define the rules at the breakdown of the ruck without having any sense of the broader rules of the game of rugby—the offside rule, passing backwards, the knock on, or whatever it might be. So many issues are in the framework of what we are talking about today, and they are the broader debate within which this debate must exist. The result of a lack of clarity is the kind of constitutional red tape to which I referred.

In conclusion, this plea for a constitutional convention is not at all about what the hon. Member for Montgomeryshire, who is no longer in the room, said with regard to kicking this into the long grass. It is not at all about wanting a pause and a broader discussion because we do not want to take the hard decisions—quite the opposite. Labour Members want to take the hard decisions because we wish to save the integrity of the future of the United Kingdom. If we do not adopt the radical, bold solution of a constitutional convention that leads to a full—and, in my view, written—constitution, with a clear definition of powers that defines where the English regions fit in with Scotland, Wales and Northern Ireland, we will find, in 20 years, that this great United Kingdom will no longer exist.

3.12 pm

Byron Davies (Gower) (Con): It is a great privilege to serve under your chairmanship, Mr Hanson. I apologise that I am suffering from terrible flu at the moment, so I hope that you can hear me okay.

I was recently a Member of the National Assembly for Wales, of course, and I think I am unique among Welsh Conservatives here in having been a Member of the National Assembly for Wales and a Westminster MP. I have seen the Welsh Government working at first hand and I have several concerns about the way they operate.

My first concern is that while I get the fact that we need to have tax devolution, and that the Government need to show competence and to be answerable for the money that they raise and how they spend it, the Welsh Government in Cardiff Bay have recently overseen an appalling piece of financial mismanagement—the regeneration investment fund for Wales. Tens of millions of pounds are being wasted, so it is worrying to think that we will suddenly hand down to Wales tax-raising powers. There is a certain arrogance about the Welsh Government's response to the loss of those millions of pounds, so I am really concerned that, should we give them tax devolution and these tax-raising powers, they will follow the same sort of path. I cannot say how much I feel for the people of Wales if they are to suffer such mismanagement.

Stephen Crabb: My hon. Friend makes an important point. I understand his long-held, strong views about our being careful about devolving taxes to Cardiff Bay. He highlights the scandal of that sale of land and the loss to the taxpayer, but until and unless the Welsh Government become a more responsible body by being accountable for the money that they raise as well as how they spend it—as long as they carry on as a big spending Department—we will get more of these scandals and more of that careless use of public money.

Byron Davies: I understand the Secretary of State's point. We have to realise that the scandal, as he calls it, of the regeneration investment fund for Wales was examined by the Wales Audit Office, which produced a damning report, and by the Welsh Assembly's Public Accounts Committee, whose damning report was published only last week. I hope that I can have some faith in his suggestion that if we give the Welsh Government this responsibility, they will grow into a more responsible—

Mr David Jones: Does my hon. Friend agree that while it is all well and good to give the Assembly Government the responsibility for accounting for the money that they spend, tax-varying powers should not be conferred without the acquiescence of the Welsh people, as was the case with the Scottish people in 1997, and that therefore a referendum should be held on the issue?

Byron Davies: It is well known that I think that the people of Wales should have had a referendum on that issue, and it is in the public domain that I have made that known to the Government.

Jonathan Edwards: Since the hon. Gentleman has been elected, he has voted for the devolution of full income tax powers for Scotland and for devolving corporation tax in its entirety to Northern Ireland, so why is he so opposed to empowering the people of Wales with fiscal powers?

Byron Davies: I have just answered that point. After seeing at first hand the Welsh Government at work, I do not have faith in their competency—it is that simple.

My final point is about policing, an area in which I have some experience. I am delighted that we will not devolve policing to Wales, because it is a very complex matter. It is about complex intelligence systems and cross-border complexities. I have always been of the opinion that bigger is better in policing. I am in favour of regional policing and we need to consider that issue in another forum, but I am delighted that it is not being considered in the Bill.

3.17 pm

Gerald Jones (Merthyr Tydfil and Rhymney) (Lab): Last, but not least, Mr Hanson; it is a pleasure to serve under your chairmanship. This is a double pleasure because, as is the case for many other Members, this is the first Welsh Grand Committee that I have attended.

As other right hon. and hon. Members have said, the draft Bill does not have much support from academics, lawyers and even the Secretary of State's party colleagues in the Welsh Assembly. Indeed, many of those who have given evidence to the Welsh Affairs Committee have outlined concerns about the Bill, particularly regarding whether it takes us forward. As our party established the Welsh Assembly, Labour Members support the additional powers for Wales proposed in the Bill, but we have significant concerns about how the powers of the Assembly would be rolled back by its other provisions.

The Secretary of State says that he wants the Bill to provide a clear and lasting settlement, but I am deeply concerned that it would take devolution backwards and not provide anything like the stable solution that he is seeking. In fact, I agree with the view that the Bill may

[Gerald Jones]

be unworkable. We know that existing legislation sets out basic tests that the Assembly must meet before it can legislate—it must abide by EU law and the European convention on human rights. It is regrettable that the Bill increases the number of tests from nine to 13. It is clear to most people that that will make the work of the National Assembly more complicated and increase bureaucracy.

There is much wrong with the Bill, but I shall focus on the necessity tests. They appear throughout the Bill, but several legal experts have made the point that “necessity” has an array of different meanings in law. The unfortunate result of the necessity test would be that many more cases could end up in the Supreme Court to decide what “necessity” means. Clearly, that would slow down the Assembly’s work and would cost the taxpayer hugely. The reality would be the bizarre situation of the Supreme Court, rather than the elected National Assembly for Wales, deciding whether a law is necessary.

Chris Davies (Brecon and Radnorshire) (Con): Although I have missed some of this afternoon’s debate, for which I apologise, I have heard a lot about various legal jurisdictions—separate or whatever—and constant calls from Labour Members for a different jurisdiction. My hon. Friend the Member for Cardiff North, who has now disappeared from the room, spoke of how much time he has spent sitting in Committees, as have I. Those of us on the Select Committee heard from lawyers, academics and legal experts who constantly wanted a new jurisdiction in Wales, although they seem to be the only ones calling for it. We have heard from the Secretary of State that the senior legal people in this country do not recommend that. The general public in Aberavon and Brecon and Radnorshire do not want it, either.

The Chair: Order. The hon. Gentleman’s intervention is too long. He will have an opportunity to make a speech after Mr Jones has finished, should he so wish. Interventions should be short sentences.

Gerald Jones: I am not sure where the hon. Member for Brecon and Radnorshire was going with that. Clearly, we want a system that works and that provides a framework for moving the Assembly and devolution forward.

The Assembly’s Constitutional and Legislative Affairs Committee’s report on the draft Bill says:

“The necessity tests have elicited considerable reaction amongst those who have provided us with evidence and it is fair to say that these tests have received very little support.”

We should accept the principle that the Assembly should be able to legislate freely in the areas devolved to it without having to prove that its actions are necessary.

Stephen Crabb: There is nothing in the draft Bill that makes the Welsh Assembly consider whether legislating in a devolved area is necessary. This is about a spill-over effect in reserved areas impacting on England and the underlying principles of civil and criminal law. There is freedom to act as long as it can be satisfied that the impact is no greater than necessary. There is nothing about satisfying an overall test of whether legislating in a devolved area is necessary.

Gerald Jones: There are necessity tests throughout the Bill. Many existing Acts of the Assembly would not have been possible if the draft Bill had been in force. We should accept the principle that the Assembly should legislate freely in those areas that are devolved.

The Bill would be much easier to implement if the necessity test was taken out of it—I ask the Secretary of State to consider that—but, unfortunately, I am not filled with much confidence that that will happen. However, to be fair, the Secretary of State has indicated that this is a draft Bill and that he is listening to comments during pre-legislative scrutiny. After listening to the deliberations of not only the Welsh Affairs Committee, but those in all aspects of Welsh life, as my hon. Friend the Member for Llanelli mentioned, I hope that the Secretary of State will act accordingly.

3.24 pm

Hywel Williams (Arfon) (PC): It is a pleasure to serve under your chairmanship, Mr Hanson. I apologise to you and the Committee for my slightly late arrival; I was detained by the Prime Minister’s statement.

I thank the Secretary of State for allowing us this pre-legislative stage for discussion. The Bill has sparked some vigorous debates about what Wales’s constitutional position should look like, not just among politicians but in civil society, although possibly not for the people on the streets of Aberavon. I hope that we will have sufficient time to think about and discuss the draft and the responses to it, not least by bodies such as the Wales Governance Centre. I would like to thank the centre for its excellent and useful report that was launched in Parliament last night. I also look forward to the report by the Welsh Affairs Committee. The discussions will take place not only today and tomorrow, but through the next weeks and months, so that parliamentarians and, more importantly, the people of Wales can come to a considered view, not subject to the time constraints of a party or parties facing difficult Assembly elections.

While I am glad that legal issues around workability and drafting are under the spotlight before the Bill is published in full, we have not had adequate time to scrutinise in debate the policy areas in the list of reservations. Members have mentioned the lack of a guiding principle in the list, and that absence is fairly clear. As far as I know, little effort has been made to justify the reservations as a group and the principle behind them. However, they do need to be justified.

I will give a small and obscure example. Members will recall that this morning I asked the Secretary of State for the justification for retaining alcohol and entertainment licences, and I referred to schedule 1 referring to schedule 7A, and so on. I would like to tell the Committee a very brief story about the debates around the Licensing Act. At that time, a number of local licensees told me that they would like to apply for their licences in Welsh. I asked the Secretary of State for Culture, Media and Sport at the time whether application forms could be made available in Welsh. The Secretary of State, now safely ensconced in the upper echelons of the BBC—I think that is today’s equivalent of running away to sea—was embarrassed because he had no answer. He countered by offering me a meeting. At the meeting, I suggested the names of a number of translation companies, which could turn the forms around in a day. Inevitably, he said it was not as simple as that. It was

not a mere matter of translation. Eventually, Welsh forms turned up, some 18 months later, long after the aforementioned licensees had despaired, and had applied for and been granted the licences in English.

I doubt that the Cardiff Government would be remiss in the first place, but if they were, they would get their skates on. Yet now, apparently, alcohol and entertainment licences must be retained here, although licensing is a local authority function and local authorities work through the Welsh, not the UK, Government, in general. I do not why it is in the list unless it is because DCMS insists that it is.

When I asked the Secretary of State all those years ago why he had not ensured that Welsh forms were available, he eventually confessed that a mere 13 years after the advent of the Welsh Language Act 1993, after 13 years of apparently serving the people of Wales well, his Department—the Department for culture, for heaven's sake—still had no Welsh language plan. Is this the same Department that now insists that it retain the power over Welsh entertainment and alcohol licences, let alone S4C—I, of course, welcomed the announcement made today—or is the decision for our own Secretary of State?

There are many other points to be made. I will not repeat the words of my hon. Friend the Member for Dwyfor Meirionnydd about the true consensus that we achieved with Silk versus the Bill that is now before us, which has been called the lowest common denominator. However, I think it is clear that the erosion of the work of the Silk Commission has hampered the Secretary of State in his stated aim of achieving a long-term settlement.

Reference has been made to policing, and I note the concerns of the right hon. Member for Clwyd West. Policing was also referred to by the hon. Member for Montgomeryshire, who is no longer in his place. Policing is devolved in Scotland and in Northern Ireland, but it is reserved in Wales—I am not quite sure why. What makes it necessary to reserve policing in Wales when it is not necessary to do so elsewhere in the UK?

The hon. Member for Gower referred to the complexities of cross-border considerations. I just want to say that it would be for the Secretary of State to argue the case for reserving, and it is not for me to argue why that should not be. I would point out that the police forces themselves support the devolution of policing. The former chief constable of Gwent Police highlighted in her evidence to the Silk Commission the fact that the Home Office develops initiatives based on the English Partnerships landscape without considering the different landscapes in Wales. That intra-Wales issue could be addressed by the devolution of policing.

The crime priorities in Wales are different. England has a knife crime problem that has not affected Wales in the same way, but that dictates the priorities of the Welsh police forces regardless. Those police forces are unique within the UK because they are non-devolved bodies operating within a largely devolved public service landscape. In the usual way, it is a case of follow the money, and where does the money for the police come from? It tends to come, as we all know, from the Assembly itself.

The police are required to follow the agendas of two Governments—currently of a different political hue. To reserve policing prevents us from achieving greater clarity and efficiency by uniting devolved responsibilities such as community services, drugs prevention and safety

partnerships with those currently held by UK Government. In my view, that is linked to the question of legal jurisdiction. I will not rehearse the argument made by my hon. Friend the Member for Dwyfor Meirionnydd this morning, but the unified jurisdiction has been a block on progress.

I should like to consider briefly the reservations that we have about energy. Plaid Cymru compromised during the Silk Commission. We believe that full responsibility should be transferred to the Welsh Government, just as it is in Scotland, but in the interests of compromise, we agreed to support an arbitrary limit of 350 MW. We compromised on that in return for compromises elsewhere, but given that the report has been cherry-picked our compromise is now meaningless. We gave in, but we do not seem to be getting back. Under the current proposal, the Swansea bay tidal lagoon would fall within the remit of the National Assembly, but the proposed Cardiff and Colwyn bay lagoons would be a matter for this place.

Stephen Crabb: I find the point that the hon. Gentleman has made fascinating, because this is the first time that I have heard anyone who was involved with the Silk Commission describe a process of fudge and political compromise. I thought from previous contributions to the debate that the commission was characterised by high-minded principle, but the hon. Gentleman is saying that it was all a bunch of trade-offs to achieve consensus, which did not have the buy-in of Her Majesty's Government or of the official Opposition, so there was no great Silk consensus based on principle.

Hywel Williams: The principles of the Silk Commission and its recommendations are quite clear—further devolution—however, as the Secretary of State knows better than I, in the process of discussion people take positions on the basis of what is before them. We decided to compromise on our long-held belief that there should be no limits. There is an interesting case that illustrates why this might be so. In the village near the town where I live, near Caernarfon, there is a hydro-electric scheme. It was initially going to generate 49 MW, because at 50 MW it would have to come to the attention of the Department of Energy and Climate Change in Whitehall. When the limit was mooted to be 350 MW, the proposed capacity was immediately raised. What we have here is an example of legislation preventing economic development that we would all want to see—the production of green electricity—because of an arbitrary limit. That is one of the reasons why we did not want such an arbitrary limit, but it is now 350 MW, which we have agreed to.

I will not refer in any detail to the contribution of my hon. Friend the Member for Dwyfor Meirionnydd, excellent as it was. It was a model for first speeches in a Welsh Grand Committee and I am sure that it will repay close reading. She said that there was little shift in mentality. There has been a change, but not a change in the world view. We heard contributions from the hon. Members for Monmouth and for Wrexham, who discussed English votes for English laws. That is a problem. I raised a point of order in the Chamber when we were debating the student issue, asking how I would represent the thousands of English students who live in Bangor, many of whom voted for me, and who will be affected by that decision. They would be unrepresented, especially if the vote went a different way. That issue needs to be addressed.

[Hywel Williams]

I am suspicious about the suggestion from the hon. Member for Wrexham that we have a joint committee of Assembly Members and Members of Parliament, along with local councils in both Wales and in England. That would be a camel by design, but perhaps we could meet in Ludlow, as the Council of Wales and the Marches used to do. There are some excellent restaurants there, I am told, but even that could not attract me to the proposal.

The right hon. Member for Clwyd West said, quite rightly, that the powers model is not a panacea and needs to be discussed. I certainly agree about that. He did not believe, as I have said, that the Welsh Government should handle policing, and there is a debate to be had about that. The hon. Member for Torfaen made an interesting reference to horses—not camels—and he made a good point that there would be legal challenges daily, which is something that animates everyone on the Committee. We want a proper solution that would not be subject to the attention of the courts.

The hon. Member for Vale of Clwyd suggested that decisions made during the St David's day process were directed by what was in the press on that day. As a long-term politician, God forbid that we take any notice of the press at all. The hon. Member for Ceredigion said that clarity was at the heart of democracy, and I agree with him entirely, as I do on many matters. He also addressed the issue of a distinct jurisdiction. The hon. Member for Montgomeryshire decried the negative tone of the discussion. In last night's meeting to launch the report by the Welsh Governance Centre direct reference was made to the negative tone of the coverage of that report. Given that the press are not here, I might say that there was a direct reference to the *Western Mail's* completely negative coverage.

The Chair: Order. I am sorry to interrupt the hon. Gentleman. He will know that time is pressing, so I hope that he will conclude his speech shortly.

Hywel Williams: Thank you, Mr Hanson. I certainly needed that note of caution.

We heard contributions from the hon. Members for Swansea East, for Cardiff North, for Aberconwy, for Gower, and for Merthyr Tydfil and Rhymney, all of which will surely repay close attention.

Finally, there is a saying in Welsh, *tri chynnig i Gymro*—three chances or opportunities for a Welshman or, I might say, for a Welsh woman. Well, this is the fourth attempt at getting devolution right, and I am quite happy to allow a fifth. Wales must have an Assembly based on a fuller, clearer and more workable set of powers to make decisions for the people of Wales. The Secretary of State could call for a pause, and I think that I reflect the view of the Committee in saying that.

3.39 pm

Susan Elan Jones (Clwyd South) (Lab): It is a great pleasure to serve under your chairmanship, Mr Hanson.

It is fair to say that we have heard a range of insightful contributions from hon. Members, and it is quite clear that the Bill, as drafted, is flawed. All the contributions that we heard are worthy of serious consideration. The hon. Member for Dwyfor Meirionnydd spoke of the

Bill as a lawyers' playground, which is an alarming thought. The right hon. Member for Clwyd West decried the Bill's bolt-on approach and made some very serious points concerning the necessity test in schedule 2, describing it as a positive invitation to make more reference to the Supreme Court, which is very worrying. My hon. Friend the Member for Wrexham spoke in great detail about the whole dilemma of English votes for English laws, especially for Welsh Members of Parliament serving border constituencies. He also spoke of the need for a constitutional convention.

My hon. Friend the Member for Torfaen spoke of the many anomalies in the draft Bill, the possible dilemma concerning horses and the apparent threat to the United Kingdom. The hon. Member for Vale of Clwyd called for greater clarity about where powers are held. The last Liberal standing, the hon. Member for Ceredigion, spoke of the importance of clarity, of subsidiarity and, again, of the need for a constitutional convention. The hon. Member for Montgomeryshire, in a wide-ranging speech, urged the Secretary of State to look at a different list of reservations, but not, we hope, at more reservations.

My hon. Friend the Member for Swansea East, who serves on the Welsh Affairs Committee, spoke of many matters, including the necessity test. My hon. Friend the Member for Aberavon decried red tape—a view with which we would all agree—and spoke of many constitutional issues. The hon. Member for Gower requested fewer powers. My hon. Friend the Member for Merthyr Tydfil and Rhymney spoke of the fear of increased bureaucracy. The hon. Member for Cardiff North said that he was not excited about constitutional issues but volunteered to be on committees, which I think would make him an excellent representative, should we ever get to a constitutional convention. Finally, the Chair of the Welsh Affairs Committee, the hon. Member for Monmouth said that the idea that we can somehow scrap the Welsh Assembly is “long gone”, which I think, by his own standards, makes him devo-philic.

To be serious, however, today's debate has shown that the draft Bill is nowhere near commanding consensus. Before it was published there was cross-party agreement on the need to give greater powers to the Welsh Assembly. Indeed, before May's elections, all the main parties in Wales were agreed that we should move to a reserved powers model of devolution. As we have heard, the model proposed in this Bill is unclear, unworkable and unacceptable in that it rolls back the Assembly's powers. Many hon. Members have referred to the evidence of the Assembly's Constitutional and Legislative Affairs Committee. Its report is pretty incisive and damning, saying that

“the draft Bill neither meets the Secretary of State's aims of a stronger, clearer and fairer devolution settlement for Wales that will stand the test of time, nor the view expressed in his evidence to us that ‘the new reserved powers model provides the clarity the current model lacks.’”

The Bill seems to fail every test the Secretary of State has set. It will not make the settlement stronger because it takes power away from the Welsh Assembly.

As many witnesses said in their evidence to the Committee, this is a ridiculously long list of reservations that amounts to a power grab. It is pure Gilbert and Sullivan because they are on a list, and it would not be so bad if it were a little list, but it is ginormous: 34 pages of reservations and 267 separate powers. Therein lies

the problem. The Secretary of State failed to stand up to Departments to ensure a rational basis to the reservations. As a consequence, if the Bill were passed, the Assembly would end up with fewer powers than it currently has. The Bill will not make the settlement clearer either, because, as Members have highlighted today, the so-called necessity tests introduce serious complexity that could be resolved only by the Supreme Court. It would be time-consuming; it would be costly to the taxpayer, and it would lead to the unacceptable situation whereby judges, as opposed to the democratically elected Assembly Members, are deciding whether Acts of the Assembly are necessary. The tests amount to a significant roll-back of the Assembly's powers, and hardly anybody is prepared to defend them.

The Bill will not make the settlement fairer, for, as well as depriving the Assembly of many important powers that it already has, it introduces a wide-ranging English veto on Welsh laws. Ministers in Whitehall will be able to block legislation that they do not agree with, even if it relates only incidentally to a Minister of the Crown's powers.

The Bill as drafted will not stand the test of time. Indeed, it has not even stood up to the scrutiny we have given it today. We all agree that we need a lasting settlement that provides certainty about the Assembly's powers, but this is not it. The Bill is so fatally flawed that if it were passed in anything like its current form, there would undoubtedly be a need for another Bill in the very near future, which takes us back to "The Mikado".

Today's debate has not only highlighted the serious flaws in the Bill, but spelled out the changes that must be made for it have cross-party support—which is what we want—both here and in the Assembly. As my hon. Friend the shadow Secretary of State said this morning, we will not support the Bill unless it is radically amended. We cannot support it in its current form, because we believe in an Assembly with greater powers. Our party created the Welsh Office in the 1960s and established the Welsh Assembly and gave it greater powers through the 2006 Act, so we will not vote for a Bill that leaves the Assembly with fewer powers than it has at present. The people of Wales will not stand for that, and neither will we.

I thank everyone who has contributed to the debate.

Jonathan Edwards: I hope you will forgive me, Mr Hanson, but in my old age my approach to politics is getting cynical. I think that what really concerns the Labour party is not the roll-back of powers, but the possible inclusion of fiscal powers—income tax sharing powers—in the Bill. Will the hon. Lady make a commitment that, if the Secretary of State moves on some of the rolled-back powers, the Labour party will support a Wales Bill that proposes more fiscal powers for Wales?

Susan Elan Jones: Let me be clear: the Labour party in Wales has always supported a fair funding settlement for Wales. We will not settle for rhetoric—*[Interruption.]*

The Chair: Order.

Susan Elan Jones: We will not settle for rhetoric when what we want is fair funding for the people of Wales and proper funding for services. We will not vote for a Bill that leaves the Assembly with fewer powers than it has at present, because that is not acceptable.

Wrth orffen, hoffwn fynegi fy siom mai Saesneg yw'r unig iaith a ganiatawyd yn y Pwyllgor yma heddiw. In finishing, I would like to express my disappointment that English is still the only language permissible in this Committee. I have raised the issue with the Leader of the House and have written to the Chair of the Procedure Committee. It is not acceptable in this day and age, when Wales has two official languages, that we are allowed to use only the English language in our proceedings here.

3.48 pm

The Parliamentary Under-Secretary of State for Wales (Alun Cairns): Thank you, Mr Hanson, for chairing this Welsh Grand Committee so ably, and I echo the comments that have been made about Mr Owen, who chaired this morning's sitting. I thank right hon. and hon. Members for their contributions and for the largely positive way in which the debate has been conducted. We have had the odd tense moment, but there has been a remarkable change in the culture of the Welsh Grand Committee, certainly compared with some of the sittings I attended in the past.

As the Secretary of State said at the outset, we want a constructive debate about the draft Wales Bill, to inform the improvements we will make before the Bill is introduced. The Committee has certainly agreed about the principle involved, but there has been some disagreement about the detail and the wiring, to use a phrase used by the Secretary of State. That only underlines how complex and difficult this process is. Some of the suggestions we have heard—I will come to them in a moment—are flawed.

According to many members, the answer is to call for a constitutional convention. My hon. Friend the Member for Montgomeryshire said that that could well be a method of kicking the matter into the long grass. There is only one example in modern history of a convention or a commission to examine the UK settlement: the Kilbrandon Commission. It was set up by Harold Wilson in April 1969 and it reported in October 1973. It had 16 volumes, 10 research papers and it ended inconclusively. That is a warning that some hon. Members may wish to bear that in mind when they call for a constitutional convention. It does not address the fundamental issues that we are trying to resolve.

Stephen Kinnock: I agree that we cannot just press "pause" on the world and wait for a constitutional convention. However, there is no reason why such a convention could not be started while we deal with some of the urgent issues that need to be tackled. The argument that, because something may not have worked in the past, it should not be tried in the present is deeply reactionary. I hoped that a more progressive point of view would be expressed.

Alun Cairns: I am grateful for that point, which I accept in the spirit that the hon. Gentleman intended. I intended partly to give a light-hearted example of a constitutional convention, and partly to probe the motives of some who call for such a convention to ascertain whether they really want a Bill.

Mr David Jones: I fully appreciate my hon. Friend's point. We do not want a talking shop that goes on for years. I also understand his possible suspicion of Members of other parties, such as the First Minister of Wales. However, given that Lord Norton of Louth, who is a

[Mr David Jones]

well-respected Conservative peer, is calling for a constitutional convocation, should not the Wales Office at least consider that?

Alun Cairns: Certainly, the Wales Office and the Government will listen to all the points that are expressed, but I was merely highlighting the one example that we have in modern history of a constitutional convention and how complicated that became to give a context for the difficulty of trying to resolve some of those issues.

I remind people who have been extremely critical of the draft Bill, the St David's day agreement and the process that the Secretary of State undertook, of the Richard Commission and the amount of time that that spent, only to be rejected by the Government of the day. That left us with a complex situation and the LCO mechanism. How many of us remember how complicated that was, whether we were in the Assembly or in Westminster? It is therefore a bit rich for some people to suggest that there is a simple and straightforward way of resolving the issues. We are keen to listen to and develop the debate, and the draft Bill was published in that spirit.

To underline the points that were made at the outset, there is a lot of rhetoric and misunderstanding. Some comments that have been made in Committee are simply inaccurate. I will pick up on some of them shortly, including those made by the hon. Member for Clwyd South. The draft Bill is ambitious and extends significant amounts of new powers to the Assembly. Matters that have been raised—be it the necessity test or the consents—are not about limiting Assembly powers. There is no Machiavellian plot to clip the Assembly's wings. It is about giving the Assembly the powers, with two Governments that have responsibility for matters that relate to Wales: the legitimate Welsh Government, who will have legitimate powers over devolved matters, and the UK Government. Who knows? In the long-term future, there may be a Labour Administration, although I do not expect that to happen for at least another two or three general elections. However, in future, Opposition Members in this Committee Room, who may be Ministers in such an Administration, could be grateful for the powers that the Bill will grant to marry the interface between Wales and the UK Government.

Not unexpectedly, several Members raised the necessity test, and I will not have time to go round all those who mentioned it. Let me clear up the misunderstanding that exists. The necessity test applies only when the Assembly seeks to legislate in relation to England, in relation to reserved matters and in relation to underlying principles of criminal and private law. It has nothing to do with the Welsh Government legislating in Wales on a devolved matter. The necessity test is about when something touches reserved matters and matters that could be deemed to be the responsibility of the UK Government.

I will give a practical, straightforward example relating to the education of a child with special educational needs. If that child, from Wales, is being educated in a school in England, Estyn would naturally have the responsibility for inspecting the provision for that child in the school in England. It would not have the authority to close the school in England, because that would be a matter for the UK Government, but it would have the power to go to that school in England. The necessity test is about making the Welsh legislation effective when

it crosses the English border. That is one practical example: there are a whole host of higher education institutions that have bases in England. The necessity test is about making the Welsh legislation effective as it applies to England. That is the scope and the scale of the necessity test. It is about enforcing legislation made by the Assembly.

Nick Thomas-Symonds: Can the Minister confirm that that necessity test is taken from Scots law, where it is used in far narrower circumstances? Ministers are trying to massively broaden it in the Welsh context. Will he confirm that that is the case? Because it is.

Alun Cairns: I am grateful to the hon. Member for Torfaen. The reason I highlighted that practical example was to reject completely some of the accusations that have been made in a number of speeches about not granting the Welsh Government the powers to act in those devolved areas. The hon. Member for Torfaen made a point about legislation relating to horses. That is absolute nonsense as the Bill is drafted.

Nick Thomas-Symonds: Will the Minister give way?

Alun Cairns: I would like to give way, but in the limited time I have left I will not. I will happily write to the hon. Gentleman and share with any other interested hon. Member why the example relating to horses is not relevant. I apologise, but I have two minutes left and I want to talk very briefly about the "separate" and "distinct" jurisdictions.

The hon. Member for Dwyfor Meirionnydd came forward with the very practical suggestion of having the "distinct" jurisdiction governed by the geographical border. However, that in itself curtails the powers of the Assembly when it is enacting legislation in relation to England. That is an example of the complexity here: should we pursue the model presented by the hon. Member for Dwyfor Meirionnydd, we would roll back powers. This complexity explains why we are trying to tease out these issues, so that we can bring forward amendments that will work for Wales, but will also work for the UK Government.

In the minutes that remain, I want to talk about the Crown consents, the so-called English veto. I absolutely reject the accusations and the phrase. More than 50 legislative consent motions have been agreed between the UK Government and the Welsh Government over the past five years when the UK Government have touched devolved responsibilities. That is the responsibility of a mature Administration. If the Welsh Government want to act on non-devolved responsibilities, quite clearly a Crown consent would be the mature, natural approach to follow. If it works, and legislative consent motions have worked well over the past five years, in a mature debate, why cannot that work in the other way? The suggestions of rejecting and opposing them would be to grant the Welsh Government powers extending well beyond any other settlement. I do not think that that is what the Labour party wants and it is certainly not what the Conservative party wants. Plaid Cymru might want that, but it has a respected position, which is to seek independence. I do not think it is what the Labour party or the Government want.

The Chair: Order. Time has beaten us.

4 pm

Committee adjourned without Question put (Standing Order No. 116(5)).

Mark Drakeford AC / AM
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA-L/MD/0296/15

David Melding AM
Chair of the Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
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26 January 2016

Dear David

Public Health (Wales) Bill

Thank you once again for your Committee's consideration of the Public Health (Wales) Bill during Stage 1. I confirmed during the General Principles debate on the Bill on 8 December that I would provide a specific response to the Committee's report and its nine recommendations. I hope the information provided demonstrates the careful consideration which has been given to each of them.

I am copying this letter to David Rees AM, Chair of the Health and Social Care Committee.

*Best wishes,
Mark*

Mark Drakeford AC / AM
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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Response to the Constitutional and Legislative Affairs Committee Stage 1 Report into the Public Health (Wales) Bill

I thank the Constitutional and Legislative Affairs Committee for its detailed consideration of the Public Health (Wales) Bill. I have considered each of the Committee's recommendations and am responding accordingly.

Recommendation 1 relates to definitions concerning workplaces which would be required under the Bill to be smoke-free. The Committee put forward two alternative suggestions for amendments to the Bill on this point. I **accept** the second of the approaches suggested by the Committee, and have tabled an amendment to require regulations made to define what is meant by "enclosed" and "substantially enclosed" to be subject to the affirmative procedure. My general view, as I previously outlined to the Committee, is that the definition of "enclosed" and "substantially enclosed" is a technical provision which may require amendment in the future, and is therefore appropriate to be dealt with in regulations. I am, however, happy to provide additional assurance to Members by applying the affirmative procedure to the regulations, and I trust the Committee will be satisfied by this approach.

In respect of **Recommendation 2**, where the Committee recommends amending section 12 to clarify that public authorities will be the enforcement authorities under this Chapter of the Bill, I **accept the principle** of the recommendation. I am happy to reiterate the indication I gave when providing evidence to the Committee that public authorities will be the enforcement agencies. However, I am unable to commit to amending the Bill on this point, as further work would first be needed around the definition of "public authorities". It is the intention to designate county and county borough councils (local authorities) as enforcement authorities for the enforcement of the smoke-free requirements in public premises and workplaces, as well as any additional smoke-free premises. However, the circumstance may arise in certain instances where it will be helpful to designate additional enforcement authorities: for example, the police are designated for enforcement of our regulations on smoking in cars carrying children, which came into force last year. In considering any potential amendment to the Bill, therefore, I would need to be satisfied that this course of action would not preclude other appropriate enforcement authorities from being designated, if required.

Recommendations 3, 4 and 7, whilst relating to different parts of the Bill, each call for amendments to be made which require the Welsh Ministers to consult on regulations to be made under specific sections of the Bill. It is my and this Government's general approach to consult prior to introducing both primary and secondary legislation into the Assembly. It was therefore always my intention to consult on the regulations covered by these recommendations. However, in order to provide greater confidence to Members, I am happy to **accept** all three recommendations and have brought forward amendments which require the Welsh Ministers, before making regulations under section 23(3), section 40(2) and section 76(1), to consider whether there are representative persons of those likely to be affected by the regulations, and to carry out consultation with any representative persons whom the Welsh Ministers consider it appropriate to consult. Regulations under these sections would relate to the form and process of making an application for entry in the register of retailers of tobacco and nicotine products, adding new offences to the Restricted Premises Order regime, and amending the list of special procedures covered by the licensing system being introduced by the Bill.

In relation to special procedures, I have given careful consideration to **Recommendation 5**. This calls for amendments to be made to include some basic core licensing criteria in section 51, and some basic core conditions in section 52. I have concluded that I am content to **accept** this recommendation and have tabled amendments to place some core subjects on the face of the Bill, to which the regulations made on the licensing conditions and criteria must relate. These subjects include, for example, infection control measures and record keeping requirements. Whilst doing this, I have retained the current approach taken in the Bill which enables the Welsh Ministers to utilise regulations to develop tailored licensing criteria and conditions for an individual special procedure, the location it is practiced from, and the basis upon which it is performed. The practice of special procedures varies significantly, and so it is important that the licensing criteria are developed to take account of the variance. For example, it is envisaged that the requirements will be different for an individual practicing tattooing from a single premises to those for a practitioner practicing acupuncture peripatetically. The approach I am taking in response to this recommendation also seeks to address a recommendation of the Health and Social Care Committee (Recommendation 5 of its report).

Recommendations 6 and 8 call for amendments to be made to the Bill to apply the affirmative procedure to the making of regulations under section 58(6) and section 77(1). These regulations relate to exempting certain premises or vehicles from the approval requirements for the performance of special procedures, and to extend the definition of “body piercing”. I am content to **accept** both recommendations and have tabled amendments to this effect. In relation to section 77(1) specifically, I have also tabled an amendment to further clarify the definition of “body piercing” within the Bill, and to ensure the definition captures the attachment to, implantation of, or removal of jewellery or objects from an individual’s body.

Recommendation 9 calls for an amendment to apply the negative procedure to commencement orders that include transitional, transitory or saving provision, made in accordance with section 101(3)(b). I am **rejecting** this recommendation as the making of commencement orders is not normally subject to any procedure, as they bring into force what the National Assembly has already approved. I see no reason, therefore, to deviate from the current convention in relation to commencement orders.

Agenda Item 6.1

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Agenda Item 6.2

By virtue of paragraph(s) vi of Standing Order 17.42

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