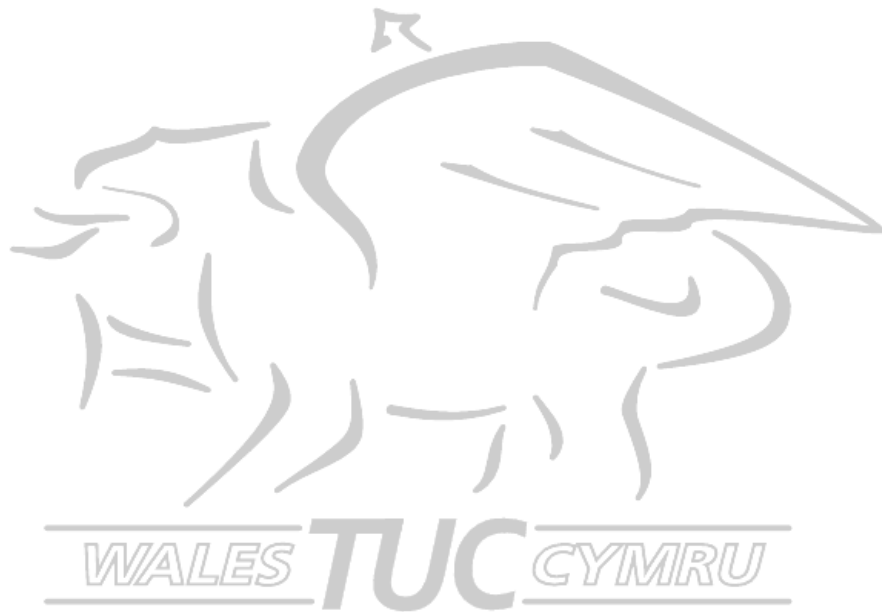


GC18/09 (b)

Response to the All Wales Convention consultation



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Introduction

The Wales TUC is the voice of Wales at work. With over 50 affiliated trade unions the Wales TUC represents nearly half a million workers.

The Wales TUC was established in 1974. It is an integral part of the TUC and was set up to ensure that the role of the TUC is effectively undertaken in Wales. The Wales TUC seeks to work with and make representations to other organisations at an all-Wales level. A major role is to co-ordinate the trade union approach to the Welsh Assembly Government and ensure that the interests of Wales' trade unionists are properly represented in the whole range of Assembly decision making.

Consultation Questions

While submissions are welcome on any matter that falls within the Convention's remit, we would particularly welcome your comments on the following:

1. In general, what level of understanding do you think there is in Wales of the current devolution settlement? For example:
 - Is the principle of separation of powers between the Welsh Assembly Government and the National Assembly for Wales ("the Assembly") understood: the executive role of the Assembly Government, and the Assembly's role in scrutinising the Assembly Government?

There is better understanding of the devolution settlement under GOWA2006 than GOWA1998. Fundamentally people in Wales have essentially based their understanding of devolution on the Westminster model despite the Assembly's "corporate body" status under GOWA1998, and have therefore always understood, rightly or wrongly, there to be a separation of powers between the Executive (Welsh Assembly Government) and the legislature (the Assembly). The way the Assembly settled under GOWA1998 encouraged this perception. GOWA2006 merely brings this arrangement more into line with public thinking, despite the constitutional differences.

- Are the devolved policy areas easily identifiable within Wales?

The devolved areas are clearly identifiable in terms of those policy areas that are clearly delineated - for example, health and education. While there is greater opportunity for confusion in areas that are either partially devolved, for example Energy policy or those which are likely to contain elements of devolved and reserved matters - for example, community safety - this is still reasonably clear. Matters that are devolved seem no less clear in the minds of the public than, for example, matters which local government and central government are responsible for.

However people can often be confused by media reporting of devolved and reserved policy areas. Policy announcements made in Westminster are reported on national news and it can be unclear if the measures are UK-wide, England only, or if the Assembly will be using the funding consequential for similar or different measures in Wales.

- Is the distinction between the Welsh Assembly Government's executive authority in devolved policy areas, and the Assembly's legislative powers in some of those devolved policy areas, like health, understood?

As noted above, the distinction is understood in line with the Parliamentary system. Therefore what understanding there is of executive powers and the legislature is comparable.

- The Assembly can, under the present system, gradually acquire legislative powers in a wider range of devolved policy areas. Is this widely recognised?

There can be little doubt that the present system is complex and difficult to understand in terms of public perception. It is clear that members of the legislature themselves are still finding their feet as to the scope and remit of acquiring legislative powers. It will take longer for this to be more widely understood although it seems unnecessarily complicated.

- The Assembly carries out its scrutiny role in both plenary and Assembly committees. Is this appreciated?

With GOWA2006 powers Committee work is likely to become more appreciated as legislative scrutiny becomes more prominent. As above, the scrutiny function which now mirrors the parliamentary system is better understood than GOWA1998 scrutiny and partial policy making function of the Subject Committees, for example.

2. What do you think has been the practical outcome of devolution in Wales?
For example:

- Can you give examples of where devolution has produced results that, in your opinion, better serve the people of Wales than would have been likely or possible before devolution?

Devolution has produced governance which is more representative of Wales and that is evident in the 'clear red water' of policy making decisions between Westminster and Wales. One good example where this has benefited Wales is the commitment not to use PFI in the health service in Wales, particularly when compared with its use in England. In the view of the Wales TUC there are many examples where devolution has produced results which better serve the people of Wales than would have been likely otherwise.

While important, the success of devolution cannot just be measured in terms of hard policy results. It has engaged people in a political dialogue and brought decision-making and accountability closer to Welsh communities which must be considered a success and a key benefit in its own right.

- Can you give examples of where devolution has not produced results that, in your opinion, better serve the people of Wales than would have been likely or possible before devolution?

This is difficult to assess and unpick, although undoubtedly arguments have and will be made that resources that have been invested in constitutional reform could have been directly allocated to front-line services and there will be comparisons with England, for example in terms of school funding, or hospital waiting times.

In policy terms there may be specific examples where decisions made under devolution have impacted specific groups. One example might be

the packages and resources invested in former coalfield sites in England at the time of devolution and the regenerative outcomes there now compared with the South Wales Coalfield where the consequential funding has been distributed in accordance with Assembly priorities.

- Has devolution changed perceptions of Wales, either within or outside Wales, or both?

In Wales there is a renewed confidence and social identity. The effect of developing a bespoke Welsh way has naturally encouraged a keener sense of our own Welsh cultural heritage and strengthened our collective identity. Policy-makers in Wales have rightly sought to harness the benefits of a renewed sense of Welshness; be it promoting Wales abroad as a small, dynamic, diverse and modern nation, celebrating our history and traditions, marking sporting achievement or delivering a strong Welsh economy.

3. How well, in your view, does the current devolution settlement work? For example:

- Do the current arrangements allow the Welsh Assembly Government to deliver effective government in devolved policy areas?
- Do the current arrangements allow the Assembly to provide effective scrutiny of the Welsh Assembly Government?

The current arrangements have only been in place a short time so this is difficult to assess. However, whether the current settlement and scrutiny structures do 'work' is likely to shift as the balance of devolved/reserved matters become weighted towards Cardiff Bay and legislative measures emerge.

It is worth noting that the majority of Wales TUC priorities for working people in Wales are unlikely to require legislative reform to implement and could be achieved under the former settlement with more robust policy-making decisions.

4. How successful have the Welsh Assembly Government and the Assembly been in dealing with legislation for Wales? Please tell us about any experience or involvement you have had in the legislative process, and

any Assembly Measures or pieces of subordinate legislation which have had an effect on any aspect of your life or work.

Once again this is difficult to comment on as the current arrangements have only been in place for a short time.

5. If there were a referendum under the Government of Wales Act 2006, the basic choice would be between sticking with the current arrangements for the Assembly to acquire legislative powers (to pass Measures) in devolved policy areas gradually, through a process where Westminster agrees to transfer powers block by block; or allowing the Assembly to exercise legislative powers (to pass Acts) in the full range of devolved policy areas immediately, by transferring those powers as a package. *[The current powers of the Assembly to pass Measures are as set out in Part 3 and Schedule 5 of the Government of Wales Act 2006; the option of giving the Assembly powers to pass Acts, following endorsement in a referendum, is set out in Part 4 and Schedule 7 of the Government of Wales Act 2006.]*

- What do you think are the advantages and disadvantages of sticking with the current system, where the Assembly acquires powers to pass Measures gradually? What do you think of the process for acquiring powers to pass Measures, through either a Legislative Competence Order (LCO) or through including provisions in a UK Parliamentary Act?
- What do you think are the advantages and disadvantages of moving to a system where the Assembly can pass Acts in the full range of devolved policy areas, without having to go through a process of adding powers gradually by agreeing LCOs or provisions in UK Acts?
- Which of these options do you prefer, and for what reasons?

There are advantages to the current system, not least that built in to the process is additional legislative scrutiny from parliament bringing with it extra capacity and expertise. However there are also clear disadvantages - it is complex, difficult to understand, difficult to communicate to the wider public and lacks certainty even with the full support of the legislature in Wales.

Transferring the powers as a package increases the scrutiny burden on the Welsh legislature, but provides a clear, easily communicated and delineated law-making structure under which the legislative will of the Assembly can be implemented without obstruction.

However the arguments do not just rest with the systemic advantages/disadvantages of both systems. Scottish-style law making powers attracts such debate by politicians, Welsh media and Welsh civic society that it detracts from discussion around important matters about policy decisions, outcomes and implementation.

Wales TUC policy is to support devolution with full law-making powers.

6. Do you feel that there are any bureaucratic or capacity issues, within the civil service, National Assembly Parliamentary Service, civil society or the legal community that would need to be addressed before powers to pass Acts could be transferred to the Assembly?

The issue of capacity is a genuine concern amongst workers in both the WAG civil service and Parliamentary Service. In the civil service in particular there needs to be more work done on workload measurement, the absence of which, creates disparities in workload pressures across the organisation.

It is a fact that a move to full law making powers would generate more work for WAG and APS staff and require new skills. To take account of this, a study should be undertaken prior to the adoption of new powers which should look at the impact on workloads and whether the organisations require additional resource. It should also make recommendations on training to ensure staff have the knowledge and skills to draw up and progress new laws.

7. Do you believe the time is now right for the people of Wales to be given the opportunity to make a judgment, through a referendum, on whether or not to introduce powers for the Assembly to pass Acts, as set out in Part 4 of the Government of Wales Act 2006?

This must be a political judgement. However a referendum must not be pursued lightly in order to maintain an agreement between political parties. The experience of 1979 shows that where a referendum is lost the development of devolution is set back for a generation. Wales TUC will campaign strongly for full law making powers in any referendum but that

referendum must only be held if it can be shown that there is clear public support.

FURTHER INFORMATION

Further information about this paper can be obtained from:

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