



Devolution in Wales: the Silk Commission

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On 11 October 2011 the Secretary of State for Wales, Cheryl Gillan, announced a new Commission on Devolution in Wales. This will look at the case for devolving fiscal powers, and will review the powers of the National Assembly for Wales in general, recommending modifications to improve the present constitutional arrangements. The Commission will aim to report on fiscal powers in autumn 2012, and on constitutional matters by spring 2014. It is led by Paul Silk, former Clerk to the National Assembly for Wales.

This note reproduces the terms of reference for the Commission, and puts them in the context of the Holtham Commission on funding reform in Wales, the fiscal changes proposed for Scotland in the *Scotland Bill*, and the changes made to the powers of the National Assembly for Wales in May 2011.

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1 Summary

In 2008 the Welsh Assembly Government set up an Independent Commission on Funding and Finance for Wales (the Holtham Commission), which concluded that the Barnett formula, through which the block grant to the devolved legislatures is determined, should be replaced by a formula based on need. It also recommended devolution of limited powers over certain taxes and borrowing.

This echoed a process of review that took place in Scotland. An independent Commission on Scottish Devolution (the Calman Commission) was set up by the UK Government in 2008 on the recommendation of the Scottish Parliament. It reported in June 2009 on possible adjustments to the devolution arrangements, including important proposals on fiscal powers.

The report of the Calman Commission inspired the *Scotland Bill 2010-12*, which completed its Commons stages in June 2011 and is currently in the House of Lords. Its most significant provisions concern fiscal matters: elements of taxation will be devolved, there will be a reduction in the block grant, and extended borrowing powers will be introduced. These changes mean that the Scottish Parliament will have to raise a proportion of its own resources, a result which is intended by the UK Government as a way to increase accountability.

The present Government made a commitment in its programme for government to establish a review of devolution for Wales, similar to the Calman Commission. However, it first implemented another commitment, to hold a referendum on extending the scope of Welsh devolution in a way that was already provided for in the *Government of Wales Act 2006*. This allowed the Assembly to pass legislation on a wider range of subjects than in the past. The referendum was held in March 2011, and the change was approved. The new system took effect after the Assembly elections in May 2011.

In October 2011 the Secretary of State for Wales, Cheryl Gillan, established the Commission on Devolution in Wales and gave its terms of reference. It is chaired by Paul Silk, former Clerk to the National Assembly for Wales, and it has two independent members and four party political nominees. Its work will be split into two segments, known as Part I and Part II. In Part I it will aim to report by autumn 2012 on fiscal matters, looking at the case for devolution of fiscal powers to Wales, and recommending a package of powers that would improve the financial accountability of the Assembly, while remaining consistent with the UK's fiscal objectives. It will then turn to constitutional matters in Part II. Initially, it was to report on this during 2013, but it was granted an extension until spring 2014.¹ It will consider the powers of the Assembly, and recommend changes to improve the present constitutional arrangements.

Some items were placed beyond the remit of the Commission. It will not consider the Holtham Commission's proposals for funding reform and borrowing, which are subject to a bilateral process between the UK Government and the Welsh Assembly Government. It will also not consider the structure of the National Assembly for Wales, nor the election of Assembly Members.

The Commission will report to Mrs Gillan and, for Part I, the Chancellor. It will be supported by a secretariat of civil servants from the UK and Welsh Governments.

2 Calman, Holtham and the Coalition

2.1 The example of Scotland: the Calman Commission

The Calman Commission was set up in 2008 by the Labour UK Government to review devolution in Scotland, following a request by the Scottish Parliament. More information on the Commission is available in Standard Note 4744, [The Commission on Scottish Devolution – the Calman Commission](#), 4 June 2010. The terms of reference of the Calman Commission were as follows:

To review the provisions of the Scotland Act 1998 in the light of experience and to recommend any changes to the present constitutional arrangements that would enable the Scottish Parliament to serve the people of Scotland better, that would improve the financial accountability of the Scottish Parliament and that would continue to secure the position of Scotland within the United Kingdom.²

Its recommendations for a range of new devolved powers over taxation and borrowing, aimed at improving accountability, coupled with some changes to other devolved powers, represented a significant development. They gave rise to the *Scotland Bill 2010-12*, which is currently awaiting its committee stage in the House of Lords, having already been passed by the Commons. The Bill does not implement all of the Calman recommendations, and it introduces some new material, but the Government has presented the Bill as its legislative response to the report of the Calman Commission.

The most significant provisions in the Bill concern fiscal matters, designed to increase responsibility and accountability. The block grant will be reduced, while elements of taxation will be devolved, and extended borrowing powers will be introduced, to make up the gap. These changes mean that the Scottish Parliament will have to raise a proportion of its own resources, whereas at present it has the option to vary the basic rate of income tax by 3 pence in the pound, but has never done so.

¹ HC Deb 8 March 2012, c74WS

² HC Deb 25 March 2008, cc7-8WS

The Calman Commission also recommended that some new matters should be devolved, which are currently reserved, and it recommended developments in the relationship between the Scottish and UK Parliaments. The *Scotland Bill* reflects some of the changes to devolved matters, although it excludes some, and it also includes provisions that were not recommended by Calman.

The Bill is discussed further in a number of documents prepared by the Libraries of the Commons and Lords. Research Paper 11/06, *Scotland Bill*, 18 January 2011, gives a detailed account of the Bill and the arguments surrounding it, as it was introduced to the Commons. Research Paper 11/49, *Scotland Bill: Committee Stage Report*, 14 June 2011, covers the passage of the Bill through the committee stage, indicating changes made at that point. Standard Note 5984, *Devolution of tax powers to the Scottish Parliament*, 29 July 2011, discusses the debate on fiscal devolution in the UK and Scottish Parliaments, including committee and report stages in the Commons. House of Lords Library Note LLN 2011/023, *Scotland Bill*, 11 July 2011, looks at report and third reading in the Commons for the Bill as a whole.

2.2 Funding in Wales: the Holtham Commission

The devolved legislatures of Wales, Scotland and Northern Ireland are funded by the Barnett formula. The Barnett formula is based on population, and it links increases in the budgets of these legislatures to increases in comparable spending by English government departments.³

The Barnett formula has been criticised on a number of grounds. In particular, its critics argue that it is not related to public spending needs. Also, as the system operates through a block grant to the devolved legislatures from the Treasury, these legislatures are not accountable for raising revenue.

As noted above, measures to increase the financial accountability of the Scottish Parliament were proposed by the Calman Commission and reflected in the *Scotland Bill*. A Commission, chaired by Gerald Holtham, was established to look at funding for Wales.

This Independent Commission on Funding and Finance in Wales was a commitment of the One Wales agreement between the Labour and Plaid Cymru groups in the National Assembly. It was established in 2008 and published its final report in 2010. Its terms of reference were to:

look at the pros and cons of the present formula-based approach to the distribution of public expenditure resources to the Welsh Assembly Government; and

identify possible alternative funding mechanisms including the scope for the Welsh Assembly Government to have tax varying powers as well as greater powers to borrow.⁴

The Commission concluded that the Barnett formula should be replaced by a formula based on need. It also recommended devolution of limited powers over certain taxes and borrowing. Its recommendations are reproduced in full in the Appendix to this note.

³ For further information on the Barnett formula see HM Treasury, *Funding the Scottish Parliament, Welsh Assembly Government and Northern Ireland Assembly: Statement of Funding Policy*, October 2010 and *The Barnett Formula*, House of Commons Library Research Paper 07/91

⁴ Independent Commission on Funding & Finance in Wales, *Final Report*, July 2010, para 1.2, accessed 1 November 2011

In its final report, the Commission said:

1.10 In our first report, we concluded that the Barnett Formula lacked any objective justification and had survived for 30 years solely for reasons of political and administrative convenience. As a direct result of the formula, the relative funding per capita for devolved activities in Wales has converged markedly towards the average level of funding in England over the past decade. We found that this process of relative decline (the so-called “Barnett squeeze”) has caused the funding of devolved activities in Wales to fall below what Wales would receive were its budget determined by the various formulae that the UK Government uses to allocate resources to comparable functions in England. If the Barnett Formula remains in place, this convergence will continue over the medium term, with the funding of devolved public services in Wales moving ever closer to the average English level of funding per capita, irrespective of higher Welsh relative needs.

1.11 In order to establish a fair and rational basis for determining the size of the Welsh block grant, the Commission recommended that in the medium term the funding arrangements for Wales should be based on relative needs. However, we also acknowledged that this could take time. As an interim measure, we recommended a simple modification to the existing formula that would place a “floor” under the block grant at a level indicated by English needs formulae and would prevent any further convergence, pending wider reform.⁵

2.3 Public finance statistics for Wales

Public spending

Public spending in Wales was £29.1 billion in 2009/10.⁶ Nearly 40% (£11.2 billion) of this is spent by UK government departments, such as social security spending by the Department for Work and Pensions. Around £10 billion is spent by the Welsh Government and nearly £8 billion by Welsh local government.

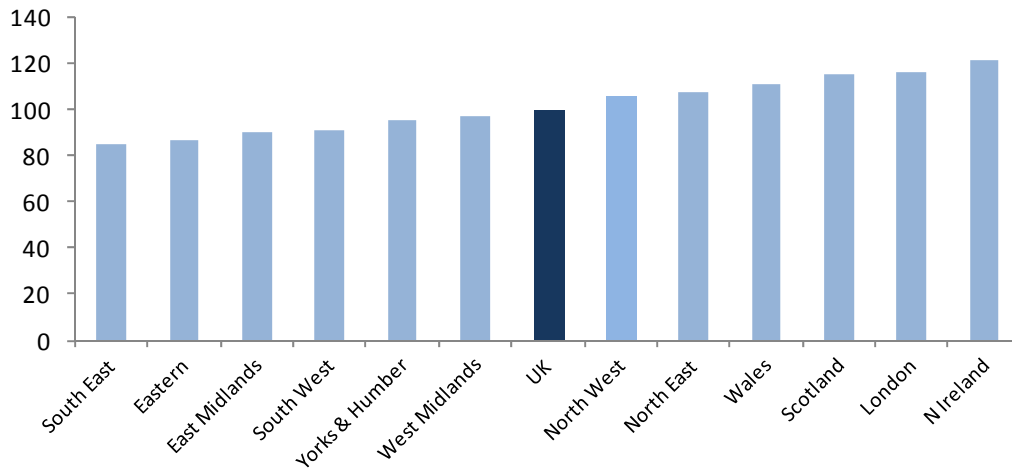
The Treasury publishes statistics on public spending per head each year in *Public Expenditure Statistical Analyses*. The most recent figures, for 2010/11 show public spending per head in Wales at £9,829. This is 11% higher than the UK average. It is lower than Scotland and Northern Ireland but higher than all the English regions except London. These figures are for all public spending in Wales, not just that financed by the Barnett formula.⁷

⁵ Independent Commission on Funding & Finance for Wales, *Final report: Fairness and accountability: a new funding settlement for Wales, summary*, July 2010

⁶ HM Treasury, *Public Expenditure Statistical Analyses 2011*, Table 9.21. These figures are for identifiable spending ie spending which can be identified as benefiting residents of Wales. It excludes spending which is for the UK as a whole such as defence.

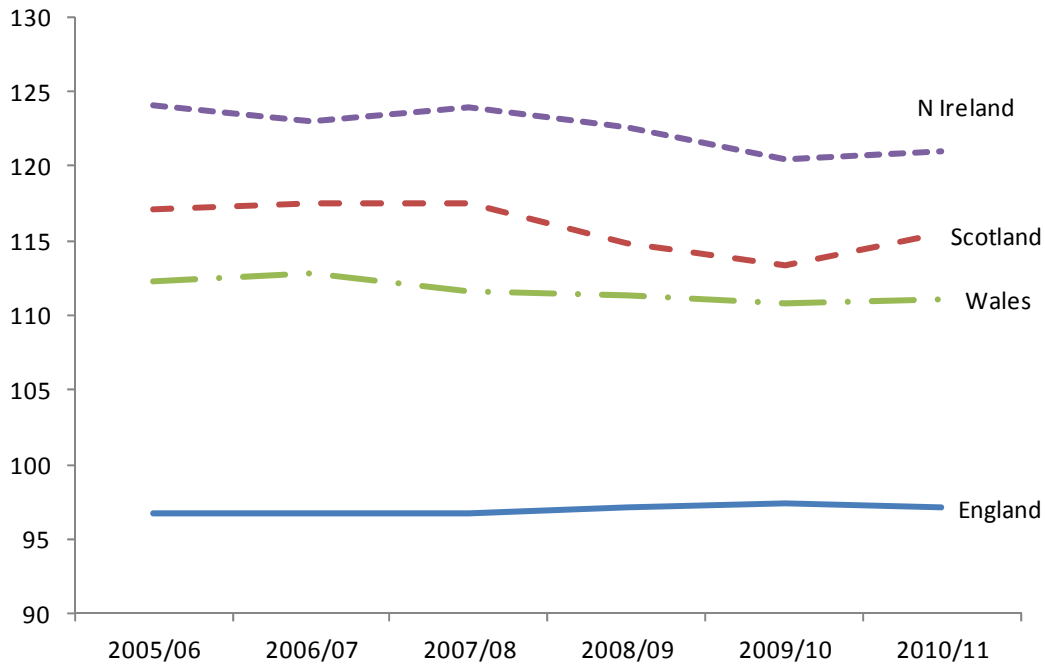
⁷ For more information on public spending in different parts of the UK, see *Public Expenditure by country and region*, House of Commons Library Standard Note (SN/EP/4033) October 2011

Public expenditure per head, 2010/11 (Index UK = 100)



Public spending per head in Wales has been 11-13% above the UK average for the last few years.

Public spending per head, UK = 100



Tax revenue

There is much less official information on taxes raised in different parts of the UK. Oxford Economics have published estimates of the revenue raised in each country and region of the UK. These are shown in the table below.⁸ Revenue raised in Wales is estimated to be £19 billion compared with £515 billion in the UK as a whole.

⁸ Oxford Economics, *London's Competitive Place in the UK and Global Economies*, (for City of London Corporation Economic Development Office), January 2011, Tables A.6 and A.10

Revenue raised in Wales

£bn, 2009/10

	Wales	UK
Income tax	4.5	140.0
NICs	3.6	95.6
VAT	2.8	70.1
Council tax	1.0	25.0
Vehicle excise duty	0.3	5.6
Corporation tax	0.9	30.2
Stamp duty	0.1	4.9
Stamp duty on shares	0.1	2.9
Fuel duty	1.3	26.2
Tobacco duty	0.5	8.8
Alcohol duty	0.4	9.0
Business rates	0.9	24.3
Inheritance tax	0.1	2.4
Air passenger duty	0.1	1.9
Total	19.0	514.7

Source: Oxford Economics estimates

Note: residence based

Balance between revenue and spending

Oxford Economics have also estimated the gap between public spending and revenue in each country and region of the UK. These show a deficit of £14.6 billion for Wales in 2009/10. It is worth noting that nearly all countries and regions of the UK had a deficit. These figures are based on all public spending in Wales, not just that financed by the Barnett formula.

Regional contributions to public finances, 2009/10

	Revenue			Expenditure	Fiscal balance
	Residence	Workplace	Average		
	£bn	£bn	£bn		
North East	16.7	17.0	16.9	29.0	-12.1
North West	49.9	50.6	50.3	74.2	-23.9
Yorks & Humber	35.3	35.7	35.5	52.4	-16.9
East Midlands	32.9	31.6	32.3	42.0	-9.8
West Midlands	38.8	38.8	38.8	54.8	-16.0
Eastern	49.1	46.8	48.0	53.5	-5.5
Greater London	91.3	99.6	95.5	94.0	1.4
South East	81.9	77.8	79.9	80.9	-1.0
South West	40.1	39.5	39.8	55.5	-15.6
Wales	19.0	18.7	18.9	33.5	-14.6
Scotland	48.3	46.8	47.6	61.9	-14.3
N Ireland	11.5	12.0	11.8	22.6	-10.9
UK	514.7	514.7	514.7	666.5	-151.8

Source: Oxford Economics

2.4 Government policy

When the present Government was formed, it included proposals on devolution in Wales in its programme for government. It made a commitment to hold a referendum on a move to a wider set of powers for the Assembly, which took place in March 2011 and endorsed the change. The programme for government also addressed the Holtham Commission, on which there was no immediate commitment, and promised a wider review of devolution in Wales, similar to the Calman Commission in Scotland:

We recognise the concerns expressed by the Holtham Commission on the system of devolution funding. However, at this time, the priority must be to reduce the deficit and therefore any change to the system must await the stabilisation of the public finances. Depending on the outcome of the forthcoming referendum, we will establish a process similar to the Calman Commission for the Welsh Assembly.⁹

Expanded powers for the National Assembly for Wales

The *Government of Wales Act 2006* provided two mechanisms for legislation by the National Assembly for Wales. For each mechanism a range of subjects was specified to which it could apply. Although the headings for these subjects were the same, the detail of what those headings contained was different. The first mechanism, known as Assembly Measures, could be applied to only a small number of matters at first; others were added piecemeal, either by Act of Parliament, or by legislative competence orders (LCOs) if requested by the Assembly and endorsed by Parliament.

⁹ [The Coalition: our programme for government](#), p28

The second mechanism, Acts of the Assembly, allows the Assembly to pass laws on a much wider range of matters within the same broad headings. The transition to this approach widens the scope of the Assembly's competence at a stroke, rather than having to wait for Acts of Parliament or apply for LCOs in order to widen it gradually.

The change from Measures to Acts was subject to approval in a referendum. The Assembly passed a resolution calling for a referendum in February 2010, and it was held, after the general election and the parliamentary process for the enabling Orders, in March 2011. The result was approval of the Assembly Act provisions, which came into force after the next Assembly elections in May 2011.

The change is discussed in greater detail in a series of Library briefings. Standard Note 5685, *Referendum for Wales: extending the scope of Assembly powers*, 27 October 2010, looks at the two legislative processes and the call for change. Standard Note 5897, *Referendum in Wales*, 7 March 2011, discusses the result of the referendum. The situation in Wales more generally is covered in Standard Note 5965, *Political developments in Wales to June 2011*, 7 July 2011.

A devolution commission for Wales

On 19 July 2011 the Secretary of State for Wales, Cheryl Gillan, announced that work was in hand to create a Commission on Devolution in Wales, in line with the commitment in the programme of government. She stated that

a key strength of the Calman Commission was its consensual approach, and the Government are committed to establish a similar approach in Wales. With this in mind we have worked with the Welsh Government and all parties in the Assembly to reach a broad consensus on how we move forward.¹⁰

She indicated that the commission would be independent, and that it would start by looking at financial accountability for the Welsh Assembly Government and the National Assembly for Wales. It would "examine issues of fiscal devolution and accountability in Wales and will focus on building consensus." After reporting on this, probably in autumn 2012, the commission would "look at the constitutional settlement in Wales in the light of experience," and would report in 2013 (this has since been moved to spring 2014). Mrs Gillan addressed the Holtham Commission in particular:

The Government are committed to considering all aspects of the Holtham commission's reports. Separate discussions will continue between the UK Government and the Welsh Government on Holtham's proposals for funding reform for Wales and they will be extended to include the operation of existing borrowing powers.¹¹

The Commission was set up in October 2011, under the chairmanship of Paul Silk. Mrs Gillan announced this in a further Written Statement reproduced below.

3 The Commission on Devolution in Wales: Silk Commission

On 11 October 2011 Mrs Gillan announced the creation of the Commission on Devolution in Wales:

¹⁰ HC Deb 19 July 2011 c115WS

¹¹ HC Deb 19 July 2011 c115WS

I informed the House on 19 July that the Government would establish an independent Commission on Devolution in Wales this autumn to review the present financial and constitutional arrangements in Wales. I said that I would make further announcements after recess.

I am now able to inform the House that the Commission will be chaired by Paul Silk, Clerk to the National Assembly for Wales from 2001 to 2007 and a former Clerk in this House. He will be joined on the Commission by two independent members. They are: Dyfrig John CBE, Chairman of the Principality Building Society; and Professor Noel Lloyd CBE, a former Vice-Chancellor and Principal of Aberystwyth University.

In addition, there will be four party political members who are each nominated by one of the four political parties in the National Assembly for Wales. They are: Professor Nick Bourne (Welsh Conservatives nominee); Sue Essex (Welsh Labour nominee); Rob Humphreys (Welsh Liberal Democrats nominee); and Dr Eurfyl ap Gwilym (Plaid Cymru nominee).

The Commission members have, between them, extensive expertise and experience in financial and constitutional matters in relation to Wales. I expect the Commission to consult widely on its proposals, and to make recommendations likely to have a wide degree of support.

The terms of reference for the Commission reflect the fact that it will carry out its work in two parts. In part I, the Commission will look at the case for the devolution of fiscal powers to the National Assembly for Wales, and recommend a package of fiscal powers that would improve the financial accountability of the Assembly, and which are consistent with the United Kingdom's fiscal objectives.

In part II the Commission will look at the powers of the Assembly, and recommend modifications to improve the present constitutional arrangements.

The Government worked closely with the Welsh Government and all the parties in the Assembly in drafting the terms of reference. The full terms of reference for the Commission are attached at annex A, and I have also placed copies in the Library of the House.

The Commission will report to me and, in relation to part I, also to the Chancellor of the Exchequer. It will be supported in its work by a small secretariat of civil servants drawn from the United Kingdom Government and the Welsh Government. It will make every effort to report on its recommendations in relation to part I in the autumn of 2012, and on part II during 2013.

Commission on Devolution in Wales—Terms of Reference

An independent Commission will be established to review the present financial and constitutional arrangements in Wales. It will carry out its work in two parts:

Part I: financial accountability

To review the case for the devolution of fiscal powers to the National Assembly for Wales and to recommend a package of powers that would improve the financial accountability of the Assembly, which are consistent with the United Kingdom's fiscal objectives and are likely to have a wide degree of support.

Part II: powers of the National Assembly for Wales

To review the powers of the National Assembly for Wales in the light of experience and to recommend modifications to the present constitutional arrangements that would

enable the United Kingdom Parliament and the National Assembly for Wales to better serve the people of Wales.

In undertaking part I, the Commission should: provide independent advice on the case for improving the financial accountability of the National Assembly for Wales consistent with the fiscal and constitutional framework of the United Kingdom; consult widely on a package of fiscal powers which would improve the financial accountability of the National Assembly for Wales; make recommendations on whether a package of fiscal powers could be devolved to the National Assembly for Wales which are likely to have a wide degree of support; and consider and make recommendations on how best to resolve the legal and practical implementation issues from devolving a package of fiscal powers, including consistency within the United Kingdom.

Part I will be completed before work on part II begins.

In undertaking part II, the Commission should: examine the powers of the National Assembly for Wales, and in particular: the boundary between what is devolved and non-devolved; whether modifications to the boundary should be made at this stage; and any cross-border implications of such modifications; consult widely on any proposed modifications to the current boundary; make recommendations on any modifications to the settlement likely to have a wide degree of support; and consider and make recommendations on how best to resolve the legal and practical implementation issues from those modifications.

The Commission will not consider, in part I, the Holtham Commission's proposals for funding reform in Wales, including Welsh Ministers' existing borrowing powers, which are being dealt with through a separate bilateral process between the United Kingdom Government and the Welsh Government; and, in part II, the structure of the National Assembly for Wales, including issues relating to the election of Assembly Members.¹²

The most notable features of this are that the Commission will split its work into two strands, and will complete work on the fiscal side before turning to the constitutional side (they will not be considered concurrently); the Commission will not consider the Holtham proposals for funding reform; and it will assess the constitutional arrangements roughly two years after the change to Assembly Act provisions and the much wider scope of devolved matters which that entailed. It is also significant that the Government has placed such emphasis on building consensus: if this is borne out in the final reports, there would be a strong basis for change.

The budget for the life of the Commission will be around £1 million, which will be funded from existing budgets. The commissioners are not paid, but the Wales Office will reimburse expenses incurred in the course of their work on the Commission.¹³

¹² HC Deb 11 October 2011 cc25-8WS

¹³ HL Deb 23 November 2011, c242W

Appendix: Recommendations of the Holtham Commission¹⁴

Recommendations from the Commission's final report

Annex 1

Needs-based formula (Chapter 3)

A1.1 The Assembly Government should pursue the introduction of a simple needs-based formula as the means of determining the Welsh block grant.

Income tax (Chapter 6)

A1.2 The Assembly Government should acquire limited powers to vary income tax rates in Wales.

Corporation tax (Chapter 7)

A1.3 The Assembly Government should seek discussions with the UK Government and the other devolved administrations about the feasibility of devolving corporation tax.

Property taxation (Chapter 7)

A1.4 Stamp duty land tax should be devolved to Wales, provided a fair offset to the block grant can be negotiated.

A1.5 The administrative costs of devolving capital gains tax on property and land should be explored with HMRC. If administrative costs are not prohibitive, then it should be devolved to Wales, provided a fair offset to the block grant can be negotiated.

A1.6 The Assembly Government should consider the reform of council tax by investigating (i) the introduction of additional bands covering high value properties and (ii) the scope to undertake more frequent revaluations of the housing stock.

A1.7 Local authorities should be given discretion to levy a higher council tax on second homes.

Minor taxes (Chapter 7)

A1.8 The Assembly Government should undertake an assessment of the usefulness of landfill tax, air passenger duty and aggregates levy as policy instruments, in the light of Ministerial objectives in those matters. If it is concluded that the taxes would provide Ministers with useful policy levers then they should be devolved to Wales, assuming a reasonable deduction from the block grant can be agreed.

New taxes (Chapter 7)

A1.9 A procedure should be confirmed to enable the UK Parliament to confer power on the National Assembly to introduce new taxes in Wales, where the Assembly requests that power.

¹⁴ Taken from Independent Commission on Funding & Finance for Wales, *Final Report: Summary*, July 2010, Annexes 1 and 2, accessed 1 November 2011.

Ensuring access to EYF (Chapter 8)

A1.10 The Assembly Government should seek agreement with the UK Government for an arrangement to invest EYF funds in government securities under the auspices of the Commissioners for the Reduction of the National Debt.

Borrowing powers (Chapter 8)

A1.11 Limited powers to borrow in order to finance capital expenditure should be devolved to the Assembly Government.

Transition arrangements (Chapter 9)

A1.12 The preparatory work that is under way to implement tax devolution for Scotland should proceed on the assumption that similar tax powers could be devolved to Wales. The Assembly Government should have a seat at the table in any discussions about fiscal devolution that are taking place at the UK level.

Improved statistics (Chapter 9)

A1.13 The Assembly Government should seek modification of the UK's national accounts to include a "provincial" tier of government spending. Independent Commission on Funding & Finance for Wales 56

Annex 2

Recommendations from the Commission's first report

Ensuring that funding is aligned with needs (Chapters 3 and 6)

A2.1 In the medium term the funding arrangements for Wales should be based on relative needs.

A2.2 No further decline in relative funding per head should occur in Wales until a new funding system is in place. This could be achieved in a straightforward way by simply multiplying any positive increments allocated to Wales by 114 per cent.

Enhancing the funding flexibility available to the Welsh Assembly Government (Chapter 5)

A2.3 The Assembly Government should be able to draw forward its capital budget across the period of a spending review.

A2.4 The Assembly Government should have a free hand in accessing the EYF funds that it has accumulated in prior years, without the requirement for discussion with, and agreement from, HM Treasury.

A2.5 The Assembly Government should be able to switch funds from capital to resource budgets, provided that such transfers would not cause a breach of the UK Government's overarching fiscal rules.

Reducing the likelihood of future disputes (Chapter 5)

A2.6 Technical aspects of the operation of the Barnett Formula should be administered by an independent advisory body that is at arm's length from both HM Treasury and the Assembly Government.

A2.7 The UK Government and the Assembly Government should jointly agree a new Ministerial concordat on the detailed funding arrangements for Wales.

Improving transparency (Chapter 5)

A2.8 In order to enhance the transparency of the process by which the Assembly Government is funded, the UK Government should produce an annual publication that would enable direct comparisons between Assembly Government expenditure covered by the Barnett Formula and similar expenditure in England.

A2.9 A Treasury Minister should be invited to meet the National Assembly for Wales's Finance Committee at least once in every spending review period to discuss the funds made available to Wales.