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Wales Governance  
Centre

# Fiscal implications of devolving justice

Guto Ifan

**Canolfan Llywodraethiant Cymru, Prifysgol Caerdydd**  
*Wales Governance Centre, Cardiff University*

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Cardiff University



# Preface

## About us

The Wales Governance Centre is a research centre that forms part of Cardiff University's School of Law and Politics 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. A key objective of the Centre is to facilitate and encourage informed public debate of key developments in Welsh governance not only through its research, but also through events and postgraduate teaching.

## About this project

Cardiff University's Wales Governance Centre launched the *Justice and Jurisdiction* project in July 2018. It brings together an interdisciplinary group of academic researchers consisting of political scientists, criminologists, constitutional law experts and political economists to investigate the operation of the legal and justice system in Wales. The project is funded by a combination of the Economic and Social Research Council, the Welsh Government and Cardiff University.

As well as producing high quality academic outputs, the project will generate a series of reports intended to inform the work of Commission on Justice in Wales as well as encourage an informed public debate on the organisation and operation of the legal and justice system in Wales. Whilst the research team continues to benefit from comments and suggestions from our external partners, the programme itself has been conceived of and is being delivered wholly independently of them.

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## About the author

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# 1

## Introduction

Approximately £1.2 billion a year is spent on the justice system in Wales, covering police services, law courts and tribunals spending, and prison and probation services. As justice is currently a reserved function, most of this spending is funded by UK government departments and agencies. Our previous report on spending on the justice system in Wales analysed the scale, composition and recent trends in spending on the justice system, including the amount already funded from devolved sources (Ifan 2019).

This report assesses the possible fiscal and budgetary implications of devolving justice functions to the Welsh Government. It analyses the size of the transfer of funding which would be required from the UK government to the Welsh Government, the likely scale of additional administration and set-up costs associated with devolution, and the issues which would be subject to negotiation between both governments. Lastly, the report analyses the type of budgetary risks and incentives the Welsh Government will face after justice devolution.

# 2

## Transfer of functions and funding

The devolution of justice functions to the Welsh Government would require a transfer of funding from the UK government. This section therefore explores the likely size of the initial transfer of funding to the Welsh Government, how future changes in funding would be determined and the possible scale of initial set-up costs and administrative costs. It raises specific questions which will need to be considered, making use of available information on UK government spending on the justice system for Wales, previous examples of devolution of functions and the experience of the other devolved nations. It also underlines the areas which would be subject to negotiation between both governments in the event of devolution.

### 2.1 Transfer of funding from the UK government and the Barnett formula

There has been a long history of devolving functions and funding to Wales, Scotland and Northern Ireland, as their constitutional settlements have evolved over time.

Funding arrangements for the devolution of justice would likely be subject to a negotiation between both governments, as was recently the case with the transfer of taxation powers to the Welsh Government. These negotiations would likely be informed by precedents of past transfers and previous agreements.

The recent Fiscal Framework Agreement between the Welsh and UK governments (2016: 10) stated:

*"When further areas of spending are devolved, the changes to the Welsh Government's block grant funding comprise two elements:*

- *Initial baseline adjustment – this reflects UK government spending plans at the point of devolution*
- *Subsequent block grant change – these are based on changes in equivalent UK government spending in the rest of the UK (via the Barnett Formula)"*

There are many previous examples of funding being transferred to account for newly devolved functions. For example, two large examples from the first decade of devolution saw the transfer of funding to cover loans for Welsh domiciled students and the Wales rail franchise. In more recent years,

Council Tax Benefit was abolished by the UK government, and partial provision was passed to the Welsh Government to enable it to establish alternative arrangements using its existing powers. The initial transfer of funding to the Welsh Government represented the amount previously spent in Wales, but with a 10% reduction – a cut which was made up by the Welsh Government in funding for the new Council Tax Reduction Scheme.

The largest transfer of funding to devolved government in recent times is the transfer of some social security benefits to the Scottish Government, which will amount to over £3 billion. Another example was the devolution of policing and justice functions to Northern Ireland. A budget was agreed and passed on to the devolved administration to fund the courts and police services. However, this was slightly different from any future justice devolution in Wales since a separate budget was already outlined for the exercise of these functions in Northern Ireland.<sup>1</sup>

Table 2.1 outlines estimates of what is currently spent on the justice system for Wales by function. On a per person basis, it also compares spending in Wales with spending in England. Some of this spending is already funded by devolved sources, so we estimate the proportion currently funded by the UK government (by subtracting known devolved funding from total spending). It should be noted that not all of the spending included in the reserved spending line would necessarily be transferred after justice devolution. Some justice functions currently funded by Home Office and the MoJ would remain reserved, as is the case in Scotland.

Using illustrative spending figures from 2017-18, the largest components of the funding transfer from the UK government to account for justice devolution would be:

- Home Office Police Grant and other specific grants - £248 million<sup>2</sup>
- HM Courts & Tribunals expenditure - £68 million, including an estimated share of centralised spending
- Crown Prosecution Service - £24 million, including an estimated share of centralised spending
- Legal aid budget for Wales - £81 million
- Smaller areas of Ministry of Justice spending & allocated central administrative costs - £62 million
- HMPPS Wales - £205 million<sup>3</sup>

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<sup>1</sup> For example, there was a £72.4 million provision for ‘Legal Services Commission – Northern Ireland’ and £59 million for the ‘Northern Ireland Court Service’ in 2007-08.

<sup>2</sup> Estimates of specific grants from Welsh Government subtracted from total specific grants to estimate UK government specific grants. Estimates are taken from Grant Income reported in annual accounts of Police and Crime Commissioners, and mainly relate to Community Support Officers grants and All Wales Schools Programme. Since some smaller grants from Welsh Government may not be reported separately, this figure may overestimate UK government specific grants.

<sup>3</sup> The size of the likely transfer is set to increase over coming years as HMP Berwyn approaches capacity.

**Figure 2.1: Estimating spending on justice functions for Wales funded from reserved sources**

	2017-18		
	£ million	Per person (£)	Per person (England = 100)
Total <sup>1</sup>	1165	372	95
of which:			
Police services	710	227	97
Law courts	251	80	87
Prisons and probation	205	65	99
of which:			
Funded by devolved sources	453	145	
Council tax - police precept	274	87	
Revenue Support Grant & Non-domestic rates	139	44	
Special grants to Police forces <sup>2</sup>	22	7	
Appropriations from police reserves	10	3	
Devolved tribunals	3	1	
Local government courts' services	5	2	
<b>Funded by UK government <sup>3</sup></b>	<b>712</b>	<b>228</b>	<b>85</b>

Notes for table:

1. Main data source for estimates of spending is the Country and Regional Analysis, though the total for Law courts has been amended to account for evidence supplied by the MoJ to the Commission (see Ifan 2019). Relative figures for law courts spending for England are therefore from different source and may not be wholly comparable.

2. Estimated from Grant Income reported in annual statement of accounts of the four Police and Crime Commissioners

3. Includes allocated central administration costs. Relative figure for England derived by subtracting police precept revenue from police spending – and including RSG and NDR elements of police spending in Welsh figure. This is done because it is not possible to separate the element of the police grant in England which was previously funded through the Local Government grants.

Source: Ifan (2019) *Public Spending on the Justice System for Wales*

The exact amounts to be transferred would be subject to a negotiation between the Welsh and UK governments. For volatile spending programmes, an average over several years could be used as a baseline. Either government could make a case for increasing (reducing) the baseline adjustment if for some reason planned spending for a programme before devolution was deemed too low (high). Negotiations would also take place to decide how much funding should be transferred to cover Welsh Government administration costs (covered later in section 2.2).

Some justice functions are provided on an England and Wales (or on a Great Britain/UK) wide basis. For example, according to annual accounts, over £18 million was provided to Welsh police forces in 2017-18 for spending on collaborative service areas, with the largest grants associated with counter



terrorism and regional organised crime. With the devolution of policing, funding arrangements would need to be agreed if these functions continue to be provided on a cross-country basis.

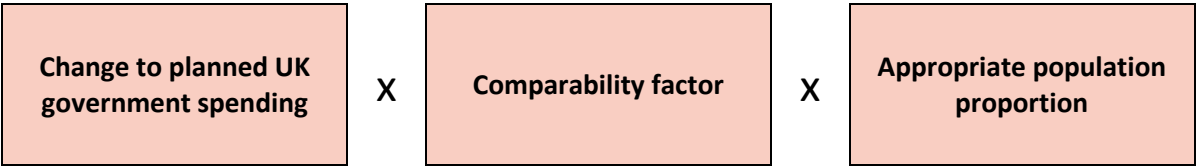
Separate transfers would need to be agreed for resource (day-to-day spending) and for capital spending. In the case of policing, the Home Office currently provides separate capital grants to Welsh police forces, funding for which would need to be transferred. In addition, there will be significant assets and liabilities associated with the police, courts and prisons estate in Wales. The revenue effect of these assets and liabilities would need to be considered in the negotiations over their transfer after devolution.

On a general level, both governments would need to agree the basis on which to estimate the funding transfer. On the one hand, the transfer could be based on the costs of the justice system for people who live in Wales, or alternatively, based on the current level of spending on justice which takes place in Wales. While generally these costs would be similar, there may be differences in prison costs, due to the substantial cross-border flows of prisoners from Wales in England and vice versa. In 2017-18 the overall cost of accommodating prisoners from Wales (in Welsh and English prisons) was approximately £189 million, more than the cost of prisons in Wales (Ifan 2019:38). These cost estimates are likely to change over coming years as HMP Berwyn approaches capacity. The agreed method of estimating costs will therefore likely affect the size of the initial transfer and any future cross-border arrangements for prisoners (discussed in next section).

This initial baseline adjustment transferred to the Welsh Government would be non-hypothecated and form a part of the Welsh Government overall block grant. A transfer of £712 million in 2017-18 would have increased the size of the total Welsh budget by approximately 4%.

After this initial transfer of funding, the future funding available to the Welsh Government will still be linked to UK government spending decisions.

Annual changes in funding from the UK government to the devolved administrations are determined by the **Barnett formula**, linked to spending decisions by the UK government in England on functions which are devolved to Wales, Scotland or Northern Ireland. The HM Treasury's (2015) Statement of Funding Policy sets out how these changes in block grant funding - termed *consequentials* - are calculated, summarised by the following formula:



Comparability factors reflect the degree to which certain spending programmes are devolved (100% if fully devolved - 0% if reserved). At UK government spending reviews, this calculation is undertaken at a departmental level – changes to each UK government department’s overall budget are applied to departmental comparability percentages. The sum of these changes represents the aggregate changes to the funding of devolved administrations for the years of the spending review. The departmental comparability percentages used at the 2015 Spending Review are outlined in figure 2.2, with justice related departments in bold.

As an example of how this process works in practice, the 2015 Spending Review planned a £600 million reduction in resource (day-to-day) funding from HM Treasury to the Ministry of Justice (MoJ) from 2015-16 to 2019-20.<sup>4</sup> Since the comparability factors for MoJ spending in the case of Scotland and Northern Ireland are 100%, a population-based share of this change would have been applied to their block grants; roughly £56 million in the case of Scotland and £19 million in the case of Northern Ireland.

**Figure 2.2: Summary of comparability factors applied in the Spending Review<sup>5</sup>**

Department	Scotland	Wales	Northern Ireland
Business, Innovation and Skills	66.4%	66.3%	66.7%
Business Rates	100.0%	100.0%	100.0%
Cabinet Office and SIA	6.5%	6.5%	10.3%
Chancellor's Departments	0.4%	0.0%	0.3%
CLG: Communities	99.7%	99.7%	99.7%
CLG: Local Government	100.0%	100.0%	100.0%
Culture, Media & Sport	76.9%	76.9%	77.6%
Education	100.0%	100.0%	100.0%
Energy & Climate Change	1.8%	1.8%	15.3%
Environment, Food & Rural Affairs	99.8%	99.0%	99.8%
Health	99.4%	99.4%	99.4%
<b>Home Office</b>	<b>91.7%</b>	<b>0.0%</b>	<b>91.7%</b>
<b>Justice</b>	<b>100.0%</b>	<b>0.0%</b>	<b>99.9%</b>
<b>Law Officers' Departments</b>	<b>100.0%</b>	<b>0.0%</b>	<b>91.6%</b>
Transport	91.0%	80.9%	91.3%
Work & Pensions	1.4%	1.4%	100.0%

Source: HM Treasury (2015) Statement of Funding Policy

At annual fiscal events - such as budgets and spring statements – the calculation is undertaken at a spending programme level, when policy announcements change the overall spending allocations for a UK government department.

<sup>4</sup> See House of Commons Library (2018) *Estimates day: Ministry of Justice spending*

<sup>5</sup> These comparability factors do not reflect machinery of government changes which have occurred since the 2015 Spending Review, e.g. the creation of the Business, Energy & Industrial Strategy

For example, at the Autumn Statement 2016, the UK government announced an additional £495 million over three years to spend on prison safety in England and Wales. Since this was a devolved function for Scotland and Northern Ireland, the Scottish block grant over these years was increased by £46 million and the Northern Irish block grant by £15 million.<sup>6</sup>

In both cases, the respective increases to these block grants were non-hypothecated, meaning the Scottish or Northern Irish governments could decide whether to increase spending on the justice system or increase spending elsewhere in the budget. In the Welsh case, the comparability factor for this spending was 0%, and the effect on spending on the justice system in Wales would depend on allocations made by the UK government.

In the event of devolution of justice functions to Wales, the **comparability factors** associated with spending on justice functions would change from 0% to 100%. In a similar way, the comparability factors for Northern Ireland were changed from 0.6% for legal departments in the 2007 Statement of Funding Policy to close to 100% in more recent versions (shown in figure 2.2).

The operation of the Barnett formula over time tends to lead to certain outcomes for the level of per person spending in the devolved countries compared to England. These outcomes mainly depend on:

- initial per person spending levels;
- the growth in comparable spending in England;
- and relative growth in population in the devolved countries compared with England.<sup>7</sup>

These factors would determine the relative spending power of the Welsh Government after devolution.<sup>8</sup>

Per person spending levels on functions already devolved to Wales are generally higher than in England. An in-built property of the Barnett formula is that if spending is growing in England, it results in **convergence** in per person spending over time between England and Wales. This was a concern in Wales in the years from 1999 to 2010, during which period relative funding per person through the Barnett formula declined to 113% of the English level - below the Holtham Commission's (2009) estimate of relative need.

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<sup>6</sup> HM Treasury (2018) *Block Grant Transparency: December 2018*, available here:

<https://www.gov.uk/government/publications/block-grant-transparency-december-2018>

<sup>7</sup> See Poole, Ifan and Phillips (2016) for a fuller explanation of the effects of the Barnett formula.

<sup>8</sup> The Welsh Government could decide to spend a greater amount than it would receive through the Barnett formula (by taking from other devolved spending areas or increasing devolved tax revenues) or spend less by redirecting funding to other devolved spending areas.

However, initial spending per person on devolved justice functions in Wales would likely be below the level in England (see table 2.1). This would mean the so-called Barnett 'squeeze' would not occur. As spending by the UK government on justice functions in England would grow over time, relative funding for Wales for justice functions would converge upwards to the English level.

Another feature of the Barnett formula is that Wales' slower population growth has a beneficial effect on relative funding per person levels in Wales. This is because the Barnett formula only determines *changes* in the level of the block grant, reflecting the latest population shares; the size of the previous year's grant which constitutes the vast majority of the current grant is not adjusted to account for the new population ratio. Wales' population is projected to grow at a much slower rate than England over coming decades (averaging 0.16% a year over the next two decades compared to 0.44% in England). This slower growing population would result in funding per person in Wales on justice functions growing at a faster rate than spending per person in England, and relative funding levels would eventually grow above the English level (see section 3.1).<sup>9</sup>

Since 2018-19, increments to the Welsh block grant triggered by spending in England have been multiplied by a 105% 'needs-based factor' (NBF). This was agreed between the two governments in order to slow the rate of convergence in relative spending levels in Wales with England. The application of the NBF to justice-related *consequentials* would result in per person funding levels in Wales growing faster than England after devolution.

Under the terms of the Fiscal Framework agreement, the level of the NBF will increase to 115% when overall relative funding levels in Wales converge to 115% of the English level. Given current population growth projections in Wales and the outlook for comparable spending, this is unlikely to happen over the next decade. However, transferring justice functions to the Welsh block grant may push relative spending in Wales closer to this level, which would result in larger *consequentials* from UK government spending decisions in future.

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<sup>9</sup> How quickly this would happen would depend on the rate of growth in comparable spending in England.

## 2.2 Administration and set-up costs

As well as the transfer of funding from the UK government, another consideration for the financial implications of devolving new functions are administration and set-up costs. This relates to two elements – initial one-off set-up costs and any additional annual administration costs not covered by the initial transfer of funding from the UK government.

According to the UK government's Statement of Funding Policy, one of the principles for the allocation of funding within the UK is that 'the devolved administrations will meet all the operational and capital costs associated with devolution' (HM Treasury: 9). In 'exceptional circumstances' however, the UK government may agree to contribute funding towards these costs.

As with the overall transferred cost from the UK government, transfers to cover administration costs would also be subject to negotiation. Following negotiations over the Welsh Government's new tax and borrowing powers, the Welsh Fiscal Framework Agreement noted that 'the Welsh Government will meet all of the net costs of devolution'. For example, the implementation costs for establishing the Welsh Revenue Authority amounted to £6.3 million over a two-year period. The body responsible for the two newly-devolved taxes now has 49 full-time equivalent staff and had a funding allocation of £6 million last year.

Meanwhile, the negotiations between the Scottish and UK government over the implementation of the Scotland Act 2016 resulted in the UK government committing to a one-off payment of £200 million towards the implementation costs of new powers, as well as a baseline transfer of £66 million to cover ongoing administration costs. It has since been estimated that the implementation costs for the new social security powers to Scotland will amount to £308 million over four years (Audit Scotland: 13).

When the devolution of justice was considered by the Commission on Devolution in Wales (Silk Commission), both the UK and Welsh governments provided evidence of the likely financial costs of devolution.

In the UK government's evidence, it was estimated devolving justice would be associated with a one-off cost of approximately £120 million to £130 million and an additional annual cost of £38.5 million. This estimate includes:

- £101.5 million one-off cost for additional prison infrastructure (paid by central government not by PFI) and £22.5 million per year additional costs of operating a devolved prison system.

These additional costs primarily reflect the costs of providing Category A and women's accommodation.

- An additional £10 million for a devolved courts service on top of costs already allocated to HMCTS Wales.<sup>10</sup>
- An additional £5 million for a Wales-only legal aid system resulting from a likely loss of scale economies.

However, the evidence submission makes clear that the precise amount to be transferred would be subject to negotiation. It seems likely that some of the 'recharge' and corporate costs included in the estimates above would be included in the transfer from the UK government. The additional annual costs over and above the transferred amounts in the long-run would likely reflect diseconomies of scale of a Wales-only system. However, these diseconomy costs are impossible to predict.

Devolution would require additional justice policy directorates in the Welsh Government. Welsh Government evidence to the Silk Commission pointed out that a policing team would be needed within the Welsh Government costing an estimated £2 to £3 million a year. In oral evidence to the Commission on Justice in Wales, then-First Minister Carwyn Jones noted that setting up policy capacity within the Welsh Government for the devolution of justice would cost an additional £10 million.

In terms of the policy capacity required for a devolved justice system, it is illustrative to look at the size of the policy directorates of the Scottish Government. Figures supplied to the Commission point to a Justice Directorate within the Scottish Government, with 121 staff, and a Safer Communities Directorate, containing 153 staff aligned to justice work. The £10 million figures suggested above would seem a reasonable estimate for a slightly smaller policy directorate.

Based on available evidence and estimates, the main source of additional costs for the Welsh Government from the devolution of justice (not likely to be covered by transfers from the UK government) would relate to the need for additional prisons capacity. The UK government's evidence to the Silk Commission assumed devolution of the prison service would require Welsh prisons to fully accommodate all prisoners from Wales. The Silk Commission concluded these additional costs 'would be difficult to justify'.

However, the Welsh Government evidence to the Silk Commission and Carwyn Jones' evidence to the Commission on Justice in Wales raised the prospect of a cross-border charging system, which would

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<sup>10</sup> More recent calculations supplied to the Commission on Justice in Wales (included in the data presented earlier) suggests overheads/corporate functions allocated to Wales of approximately £3.3 million. This includes an ICT recharge based on the proportion of devices recorded for Wales, and other HQ costs allocated on the basis of FTE numbers.

enable some Welsh prisoners to be held in English prisons after devolution, and vice versa. Given the mismatch between prisons capacity and the need for prison places in Wales, a 'self-contained' scenario is unlikely. Carwyn Jones' evidence notes that Scotland and Northern Ireland already pay for some prisoners to be in England.

While the details of any cross-border transfer scheme would need to be worked out, we can take an illustrative look at the type of flows of prisoners and funding which would be required, based on unit costs of holding prisoners published by the Ministry of Justice. The average number of category A prisoners from Wales in 2018 was 33, while there were 259 women prisoners from Wales (based on address prior to entering custody). Based on the average cost-per-prisoner figures for Eastwood Park (which holds the majority of Welsh female prisoners) of just over £42,100 and the average cost-per-prisoner for dispersal prisons in England of £64,400, a transfer of approximately £13 million from the Welsh Government to the UK government would cover the accommodation of Wales' women and category A prisoners.

Based on cost-per-prisoner estimates in 2017-18, spending on all prisoners from Wales currently exceeds spending on prisons in Wales (Ifan 2019). However, as HMP Berwyn approaches full capacity, there will be an excess of prisoner places in Wales. Based on the current Welsh prisoner population, this surplus of places for non-Category A male prisoners in Wales would amount to approximately 1,000. If excess prisoner places were filled with prisoners from England, this could mean a transfer from the UK government to the Welsh Government of approximately £35 million.<sup>11</sup> These arrangements would need to be agreed at the point of devolution, and will need to be considered alongside the initial transfer of funding from the UK government.

Devolution has already required extensive coordination arrangements for cross-border flows of other public services (Poole and Ifan 2019). A good example is the provision and coordination of cross-border health care services, which may provide an illustrative example of how a cross-border charging system may work.

The *Protocol for Cross-Border Healthcare Services* is an agreement between the Chief Executives of the NHS in Wales and the NHS Commissioning Board in England which aims to ensure smooth and efficient interactions either side of the English-Wales border. The flows of services and funding in each direction are considerable. In 2016, approximately 15,000 Welsh residents were registered with a family doctor in England, and around 21,000 English residents were registered in Wales (Watkins

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<sup>11</sup> This is based on the average cost-per-prisoner estimates for Welsh prisons. As HMP Berwyn approaches capacity, we assume the average cost per prisoner would fall to the average of all other large Category C public sector prisons across England with over 1,000 prisoners (£28,700).

2016). For primary care there is no funding flow between the countries. In the case of secondary care provided to patients registered with a doctor across the border, a net funding transfer is agreed annually between the Department of Health and the Welsh Government. This transfer amounted to approximately £6 million to the Welsh Government in 2015, determined by the 'net import' of English residents to Wales and multiplied by spend per resident (House of Commons Welsh Affairs Committee 2015).

Due to Wales' relatively low population density, many highly-specialised health care services are provided by English hospitals. These services are commissioned by the *Welsh Health Specialised Services Committee*. For most types of specialised care, service level agreements and contracts are in place with English hospitals to treat Welsh patients. In 2015, the committee managed 34 health contracts with English providers worth £100 million.

There are also legal frameworks governing cross-border placements of individuals requiring social care, agreed by the four governments of the UK, as set out in Schedule 1 of the Care Act 2014 and accompanying statutory guidance. Separate bilateral agreements have been made between the four administrations of the UK to determine which government bears the cost of NHS funded nursing care required for individuals placed cross-border in a care home.

Given these existing cross-border arrangements for devolved areas and for prisoners from Northern Ireland and Scotland, a cross-border charging system between Welsh and English prisons would seem a realistic prospect. The required levels of funding flows are not large compared to existing funding flows for cross-border devolved services.

In the longer term the Welsh Government may decide to change the nature of the Welsh prison estate which would bring additional costs to the Welsh budget. For example, the former Cabinet Secretary for Local Government and Public Services Alun Davies suggested that a Welsh Government would do things differently as prisons in Wales 'have not been designed to serve Welsh needs'.



# 3

## Fiscal risks and incentives for the Welsh Government

### 3.1 Net budgetary effect of justice devolution

After devolution, spending on justice functions will need to be funded through the Welsh Government budget. As previously outlined, the extra funding available to the Welsh Government will depend on the initial transfer and future spending on justice functions in England through the Barnett formula.

In section 2.1, we noted that the in-built properties of the Barnett formula and Wales' slower projected population growth could result in funding levels per person for justice functions in Wales growing slightly faster than in England under a devolved system. Figure 3.1 shows a projection of relative funding per person for justice functions the Welsh Government would receive through the Barnett formula. We assume that devolution takes place from 2018-19, and the initial level of funding per person transferred would amount to around 83% of the English level per person.<sup>12</sup> We then assume that over a long period of time, comparable spending in England on the justice system grows by 3% in nominal terms a year (around 1% in real terms). This additional spending in England would result in *consequentials* for the Welsh Government each year through the Barnett formula. Wales' lower initial level of spending, its slower growth in population (from ONS projections) and the application of the 105% needs-based factor would result in relative funding per person converging upwards to the level of England.

The Welsh Government could decide to increase spending per person at a faster rate in Wales or use some of these *consequentials* for other areas of its budget. This extra funding through convergence could be substantial, though the rate of convergence would depend on how quickly spending in England grows.

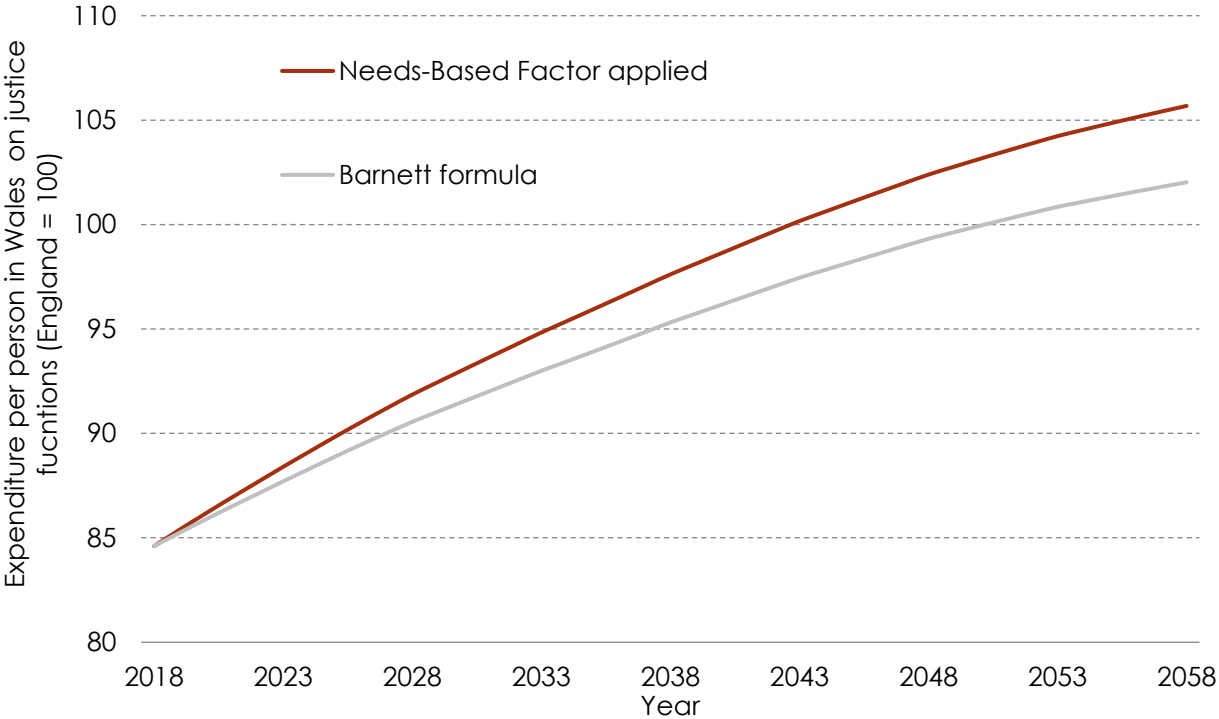
It is impossible to say whether Wales would be 'worse' or 'better-off' through justice devolution – and by how much - since we don't know what spending per person would be under an alternative reserved system. For example, the UK government could decide to spend higher amounts per person in Wales in future. However, receiving 93% of the per person spending level of England in 2030-31 instead of

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<sup>12</sup> The initial level of funding per person is likely to be slightly higher than shown here, as devolution would take place after HMP Berwyn approaches capacity.

85% would mean almost £100 million (or 10%) more to spend in Wales in that year (as shown in figure 3.1). Over time, this increase in spending power for the Welsh Government could offset the higher administration costs associated with a Wales-only system (discussed in section 2.2).

**Figure 3.1: Estimates of relative funding per person for justice functions after devolution**



After devolution, the Welsh Government will have to meet future cost pressures. Relative trends in the justice system in Wales compared with England will be an important factor in determining the effect of justice devolution on the Welsh budget. If the need for public spending on justice functions grows faster in Wales than in England, the Welsh Government will need to find money from elsewhere in its budget. Conversely, reducing the demands on justice spending over time could free up more funding for other devolved public services. The next section therefore focuses on the potential incentives the Welsh Government would face after justice devolution.

### 3.2 Fiscal incentives following justice devolution

The devolution of justice functions would allow the Welsh Government to implement alternative justice policies and make different budgetary decisions. There are many areas of justice spending which have seen large cuts since the start of UK government austerity measures. While the Welsh Government would probably want to increase spending on some of these areas after devolution, doing so will require tough choices and trade-offs between other areas of the devolved budget. Justice priorities will need to be balanced against other areas of the Welsh budget which have seen large cuts since 2010, such as local authority budgets, and areas that are facing rising cost and demand pressures, such as health and social care.

Given the growing demands on already-devolved public services and the tight budget outlook, the Welsh Government would face a significant incentive to reduce costs in the justice system after devolution. Jones and Wyn Jones (2019: 102-120) outline the numerous ways in which devolved and reserved spending interact with the justice system. One view amongst service providers and practitioners in Wales was that the financial benefits of 'spend to save' policies implemented by the Welsh Government in devolved areas ultimately flow to the UK government rather than the devolved budget. After devolution, the Welsh Government will be fully incentivised to use its devolved powers to reduce costs on the justice system.

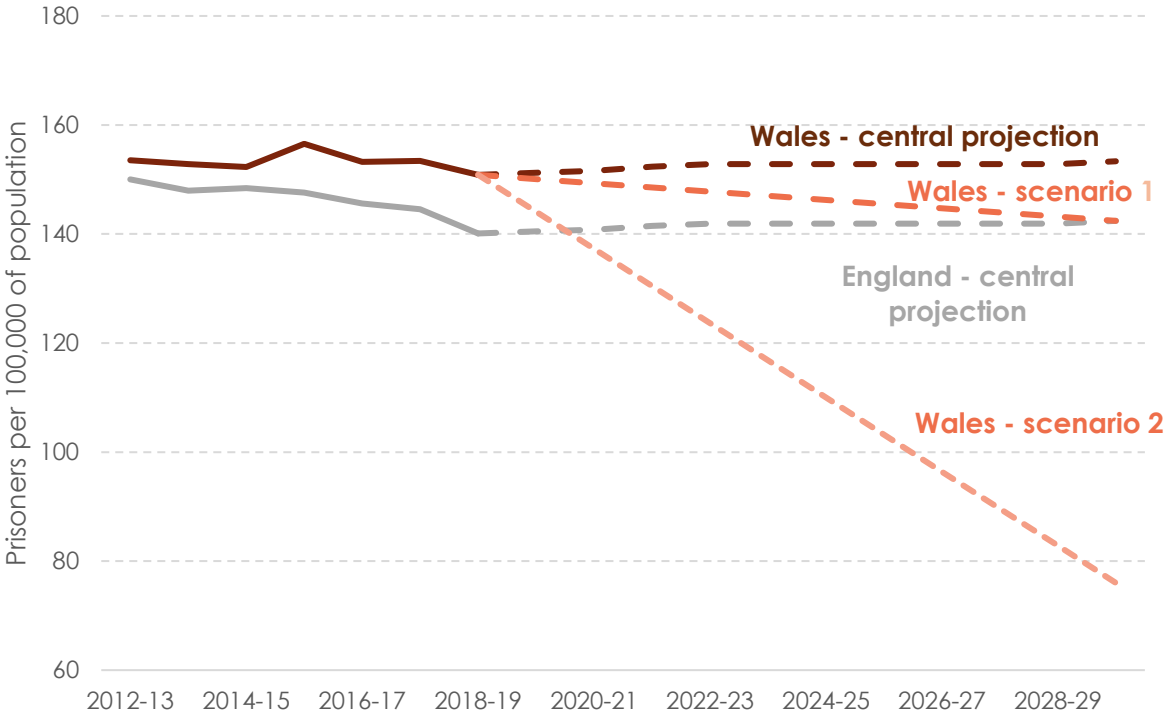
Since spending on prisons and probation services amounts to nearly a fifth of spending on the justice system in Wales, reducing the prisoner population of Wales would offer one way of reducing justice spending. The Welsh imprisonment rate is higher than in England and currently the highest in Western Europe (Jones 2019).

To examine the potential budgetary effects of reducing the prison population, we make simple projections of the imprisonment rate and the prisoner population in Wales after devolution and what this would mean for spending on prisons. In 2017-18, overall resource spending on prisons in Wales amounted to £168 million a year (Ifan 2019). As HMP Berwyn approaches its full capacity of 2,106, we assume its average cost per prisoner would fall to the average for all large Category C public sector prisons across England with over 1,000 prisoners (approximately £28,700). This would result in overall resource spending on prisons in Wales of around £190 million at the point of devolution.

As outlined in section 2.2, a cross-border prisoner charging system could see the Welsh Government transfer approximately £13 million to the UK government to cover the accommodation of female and Category A prisoners. At the average estimated cost-per-prisoner of Wales' prisons, the cost of

accommodating Wales’ prison population would amount to £155 million. There would be an excess of prison places in Wales in this situation, which would either result in increased costs per prisoner, or those places could be filled by prisoners from England. Filling the excess capacity of prison places at the average cost per prisoner of Welsh prisons would result in a transfer of approximately £35 million from the UK government. Doing so would potentially allow the Welsh Government to reduce its imprisonment rate while maintaining costs per prisoner through economies of scale.

**Figure 3.2: Projections of imprisonment rate in Wales**



Source: Jones (2019) and author’s calculations

A reduction in the Welsh prison population from the point of devolution would result in a surplus for the Welsh Government. Figure 3.2 shows the recent trends in the number of prisoners from Wales and England (based on address prior to custody) per 100,000 of population. Our central projection uses the Ministry of Justice’s (2018) prison population projections for England and Wales to 2022-23 and assumes that the change in Wales’ imprisonment rate matches that of England.<sup>13</sup> From 2023-24 onwards, we project that imprisonment rates increase slightly, in line with average projected growth from 2018-19 to 2022-23.

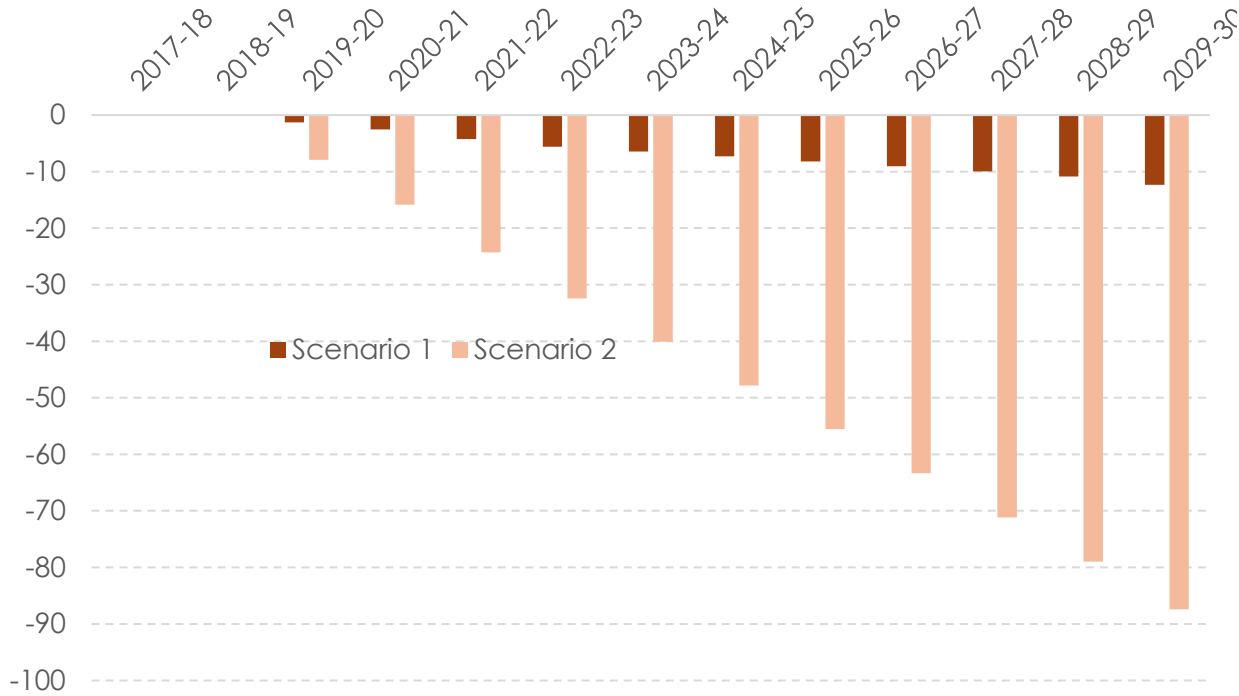
Our alternative scenario 1 assumes that the Welsh imprisonment rate decreases to the level in England by 2029-30. Scenario 2 assumes that the Welsh imprisonment rate falls much more

<sup>13</sup> Available here: <https://www.gov.uk/government/statistics/prison-population-projections-ns>

dramatically over time, so that it corresponds to the current Northern Irish rate of imprisonment by 2029-30

Both scenarios result in a lower prison population from Wales, while scenario 2 would amount to almost a halving of the prison population over a decade. Assuming constant costs per prisoner, we project the savings to the Welsh Government budget from lower prisons spending, showed in figure 3.3. The projection for scenario 1 shows a small saving for the Welsh Government building over time. The more dramatic fall in the prisoner population from Wales in scenario 2 would result in substantial annual savings.

**Figure 3.3: Savings on prison spending for Welsh Government under different scenarios for imprisonment (real terms, 2017-18 prices)**



Source: author's calculations

While based on a simple projection and strong assumptions, these projections provide an illustrative look at the relationship between imprisonment rates and the Welsh budget if justice was devolved. Costs per prisoner in Welsh prisons would be unlikely to stay constant in scenario 2, though charging for accommodating prisoners from England could reduce cost pressures. A reduction in the prison population would also bring other significant savings to the Welsh Government budget, apart from lower prisons spending. For example, wider costs for spending on probation services, healthcare and social services are not captured in these projections. On the other hand, such a reduction in the prison

population may only be possible through increasing spending on other areas, which may reduce the scale of the savings outlined in figure 3.3.

# 4 Conclusion

This report has outlined the possible fiscal and budgetary implications of devolving justice functions to the Welsh Government.

As with many previous examples of devolution, devolving justice functions will require an appropriate transfer of funding from the UK government to the Welsh Government. The size of this transfer will reflect the UK government's spending plans prior to devolution. This will require a detailed assessment of what is currently spent on the justice system for Wales by UK government departments and agencies, which will be subject to a negotiation between both governments.

Future changes in the funding available to the Welsh Government will continue to be influenced by UK government spending decisions in England. Spending per person in Wales on justice is currently lower than the level in England. This means that the application of the Barnett formula over time would likely lead to relative funding levels converging upwards to the level in England. Wales' slower growing population and the multiplying of *consequential*s with the agreed Needs-Based Factor (of 105%) will further boost funding levels per person in Wales over time. The Welsh Government could decide to spend this slight boost in funding on justice functions or use the funding elsewhere in its budget.

The fiscal impact of justice devolution will also depend on any additional administrative and set up costs. Devolved governments are usually responsible for meeting costs associated with devolution, though this too will be subject to a negotiation. Most annual administration costs could be covered in the initial transfer from the UK government, reflecting the amounts currently spent by UK government departments on administering justice in Wales. The Welsh Government would however face initial set-up costs associated with devolution, and very likely additional administrative costs reflecting diseconomies of scale associated with running a Wales-only system – costs which are very difficult to quantify. There will be a need for justice policy directorates to be established in the Welsh Government, the annual cost of which has been estimated at approximately £10 million. These additional costs may over time be offset by the operation of the Barnett formula over time.

Another key consideration for justice devolution is the possibility of a cross-border charging system for prisoners. This system would be required to reflect the lack of accommodation for female and Category A prisoners in Wales and the surplus of places for other male prisoners. Although the details

of such a system would need to be carefully considered, we find that the funding flows required for such a system would not be uncommon with existing cross-border funding flows for other public services, such as specialist healthcare provision.

If justice was devolved, the Welsh Government would bear the risk of a divergence in trends in the justice system in Wales compared with England. For example, an increase in crime and imprisonment could increase costs above the funding transferred by the UK government. On the other hand, it would create substantial incentives for the Welsh Government to move towards an alternative model for the justice system. For example, reducing imprisonment and re-offending in Wales could lead to substantial budgetary savings, which could be reinvested elsewhere in the budget. A concern under the present system is that the financial benefits of spend-to-save policies implemented by the Welsh Government to reduce costs in the justice system are captured by the UK government. A devolved justice system would address this issue, with the financial benefits of any policies implemented to reduce crime and imprisonment flowing to the Welsh Government budget instead.

In conclusion, the fiscal and budgetary effect of justice devolution remains somewhat uncertain and would largely depend on future negotiations between both governments. An adequate funding transfer from the UK government followed by the application of the Barnett formula could be beneficial to the Welsh Government and relative spending levels in Wales. The likely additional costs of devolution would not appear to be prohibitive, providing adequate cross-border arrangements can be agreed and the process of devolution is staged over time.



## Sources

HM Treasury (2018) *Block Grant Transparency: December 2018*. Available at:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/767101/Block\\_Grant\\_Transparency\\_2018\\_PDF\\_1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/767101/Block_Grant_Transparency_2018_PDF_1.pdf)

HM Treasury (2015) *Statement of Funding Policy*, November 2015. Available at:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/479717/statement\\_of\\_funding\\_2015\\_print.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/479717/statement_of_funding_2015_print.pdf)

House of Commons Welsh Affairs Committee (2015) *Cross-border health arrangements between England and Wales*, HC 404. Available at:  
<https://publications.parliament.uk/pa/cm201415/cmselect/cmwelaf/404/404.pdf>

Ifan (2019) *Public Spending on the Justice System for Wales*. Cardiff: Wales Governance Centre

Jones, R. and Wyn Jones, R (2019) *The Jagged Edge*. Cardiff: Wales Governance Centre

Jones (2019) *Sentencing and Immediate Custody in Wales: A Factfile*, Cardiff: Wales Governance Centre

Ministry of Justice (2019) *Prison population projections 2018 to 2023*. Available at:  
<https://www.gov.uk/government/statistics/prison-population-projections-ns>

Poole, E. and Ifan, G. (2019) Internal coordination of social security in the UK, *European Journal of Social Security*, 21(2), 153-162

Poole, E., Ifan, G. and Phillips, D. (2016) *Barnett Squeezed? Options for a Funding Floor after Tax Devolution*. December 2016. Cardiff: Wales Governance Centre



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