

## **A Civic Response to the Draft Wales Bill**

This response to the *Draft Wales Bill* expresses the views of individuals from Welsh civic society who support the passing of a bill to deliver a 'stronger, clearer and fairer devolution settlement for Wales' that will 'stand the test of time'. We therefore commend some of the draft's aspirations.

We highlight that many proposals set out in the draft have received support such as incorporating the permanence of the Welsh devolved institutions into law, placing the Sewel Convention on a legislative basis and the transfer of powers concerning energy, transport and electoral reform. It is to be welcomed that the Assembly will be able to determine its own composition and mode of election.

We are agreed however that the *Draft Wales Bill* requires significant and principled amending. It is our view that the draft should not proceed without the following seven framework constitutional principles being applied rigorously and consistently:

(1) **Democratic Integrity** - Following the affirmative response to the 2011 Referendum the people of Wales are entitled to an Assembly enabled to make laws on all the matters in the 20 subject areas it has powers for, without needing the agreement of the UK Parliament or Government.

(2) **No Confiscation of Powers** - Following the same affirmative response the Assembly should not have powers it currently enjoys, as granted by Parliament and interpreted by the Supreme Court as objects of legislative activity, confiscated by the UK Government without its consent.

(3) **Subsidiarity** - In trying to move towards a reserved model, the Welsh public's need for clarity, concerning where legislative competence lies, demands the comprehensive use of the principle of subsidiarity.

(4) **Coherent Powers** - Greater regard should be given to the evidence provided by Welsh civic society and considered effectively by the Silk Commission concerning what powers should be devolved. The response to the Commission's well thought through recommendations has been disappointing and lacking in both transparency and coherence.

(5) **Clarity Without Confiscation** - In attempting to move towards a reserved model, clarity should not be achieved at the expense of the Assembly's competence or used as a means to impose new and unnecessary restrictions.

(6) **No Necessity Test** - That the democratically-elected representatives of the people, in the making of modifications of the private and the criminal law, should determine what is necessary to achieve their legislative aims. The Assembly should not have its role as a primary law-making body undermined by restricting its appropriate choices. The proposed necessity test is unnecessary and undermines the Assembly's law-making.

(7) **Recognise Within the Legal System that a Body of Law Extends only to Wales** - Restrictions should not be imposed upon the Assembly in an outdated effort to provide 'a general level of protection for the unified legal

system of England and Wales.' Since the law of England and Wales has not been completely unified for some time, the legal system which administers it needs to develop so as to reflect that modern reality rather than restrict it. Three bodies of law already exist in Wales and England.

We believe that applying these seven principles consistently and fairly to the redrafting of the *Draft Wales Bill* will provide the clear and enduring constitutional settlement Welsh civic society has a right to enjoy.

20th November 2015

**Presented in a personal capacity by:**

Aled Edwards OBE  
David Gordon Hughes  
Geraint Talfan Davies OBE  
Jonathan Elystan Rees  
Keith Towler  
Mark Hinge  
Paul O'Shea  
Rhodri Williams QC  
Saleem Kidwai OBE  
Shan Ashton  
Shereen Williams  
Siân Pearce  
Thomas Glyn Watkin